

Philosophy/Sociology

THE THEORY OF COMMUNICATIVE ACTION, Volume Two

JÜRGEN HABERMAS

Translated by Thomas McCarthy

The conclusion to one of the great works of twentieth-century social theory.

Jürgen Habermas opens volume 2 with a brilliant reinterpretation of Mead and Durkheim and then develops his own approach to society, combining two hitherto competing paradigms, "system" and "lifeworld." The strength of this combination is then demonstrated in a detailed critique of Parsons's theory of social systems. Concluding with a critical reconstruction of the Weberian and Marxian treatments of modernity and its discontents, Habermas sets a new agenda for the critical theory of contemporary society. The combination of historical and theoretical sweep, analytical acumen and synthetic power, imagination and engagement mark this as one of the great works of twentieth-century social theory.

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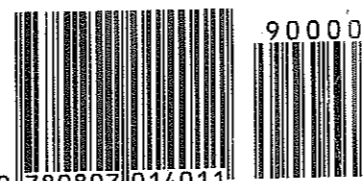
"This work is the most ambitious single study in social theory to appear in recent memory. Sophisticated and innovative... an important accomplishment. Habermas's continuing project is crucial reading for anyone who wishes to remain conversant with the most advanced work in social theory today."

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JÜRGEN HABERMAS

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Volume Two

Lifeworld and System: A Critique of Functionalist Reason

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2. Marx and the Thesis of Internal Colonization

There are a number of reasons for going back to Marx, or more precisely, to the interpretation of Marx stemming from Western Marxism's reception of Weber. On the one hand, the dynamics of class opposition might explain the inner dynamics of bureaucratization—the hypertrophic growth of media-steered subsystems, resulting in the encroachment of administrative and monetary steering mechanisms upon the lifeworld. On the other hand, the reification of communicatively structured domains of action does not, in the first instance, produce effects distributed in any class-specific manner. The phenomena that Weber traced to bureaucratization are by no means characteristic of specific class situations but of modernized societies as a whole. Lukacs connected Weber's theory of rationalization with Marx's political economy in such a way that he could understand the *class-unspecific* side effects of modernization processes as the results of an underlying class conflict. Whereas in Marx there was a direct path from the analysis of the commodity form to the material impoverishment of proletarian forms of life, Lukacs derived from the subsumption of labor power under the commodity form a form of objectivity with which he hoped to decode all “the forms of subjectivity in bourgeois society.” He already had in view an objectivistic deformation of subjectivity generally, a reification of consciousness that embraced bourgeois culture and science and the mentality of bourgeois strata, as well as the economic and reformist self-understanding of the labor movement. For this reason he could assert that the bourgeoisie shares with the proletariat the reification of all its expressions of life; their positions in the production process, which separate the two classes, privilege the wage laborer only in respect to the possibility of recognizing the cause of alienation, namely, the subsumption of life-relations under the commodity form. It is only in connection with this theory of class consciousness that the theory of reification could trace an all-encompassing rationalization back to the conditions of class struggle under which modernization took place in capitalist societies.

As we saw in Volume 1, this Hegelianizing philosophy of history leads to untenable consequences that induced Horkheimer and Adorno to give up the theory of class consciousness. They solved the problem of connecting Marx and Weber by leaning all the more heavily on Weber. If, following Weber, one conceives of the rationalization of life's orders as

the institutionalization of purposive rational action, it is only a small step to generalizing the reification of consciousness into an expression of instrumental reason. And if, like him, one sees the subsystems of purposive rational action irresistibly congealing into an iron cage, it is only a small step from Lukacs's theory of reification to the critique of instrumental reason, that is, to the vision of an administered, totally reified world in which means-ends rationality and domination are merged. This theory has the advantage of directing our attention to the symptoms of the systemically induced deformation of communicatively structured life-contexts, which is no longer localizable in any class-specific way. Its weakness consists in deriving the erosion of the lifeworld from the spell of a means-ends rationality that has been demonized as instrumental reason. The critique of instrumental reason thereby falls into the same error as the Weberian theory and, in addition, forfeits the fruits of an approach nonetheless directed to systemic effects.

The concept of instrumental reason suggests that the rationality of knowing and acting subjects is systemically expanded into a purposive rationality of a higher order. Thus the rationality of self-regulating systems, whose imperatives override the consciousness of the members integrated into them, appears in the shape of a totalized purposive rationality. This confusion of system rationality and action rationality prevented Horkheimer and Adorno, as it did Weber before them, from adequately separating the rationalization of action orientations within the framework of a structurally differentiated lifeworld from the expansion of the steering capacity of differentiated social systems. As a result, they could locate the spontaneity that was not yet in the grips of the reifying force of systemic rationalization only in irrational powers—in the charismatic power of the leader or in the mimetic power of art and love.

Horkheimer and Adorno failed to recognize the communicative rationality of the lifeworld that had to develop out of the rationalization of worldviews before there could be any development of formally organized domains of action at all. It is only this communicative rationality, reflected in the self-understanding of modernity, that gives an inner logic—and not merely the impotent rage of nature in revolt—to resistance against the colonization of the lifeworld by the inner dynamics of autonomous systems. Horkheimer and Adorno were unable to appropriate the systematic content of Weber's diagnosis of the times and to make it fruitful for social-scientific inquiry, because

· they did not take seriously enough Weber's studies on the rationalization of worldviews, or the independent logic of cultural modernity; but also because they were uncritical in two directions;

- vis-à-vis Marx, in that they held fast to the basic assumptions of the theory of value as the core of their tacit orthodoxy, and in this way they blinded themselves to the realities of a developed capitalism based on the pacification of class conflict through welfare-state measures;
- vis-à-vis Weber, in that they remained fixated on the model of purposive rationality and, for that reason, did not expand the critique of instrumental reason into a critique of functionalist reason.

There is no need to say any more about this last point. I will deal now with the other two by (A) examining what Marx's theory of value can contribute to a theory or reification translated into system-lifeworld concepts, and then pointing out its weaknesses, in order (B) to see how we might explain the pacification of class conflict in welfare-state mass democracies and how we could combine the Marxian view of ideology with Weber's reflections on cultural modernity. Finally, I will (C) develop the thesis of internal colonization and support it with some examples from current tendencies toward juridification.

A.—The Marxian approach owes its theoretical superiority over proposals subsequently developed at the same level of abstraction to an ingenious coup de main: the analysis of the commodity form. Through his analysis of the double character of the commodity, Marx arrived at basic value-theoretical assumptions that enabled him both to describe the process of the development of capitalist society from the economic perspective of an observer as a crisis-ridden process of the self-realization of capital and, at the same time, to represent it from the historical perspective of those involved (or of a virtual participant) as a conflict-ridden interaction between social classes. In the concepts of value theory, the exchange relation between labor power and variable capital—a relation that, institutionalized in the labor contract, is fundamental to this mode of production—can be explained simultaneously as the steering mechanism of a self-regulating process of production and as a reflexive relation that makes the whole accumulation process intelligible as an objectified and anonymous process of exploitation. Marx starts from the idea that the *form* of the conflict bred in all class societies by the privileged appropriation of socially produced wealth had changed in a characteristic way with the establishment of the capitalist mode of production. Whereas the dynamics of class in politically constituted, stratified societies were manifested directly on the level of conflicts of interest between social groups, in bourgeois society they are objectivistically concealed and objectivated through the medium of exchange value. The mechanism of the labor market, institutionalized in private law, takes

over functions that had previously been performed by politically institutionalized relations of social force and economic exploitation. The monetarization of labor power becomes the basis of class relations. The analysis of these relations has to begin therefore with the double character of the commodity.

On the one hand, labor power is expended in *concrete* actions and cooperative relationships; on the other hand, it is absorbed as an *abstract* performance by a labor process that is formally organized for purposes of valorization. In this respect, the labor power sold by producers is the site of an encounter between the imperatives of system integration and those of social integration: as an *action* it belongs to the lifeworld of the producers, as a *performance* to the functional nexus of the capitalist enterprise and of the economic system as a whole. Marx was concerned to uncover the illusion that labor power is a commodity like any other. As Claus Offe has put it:

The institution of the labor "market" and "free wage labor" is a fiction, since what is of interest positively and negatively in the commodity called labor power is indeed what distinguishes it from all other commodities, namely, that it is in fact a "living" labor power that (1) does not arise for the purpose of salability, (2) cannot be separated from its owner, and (3) can be set in motion only by its owner. This inextirpable subject-rootedness of labor power implies that in wage labor the categories of action and functioning, of social and system integration are inextricably intertwined.¹

The wage-labor relation neutralizes the performances of producers vis-à-vis the lifeworld contexts of their actions. It sets the conditions of organizational membership under which wage laborers declare their general willingness to expend their labor power as a suitably programmed contribution to maintaining the capitalist enterprise. It is this monetarized labor power, which is appropriated as a commodity and alienated from the life context of producers, that Marx calls "abstract labor." "It is indifferent to the natural-material object of use and to the need that it satisfies; it is indifferent to the particular kinds of activity, as well as to the working individuals and their social situations. These marks of indifference find expression in the determinations of labor which produces exchange value; it is characterized as 'human labor' that is 'the same', 'without difference', 'without individuality', 'abstract', 'universal'. These same features continue on in the relations of indifference that mark the workers' behavior toward others and toward himself."² The analysis of the double character of the commodity "labor power" follows step by step the neutralizations through which labor power is consti-

tuted as abstract, "indifferent to the lifeworld," and available for systemic imperatives.

Marx explains this process of *real abstraction* by means of the objectification of socially integrated contexts of action, which takes place when interactions are no longer coordinated via norms and values, or via processes of reaching understanding, but via the medium of exchange value. In this case, participants are primarily interested in the consequences of their actions. Inasmuch as they orient themselves to "values" in a purposive-rational manner, as if the latter were objects in a second nature, they adopt an objectivating attitude to each other and to themselves, and they transform social and intrapsychic relations into instrumental relations. In this respect, the transformation of concrete into abstract labor power is a process in which communal and individual life become reified. In what follows, I will first emphasize the strengths of this theoretical approach (a); and then discuss its weaknesses (b).

(a) The Marxian theory of value is of methodological and substantive interest for the path that we have followed from Parsons back to Weber. It specifies rules for the fundamental interchange relations between the economic system and the lifeworld, that is, for the market-regulated appropriation of labor power. Using these rules, systematic statements about anonymous processes of valorization can be translated into historical statements about interaction relations between social classes. In this way, problems of system integration—that is to say, the crisis-ridden pattern of accumulation—can be reflected at the level of social integration and connected with the dynamics of class conflict. Taking up from the illuminating Marx interpretation of E. M. Lange,³ Hauke Brunkhorst has distinguished two pairs of theory languages and observation languages, which, depending on the pragmatic roles of their basic concepts, refer either to states and events in the lifeworlds of capitalists and wage laborers, or to systemic contexts of valorization.⁴ The language of classes (*Lc*) is constructed from such action-theoretical concepts as 'concrete labor', 'class interests', and the like; the language of valorization (*Lv*) from such systems-theoretical concepts as 'abstract labor' and 'value'.

