

### III

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## Political Functions of the Public Sphere

### 8 The Model Case of British Development

A public sphere that functioned in the political realm arose first in Great Britain at the turn of the eighteenth century. Forces endeavoring to influence the decisions of state authority appealed to the critical public in order to legitimate demands before this new forum. In connection with this practice, the assembly of estates became transformed into a modern parliament—a process that was, of course, drawn out over the entire century. Why conflicts that were thus fought out by involving the public arose so much earlier in Great Britain than in other countries is a problem not yet resolved. A literary public sphere existed on the Continent too as an authority to which appeal could be made. There, however, it began to become politically virulent only when, under the aegis of mercantilism, the capitalist mode of production had advanced to a stage reached in Great Britain after the Glorious Revolution. For in the second half of the seventeenth century there emerged in Great Britain a large number of new companies engaged in and expanding the manufacture of textiles, the metal industry, and paper production. The traditional opposition between landed and moneyed interests, which in Great Britain (where the younger sons of the gentry quickly rose to become successful merchants, and where often enough the high bourgeoisie purchased landed estates<sup>1</sup>) had not in any event become entrenched as a pronounced conflict between classes, was now overlaid with a

new conflict of interests between the restrictive interests of commercial and finance capital on one side and the expansive interests of manufacturing and industrial capital on the other.<sup>2</sup> Awareness of this conflict began at the start of the eighteenth century; only from this time on were "commerce" and "trade" no longer unquestionably synonymous with "manufacture" and "industry." To be sure, this conflict repeated an antagonism already typical of the earlier phases of capitalist development, the conflict between the interests of an older generation already established in the market and those of a younger generation which had as yet to open up markets for new branches of trade and industry. Had this constellation remained confined to the narrow circle of merchant-princes, as was still the case in the age of the Tudors, the situation would have scarcely arisen where both parties appealed to the new authority of the public. In post-revolutionary Great Britain, however, this antagonism, carrying over into the sphere of capital as such, involved broader strata exactly in the measure in which the capitalist mode of production prevailed. Since these very same strata had in the meantime become engaged in rational-critical debate, it was an obvious step for the weaker party to carry the political conflict into the public sphere. Around the turn of the century, party conflict penetrated in this fashion even into the disenfranchised segment of the population.

Three events occurring in 1694 and 1695 mark the beginning of this development. The founding of the Bank of England, unlike that of the stock exchanges in Lyons and Amsterdam, signaled a new stage in the development of capitalism. On the basis of a capitalistically revolutionized mode of production, it promised the consolidation of a system until then held together by commerce.<sup>3</sup> The elimination of the institution of censorship marked a new stage in the development of the public sphere. It made the influx of rational-critical arguments into the press possible and allowed the latter to evolve into an instrument with whose aid political decisions could be brought before the new forum of the public. Finally, the first cabinet government<sup>4</sup> marked a new stage in the development of Parliament. It was a first step along the long path toward the parliamentarization of state authority that led ultimately to the

point at which the public active in the political realm established itself as an organ of the state.

Already in the 1670s the government had found itself compelled to issue proclamations that confronted the dangers bred by the coffee-house discussions. The coffee houses were considered seedbeds of political unrest: "Men have assumed to themselves a liberty, not only in coffee-houses, but in other places and meetings, both public and private, to censure and defame the proceedings of the State, by speaking evil of things they understand not, and endeavouring to create and nourish an universal jealousy and dissatisfaction in the minds of all His Majesties good subjects."<sup>5</sup> Censorship came to an end with the Licensing Act of 1695; the Queen several times admonished the members of Parliament to bring censorship back, but in vain. To be sure, the press continued to be subject to the strict Law of Libel<sup>6</sup> and to the restrictions connected with numerous privileges of Crown and Parliament. The stamp tax,<sup>7</sup> enacted in 1712, resulted in a temporary setback: the journals printed fewer copies and were reduced in volume; some disappeared altogether. Compared to the press in the other European states, however, the British press enjoyed unique liberties.

Harley was the first statesman to understand how to turn the new situation to his advantage. He engaged authors like Defoe (who has been called the first professional journalist), who defended the cause of the Whigs not only in the pamphlets in use up until then but also in the new journals. Indeed, he was the first to make the "party spirit" a "public spirit." Defoe's *Review*, Tutchin's *Observer*, and Swift's *Examiner*, were discussed in clubs and coffee houses, at home and in the streets. Walpole and Bolingbroke themselves addressed the public. Men like Pope, Gay, Arbuthnot, and Swift combined literature and politics in a peculiar fashion comparable to Addison's and Steele's combination of literature and journalism.