Within each of these two languages, the theoretical concepts have first to be operationalized and correlated with concepts of an observation language.⁵ Furthermore, statements expressed in one theory or observation language have to be translated into statements of the other. The theory of value can now be understood as an attempt to explicate these translation rules. The metaphor of the transformation of concrete into abstract labor is tied to the basic intuition by which Marx wants to make clear how statements from *Lct* can be translated into *Lvt*. On this basis, and with the aid of the correlation rules linking each of the theory languages to an observation language, correspondences can then be worked

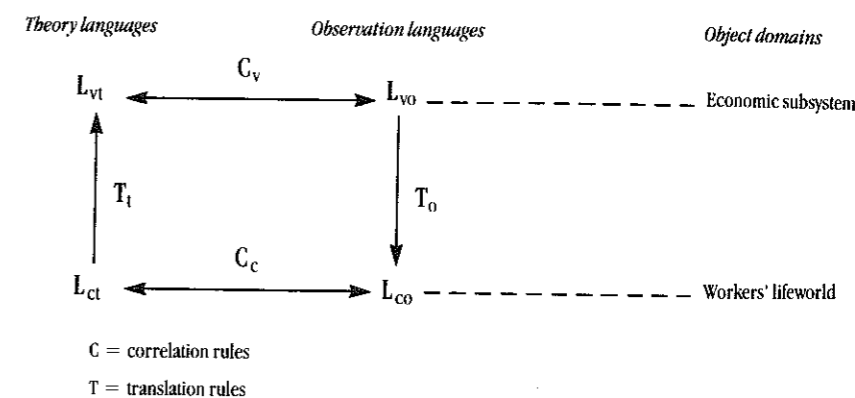


Figure 40. Brunkhorst's Model of the Structure of Scientific Language in *Capital*

out between statements in *Lvo* and *Lco*. This would make it possible, for example, to infer from economic crises to risks affecting the lives of the workers. From statements of this sort—referring to pathologies and deformations of practical forms of life—and with the aid of certain empirical hypotheses—for instance, about the solidarizing effects of the forms of cooperation developed under the factory system—Marx derives statements about the political organization of the labor movement and the dynamics of class struggle, that is, propositions having to do with the theory of revolution, which are also formulated in *Lco*.

To the extent that the structure of Marxian theory is characterized by this connecting of systems-theoretic and action-theoretic concepts, the central position of value theory can be seen in Figure 40, a scheme of rules for correlating expressions and translating statements.

If we represent the theory advanced in *Capital* in this way, that is, in terms of the language of science, then it is the task of value theory to explain the "translation rules" (*Tt*) by which we can pass from a hermeneutically developed, class-theoretical description (of concrete labor relations, embedded in lifeworld contexts) to an objectivating description (of value relations in the economic system). In this translation from one theoretical description to the other, the references have to be retained to a degree sufficient for retranslating (using *To*) from statements about problems of system integration into statements about problems of social integration.

Viewed *methodologically*, the theory of value had for Marx a status similar to that which the action-theoretical introduction of steering media had for Parsons. From a *substantive* perspective, however, Marx's con-

necting of systems theory and action theory had from the start a critical sense that is absent in Parsons: he wanted to *denounce* the self-maintainance of the economic subsystem as a dynamics of exploitation made unrecognizable under the veil of objectification.

Georg Lohmann has developed an original interpretation of the Marxian method, in particular of the intention behind Marx's "critical presentation." Drawing on texts from *Capital*, he explains the relation of the "historical excursuses" to the "economic passages" in the narrower sense. Only against the historically illuminated background of the destruction of the life-context of the exploited producers can the truth about a system that transcends the horizon of this lifeworld come to light. Capital reveals its secret only in the historically preserved traces of destruction left behind by the autonomous capitalist economic system in a lifeworld subjected to its imperatives. The further it consolidates the production of social wealth into a system steered autonomously via the medium of exchange value and has, in that respect, become an end unto itself, and the further the social reality of the sphere of social labor thereby gets adapted to the basic categories of systems theory, all the more does "the whole" reveal itself to be "the untrue." The historical excursuses reveal "the subsumption of precapitalist modes of labor and life under the domination of capital, the acts of resistance and struggle of the workers for a life more in line with their demands, as well as the formation of the processes and conditions of their lives."⁶

Because Marx uses the theory of value to get from the lifeworld of concrete labor to the economic valorization of abstract labor, he can return from this level of systems analysis to the level of a historical and class-theoretical presentation of everyday practice, and can there reckon up the costs of capitalist modernization. The "bilingual" character of the theoretical presentation gives to the dialectical conceptual framework in which Marx brings together systems and action theory its critical point: "Whereas for Hegel the move toward more developed categories is at the same time an advance in the manifestation of 'Truth', for Marx the further categorial conceptualization of the whole is an advance in uncovering the *truth about* capital: that, as a whole, it is something 'negative', something that is historically changeable."⁷

(b) At this point we can see a first weakness in the theory of value. My reconstruction tacitly began with the problem of connecting the action/lifeworld and system paradigms—a problem that became explicit only with Parsons. This was a marked stylization. Marx does move at the two analytical levels of "system" and "lifeworld," but their separation is not really presupposed in his basic economic concepts, which remain tied to Hegelian logic. On the contrary, the interconnection between the two types of theoretical *statements* could be explained through a *se-*

semantic explication of the shifts in meaning involved in using these basic terms only if it is assumed that there is a logical (in the Hegelian sense) connection between the development of the system and the structural transformation of the lifeworld. It is only under this assumption that Marx could hope to grasp a totality comprising both moments at one blow, so to speak, by means of a theory of value that proceeds in terms of semantic analysis. Otherwise it would have been necessary to engage in empirical investigations of real abstraction, that is, of the transformation of concrete into abstract labor.

As matter of fact, the young Marx conceives of the unity of system and lifeworld as did the young Hegel, on the model of a ruptured ethical totality whose abstractly divided moments are condemned to pass away. Under these premises, an accumulation process that has broken away from orientations to use value literally amounts to an illusion—the capitalist system is *nothing more* than the ghostly form of class relations that have become perversely anonymous and fetishized. The systemic autonomy of the production process has the character of an enchantment. Marx is convinced a priori that in capital he has before him *nothing more* than the mystified form of a class relation. This interpretation excludes from the start the question of whether the systemic interconnection of the capitalist economy and the modern state administration do not *also* represent a higher and evolutionarily advantageous level of integration by comparison to traditional societies. Marx conceives of capitalist society so strongly as a totality that he fails to recognize the *intrinsic* evolutionary *value* that media-steered subsystems possess. He does not see that the differentiation of the state apparatus and the economy *also* represents a higher level of system differentiation, which simultaneously opens up new steering possibilities *and* forces a reorganization of the old, feudal, class relationships. The significance of this level of integration goes beyond the institutionalization of a new class relationship.

Marx's misperception also has consequences for his theory of revolution. He does not want merely to describe how the systemically autonomous process of capital's self-realization is experienced from the lifeworld perspective of the wage laborer as a continual exploitation, how the subsumption of labor power under the commodity form tears the workers out of their traditional conditions of life, uproots feudal modes of existence in a plebian fashion, and then shapes them into proletarian forms. Rather, he projects a *practical-political* perspective for action, which, in its assumptions, is exactly contrary to the perspective tacitly adopted by systems functionalism. Systems theory presupposes that the world-historical process of instrumentalizing the lifeworld, particularly the sphere of social labor, in line with the imperatives of self-regulating

systems—the process that Marx denounces—has already come to a close. The marginalized lifeworld can, it is supposed, survive only if it transforms itself in turn into a media-steered subsystem and leaves behind the communicative practice of everyday life as the empty shell of formally organized domains of action. As opposed to this, Marx has in view a future state of affairs in which the objective semblance of capital has dissolved and the lifeworld, which had been held captive under the dictates of the law of value, gets back its spontaneity. He foresees that the forces of the industrial proletariat, at first merely in revolt, will, under the leadership of a theoretically enlightened avant-garde, form themselves into a movement that seizes political power for the purpose of revolutionizing society. Along with the private ownership of the means of production, the movement will also destroy the institutional foundations of the medium through which the capitalist economic system was differentiated out, and will bring the systemically autonomous process of economic growth back again into the horizon of the lifeworld.

System and lifeworld appear in Marx under the metaphors of the “realm of necessity” and the “realm of freedom.” The socialist revolution is to free the latter from the dictates of the former. It seems as if theoretical critique has only to lift the spell cast by abstract labor (subsumed under the commodity form). The intersubjectivity of workers associated in large industries is crippled under the self-movement of capital; theoretical critique has only to free it of its stiffness for an avant-garde to mobilize living—critically enlivened—labor against dead labor and to lead it to the triumph of the lifeworld over the system of deworled labor power.

As against these revolutionary expectations, Weber's prognosis has proven correct: the abolition of private capitalism would not at all mean the destruction of the iron cage of modern industrial labor.⁸ Marx's error stems in the end from dialectically clamping together system and lifeworld in a way that does not allow for a sufficiently sharp separation between the *level of system differentiation* attained in the modern period and the *class-specific forms* in which it has been *institutionalized*. Marx did not withstand the temptations of Hegelian totality-thinking; he construed the unity of system and lifeworld dialectically as an “untrue whole.” Otherwise he could not have failed to see that *every* modern society, whatever its class structure, has to exhibit a high degree of structural differentiation.

This failure is connected with a second weakness of the value-theoretical approach. Marx has no criteria by which to distinguish the destruction of traditional forms of life from the reification of posttraditional lifeworlds.

In Marx and the Marxist tradition the concept of “alienation” has been

applied above all to the wage laborer's mode of existence. In the Paris Manuscripts it is still the expressivist model of creative productivity, in which the artist develops his own essential powers as he shapes his works, that furnishes the standard for criticizing alienated labor. This perspective is retained in the more strongly phenomenologically and anthropologically oriented versions of contemporary praxis philosophy.⁹ Marx himself, however, broke free of this ideal of self-formation inherited from Herder and Romanticism¹⁰ when he moved on to the theory of value. In the idea of an exchange of equivalents, the latter retains only a formal perspective of distributive justice from which to judge the subsumption of labor power under the commodity form. With the idea of transforming concrete into abstract labor, the concept of alienation loses its determinacy. It no longer refers to deviations from the model of an exemplary praxis, but to the instrumentalization of a life that is represented as an end in itself: “The wage laborer has to orient himself to the possibilities of life as a whole by abstracting from them a part so reduced that they get specified as capacities to work, and these in turn are redefined in such a way that they get expressed as objectified powers . . . Life is no longer lived for its own sake; instead, the totality of life's accomplishments is used to realize a certain type of activity, namely the sale of one's labor power. What is posited through capitalist integration, in the ‘buying and selling of labor power’, only as a possibility—namely, the gradual reduction of the whole of life's possibilities to the capacity to work and their abstraction into labor power—realizes itself backwards, so to speak, in the development of the capitalist production process.”¹¹

This concept of alienation remains indeterminate insofar as there is no historical index for the underlying concept, at times Aristotelian, at times Hegelian, of a “life” that is reduced in its possibilities as a result of violating the ideal of justice inherent in the exchange of equivalents. Marx speaks in the abstract about life and life's possibilities; he has no concept of a rationalization to which the lifeworld is subject to the extent that its symbolic structures get differentiated. Thus, in the historical context of his investigations, the concept of alienation remains peculiarly ambiguous.