In these first years, of course, the leading press was never in the hands of the opposition. The *London Gazette*, for a long time the only official gazette, in the old style of the "political newspaper" discreetly limited to news reports, was supplemented in 1704 by the thrice weekly *Review*; in 1711 the *Ex-*

*aminer* took the place of the latter. At the end of Queen Anne's rule the Whigs, with the *British Merchant*, entered into competition against the *Mercator*, founded in 1713. Then under George I began the dominance of the Whigs that was to last for decades. But it was not the Whigs who, purchasing the *London Journal* in 1722 (the most important and widely read journal at that time),<sup>8</sup> created political journalism in the grand style; this was the work of the Tories who now constituted themselves as the opposition under Bolingbroke:

The innovation brought about by the opposition was the creation of a popular opinion. Bolingbroke and his friends knew how to form such a public opinion that, aimed at the same objective and furnished with likeminded impulses of will, could be mobilized for political use. It was not demagoguery and sloganeering, uproars and mob scenes that were novel. . . . also, there were still no regular public meetings. . . . Rather, this public opinion was directed by another factor: by the establishment of an independent journalism that knew how to assert itself against the government and that made critical commentary and public opposition against the government part of the normal state of affairs.<sup>9</sup>

In the summer of 1726, inspired by Bolingbroke, there appeared as the "long opposition's" literary prelude three pieces satirizing the times: Swift's *Gulliver*, Pope's *Dunciad*, and Gay's *Fables*. In November of the same year Bolingbroke brought out the first issue of the *Craftsman*, the publicist platform of the opposition until the editor's emigration to France in 1735. With this journal, followed by the *Gentleman's Magazine*, the press was for the first time established as a genuinely critical organ of a public engaged in critical political debate: as the fourth estate.

Thus raised to the status of an institution, the ongoing commentary on and criticism of the Crown's actions and Parliament's decisions transformed a public authority now being called before the forum of the public. This authority thereby became "public" in a double sense. From now on, the degree of the public sphere's development was measured by the state of the confrontation between government and press, as it drew out over the entire century.<sup>10</sup> The *Letters of Junius*, which appeared from 21 November 1768 through 12 May 1772 in the

*Public Advertiser* (in their way forerunners of the political lead article) marked this state in a highly visible manner. This series of satirical articles have been called "pioneers of the modern press,"<sup>11</sup> because in them the King, the ministers, top military men, and jurists were publicly accused of political machinations, and secret connections of political significance were thereby uncovered in a manner that ever since has been exemplary of a critical press.

Against such criticism Parliament possessed an effective instrument that guaranteed it secrecy of proceedings in a privilege dating from the time of its confrontation with the Crown. To be sure, in 1681 the publication of the "votes," those skimpy reports on certain results of parliamentary deliberations, was authorized;<sup>12</sup> but Parliament insisted stubbornly on the prohibition of the latter's being made publicly accessible. Since Queen Anne's accession to the throne *The Political State of Great Britain* undertook with the utmost caution something in the nature of a report on Parliament, a task also attended to from 1716 on by the *Historical Register*. Naturally, these two journals were partial to the government; the opposition had to remain satisfied with occasional reports on the most important speeches of its representatives in the weekly newspapers or with a collection of these speeches in the form of a brochure. Since the early thirties, in that new climate of political criticism created by the *Craftsman*, the *Gentleman's Magazine*, and soon thereafter its counterpart, the *London Magazine* reported on parliamentary debates. Parliament saw itself repeatedly forced to renew the injunction against publication. Finally in 1738 it tightened up the old decrees to the point that even a publication of its debates between sessions would be deemed a breach of privilege.<sup>13</sup> Only in the year 1771 did Wilkes, as the alderman of London, succeed in nullifying, in fact if not in law, the parliamentary privilege. The sentence of the editor of the *Evening Post* found guilty of breach of privilege was never carried out. The exclusion of the public from the parliamentary deliberations<sup>14</sup> could no longer in any event be maintained at a time in which "Memory" Woodfall was able to make the *Morning Chronicle* into the leading London daily paper because he could reproduce verbatim sixteen columns of parliamentary

speeches without taking notes in the gallery of the House of Commons, which was prohibited. A place for journalists in the gallery was officially provided by the Speaker only in the year 1803; for almost a century they had to gain entry illegally. But only in the House of Parliament newly constructed after the fire of 1834 were stands for reporters installed—two years after the first Reform Bill had transformed Parliament, for a long time the target of critical comment by public opinion, into the very organ of this opinion.

This transformation stretched out over almost a century and a half. In its continuity it is uniquely suited to the study of a critically debating public's gradual assumption of the functions of political control. In Great Britain alone at the end of the seventeenth century had a constitution been instituted simultaneously with the termination of the religious civil war. While this development, through the partial actualization of a government based on law (Habeas Corpus Act, Declaration of Rights), did not entirely anticipate the eighteenth- and nineteenth-century bourgeois revolutions on the continent, it made those revolutions superfluous at home. At a stage of capitalist development at which industrial capitalism was just barely emerging (still dominated by the merchant capitalism that was in any case rather more interested in the conservation of the old mode of production), even the leading representatives of the moneyed interests came from the conservative strata of a high bourgeoisie in many ways intimately involved with the nobility. Its members encountered one another in Parliament on the basis of a certain social homogeneity that was aristocratic in character.<sup>15</sup>