Marx uses it to criticize the conditions of life that arose with the proletarianizing of craftsmen, farmers, and rural plebians in the course of capitalist modernization. But he is unable to distinguish in this repressive uprooting of traditional forms of life between the aspect of *reification* and that of *structural differentiation of the lifeworld*. For this, the concept of alienation is not sufficiently selective. The theory of value provides no basis for a concept of reification, enabling us to identify syndromes of alienation relative to the degree of rationalization attained in a lifeworld. At the stage of posttraditional forms of life, the pain that the

separation of culture, society, and personality *also* causes those who grow into modern societies and form their identities within them counts as a process of individuation and not alienation. In an extensively rationalized lifeworld, reification can be measured only against the conditions of communicative sociation, and not against the nostalgically loaded, frequently romanticized past of premodern forms of life.

I find the third, and decisive, weakness of the theory of value to be the overgeneralization of a specific case of the subsumption of the lifeworld under the system. Even if we trace the dynamics of class conflict back to the "fundamental contradiction" between wage labor and capital, processes of reification need not appear only in the sphere in which they were caused—in the sphere of social labor. As we have seen, the economy steered by money depends on being functionally supplemented by an administrative system differentiated out via the medium of power. Thus, formally organized domains of action are able to absorb communicative contexts of life through both media—money and power. The process of reification can manifest itself just as well in public as in private domains, and in the latter areas it can attach to consumer as well as to occupational roles. By contrast, the theory of value allows for only *one* channel through which the monetarization of labor power expropriates from producers work activities abstracted into performances.

There is in the action-theoretic foundations of the theory of value an error similar to the one found in Weber and in two lines of Weber reception, Western Marxism and Parsons: the model of purposive rationality is viewed as fundamental for social action as well. Marx was unable to conceive the transformation of concrete into abstract labor as a special case of the systemically induced reification of social relations in general because he started from the model of the purposive actor who, along with his products, is robbed of the possibility of developing his essential powers. The theory of value is carried through in action-theoretic concepts that make it necessary to approach the genesis of reification *below* the level of interaction, and to treat as derived phenomena the de-formation of interaction relations themselves—the deworlding of communicative action that is transferred over to media and the technicizing of the lifeworld that follows upon this. "The one-sided interpretation of basic action concepts, according to which action can be understood only as productive-objectifying activity, takes its revenge in underestimating the extent of neutralization that comes with the reduction of abstract labor. Marx is too harmless, in categorial terms, when it comes to determining the neutralizations of action required for system integration."¹²

The three weaknesses of the theory of value that we have analyzed here explain why, despite its two-level concept of society combining system and lifeworld, the critique of political economy has been unable

to produce a satisfactory account of late capitalism. The Marxian approach requires an economically foreshortened interpretation of developed capitalist societies. Marx was right to assign an evolutionary primacy to the economy in such societies: the problems in this subsystem determine the path of development of the society as a whole. But this primacy should not mislead us into tailoring the complementary relationship between the economy and the state apparatus to a trivial notion of base and superstructure. As opposed to the monism of the theory of value, we have to allow for two steering media and four channels through which the two complementary subsystems subject the lifeworld to their imperatives. Reification effects can result in like manner from the bureaucratization and monetarization of public and private areas of life.

B.—Our critical discussion of the theory of value gives occasion to build the dynamics of an accumulation process that has become an end in itself into the model developed earlier for interchange relations between the economy and state, on the one side, and the private and public spheres, on the other (Figure 39). This model protects us against an economically narrowed interpretation, directs our attention to the interaction between state and economy, and provides an explanation for the characteristic features of political systems in developed capitalist societies. Marxian orthodoxy has a hard time explaining government interventionism, mass democracy, and the welfare state. The economic approach breaks down in the face of the pacification of class conflict and the long-term success of reformism in European countries since World War II, under the banner of a social-democratic program in the broader sense. In what follows, I shall (*a*) indicate the theoretical deficits detrimental to Marx's attempts to explain late capitalism, in particular state interventionism, mass democracy, and the welfare state; and then (*b*) introduce a model that explains the compromise structures of late capitalism and the cracks within them; and finally (*c*) go back to the role of culture, to which the Marxian theory of ideology does not do justice.

(*a*) *Government Interventionism.* If we take as a basis the model of two complementary subsystems, one of which presents the problems to the other, a crisis theory that proceeds only in economic terms proves to be unsatisfactory. Even if system problems arise in the first place from the crisis-ridden course of economic growth, economic disequilibria can be balanced through the state jumping into the functional gaps of the market. Of course, the substitution of governmental for market functions takes place under the proviso that the sovereign right of private enterprise in matters of investment be fundamentally safeguarded. Economic growth would lose its intrinsic capitalist dynamics and the economy would forfeit its primacy if the production process were *controlled*

through the medium of power. The intervention of the state may not affect the division of labor between a market-dependent economy and an economically unproductive state. In all three central dimensions—guaranteeing by military and legal-institutional means the presuppositions for the continuance of the mode of production; influencing the business cycle; and attending to the infrastructure with a view to the conditions of capital realization—government intervention has the *indirect* form of manipulating the boundary conditions for the decisions of private enterprise, and the *reactive* form of strategies for avoiding its side effects or compensating for them. This refracted mode of employing administrative power is determined by the propelling mechanism of an economy steered via the money medium.

As a result of this structural dilemma, economically conditioned crisis tendencies are not only administratively processed, flattened out, and intercepted, but also are inadvertently displaced into the administrative system. They can appear in various forms there—for example, as conflicts between business-cycle policy and infrastructure policy, as an overuse of the resource “time” (national debt), as an overloading of bureaucratic planning capacities, and so forth. This can, in turn, call forth relief strategies aimed at shifting the burden of problems back onto the economic system. Claus Offe has been particularly concerned to explain this complicated pattern of crises and of maneuvers to deal with them—oscillating from one subsystem to the other, pushed from one dimension to the other.¹³

Mass democracy. If we start from a model with two steering media, namely, money and power, then an economic theory of democracy developed in terms of Marxist functionalism is inadequate. In comparing these two media, we saw that the institutionalization of power is more demanding than that of money. Money is anchored in the lifeworld by the institutions of bourgeois private law; for this reason the theory of value can start from the contractual relation between the wage laborer and the owner of capital. By contrast, the public-legal (in the sense of the law applying to public bodies) pendant of an organization of offices does not suffice for power; above and beyond this, a legitimation of the political order is needed. And only democratic procedures of political will-formation can in principle generate legitimacy under conditions of a rationalized lifeworld with highly individuated members, with norms that have become abstract, positive, and in need of justification, and with traditions that have, as regards their claim to authority, been reflectively refracted and set communicatively aflow.¹⁴ In this respect, the organized labor movement aimed in the same direction as the bourgeois emancipation movements. In the end, the legitimation process is regulated—on

the basis of freedom of organization and of belief, and by way of competition between parties—in the form of free, secret, and general elections. Of course, the political participation of citizens takes place under certain structural restrictions.

Between capitalism and democracy there is an *indissoluble* tension; in them two opposed principles of societal integration compete for primacy. If we look at the self-understanding expressed in the basic principles of democratic constitutions, modern societies assert the primacy of a lifeworld in relation to the subsystems separated out of its institutional orders. The normative meaning of democracy can be rendered in social-theoretical terms by the formula that the fulfillment of the functional necessities of *systemically* integrated domains of action shall find its limits in the integrity of the lifeworld, that is to say, in the requirements of domains of action dependent on *social* integration. On the other hand, the internal dynamics of the capitalist economic system can be preserved only insofar as the accumulation process is uncoupled from orientations to use value. The propelling mechanism of the economic system has to be kept as free as possible from lifeworld restrictions as well as from the demands for legitimation directed to the administrative system. The internal systemic logic of capitalism can be rendered in social-theoretical terms by the formula that the functional necessities of systemically integrated domains of action shall be met, if need be, even at the cost of *technicizing* the lifeworld. Systems theory of the Luhmannian sort transforms this practical postulate into a theoretical one and thus makes its normative content unrecognizable.

Offe has expressed the tension between capitalism and democracy, from the standpoint of the competition between two contrary principles of societal integration, in the following paradox:

Capitalist societies are distinguished from all others not by the problem of their reproduction, that is, the reconciliation of social and system integration, but by the fact that they attempt to deal with what is in fact the basic problem of all societies in a way that simultaneously entertains two solutions which logically preclude one another: the differentiation or privatization of production and its politicization or “socialization” (in the Marxian sense). The two strategies thwart and paralyze each other. As a result the system is constantly confronted with the dilemma of having to abstract from the normative rules of action and the meaning relations of subjects without being able to disregard them. The political neutralization of the spheres of labor, production, and distribution is simultaneously confirmed and repudiated.¹⁵

This paradox also manifests itself in the fact that if parties want to gain or retain the power of office, they have to secure the trust of private investors and of the masses simultaneously.

Above all, the two imperatives clash in the political public sphere, where the autonomy of the lifeworld has to prove itself in the face of the administrative system. The "public opinion" that gets articulated there has a different meaning from the perspective of the lifeworld than it does from the systemic perspective of the state apparatus.¹⁶ One or the other of these perspectives is adopted by political sociologists according to whether they take an action-theoretic or a systems-theoretic approach; the chosen perspective is then applied to support a pluralistic, or ideology-critical, or authoritarian approach. Thus, from one point of view, what opinion polls report as public opinion or the will of the voters, of parties and associations, counts as a pluralistic expression of a general interest; social consensus is regarded as the *first link* in the chain of political will-formation and as the *basis* of legitimation. From the other point of view, the same consensus counts as the *result* of engineering legitimation; it is regarded as the *last link* in the chain of production of mass loyalty, with which the political system outfits itself in order to make itself independent from lifeworld restrictions. These two lines of interpretation have been falsely opposed to one another as the normative versus the empirical approach to democracy. In fact, however, each of the two views contains only one aspect of mass democracy. The formation of will that takes place via competition between parties is a result of both—the pull of communication processes in which norms and values are shaped, on the one hand, and the push of organizational performances by the political system, on the other.

The political system produces mass loyalty in both a positive and a selective manner: positively through the prospect of making good on social-welfare programs, selectively through excluding themes and contributions from public discussion. This can be accomplished through a sociostructural filtering of access to the political public sphere, through a bureaucratic deformation of the structures of public communication, or through manipulative control of the flow of communication.

By a combination of such variables we can explain how the symbolic self-presentation of political elites in the public sphere can be largely uncoupled from real decision-making processes within the political system.¹⁷ Corresponding to this, we find a segmenting of the role of the voter, to which political participation is generally restricted. In general, electoral decisions have influence only on the recruitment of leadership personnel; as far as the motives behind them are concerned, they are removed from the grasp of discursive will-formation. This arrangement

amounts to a neutralization of the possibilities for political participation opened up by the role of citizen.¹⁸

Welfare state. If we begin with a model of the interchange of the formally organized domains of economics and politics, on the one side, and communicatively structured domains of the private and public spheres on the other, then we have to consider that problems arising in the sphere of social labor get shifted from private to public spheres of life and, under the conditions of competitive-democratic will-formation, are there transformed into mortgages on legitimation. The social burdens resulting from class conflict—and these are in the first instance private burdens—cannot be kept away from the political sphere. Thus does social welfare become the political content of mass democracy. This shows that the political system cannot emancipate itself without a trace from its citizens' orientations to use values. It cannot produce mass loyalty in any desired amount, but must, in its social-welfare programs, also make offers that can be checked as to fulfillment.

The legal institutionalization of collective bargaining became the basis of a reform politics that has brought about a pacification of class conflict in the social-welfare state. The core of the matter is the legislation of rights and entitlements in the spheres of work and social welfare, making provision for the basic risks of the wage laborers' existence and compensating them for handicaps that arise from the structurally weaker market positions (of employees, tenants, consumers, etc.). Social-welfare policy heads off extreme disadvantages and insecurities without, naturally, affecting the structurally unequal property, income, and power relations. The regulations and performances of the social-welfare state are, however, not only oriented to goals of social adjustment through individual compensations, but also to overcoming collectively experienced, external effects—for example, in the ecologically sensitive areas of town planning and highway construction, energy and water policy, protection of the countryside, or in the areas of health, culture, and education.

Politics directed to expanding the social-welfare state is certainly faced with a dilemma, which is expressed at the fiscal level in the zero-sum game between public expenditures for social-welfare measures, on the one side, and expenditures aimed to promote business and to improve the infrastructure in ways that foster economic growth, on the other side. The dilemma consists in the fact that the social-welfare state is supposed to head off immediately negative effects on the lifeworld of a capitalistically organized occupational system, as well as the dysfunctional side effects thereupon of economic growth that is steered through capital accumulation, and it is supposed to do so without encroaching upon the organizational form, the structure, or the drive mechanism of

economic production. Not the least among the reasons why it may not impair the conditions of stability and the requirements of mobility of capitalist growth is the following: adjustments to the pattern of distribution of social compensations trigger reactions on the part of privileged groups unless they can be covered by increases in the social product and thus do not affect the propertied classes; when this is not the case, such measures cannot fulfill the function of containing and mitigating class conflict.

Thus, not only is the *extent* of social-welfare expenditures subject to fiscal restrictions, the *kind* of social-welfare performances, the *organized way* in which life is provided for, has to fit into the structure of an interchange, via money and power, between formally organized domains of action and their environments.

(b) Insofar as the political system in developed capitalist societies manages to overcome the structural dilemmas accompanying government interventionism, mass democracy, and the welfare state, structures of late capitalism take shapes that have to appear as paradoxical from the perspective of a Marxian theory with a narrowly economic approach. The welfare-state pacification of class conflict comes about under the condition of a continuation of the accumulation process whose capitalist drive mechanism is protected and not altered by the interventions of the state. In the West, under both social-democratic and conservative governments, a reformism relying on the instruments of Keynesian economics has made this development into a program; since 1945, especially in the phase of reconstructing and expanding destroyed productive capacity, it has achieved unmistakable economic and sociopolitical successes. The societal structures that have crystallized out in the process should not, however, be interpreted in the manner of Austro-Marxist theoreticians such as Otto Bauer or Karl Renner, that is, as the result of a class compromise. For with the institutionalization of class conflict, the social antagonism bred by private disposition over the means of producing social wealth increasingly loses its structure-forming power for the lifeworlds of social groups, although it does remain constitutive for the structure of the economic system. Late capitalism makes use in its own way of the relative uncoupling of system and lifeworld. A class structure shifted out of the lifeworld into the system loses its historically palpable shape. The unequal distribution of social rewards reflects a structure of privilege that can no longer be traced back to class positions in any unqualified way. The old sources of inequality are, to be sure, not sealed off, but now there is interference with both welfare-state compensations and inequalities of another sort. Disparities and conflicts among marginal groups are characteristic of this. The more the class conflict that is built

into society through the private economic form of accumulation can be dammed up and kept latent, the more problems come to the fore that do not *directly* violate interest positions ascribable on a class-specific basis.

Here I shall not go into the difficult problem of how the composition rules for the pattern of social equality in late capitalism undergo change; I am interested rather in how a new type of reification effect arises in class-unspecific ways, and why these effects—filtered, naturally, through the pattern of social inequality and spread around in a differential fashion—are today found above all in communicatively structured domains of action.

The welfare-state compromise alters the conditions of the four existing relations between system (economy and state) and lifeworld (private and public spheres), around which the roles of the employee and the consumer, the client of public bureaucracies and the citizen of the state, crystallize. In his theory of value Marx concentrated solely on the exchange of labor power for wages and found the symptoms of reification in the sphere of social labor. Before his eyes he had that historically limited type of alienation that Engels, for example, had described in *The Condition of the Working Class in England*.¹⁹ From the model of alienated factory work in the early stages of industrialization, Marx developed a concept of alienation that he carried over to the proletarian lifeworld as a whole. This concept makes no distinction between the dislocation of traditional lifeworlds and the destruction of posttraditional lifeworlds. And it also does not discriminate between impoverishment, which concerns the material reproduction of the lifeworld, and disturbances in the symbolic reproduction of the lifeworld—in Weber's terms, between problems of outer and of inner need. But this type of alienation recedes further and further into the background as the welfare state becomes established.

In the social-welfare state, the roles provided by the occupational system become, so to speak, normalized. Within the framework of post-traditional lifeworlds, the structural differentiation of employment within organizations is no foreign element in any case; the burdens resulting from the character of heteronomously determined work are made at least subjectively bearable—if not through “humanizing” the work place, through providing monetary rewards and legally guaranteed securities—and are largely headed off in this way, along with other disadvantages and risks stemming from the status of workers and employees. The role of employee loses its debilitating proletarian features with the continuous rise in the standard of living, however differentiated by stratification. As the private sphere is shielded against palpable consequences of the system imperatives at work, conflicts over distribution also lose

their explosive power; it is only in dramatic, exceptional cases that they go beyond the institutional boundaries of collective bargaining and become a burning issue.

This new equilibrium between normalized occupational roles and upgraded consumer roles is, as we have seen, the result of a welfare arrangement that comes about under the legitimation conditions of mass democracy. The theory of value was wrong to ignore the interchange relations between the political system and the lifeworld. For the pacification of the sphere of social labor is only the counterpart to an equilibrium established on the other side, between an expanded, but at the same time neutralized, citizen's role and blown-up client's role. The establishment of basic political rights in the framework of mass democracy means, on the one hand, a universalization of the role of citizen and, on the other hand, a segmenting of this role from the decision-making process, a cleansing of political participation from any participatory content. Legitimacy and mass loyalty form an alloy that is not analyzed by those involved and cannot be broken down into its critical components.

For this neutralization of the generalized role of citizen, the welfare state also pays in the coin of use values that come to citizens as clients of welfare-state bureaucracies. "Clients" are customers who enjoy the rewards of the welfare state; the client role is a companion piece that makes political participation that has been evaporated into an abstraction and robbed of its effectiveness acceptable. The negative side effects of institutionalizing an alienated mode of having a say in matters of public interest are passed off onto the client role in much the same way as the burdens of normalizing alienated labor are passed off onto the consumer role. It is primarily in these two channels that new conflict potentials of late capitalist society are gathering. With the exception of critical theorists such as Marcuse and Adorno, Marxists have found these new potentials vexing. Of course, the framework of the critique of instrumental reason within which those critical theorists operated has turned out to be too narrow. Only in the framework of a critique of functionalist reason can we give a plausible account of why, under the cover of a more or less successful welfare-state compromise, there should still be any conflicts breaking out at all—conflicts that do not appear primarily in class-specific forms and yet go back to a class structure that is displaced into systemically integrated domains of action. The explanation suggested by our model of late capitalist society—a model that is admittedly very stylized and that works with only a few, idealized assumptions—is the following.

Welfare-state mass democracy is an arrangement that renders the class antagonism still built into the economic system innocuous, under the condition, however, that the capitalist dynamics of growth, protected by

measures of state intervention, do not grow weak. Only then is there a mass of compensation available that can be distributed according to implicitly agreed upon criteria, in ritualized confrontations, and channeled into the roles of consumer and client in such a way that the structures of alienated labor and alienated political participation develop no explosive power. However, the politically supported, internal dynamics of the economic system result in a more or less continuous increase in system complexity—which means not only an *extension* of formally organized domains of action, but an increase in their internal *density* as well. This is true, in the first place, for relations within the subsystems of the economy and the public administration and for their relations with each other. It is this internal growth that explains the processes of concentration in commodity, capital, and labor markets, the centralization of private firms and public agencies, as well as part of the expansion in the functions and activities of the state (as manifested by the correlative rise in government budgets).

However, the growth of this whole complex has as much to do with the interchange of the subsystems with those spheres of the lifeworld that have gotten redefined as system environments—in the first instance, private households that have been converted over to mass consumption, and client relations that are coordinated with bureaucratic provisions for life.

On the basic assumptions of our model, these are the two channels through which the compensations flow, which the welfare state offers for the pacification of the sphere of social labor and the neutralization of participation in political decision-making processes. If we ignore for the moment crisis-laden disequilibria of the system that are passed on to the lifeworld in administratively processed forms, capitalist growth triggers conflicts within the lifeworld chiefly as a consequence of the expansion and the increasing density of the monetary-bureaucratic complex; this happens, first of all, where socially integrated contexts of life are redefined around the roles of consumer and client and assimilated to systemically integrated domains of action. Such processes have always been part of capitalist modernization; historically, they have been successful in overriding the defensive reaction of those affected so long as it was primarily a question of transferring the material reproduction of the lifeworld over to formally organized domains of action. Along the front between system and lifeworld, the lifeworld evidently offers stubborn and possibly successful resistance only when functions of symbolic reproduction are in question.

(c) Before getting into these empirical matters, we have to pick up a thread that we earlier laid aside. We interpreted Weber's thesis of the loss of freedom in terms of a systemically induced reification of communica-

tively structured domains of action; then, from our critical discussion of the theory of value, we arrived at hypotheses that might explain why there are reification tendencies at all in developed capitalist societies, even if in an altered form. But how does Weber's second cultural-critical thesis—which had to do with the disintegration of religious-metaphysical worldviews and with phenomena of a loss of meaning—fit together with this reception of Marx? In Marx and Lukacs the theory of reification is supplemented and supported by a theory of class consciousness. The latter is directed, in an ideology-critical fashion, against the dominant form of consciousness and reclaims for the other side certain privileged opportunities for critical insight. In the face of a class antagonism pacified by means of welfare-state measures, however, and in the face of the growing anonymity of class structures, the theory of class consciousness loses its empirical reference. It no longer has application to a society in which we are increasingly unable to identify strictly class-specific lifeworlds. Consistent with this, Horkheimer and his collaborators replaced it with a theory of mass culture.