In this respect the economically and socially uppermost classes in 1688 had also come to dominate politically. The House of Commons, however, lost its character of an estate assembly not merely because it was composed increasingly of delegates from the corporations, of nominees of the ruling classes. Rather, from the outset those bourgeois strata of the Protestant middle class, involved in business and commerce (whose capitalist interests had been behind their substantial support of the Revolution, without now being represented in Parliament), formed something like a steadily expanding pre-

parliamentary forum. Here, as a critical public soon to be aided by appropriate publicist organs, they followed the deliberations and decisions of Parliament, regardless of whether they still had for the most part the vote, as in London and Westminster<sup>16</sup> or whether (as elsewhere) they were part of the disenfranchised mass. Parliament's change in function was not reducible solely to the fact that the sovereign, bound by the Bill of Rights, was demoted to a King in Parliament. In addition, it took the new relationship of Parliament to the public sphere that ultimately led to the full publicity of the parliamentary deliberations to bring about a qualitative difference from the previous system.

Now the King, who could not circumvent Parliament, was also forced to secure for himself a firm following within Parliament. The *origin* of the Whig-Tory opposition in the name of "resistance" here and of "divine right" there, the split of Parliament at the time of the conflict over the Exclusion Bill into "parties" whose antagonism replaced the older one between Parliament and country on one side, Crown and councillors on the other, may be structurally related to the objective interest constellations of the various social groups. The parliamentary *development* of these "factions," however, can only be comprehended in terms of a dynamics internal to Parliament as they evolved during the subsequent century, caught between the public considerations and arguments of a critical public and the corrupting influence of a King forced to resort to rule by indirection. The minority that did not get its way in Parliament could always seek refuge in the public sphere and appeal to the judgment of the public; the majority, held together by bribery,<sup>17</sup> considered itself bound to legitimate the authority at its disposal by reference to reason against the opposition's claims to the contrary. This constellation evolved after that peculiar reversal of battlefronts that for a generation made the party of resistance, the Whigs, the governing party, and conversely compelled the Jacobite legitimists to a practice of resistance on the basis of the revolutionary order. From 1727 on, under the impact of the *Craftsman*, a systematic opposition arose which (for a while even equipped with something like a shadow cabinet) until 1742, via literature and press, informed the public at large about the political controversies in Parlia-

ment. The Tories in theory adopted the principles of the Old Whigs; the Modern Whigs in control of the government in practice adopted the principles of the Tories. Until then political opposition at the national level had been possible only as the attempt to push one's interests by resorting to violence in the forms of the Fronde and the Civil War; now, through the critical debate of the public, it took the form of a permanent controversy between the governing party and the opposition. This discussion in principle went beyond the issues of the day to include the "topics of government"; the separation of powers, British liberties, patriotism and corruption, party and faction, the question of the legality of the opposition's new relationship to the government—and even basic questions of political anthropology. Fittingly, the theory of the opposition<sup>18</sup> developed by Bolingbroke himself within the context of his pessimistic anthropology had its origin in the critical debate carried on in the journals of the thirties. Bolingbroke now propounded the relationship of private and public interests as the relationship of court and country, of "in power" and "out of power," of pleasure and happiness, passion and reason. The opposition, as the party of the country, always appeared to be in the right versus the party of the court corrupted by "influence."

From the early part of eighteenth century on, it became usual to distinguish what was then called "the sense of the people" from the official election results. The average results of the county elections were taken to provide an approximate measure of the former. The "sense of the people," "the common voice," "the general cry of the people," and finally "the public spirit" denoted from this time onward an entity to which the opposition could appeal—with whose help, in fact, it more than once forced Walpole and his parliamentary majority to concessions.<sup>19</sup> Such occurrences, of course, must not be construed prematurely as a sign of a kind of rule of public opinion. The true power constellation is more reliably gauged by the ineffectiveness of the numerous mass petitions organized since 1680. To be sure, in 1701 as well as in 1710, the dissolution of Parliament actually followed upon corresponding petitions; but these were basically mere acclamations of which the King made



use. This became obvious between 1768 and 1771 when, in connection with the agitation of Wilkes, the demanded dissolution of Parliament did not follow upon the petitions of numerous counties, towns, and villages. Considering that the parliamentary majority was willing to do his bidding anyhow, it was not in the King's interest to expose himself to the risks of a new election. Even the dissolution of Parliament in 1784 (on the occasion of which the King, in a speech before the House of Commons that became famous, stated that he felt obliged "to recur to the sense of the people") was not due chiefly to the pressure of this "opinion of the people."<sup>20</sup>

Nevertheless, besides the new, large daily newspapers like the *Times* (1785), other institutions of the public reflecting critically on political issues arose in these years. In Wilkes's days, public meetings increased in size and frequency. Political associations too were formed in great numbers. The twenty-six county associations, founded in 1779 after the model of the Yorkshire Association, dealt with questions of war expenditures, parliamentary reform, etc. Although as early as the end of the seventeenth century members of Parliament banded together into loosely knit clubs, *Gentleman's Magazine* still found it difficult in 1741 to characterize the elected delegates according to political orientations; they could in no way be categorized as members of a definite party. Only toward the end of the eighteenth century did the parties attain an organizational basis outside of Parliament, "outdoors," that went beyond those petitions, public meetings, and political associations. With the founding of local committees they assumed their first solid organizational form.