Marx developed his dialectical concept of ideology with an eye to eighteenth-century bourgeois culture. These ideals of self-formation, which had found classic expression in science and philosophy, in natural right and economics, in art and literature, had entered into the self-understanding and the private life-styles of the bourgeoisie and of an increasingly bourgeois nobility, as well as into the principles of public order. Marx recognized the ambivalent content of bourgeois culture. In its claims to autonomy and scientific method, to individual freedom and universalism, to radical, romantic self-disclosure, it is on the one hand, the result of cultural rationalization—having ceased to rely on the authority of tradition, it is sensitive to criticism and self-criticism. On the other hand, however, the normative contents of its abstract and unhistorical ideas, overshooting as they do existing social realities, not only support a critically transforming practice by providing some initial guidance, but also support an affirming and endorsing practice by providing a measure of idealistic transfiguration. The utopian-ideological double character of bourgeois culture has been worked out again and again from Marx to Marcuse.²⁰ This description applies to just those structures of consciousness that we would expect under the conditions of a modern form of understanding.

We designated as a "modern form of understanding" a structure of communication characterized in profane domains of activity by the facts that (a) communicative actions are increasingly detached from normative contexts and become increasingly dense, with an expanded scope for contingencies; and (b) forms of argumentation are institutionally dif-

ferentiated, namely, theoretical discourse in the scientific enterprise, moral-practical discourse in the political public sphere and in the legal system, and aesthetic criticism in the artistic and literary enterprise. (See Figure 28 above). In the early modern period, the realm of the sacred was not completely leveled down; in secularized form it lived on in the contemplation of an art that had not shed its aura, as well as in practically effective religious and philosophical traditions, in the transitional forms of a not yet fully secularized bourgeois culture. As this residue of the sacred gets flattened out, however, as the syndrome of validity claims gets disentangled here as well, the "loss of meaning" that occupied Weber makes itself felt. The rationality differential that had always existed between the realms of the sacred and the profane now disappears. The rationality potential released in the profane realm had previously been narrowed down and neutralized by worldviews. Considered in structural terms, these worldviews were at a lower level of rationality than everyday consciousness; at the time, however, they were intellectually better worked through and articulated. What is more, mythical or religious worldviews were so deeply rooted in ritual or cultic practices that the motives and value orientations formed without coercion in collective convictions were sealed off from the influx of dissonant experiences, from the rationality of everyday life. This all changes with the secularization of bourgeois culture. The irrationally binding, sacrally preserved power of a level of rationality that had been superseded in everyday practice begins to wane. The substance of basic convictions that were culturally sanctioned and did not need to be argued for begins to evaporate.

From the logic of cultural rationalization we can project the vanishing point toward which cultural modernity is heading; as the rationality differential between the profane realm of action and a definitively disenchanting culture gets leveled out, the latter will lose the properties that made it capable of taking on ideological functions.

Of course, this state of affairs—which Daniel Bell has proclaimed as "The End of Ideology"—was a long time coming. The French Revolution, which was fought under the banner of bourgeois ideals, inaugurated the epoch of ideologically determined mass movements. The classical bourgeois emancipation movements gave rise to traditionalist reactions with the characteristics of a regression to the prebourgeois level of imitated substantiality. On the other hand, there was also a syndrome of heterogeneous modern reactions, ranging across a broad spectrum of scientific—mostly pseudoscientific—popular views, from anarchism, communism, and socialism, through syndicalist, radical-democratic, and conservative-revolutionary orientations, to fascism and National Socialism. This was the second generation of ideologies that arose on the

ground of bourgeois society. All differences in formal level and synthetic power notwithstanding, they have one thing in common. Unlike the classical bourgeois ideology, these worldviews, rooted in the nineteenth century, work up specifically modern manifestations of withdrawal and deprivation—that is to say, deficits inflicted upon the lifeworld by societal modernization. This is the direction indicated, for instance, by the visionary desires for a moral or aesthetic renewal of the political public sphere or, more generally, for revitalizing a politics that has shrunk to administration. Thus, tendencies to moralization are expressed in the ideals of autonomy and participation that usually predominate in radical-democratic and socialist movements. Tendencies to aestheticization are expressed in needs for expressive self-presentation and authenticity; they can predominate in both authoritarian movements (like fascism) and antiauthoritarian movements (like anarchism). Such tendencies are in keeping with modernity inasmuch as they do not turn to metaphysically or religiously satisfying worldviews to “salvage” the moral-practical and expressive moments suppressed or neglected by the capitalist pattern of modernization; they seek, instead, to establish them practically in the new life forms of a society revolutionized in some way or other.

In spite of the differences in content, these worldviews still share with the ideologies of the first generation—the offspring of rational natural law, of utilitarianism, of bourgeois social philosophy and philosophy of history in general—the *form* of totalizing conceptions of order addressed to the political consciousness of comrades and partners in struggle. It is just this form of a global interpretation of the whole, drawn up from the perspective of the lifeworld and capable of integration, that had to break down in the communication structures of a developed modernity. When the auratic traces of the sacred have been lost and the products of a synthetic, world-picturing power of imagination have vanished, the form of understanding, now fully differentiated in its validity basis, becomes so transparent that the communicative practice of everyday life no longer affords any niches for the structural violence of ideologies. The imperatives of autonomous subsystems then have to exert their influence on socially integrated domains of action from the outside, and *in a discernible fashion*. They can no longer hide behind the rationality differential between sacred and profane realms of action and reach inconspicuously through action orientations so as to draw the lifeworld into intuitively inaccessible, functional interconnections.

If, however, the rationalized lifeworld more and more loses its structural possibilities for ideology formation, if the facts that speak for an instrumentalizing of the lifeworld can hardly be interpreted away any longer and ousted from the horizon of the lifeworld, one would expect

that the competition between forms of social and system integration would openly come to the fore. But the late capitalist societies fitting the description of “welfare-state pacification” do not confirm this conjecture. They have evidently found some functional equivalent for ideology formation. In place of the positive task of meeting a certain need for interpretation by ideological means, we have the negative requirement of preventing holistic interpretations from coming into existence. The lifeworld is always constituted in the form of a global knowledge intersubjectively shared by its members; thus, the desired equivalent for no longer available ideologies might simply consist in the fact that the everyday knowledge appearing in totalized form remains diffuse, or at least never attains that level of articulation at which alone knowledge can be accepted as valid according to the standards of cultural modernity. *Everyday consciousness* is robbed of its power to synthesize; it becomes *fragmented*.

Something of this sort does in fact happen; the differentiation of science, morality, and art, which is characteristic of occidental rationalism, results not only in a growing autonomy for sectors dealt with by specialists, but also in the splitting off of these sectors from a stream of tradition continuing on in everyday practice in a quasi-natural fashion. This split has been repeatedly experienced as a problem. The attempts at an *Aufhebung* of philosophy and art were rebellions against structures that subordinated everyday consciousness to the standards of exclusive expert cultures developing according to their own logics and that yet cut it off from any influx from them.²¹ Everyday consciousness sees itself thrown back on traditions whose claims to validity have already been suspended; where it does escape the spell of traditionalism, it is hopelessly splintered. In place of “false consciousness” we today have a “fragmented consciousness” that blocks enlightenment by the mechanism of reification. It is only with this that the conditions for a *colonization of the lifeworld* are met. When stripped of their ideological veils, the imperatives of autonomous subsystems make their way into the lifeworld from the outside—like colonial masters coming into a tribal society—and force a process of assimilation upon it. The diffused perspectives of the local culture cannot be sufficiently coordinated to permit the play of the metropolis and the world market to be grasped from the periphery.

Thus, the theory of late-capitalist reification, reformulated in terms of system and lifeworld, has to be supplemented by an analysis of cultural modernity, which replaces the now superseded theory of consciousness. Rather than serving a critique of ideology, this analysis would have to explain the cultural impoverishment and fragmentation of everyday consciousness. Rather than hunting after the scattered traces of revolution-

ary consciousness, it would have to examine the conditions for recoupling a rationalized culture with an everyday communication dependent on vital traditions.

C.—Tendencies toward Juridification.—I have explained the symptoms of reification appearing in developed capitalist societies by the fact that the media-controlled subsystems of the economy and the state intervene with monetary and bureaucratic means in the symbolic reproduction of the lifeworld. According to our hypothesis, a "colonialization of the lifeworld" can come about only

- when traditional forms of life are so far dismantled that the structural components of the lifeworld (culture, society, and personality) have been differentiated to a great extent;
- when exchange relations between the subsystems and the lifeworld are regulated through differentiated roles (for employment at organized work places, for the consumer demand of private households, for the relation of clients to government bureaucracies, and for formal participation in the legitimation process);
- when the real abstractions that make available the labor power of the employed and make possible the mobilization of the vote of the electorate are tolerated by those affected as a trade-off against social rewards (in terms of time and money);
- where these compensations are financed according to the welfare-state pattern from the gains of capitalist growth and are canalized into those roles in which, withdrawn from the world of work and the public sphere, privatized hopes for self-actualization and self-determination are primarily located, namely, in the roles of consumer and client.

Statements about an internal colonialization of the lifeworld are at a relatively high level of generalization. This is not so unusual for social-theoretical reflection, as can be seen in the example of systems functionalism as well. But such a theory is always exposed to the danger of overgeneralization and so must be able to specify at least *the type* of empirical research that is appropriate to it. I shall therefore provide an example of the evidence by which the thesis of internal colonialization can be tested: the juridification of communicatively structured areas of action. I choose this example because it offers no particularly serious problems in method or content. The development of law belongs to the undisputed and, since Durkheim and Weber, classical research areas of sociology.

If it is true that the symbolic reproduction of the lifeworld cannot be

transposed onto the base of systemic integration without pathological consequences, and if precisely this trend is the unavoidable side effect of a successful welfare-state program, then in the areas of cultural reproduction, social integration, and socialization an assimilation to formally organized domains of action would have to take place under the conditions mentioned above. The social relations we call "formally organized" are those that are first constituted in forms of modern law. Thus it is to be expected that the changeover from social to system integration would take the form of juridification processes. The predicted reification effects would have to be demonstrated at the analytical level and, indeed, as being the symptomatic consequence of *a specific kind* of juridification.

I shall analyze this specific juridification process in connection with German examples from the spheres of family and school law. It is only the late offshoot of a juridification process that has accompanied bourgeois society since its beginnings. The expression 'juridification' [*Verrechtlichung*] refers quite generally to the tendency toward an increase in formal (or positive, written) law that can be observed in modern society. We can distinguish here between the *expansion* of law, that is the legal regulation of new, hitherto informally regulated social matters, from the *increasing density* of law, that is, the specialized breakdown of global statements of the legally relevant facts [*Rechtstatbestände*] into more detailed statements.²² Otto Kirchheimer introduced the term *Verrechtlichung* into academic discussion during the Weimar Republic. At that time he had in mind primarily the institutionalization of class conflict through collective bargaining law and labor law, and in general the juristic containment of social conflicts and political struggles. This development toward the welfare state, which found expression in the participatory social rights [*soziale Teilhaberechte*] of the Weimar Constitution and received great attention in the constitutional law theories of the time (above all from Heller, Smend, and Carl Schmitt), is but the last link in a chain of juridification thrusts. In rough outline, we can distinguish four epochal juridification processes. The first wave led to *the bourgeois state*, which, in western Europe, developed during the period of Absolutism in the form of the European state system. The second wave led to the *constitutional state* [*Rechtsstaat*], which found an exemplary form in the monarchy of nineteenth-century Germany. The third wave led to the *democratic constitutional state* [*demokratischer Rechtsstaat*], which spread in Europe and in North America in the wake of the French Revolution. The last stage (to date) led finally to the *democratic welfare state* [*soziale und demokratische Rechtsstaat*], which was achieved through the struggles of the European workers' movement in the course of the twentieth century and codified, for example, in Article 21 of the Constitution of the Federal Republic of Germany. I will characterize

these *four global waves of juridification* from the viewpoint of the uncoupling of system and lifeworld and the conflict of the lifeworld with the inner dynamics of autonomous subsystems.

(a) The European development of law during the phase of Absolutism can be understood basically as an institutionalization of the two media through which the economy and state were differentiated off into subsystems. The *bourgeois state* formed the political order within which early modern, occupationally structured society was transformed into a capitalist market society. On the one hand, relations among individual commodity owners were subjected to legal regulation in a code of civil law tailored to strategically acting legal persons who entered into contracts with one another. As we have seen, this legal order is characterized by positivity, generality, and formality; it is constructed on the basis of the modern concept of statutory law and the concept of the legal person as one who can enter into contracts, acquire, alienate, and bequeath property. The legal order is supposed to guarantee the liberty and property of the private person, the security of the law [*Rechtssicherheit*], the formal equality of all legal subjects before the law, and thereby the calculability of all legally normed action. On the other hand, public law authorizes a sovereign state power with a monopoly on coercive force as the sole source of legal authority. The sovereign is absolved from orientation toward any particular policies or from specific state objectives and becomes defined instrumentally, that is, only in relation to the means for the legal exercise of bureaucratically organized domination. The means of effectively allocating power become the only goal.

With this first wave of juridification, "civil society" was constituted, if we use this expression in the sense of Hegel's philosophy of right. The self-understanding of this phase found its most consistent expression in Hobbes's *Leviathan*. This is of special interest in our context inasmuch as Hobbes constructs the social order exclusively from the system perspective of a state that constitutes civil society; he defines the lifeworld negatively—it encompasses everything excluded from the administrative system and left to private discretion. The lifeworld is that from which civil law and legal authority emancipate the citizen; its essence lies in the corporatively bound, status-dependent conditions of life that had found their particularistic expression in feudal [*ständisch*] laws concerning person, profession, trade, and land. What remains of this in Hobbes's rational state is attributed to the sphere of the private, which indeed can now only be characterized privately—by the minimum of peace that ensures physical survival, and by the unfettering of the empirical needs of isolated subjects who compete for scarce resources according to the laws of the market. The lifeworld is the unspecific reservoir

from which the subsystems of the economy and state extract what they need for their reproduction: performance at work and obedience.²³

The Hobbesian construction hits exactly at the level of abstraction at which the innovations of the bourgeois state—namely, legal provisions for the institutionalization of money and power—can be characterized. Hobbes, in abstracting from the historical substratum of premodern life-forms, anticipates in his theory what Marx will later ascribe to reality as "real abstractions." Without this lifeworld substratum, the state in its absolutist form could not have found a basis for its legitimation, nor could it have functioned. Certainly, the bourgeois state accelerated the dissolution of this substratum on which it tacitly fed. However, out of the exhausted traditional life forms, and out of the premodern life-contexts in the process of dissolution, there arose—at first in class-specific forms—the structures of a modern lifeworld, which Hobbes could not see because he exclusively adopted the system perspective of the bourgeois state. From this perspective, everything that is not constituted in the forms of modern law must appear *formless*. But the modern lifeworld is no more devoid of its own structures than are historical forms of life. *Subsequent* juridification thrusts can be understood in these terms: a lifeworld that at first was placed at the disposal of the market and of absolutist rule little by little makes good its claims. After all, media such as power and money need to be anchored in a modern lifeworld. Only in this way can the bourgeois state gain a nonparasitic legitimacy appropriate to the modern level of justification. Today the structurally differentiated lifeworld, upon which modern states are functionally dependent, remains as the only source of legitimation.

(b) *The bourgeois constitutional state* found a prototypical form in nineteenth-century German constitutionalism and was conceptualized by theoreticians of the *Vormärz* period (1815–48), such as Karl von Rotteck or Robert von Mohl,²⁴ and later by F.J. Stahl.²⁵ Used as an analytical concept, it refers to more general aspects of a wave of juridification that by no means coincides with the specific legal developments in Germany.²⁶ This second wave means the constitutional regulation of administrative authority which up to then was limited and bound only by the legal form and the bureaucratic means of exercising power. Now, as private individuals, citizens are given actionable civil rights against a sovereign—though they do not yet democratically participate in forming the sovereign's will. Through this kind of constitutionalization of the state [*Verrechtsstaatlichkeit*], the bourgeois order of private law is coordinated with the apparatus for exercising political rule in such a way that the principle of the legal form of administration can be interpreted in the sense of the "rule of law." In the citizens' sphere of freedom the ad-

ministration may interfere neither *contra* nor *praeter* nor *ultra legem*. The guarantees of the life, liberty, and property of private persons no longer arise only as functional side effects of a commerce institutionalized in civil law. Rather, with the idea of the constitutional state, they achieve the status of morally justified constitutional norms and mark the structure of the political order as a whole.

In terms of social theory, this process can again be seen from two sides: from the perspectives of the system and the lifeworld. The absolutist state had understood itself exclusively as an agent of subsystems that were differentiated out via money and power; it had treated the lifeworld, pushed into the private sphere, as unformed matter. This legal order was now enriched by elements that acknowledged the entitlement to protection of the citizens' modern lifeworld. Viewed from the outside, this can also be understood as a first step by which the modern state acquired a legitimacy in its own right: legitimation *on the basis* of a modern lifeworld.

(c) The *democratic constitutional state* took shape during the French Revolution and, since Rousseau and Kant, has occupied political theory to the present day. Again, I am using the term analytically to refer to the wave of juridification in which the idea of freedom already incipient in the concept of law as developed in the natural law tradition was given constitutional force. Constitutionalized state power was democratized; the citizens, as citizens of the state, were provided with rights of political participation. Laws now come into force only when there is a democratically backed presumption that they express a general interest and that all those affected could agree to them. This requirement is to be met by a procedure that binds legislation to parliamentary will-formation and public discussion. The *juridification of the legitimation process* is achieved in the form of general and equal suffrage and the recognition of the freedom to organize political associations and parties. This heightens the problem of the separation of powers, that is, of the relations among the functionally differentiated governmental institutions of the legislature, the executive, and the judiciary. In the constitutional state this problem had existed only for the relationship between the executive and the judiciary.

In terms of social theory, this wave of democratization lies along the same path as the previous constitutionalization. Once again the modern lifeworld asserts itself against the imperatives of a structure of domination that abstracts from all concrete life-relations. At the same time, this brings to a certain close the process of anchoring the medium of power in a lifeworld that is rationalized and differentiated, and no longer only among the bourgeoisie.

The first juridification wave constitutive of bourgeois society was still

dominated by those ambivalences that Marx exposed in connection with "free" wage labor. The irony of this freedom was that the social emancipation of wage laborers, that is, the freedom of movement and freedom of choice upon which the labor contract and membership in organizations were based, had to be paid for with the proletarianization of the wage laborers' mode of life, of which normatively no account was taken at all. The next two waves of juridification were already carried forward by the pathos of bourgeois emancipation movements. Along the way to the constitutionalization and democratization of the bureaucratic authority that at first appeared in absolutist form, we find the unambiguously freedom-guaranteeing character of legal regulations. Wherever bourgeois law visibly underwrites the demands of the lifeworld against bureaucratic domination, it loses the ambivalence of realizing freedom at the cost of destructive side effects.

(d) The *welfare state* (which I need not characterize once again) that developed in the framework of the democratic constitutional state continues this line of *freedom-guaranteeing juridification*. Apparently it bridles the economic system in a fashion similar to the way in which the two preceding waves of juridification bridled the administrative system. In any case, the achievements of the welfare state were politically fought for and vouchsafed in the interest of guaranteeing freedoms. The parallels leap to the eye: in the one case the inner dynamics of the bureaucratic exercise of power, in the other the inner dynamics of economic accumulation processes were reconciled with the obstinate structures of a lifeworld that had itself become rationalized.

The development toward a *democratic welfare state* can in fact be understood as the institutionalizing in legal form of a social power relation anchored in class structure. Classic examples would be limitations placed upon working hours, the freedom to organize unions and bargain for wages, protection from layoffs, social security, and so forth. These are instances of juridification processes in a sphere of social labor previously subordinated to the unrestricted power of disposition and organization exercised by private owners of the means of production. Here too we are dealing with power-balancing juridifications within an area of action that is *already constituted by law*.

Norms that contain class conflict and enforce social-welfare measures have, from the perspective of their beneficiaries as well as from that of democratic lawgivers, a freedom-guaranteeing character. However, this does not apply unambiguously to all welfare-state regulations. From the start, the *ambivalence of guaranteeing freedom and taking it away* has attached to the policies of the welfare state.²⁷ The first wave of juridification constitutive of the relation between capital and wage labor owed its ambivalence to a contradiction between, on the one hand, the socially

emancipatory intent of the norms of bourgeois civil law and, on the other, its socially repressive effects on those who were forced to offer their labor power as a commodity. The net of welfare-state guarantees is meant to cushion the external effects of a production process based on wage labor. Yet the more closely this net is woven, the more clearly ambivalences of *another sort* appear. The negative effects of this—to date, final—wave of juridification do not appear as side effects; they result *from the form of juridification itself*. It is now the very means of guaranteeing freedom that endangers the freedom of the beneficiaries.

In the area of *public welfare policy* this situation has attracted wide attention under the title “juridification and bureaucratization as limits to welfare policy.”²⁸ In connection with social-welfare law, it has been shown repeatedly that although legal entitlements to monetary income in case of illness, old age, and the like definitely signify historical progress when compared with the traditional care of the poor,²⁹ this juridification of life-risks exacts a noteworthy price in the form of *restructuring interventions in the lifeworlds* of those who are so entitled. These costs ensue from the bureaucratic implementation and monetary redemption of welfare entitlements. The structure of bourgeois law dictates the formulation of welfare-state guarantees as *individual* legal entitlements under precisely *specified* general legal conditions.