In 1792, three years after the outbreak of the French Revolution, the public that was involved, in its function as the carrier of public criticism, in the critical debate of political issues, received indirect sanction through a speech given by Fox in the House of Commons. For the first time public opinion in the strict sense was introduced into Parliament:

It is certainly right and prudent to consult the public opinion. . . . If the public opinion did not happen to square with mine; if, after pointing out to them the danger, they did not see it in the same light

with me, or if they conceived that another remedy was preferable to mine, I should consider it as my due to my king, due to my Country, due to my honour to retire, that they might persue the plan which they thought better, by a fit instrument, that is by a man who thought with them . . . but one thing is most clear, that I ought to give the public the means of forming an opinion.<sup>21</sup>

As remarkable as the statement itself was its occasion: Fox was opposing Pitt who in 1791, under the pressure of public opinion, discontinued his war preparations against Russia. But by the turn of the nineteenth century, the public's involvement in the critical debate of political issues had become organized to such an extent that in the role of a permanent critical commentator it had definitively broken the exclusiveness of Parliament and evolved into the officially designated discussion partner of the delegate. Fox's speeches were made with the public in mind; "they," the subjects of public opinion, were no longer treated as people whom, like "strangers," one could exclude from the deliberations. Step by step the absolutism of Parliament had to retreat before their sovereignty. Expressions like "the sense of the people" or even "vulgar" or "common opinion" were no longer used. The term now was "public opinion"; it was formed in public discussion after the public, through education and information, had been put in a position to arrive at a considered opinion. Hence Fox's maxim, "to give the public the means of forming an opinion."

Nevertheless, the discussion about expanding the right to vote was drawn out over four more decades. Finally, two years after the July Revolution, the Reform Bill was passed revising the obsolete apportioning of the electoral districts and according the right to have political input also to the upper middle class out of which the great majority of the critically debating public was recruited. Of the approximately twenty-four million residents at that time, almost a million were now allowed to vote. The conditions for the temporary era of a government by public opinion became complete in 1834 with Peel's Tamworth Manifesto; for the first time a party published its election platform. Public opinion was formed in the conflict of arguments concerning a substantive issue, not uncritically based on common sense in the either naive or plebiscitarily manipulated

assent to or vote about persons. Hence it needed a defined issue as its object more than it needed prominent persons. The Conservatives published their program; at the same time, in an election proclamation, the Whigs admonished: "Remember that you are now fighting for things, not men—for the real consequences of your reform."<sup>22</sup>

## 9 The Continental Variants

In France too arose, although not before roughly the middle of the eighteenth century, a public that critically debated political issues. Before the Revolution, however, it could not effectively institutionalize its critical impulses, as was possible in contemporary England. Not a line could be published without the consent of the censor; a political journalism could not be developed; the periodical press as a whole remained scanty. The official weekly, the *Mercure de France*, although the most widely read journal, in 1763 still had not more than 1600 subscribers of whom a good third lived in Paris and 900 in the provinces; the remaining subscriptions went abroad. Clandestinely, of course, one read the illegally imported journals, especially those from Holland.<sup>23</sup>

Not only was a developed political journalism lacking, but also an estates assembly which under its influence might have gradually been transformed into a representative institution of the people. The Estates General had not been convened since 1614. The existing parliaments—that is, the highest courts, which indeed constituted the only political power not utterly dependent upon the King—did not embody the top layer of the bourgeoisie but bourgeoisified intermediate powers, to the extent that they were still able to resist the centralism of absolutist rule. Ultimately, the social basis for such institutions was lacking as well. Admittedly, a bourgeoisie engaged in trade and commerce was not entirely absent; under the Regency the speculators and bankers, trading manufacturers, large merchants and tax farmers already formed an upper bourgeoisie in whose hands the wealth of the nation was gathered. But politically they could not affect the fate of the nation; they were not united, as in England, with the nobility and the higher

officialdom (*noblesse de robe*<sup>24</sup>) into a homogeneous top stratum which, supported by a firm prestige, would also have been able to represent politically the interests of the capital-accumulating classes against the King.