In social-welfare law, *individualization*—that is, the attribution of entitlements to strategically acting legal subjects pursuing their private interests—may be more appropriate to the life situations requiring regulation than is the case, for instance, in family law. Nevertheless, the individualizing definition of, say, geriatric care has burdensome consequences for the self-image of the person concerned, and for his relations with spouse, friends, neighbors, and others; it also has consequences for the readiness of solidaric communities to provide subsidiary assistance. A considerable compulsion toward the redefinition of everyday situations comes above all from the *specification of legal conditions*—in this case, the conditions under which social security will provide compensation: “An insured case is normally understood as a ‘typical example of the particular contingency against which social security is supposed to provide protection.’ Compensation is made in the event of a valid claim to benefit. The juridification of social situation-definitions means introducing into matters of economic and social distribution an if-then structure of conditional law that is ‘foreign’ to social relations, to social causes, dependencies and needs. This structure does not, however, allow for appropriate, and especially not for preventive, reactions to the causes of the situations requiring compensation.”³⁰

In the end, the *generality* of legal situation-definitions is tailored to *bureaucratic implementation*, that is, to the administration that deals

with the social problem as presented by the legal entitlement. The situation to be regulated is embedded in the context of a life history and of a concrete form of life; it has to be subjected to violent abstraction, not merely because it has to be subsumed under the law, but so that it can be dealt with administratively. The implementing bureaucracies have to proceed very selectively and *choose* from among the legally defined conditions of compensation those social exigencies that can at all be dealt with by means of bureaucratic power exercised according to law. Moreover, this suits the needs of a centralized and computerized handling of social exigencies by large, distant organizations. These organizations add a spatial and temporal element to the social and psychological distance of the client from the welfare bureaucracy.

Furthermore, the indemnification of the life-risks in question usually takes the *form of monetary compensation*. However, in such cases as reaching retirement or losing a job, the typical changes in life situation and the attendant problems cannot as a rule be subjected to consumerist redefinition. To balance the inadequacy of these system-conforming compensations, *social services* have been set up to lend *therapeutic assistance*.

With this, however, the contradictions of welfare-state intervention are only reproduced at a higher level. The form of the administratively prescribed treatment by an expert is for the most part in contradiction with the aim of the therapy, namely, that of promoting the client's independence and self-reliance. “The process of providing social services takes on a reality of its own, nurtured above all by the professional competence of public officials, the framework of administrative action, biographical and current ‘findings’, the readiness and ability to cooperate of the person seeking the service or being subjected to it. In these areas too there remain problems connected with a class-specific utilization of such services, with the assignments made by the courts, the prison system and other offices, and with the appropriate location and arrangement of the services within the network of bureaucratic organizations of the welfare state; but beyond this, such forms of physical, psycho-social and emancipatory aid really require modes of operation, rationality criteria and organizational forms that are foreign to bureaucratically structured administration.”³¹

The ambivalence of the last juridification wave, that of the welfare state, can be seen with particular clarity in the paradoxical consequences of the social services offered by the therapeutocracy—from the prison system through medical treatment of the mentally ill, addicts and the behaviorally disturbed, from the classical forms of social work through the newer psychotherapeutic and group-dynamic forms of support, pastoral care and the building of religious groups, from youth work,

public education, and the health system through general preventive measures of every type. The more the welfare state goes beyond pacifying the class conflict lodged in the sphere of production and spreads a net of client relationships over private spheres of life, the stronger are the anticipated pathological side effects of a juridification that entails both a bureaucratization and a monetarization of core areas of the lifeworld. The *dilemmatic structure of this type of juridification* consists in the fact that, while the welfare-state guarantees are intended to serve the goal of social integration, they nevertheless promote the disintegration of life-relations when these are separated, through legalized social intervention, from the consensual mechanisms that coordinate action and are transferred over to media such as power and money. In this sense, R. Pitschas speaks of the crisis of public-welfare policy as a crisis of social integration.³²

For an empirical analysis of these phenomena, it is important to clarify the criteria on the basis of which the aspects of guaranteeing and taking away freedom can be separated. From the legal standpoint the first thing that presents itself is the classical division of fundamental rights into liberties and participatory rights; one might presume that the structure of bourgeois formal law becomes dilemmatic precisely when these means are no longer used to negatively demarcate areas of private discretion, but are supposed to provide positive guarantees of membership and participation in institutions and benefits. If this presumption proved true, then one would already expect a change from guaranteeing to taking away freedom at the third (democratizing) stage of juridification and not only at the fourth (welfare state) stage. There are indeed indications that the *organization of the exercise of civil liberties* considerably restricts the possibilities for spontaneous opinion formation and discursive will-formation through a segmentation of the voter's role, through the competition of leadership elites, through vertical opinion formation in bureaucratically encrusted party apparatuses, through autonomized parliamentary bodies, through powerful communication networks, and the like. However, such arguments cannot be used to deduce aspects of taking away freedom from the very *form* of participatory rights, but only from the bureaucratic ways and means of their *implementation*. One can scarcely dispute the unambiguously freedom-guaranteeing character of the *principle* of universal suffrage, nor of the *principles* of freedom of assembly, of the press, and of opinion—which, under the conditions of modern mass communication, must also be interpreted as democratic participatory rights.

A different criterion, more sociological in nature and open to social-theoretic interpretation, takes us further: that is, the classification of legal

norms according to whether they can be legitimized only through procedure in the positivist sense, or are amenable to substantive justification. If the legitimacy of a legal norm is brought into question, it is, in many cases, sufficient to refer to the formally correct genesis of the law, judicial decision, or administrative act. Legal positivism has conceptualized this as legitimation through procedure, though, of course, without seeing that this mode of legitimation is insufficient in itself and merely points to the need for justification of the legitimizing public authorities.³³ In the face of the changing and steadily increasing volume of positive law, modern legal subjects content themselves in actual practice with legitimation through procedure, for in many cases substantive justification is not only not possible, but is also, from the viewpoint of the lifeworld, meaningless. This is true of cases where the *law serves as a means for organizing media-controlled subsystems* that have, in any case, become autonomous in relation to the normative contexts of action oriented by mutual understanding. Most areas of economic, commercial, business, and administrative law fit here:³⁴ the law is combined with the media of power and money in such a way that it takes on the role of a steering medium itself. Law as a medium, however, remains bound up with *law as an institution*. By legal *institutions* I mean legal norms that cannot be sufficiently legitimized through a positivistic reference to procedure. Typical of these are the bases of constitutional law, the principles of criminal law and penal procedure, and all regulation of punishable offenses close to morality (e.g., murder, abortion, rape, etc.). As soon as the validity of *these* norms is questioned in everyday practice, the reference to their legality no longer suffices. They need substantive justification, because they belong to the legitimate orders of the lifeworld itself and, together with informal norms of conduct, form the background of communicative action.

We have characterized modern law through a combination of principles of enactment and justification. This structure simultaneously makes possible a positivistic prolongation of the paths of justificatory reasoning and a moralizing intensification of the justification problematic, which is thereby shifted into the foundations of the legal system. We can now see how the uncoupling of system and lifeworld fits in with this legal structure. Law used as a steering medium is relieved of the problem of justification; it is connected with the body of law whose substance requires legitimation only through formally correct procedure. By contrast, legal institutions belong to the societal components of the lifeworld. Like other norms of conduct not covered by the sanctioning authority of the state, they can become moralized under appropriate circumstances. Admittedly, changes in the basis of legitimation do not

directly affect the stock of legal norms, but they may provide the impetus for a legal (or, in the limiting case, a revolutionary) change in existing law.

As long as the law functions as a complex medium bound up with money and power, it extends to formally organized domains of action that, as such, are directly constituted in the forms of bourgeois formal law. By contrast, legal institutions have no *constitutive* power, but only a *regulative* function. They are embedded in a broader political, cultural, and social context; they stand in a continuum with moral norms and are superimposed on communicatively structured areas of action. They give to these informally constituted domains of action a binding form backed by state sanction. From this standpoint we can distinguish processes of juridification according to whether they are linked to antecedent institutions of the lifeworld and juridically superimposed on socially integrated areas of action, or whether they merely increase the density of legal relationships that are constitutive of systemically integrated areas of action. Here, the question of the appropriate mode of legitimation may serve as a first test. The technicized and de-moralized areas of law that grow along with the complexity of the economic and administrative systems have to be evaluated with respect to functional imperatives and in accordance with higher-order norms. Looked at historically, the continuous growth in positive law largely falls into this category and merely indicates an increased recourse to the medium of law. The epochal juridification waves are, on the other hand, characterized by *new legal institutions*, which are also reflected in the legal consciousness of everyday practice. Only with respect to this second category of juridification do questions of normative evaluation arise.

The first wave of juridification had a freedom-guaranteeing character to the extent that bourgeois civil law and a bureaucratic domination exercised by legal means at least meant emancipation from premodern relations of power and dependence. The three subsequent juridification waves guaranteed an increase in freedom insofar as they were able to restrain, in the interests of citizens and of private legal subjects, the political and economic dynamics that had been released by the legal institutionalization of the media of money and power. The step-by-step development toward the democratic welfare state is directed against those modern relations of power and dependence that arose with the capitalist enterprise, the bureaucratic apparatus of domination, and, more generally, the formally organized domains of action of the economy and the state. The inner dynamics of these action systems also unfold within the organizational forms of law, but in such a way that law here takes on the role of a steering medium rather than supplementing institutional components of the lifeworld.

In its role as a medium, existing law can be more or less functional, but outside of the horizon of the lifeworld it is meaningless to question the freedom-guaranteeing or freedom-reducing character of these norms. The ambivalence of guaranteeing/taking away freedom cannot be reduced to a dialectic between law as an institution and law as a medium, because the alternative between guaranteeing or taking away freedom is posed only from the viewpoint of the lifeworld, that is, only in relation to legal institutions.

So far we have proceeded on the assumption that law is used as a medium only within formally organized domains of action, and that as a steering medium it remains indifferent in relation to the lifeworld and to the questions of substantive justification that arise within its horizons. Welfare-state interventionism has since rendered this assumption invalid. Public welfare policy has to use the law precisely as a medium to regulate those exigencies that arise in communicatively structured areas of action. To be sure, the principle of social participation and social compensation is, like freedom of association, a constitutionally anchored institution that can connect up easily with the legitimate orders of the modern lifeworld. But social-welfare law, through which social compensation is implemented, differs from, for instance, the laws governing collective bargaining, through which freedom of association becomes effective, in one important respect: measures of social-welfare law (as a rule, compensatory payments) do not, like collective wage and salary agreements, intervene in an area that is *already* formally organized. Rather, they regulate exigencies that, as lifeworld situations, belong to a communicatively structured area of action. Thus, I should like to explain the type of reification effect exhibited in the case of public welfare policy by the fact that the *legal institutions* that guarantee social compensation become effective only through *social-welfare law used as a medium*. From the standpoint of action theory the paradox of this legal structure can be explained as follows. As a medium, social-welfare law is tailored to domains of action that are first constituted in legal forms of organization and that can be held together only by systemic mechanisms. At the same time, however, social-welfare law applies to situations embedded in informal lifeworld contexts.