The class differences went deep. To be sure, the rich merchants, normally in the third generation, acquired titles of nobility, for the most part those carrying sinecures of high official posts; yet in this fashion they removed themselves from the spheres of production and distribution. Around the middle of the century the Abbé Coyer, in *La Noblesse Commercante*, drew attention to this problem, triggering a storm of pamphlets. On the other hand, the nobility, which withdrew from trade and commerce as well as from the banking business as pursuits incompatible with its status, became economically dependent on the crown: considered, from the bourgeois standpoint of productive labor, a parasitical stratum paid for its political insignificance with tax privileges and royal patents. The king largely monopolized public authority. Civic equality existed but in its negative form. All except the king (and one official) were equally subjects and equally subjugated to authority—were private. Their sphere, whether bourgeois or not, was the *société civile*—during the eighteenth century a structure not easily analyzed in terms of class theory. In many ways the bourgeoisie was still part of a society organized on the estate principle, as both the feudal role of the bourgeois parliaments and the adaptation of the higher bourgeoisie to the nobility showed; and in many ways the nobility in its *salons* was more receptive to the enlightened mode of thought of bourgeois intellectuals than was the bourgeoisie itself. Nevertheless, bourgeoisie, nobility, and crown were so clearly differentiated from one another in terms of status and function that the “sectors”—the political, the economic, and the one in-between occupied by “society”—could be easily separated.<sup>25</sup>

In the first half of the century, the criticism of the *philosophes* was preoccupied, Montesquieu notwithstanding, with religion, literature, and art; only at the stage of its encyclopedic publication did the moral intent of the *philosophes* develop into a political one, at least indirectly. The Encyclopedia was planned as a publicist undertaking in the grand style.<sup>26</sup> Robespierre

could celebrate it later as "the introductory chapter of the Revolution." In the last third of the century, clubs of the sort of the early gentlemen's society that met at the Club d'Entresol,<sup>27</sup> inspired by English ideas, succeeded the *bureaux d'esprit* ruled by women; initiators of public criticism, the *philosophes* changed from belles lettrists into economists. "Economists" was the name for the physiocrats who first met at Quesnay's and later at Mirabeau's and Turgot's; their club lasted for over a decade. They promoted their doctrine in the *Gazette du Commerce* and in the *Journal de l'Agriculture, du Commerce et des Finances*, until finally in 1774 two of their most important proponents, Turgot and Malessherbes, were called into the government—the first exponents, as it were, of public opinion.

As is well known, however, it was Necker who first succeeded in opening a breach in the absolutist system for a public sphere in the political realm: he made public the balance of the state budget. Three months later the King got rid of his minister.<sup>28</sup> Nevertheless, the public's critical debate of political issues had proved its mettle as a check on the government, significantly at the nerve center of bourgeois interests; for the extent of the state debt symbolized the disproportion of economic power and political powerlessness on the one hand and of financial dependence and absolutist rule on the other. Brought into life with the help of intellectuals who had risen socially, in the womb of a parasitic, economically and politically functionless, yet socially eminent nobility the sphere of a public that eventually also engaged in a critical debate of political issues now definitively became the sphere in which civil society reflected on and expounded its interests. From the time of Necker's *compte rendu*, this public sphere in the political realm could only be suppressed; it could no longer be effectively put out of commission. By way of the *Cahiers de Doléance* the public's considered observations on public affairs were officially permitted. This led, as is well known, to the convening of the Estates General; the tradition of an estates assembly, uninterrupted in Great Britain, was taken up again on a level of social development where it had no alternative but to assume the role of a modern parliament.

The Revolution created in France overnight, although with

less stability, what in Great Britain had taken more than a century of steady evolution: the institutions, which until then had been lacking, for critical public debate of political matters. Club-based parties emerged from which parliamentary factions were recruited; there arose a politically oriented daily press.<sup>29</sup> And already the Estates General successfully asserted the publicity of its deliberations. Beginning in August the daily *Journal des Débattes et des Décrets* appeared, specializing in reports on parliamentary proceedings. At least as important as the factual institutionalization of the public sphere in the political realm was its anchoring in legal statutes. The revolutionary event was immediately interpreted and defined in terms of constitutional law; therein may lie the reason that on the continent the bourgeois public became so precisely aware of its political functions, actual or potential. Here a self-awareness emerged that was terminologically more clearly expressed than in Great Britain at the time. From elements in the codifications of the French revolutionary constitution, the political functions of the public sphere were quickly transformed into slogans that spread all over Europe. It was no accident that the German term for the public sphere, “*Öffentlichkeit*,” was formed after the French; in its original version, “*Publizität*,” it made the rounds in the satirical poem circulating throughout Germany in the days of the revolution:

The magic word before whose power  
Even the people's masters cower,  
Flapping their wigs officiously—  
Prick up your ears; the word—it is publicity.<sup>30</sup>