In our context, government welfare policy serves only as an illustration. The thesis of internal colonization states that the subsystems of the economy and state become more and more complex as a consequence of capitalist growth, and penetrate ever deeper into the symbolic reproduction of the lifeworld. It should be possible to test this thesis sociologically wherever the traditionalist padding of capitalist modernization has worn through and central areas of cultural reproduction, social integration, and socialization have been openly drawn into the vortex of eco-

conomic growth and therefore of juridification. This applies not only to such issues as protection of the environment, nuclear reactor security, data protection, and the like, which have been successfully dramatized in the public sphere. The trend toward juridification of informally regulated spheres of the lifeworld is gaining ground along a broad front—the more leisure, culture, recreation, and tourism recognizably come into the grip of the laws of the commodity economy and the definitions of mass consumption, the more the structures of the bourgeois family manifestly become adapted to the imperatives of the employment system, the more the school palpably takes over the functions of assigning job and life prospects, and so forth.

The structure of juridification in school and family law is marked by ambivalences similar to those in the area of welfare law. In the Federal Republic of Germany these problems, which dominate discussions of legal policy, have been worked out for particular aspects of the development of school³⁵ and family law.³⁶ In both cases juridification means, in the first place, the establishment of basic legal principles: recognition of the child's fundamental rights against his parents, of the wife's against her husband, of the pupil's against the school, and of the parents', teachers', and pupils' against the public school administration. Under the headings of "equal opportunity" and "the welfare of the child" the authoritarian position of the *paterfamilias*—which is still anchored in, among other things, matrimonial-property law in the German Civil Code—is being dismantled in favor of a more equal distribution of the competencies and entitlements of other family members. To the juridification of this traditional, economically grounded, patriarchal power relation in the family, there corresponds, in the case of the schools, a legal regulation of the special power relation (which persisted into the 1950s) between government bureaucracy and the schools. While the core areas of family law (governing marriage, support, matrimonial property, divorce, parental care, guardianship) have been reformed via adjudication (i.e., court decisions) and via legislation, bringing schools under the rule of law—that is, the legal regulation of areas outside the law as specified in the official prerogatives of the schools—was initially stimulated by adjudication and then carried forward by the government educational bureaucracy through administrative channels.³⁷ The bureaucracy had to ensure that instructional procedures and school measures, as far as they were relevant to the pupil's later life and the parents' wishes, were given a form in which they were accessible to judicial review. It is only more recently that the judiciary has called upon the legislature to act so as to guide the overflowing bureaucratic juridification into statutory channels.³⁸

The expansion of legal protection and the enforcement of basic rights in the family and the schools require a high degree of differentiation of

specific conditions, exceptions, and legal consequences. In this way, these domains of action are opened up to bureaucratic intervention and judicial control. In no way are family and school formally organized spheres of action. If they were, *to begin with*, already constituted in legal form, the increasing density of legal norms could lead to a redistribution of money and power without altering the basis of social relations. In fact, however, in these spheres of the lifeworld, we find, *prior to* any juridification, norms and contexts of action that by functional necessity are based on mutual understanding as a mechanism for coordinating action. Juridification of these spheres means, therefore, not increasing the density of an already existing network of formal regulations, but, rather, legally supplementing a communicative context of action through the superimposition of legal norms—not through legal institutions but through law as a medium.

The formalization of relationships in family and school means, for those concerned, an objectivization and *removal from the lifeworld* of (now) formally regulated social interaction in family and school. As legal subjects they encounter one another in an objectivizing, success-oriented attitude. S. Simitis describes the complementary role played by the law in socially integrated areas of action: "Family law *supplements* a morally secured system of social rules of conduct, and to that extent is strictly complementary."³⁹ The same is true of the schools. Just as the socialization process in the family *exists prior to and conditions* legal norms, so too does the pedagogical process of teaching. These formative processes in family and school, which take place via communicative action, must be able to function independent of legal regulation. If, however, the structure of juridification requires administrative and judicial controls that do not merely *supplement* socially integrated contexts with legal institutions, but *convert* them over to the medium of law, then functional disturbances arise. This is the action-theoretic explanation for the negative effects of juridification stressed in juristic and sociological discussions.

Simitis and his collaborators have carried out empirical research on the dilemmatic structure of the juridification of the family in connection with child custody laws.⁴⁰ The group has concentrated on the decision-making practices of wardship courts. The protection of the welfare of the child as a basic right can be implemented only by giving the state possibilities to intervene in parental privileges, once regarded as untouchable. It was the dialectic of this juridification that inspired Simitis to undertake his study: "However indispensable state services may be, they not only bring advantages for individual family members, but simultaneously bring about increasing dependence. Emancipation within the family is achieved at the cost of a new bond. In order to constitute himself as a

person, the individual family member sees himself compelled to make claims on the assistance of the state. What therefore, at first sight, is sometimes presented as an instrument for breaking up domination structures within the family, proves on closer examination to be also a vehicle for another form of dependence.⁴¹ The study shows that the wardship judges surveyed based their judgments on insufficient information and oriented themselves predominantly to the child's "physical" rather than "spiritual" well-being. The psychological shortcomings of judicial decision-making practice result, however, not so much from an inadequate professional training of jurists for such tasks, as from juristic formalization of matters that require a *different type* of treatment: "Initiatives to ascertain the facts or to suggest better ways of resolving conflicts are scarcely to be found. There are perhaps reasons for this on the side of the parents themselves; but it is also a result of their position in respect to the legal process (and in reality), which tends to turn them into 'objects' of negotiation between the judge and the youth-welfare office and thus to make them 'subordinated subjects of the proceedings' rather than 'participants' in them."⁴² In almost all cases one can see "how little the judge is able to accomplish with his specifically juridical means, whether it is a question of communication with the child that is essential for the proceedings, or of understanding the factors important for the child's development."⁴³ It is the medium of the law itself that violates the communicative structures of the sphere that has been juridified.

From this viewpoint, one can understand the policy recommendation to the effect that legislators keep to a minimum the state interventions necessary to protect children's rights. "Among the various possible solutions, the one to be preferred is that which leaves the judge the least amount of discretion in making decisions. Legislative regulation, therefore, ought not to favor far-reaching judicial intervention, as has hitherto increasingly been the case. On the contrary, it must, first and foremost, do everything possible to de-judicialize the conflict."⁴⁴

Of course, replacing the judge with the therapist is no panacea; the social worker is only another expert, and does not free the client of the welfare-state bureaucracy from his or her position as an object. Remodeling wardship law in a therapeutic direction would merely accelerate the assimilation of family law to child welfare law: "In this para-law of the family, it is a governmental authority, the Division of Child Welfare, which sets the tone. Here child-rearing takes place under state supervision, and parents are held accountable for it. The language, particularly of many older commentaries, shows better than any regulation what the goal is. State intervention compensates for disrupted normality."⁴⁵

Nevertheless, the intuition that lies behind the paradoxical proposal to dejudicialize juridified family conflict is instructive: the juridification

of communicatively structured areas of action should not go beyond the enforcement of principles of the rule of law, beyond the legal institutionalization of the *external* constitution of, say, the family or the school. The place of law as a medium is to be taken by procedures for settling conflicts that are appropriate to the structures of action orientated by mutual understanding—discursive processes of will-formation and consensus-oriented procedures of negotiation and decision making. This demand may seem more or less acceptable for private realms such as the family, and it may well be in line with the educational orientations specific to the middle class. For a public domain such as the schools, the analogous demand for deregulation and debureaucratization meets with resistance.⁴⁶ The call for a more strictly pedagogical approach to instruction and for a democratization of decision-making structures is not immediately compatible with the neutralization of the citizen's role;⁴⁷ it is even less compatible with the economic system-imperative to uncouple the school system from the fundamental right to education and to close-circuit it with the employment system. From the perspective of social theory, the present controversy concerning the basic orientations of school policy can be understood as a fight for or against the colonization of the lifeworld. However, I shall confine myself to the analytical level of juridification; this manifests itself no less ambivalently in the schools than in the family.

The protection of pupils' and parents' rights against educational measures (such as promotion or nonpromotion, examinations and tests, and so forth), or from acts of the school or the department of education that restrict basic rights (disciplinary penalties), is gained at the cost of a judicialization and bureaucratization that penetrates deep into the teaching and learning process. For one thing, responsibility for problems of educational policy and school law overburdens government agencies, just as responsibility for the child's welfare overburdens the wardship courts. For another, the medium of the law comes into collision with the form of educational activity. Socialization in schools is broken up into a mosaic of legally contestable administrative acts. Subsuming education under the medium of law produces an "abstract grouping together of those involved in the educational process and individualized legal subjects in a system of achievement and competition. The abstractness consists in the fact that the norms of school law apply without consideration of the persons concerned, of their needs and interests, cutting off their experiences and splitting up their life relationships."⁴⁸ This has to endanger the pedagogical freedom and initiative of the teacher. The compulsion toward litigation-proof certainty of grades and the over-regulation of the curriculum lead to such phenomena as depersonalization, inhibition of innovation, breakdown of responsibility, immobility, and so

forth.⁴⁹ G. Frankenberg has studied the consequences of the juridification of teaching practice from the viewpoint of how teachers, as those to whom the legal norms are addressed, perceive the demands of law and react to them.

There are structural differences between the legal form in which courts and school administrations exercise their powers, on the one hand, and an educational task that can be accomplished only by way of action oriented to mutual understanding, on the other. Frankenberg captures these differences well: "We can take as dominant characteristics of the political-legal dimension of the teaching task: (1) a discrepancy between behavioral prescriptions and concrete action situations; (2) a 'double coverage' for the government's 'educational mandate', through the school administration's responsibility for setting guidelines and through the authority of administrative courts to interpret and specify general norms; (3) an unclear demarcation of the teacher's pedagogic scope of action; and (4) possible threats, whether open or disguised, of sanctions for behavior that conflicts with the norms. To the opacity of the normative complex of school law this adds the incalculability of the normative demands decisive for educational practice."⁵⁰ These structural differences leave the teacher insecure and evoke reactions that Frankenberg describes as over- or underutilization of the pedagogical scope of action, that is, as overattention to or concealed disobedience of the law.

The legal regulation of the special power relation of the school removes some relics of absolutist state power. However, the normative remodeling of this communicatively structured action area is accomplished in the form of welfare-state interventionist regulations. Controlled by the judiciary and the administration, the school changes imperceptibly into a welfare institution that organizes and distributes schooling as a social benefit. As in the case of the family, the result for legal policy is the call to dejudicialize and above all to debureaucratize the pedagogical process. The framework of a school constitution under the rule of law, which transposes "the private law of the state into a genuinely public law," is to be filled, not by the medium of law, but through consensus-oriented procedures for conflict resolution—through "decision-making procedures that treat those involved in the pedagogical process as having the capacity to represent their own interests and to regulate their affairs themselves."⁵¹

If one studies the paradoxical structure of juridification in such areas as the family, the schools, social-welfare policy, and the like, the meaning of the demands that regularly result from these analyses is easy to decipher. The point is to protect areas of life that are functionally dependent on social integration through values, norms, and consensus formation, to

preserve them from falling prey to the systemic imperatives of economic and administrative subsystems growing with dynamics of their own, and to defend them from becoming converted over, through the steering medium of the law, to a principle of sociation that is, for them, dysfunctional.