The constitution of 1791, which on the whole adopted the *Déclaration des Droits de l'Homme et du Citoyen* of 26 August 1789, supplemented the complex of the “public sphere” in paragraph 11: “The free communication of ideas and opinions is one of the most precious rights of man. Everyone can therefore speak, write, and print freely, with the proviso of responsibility for the misuse of this liberty in the cases determined by law.”<sup>31</sup> The constitution of 1793 explicitly included freedom of assembly in the protection of freedom of expression: “The right to communicate one's ideas and opinions, whether through the

press or in any other manner, the right to assemble peaceably . . . cannot be refused." It then added, as if to offer an excuse for this precaution, a reference to the *ancien régime*: "The necessity to promulgate these rights arises from the presence or the fresh memory of despotism."<sup>32</sup> By the time this article was enacted, of course, it no longer corresponded to the constitutional reality. In August of the preceding year, two days after the storming of the *Tuileries*, opponents of the revolution were denounced in an edict of the Paris Commune as *empoisonneurs de l'opinion publique* (poisoners of public opinion) and their presses confiscated. On 17 January 1800, two days after the coup d'état, Napoleon eliminated the freedom of the press. Only thirteen papers, listed by name, were excluded from the prohibition of the political press. From 1811 on he allowed only three papers besides the official *Moniteur*, and even these were under strict censorship. The Bourbons, upon their return, introduced themselves with the proclamation that they would respect the freedom of the press. The *Charte* of June, 1814 (Article 8) also stated: "The French have the right to have their views published and printed, if they abide by the laws which are intended to prevent the abuses of this liberty."<sup>33</sup> But the opposition could express itself only with great caution. Only the July Revolution, which got its catchword from the opposition paper just founded by Thiers and Mignet, the *National*,<sup>34</sup> gave back to the press and the parties, and finally to the parliament expanded through electoral reform and deliberating completely in public, the latitude guaranteed by the revolutionary rights of man.

In Germany something akin to a parliamentary life emerged only in the train of the July Revolution, and then only for a brief period, in the capitals of a few southern and southwestern German territories,<sup>35</sup> where the representative bodies recommended in the Concluding Actions of the Vienna Congress of 1815 ("*Wiener Schlussakte*") had been linked to certain traditions of the territorial estates but then, of course, almost everywhere thwarted by the Karlsbad Resolutions.

German conditions differed from the British on account of the estate barriers, especially those between nobility and bourgeoisie, generally preserved longer by continental absolutism.

The bourgeois, for their part, distanced themselves rigorously from the people. To the latter belonged, besides the rural population (ranging from agricultural laborers through tenants to freeholders) and the lower class proper (day laborers, soldiers, and servants), the shopkeepers, artisans, and workers. *Volk* was coextensive with *peuple*, both categories assumed the same meaning during the eighteenth century; in both countries standing behind a shop counter as well as working at manual labor were the subjectively accepted criteria for exclusion from the genuine bourgeoisie. Those who at one time were the burghers (*Bürger*), townspeople (*Stadtbürger*) par excellence, namely retailers and artisans, were no longer reckoned among the bourgeoisie by those properly "bourgeois." Their criterion was education (*Bildung*); the bourgeois belong to the cultivated (*gebildet*) classes—businessmen and university-trained men (scholars, ministers, officials, physicians, judges, and teachers). However, the German conditions differed from the French because of the nobility's complete dependence on the courts. It was incapable of developing, in communication with bourgeois intellectuals, the economically and politically detached sphere of "society" into that of a culturally dominant and critically involved public.<sup>36</sup>

The public's rational-critical debate of political matters took place predominantly in the private gatherings of the bourgeoisie. During the last decades of the eighteenth century the blossoming journals, including the political ones, were the crystallization points of the "social" life of private people. It was not only that the journals themselves attested to the "addiction" or even the "mania" of the enlightened age for reading;<sup>37</sup> from the seventies on private and commercial reading societies proliferated over all the towns, even the smaller ones, so that a general discussion about the merits and demerits of these establishments could set in. By the end of the century, more than 270 reading societies could be counted in Germany.<sup>38</sup> They were mostly associations with rooms that provide the opportunity both for reading newspapers and journals and, just as importantly, for discussing what had been read. The oldest reading circles had involved nothing more than collective subscriptions that helped to lower the cost of the papers. In con-



trast, the reading societies no longer arose from such financial motives. These societies, which elected their executive committee according to bylaws, voted on the acceptance of new members by majority and generally dealt with disputes in parliamentary fashion. They excluded women and forbade gambling and exclusively served the need of bourgeois private people to create a forum for a critically debating public: to read periodicals and to discuss them, to exchange personal opinions, and to contribute to the formulation of an opinion that from the nineties on will be called "public." Journals with political content had the largest number of subscribers and were most widely read: Schlözer's *Staatsanzeigen* and Wieland's *Teutscher Merkur*, Archenholz's *Minerva*, the *Hamburger Politische Journal*, and the *Journal von und für Deutschland*.<sup>39</sup> Schlözer's journal, reaching an edition of 4000, enjoyed a Hannoverian reflection of the British freedom of the press; it was considered the "bête noire of the high and mighty," as, in the expression of the day, they were afraid of "getting into the Schlözer."<sup>40</sup> Even the brutal reaction of the princes against the first political publicists in southwestern Germany was symptomatic of a certain critical strength of the public sphere. Wekherlin, who in 1778 published the *Felleisen*, and Schubart, who became known in 1774 for his *Deutsche Chronik*, both paid a high price. One died in prison; the other was broken in ten years' confinement in a fortress: brainwashing in the direct mode still existed.<sup>41</sup>

### **10 Civil Society as the Sphere of Private Autonomy: Private Law and a Liberalized Market**

The historical excursions on the rise (in Great Britain and on the Continent) of a functioning public sphere in the political realm remain abstract as long as they are confined to the institutional interrelations of public, press, parties, and the parliament, and to the tension-charged field in which authority and publicity (as the principle of a critical control of the cabinets) confronted each other. They can document that the public sphere takes on political functions during the eighteenth century, but the kind of function itself can be grasped only in relation to that specific phase in the developmental history of civil society as a whole

in which commodity exchange and social labor became largely emancipated from governmental directives. In the political order in which this process reached its temporary completion, it was not by accident that the public sphere assumed a central place. It became the very organizational principle of the bourgeois constitutional states that feature parliamentary forms of government as, for example, Great Britain after the great Reform Bill of 1832; the same, with certain reservations, also held true for the so-called constitutional monarchies on the model of the Belgian Constitution of 1830.

The public sphere as a functional element in the political realm was given the normative status of an organ for the self-articulation of civil society with a state authority corresponding to its needs. The social precondition for this "developed" bourgeois public sphere was a market that, tending to be liberalized, made affairs in the sphere of social reproduction as much as possible a matter of private people left to themselves and so finally completed the privatization of civil society. Under absolutism, the latter's establishment as a private realm was conceivable at first only in the privative sense that social relationships were stripped of their quasi-public character. The political functions, both judicial and administrative, were consolidated into public authority. The domain separated from this public sphere was by no means already "private" in the sense of a liberation from rule by state authority; it came into existence at all only as a domain subject to mercantilist regulation. On the other hand, the "unifying system" of mercantilism already established the beginnings of a privatization of the process of social reproduction in the positive sense: the latter might gradually evolve autonomously, that is, in accord with the laws intrinsic to the market. For in proportion to the increasing prevalence of the capitalist mode of production, social relationships assumed the form of exchange relationships. With the expansion and liberation of this sphere of the market, commodity owners gained private autonomy; the positive meaning of "private" emerged precisely in reference to the concept of free power of control over property that functioned in capitalist fashion.

The modern history of private law shows how far this process

had already advanced in the mercantilist phase. The conception of the legal transaction as involving a contract based on a free declaration of will was modelled on the exchange transaction of freely competing owners of commodities. At the same time, a system of private law that in principle reduced the relationships of private people with one another to private contracts operated with the assumption that the exchange relationships that came about in accordance with the laws of the free market had model character. Of course, parties to a contract were not in every case also exchange partners, but the relationship of the latter, which was central to civil society, supplied the model for all contractual relationships. With the fundamental liberties of the system of private law, the category of a general legal standing—the guarantee of the legal status of the person—was articulated as well; the latter was no longer defined by estate and birth. The *status libertatis*, the *status civitatis*, and the *status familiae* gave way to the one *status naturalis*, now ascribed generally to all legal subjects<sup>42</sup>—thus corresponding to the fundamental parity among owners of commodities in the market and among educated individuals in the public sphere.

With the great codifications of civil law a system of norms was developed securing a private sphere in the strict sense, a sphere in which private people pursued their affairs with one another free from impositions by estate and state, at least in tendency. These codifications guaranteed the institution of private property and, in connection with it, the basic freedoms of contract, of trade, and of inheritance. Admittedly the developmental phases were more clearly demarcated on the continent, precisely because of their codifications, than in Britain, where the same process occurred within the framework of Common Law. Yet the special legal forms and institutions of a society with free traffic in commodities<sup>43</sup> were formed earlier here than in countries with a Roman Law tradition. In Prussia the *Allgemeine Landrecht* was published in 1794; in Austria the *Allgemeine Bürgerliche Gesetzbuch* in 1811; the classic work of bourgeois private law, the *Code Civil* of 1804, came between the two. It was characteristic of all these legal codes that they originated not only in the interest of civil society but also in its

specific medium: many times they went through the critical public scrutiny of private people come together as a public. Through prize competitions and through questionnaires, public opinion contributed to legal codification even where parliamentary bodies did not exist or remained ineffective, as in Napoleonic France. As in Berlin and Vienna, so in Paris the proposed legal code was in 1800 submitted for critical assessment to the public and not just to an internal forum of specialists. Indeed, the proposals themselves were not even formulated by the traditional carriers of jurisprudence but by educated and trusted agents of the government who, in a way, were its contacts with a public already a politically active entity; basic ideas were debated in discussion circles such as the Berlin *Mittwochsgesellschaft*, to which Suarez belonged.

The modern history of private law did not start with the eighteenth-century transformation of natural law into positive law. However, the received Roman Law, which was understood as "private" at first only in contrast to canonical law, nevertheless did not begin to develop into the law of emancipated civil society before the dissolution of the traditional legal forms of both the old ruling estates and the town-based occupational status groups (*Berufsstände*). Under absolutism, functioning in any event more as a legal technique than as law, it served the territorial princes as an instrument in the conflict between the authorities bent on centralization and the particularism of the estates. Civil society was to be released from its corporate bonds and subjected to the administrative sovereignty of the prince. In this function too Roman Law did not guarantee an order of "private" law in the strict sense. Even where it was not entirely absorbed by police ordinances, "private law" remained a creature of state authority; these ordinances included in their coverage peripheral problems of the "public welfare"<sup>44</sup> along with commercial, occupational, and labor law. The digests to which the reigning theory of private law was at that time oriented became a fiction when compared with the legally relevant reality:

In labor law, with regard to relationships involving free labor, the digests mention only the rather undifferentiated wage for services

rendered by free persons; but the local law concerning domestic servants takes domestic authority and household community as its point of departure; the local law concerning artisans presumes the corporate organization of occupational status groups; the law regulating agricultural labor takes the service obligations of peasants for granted. The digests' regulations concerning debts for the most part presuppose freedom of contract; the local regulations contain a multitude of price controls, taxes, supply and first offer obligations, production restrictions, obligatory contracts. An abstract, universal, and hence apparently free legal order implying an economically free individual stands confronted with an almost suffocating degree of restriction on the law governing contracts, labor, residence, and real estate (that is to say, all social and economic foci of private law) imposed by state, occupational status groups, and corporations.<sup>45</sup>

By the second half of the eighteenth century modern private law had in principle done away with these controls. Nevertheless, it then took yet another hundred years for the development from status to contract to break completely through all the restrictions that at that time hindered the utilization of industrial capital and thus the establishment of the capitalist mode of production; for property to become freely disposable for the exchange transactions of participants in the market; for the specification of its heirs to be left up to the free will of the owner; for the choice and exercise of a trade and the training of workers to become a matter of the entrepreneur's discretion; and for wages to be determined by a free contract between the employer and the employee. In 1757 the justices of the peace in Great Britain lost the task of state-imposed wage regulation, first in the textile industry; by 1813 free wage labor had been introduced in all branches of industry; a year later the Elizabethan law prescribing a seven-year training period for apprentices was abolished. This was complemented by a strict prohibition of unionization. Likewise, from the mid-eighteenth century on, freedom of trade progressed step by step. In France this development started with the outbreak of the Revolution; by 1791 almost all government directives and all estate-related regulations in trade and industry had been eliminated. What in Austria could be accomplished already under Joseph II had to wait in Prussia for the Stein-Hardenberg Reforms following the defeat of 1806. Also, the feudalistic

inheritance laws were defended successfully for a long time. In Great Britain the individualistic conception that the passing on of property through inheritance must be detached from the collective economic unit of the household and the family and become a matter of the individual property owner came to prevail only with the Reform Bill of 1843.<sup>46</sup> Before the trade between nations (and in Germany between territories) was freed from customs restrictions, industrial capital battered down all obstacles at home; at the end of this development it was almost exclusively the laws of free competition that governed the market of goods, real estate, labor, and even capital itself.

Even in Great Britain the liberalization of foreign trade could be carried out with consistency only after the repeal of the Corn Laws in 1846. The old contradiction between the defensive interests vested in established market positions, on the one hand, and the expansive interests of capital invested in ever new sectors, on the other, was reproduced at a higher level. This time, however, driven by the tremendous forces of the industrial revolution,<sup>47</sup> it led not merely to a temporary weakening of old monopolies but, in the longer run, to a turnover in the positions of market dominance. The need of the new industries for expanded consumer markets for their goods, for an expanded supply of raw materials for their products, and finally for expanded food imports, which kept the subsistence level of their producers (i.e., the wage laborers) low—this objective interest in a removal of government regulations, privileges, and controls found Great Britain at that time, as the nation dominating both sea and market, in a situation in which it had everything to gain from *laissez faire* and nothing to lose. Great Britain's leading industrial position increased her interest in free trade.<sup>48</sup> Furthermore, after the emancipation of the North American colonies from the mother country it had been possible to put the example to the test. The trade with a free country was proven to be at least as profitable as exchange within one and the same colonial system.<sup>49</sup> In this way free trade,<sup>50</sup> the effectiveness of free competition at home and abroad, determined the entire phase we call liberal. Indeed, we have become accustomed to deriving the essence of all

capitalism from the competitive capitalism of this specific form. In contrast to this notion it should be recalled that this phase lasted only for one blissful moment in the long history of capitalist development; for it issued from a unique historical constellation in Great Britain at the close of the eighteenth century. The other countries did not actualize the principles of *laissez faire* in international trade without reserve, even in the middle of the nineteenth century when the liberal era was at its height. Nevertheless, only during this phase was civil society as the private sphere emancipated from the directives of public authority to such an extent<sup>51</sup> that at that time the political public sphere could attain its full development in the bourgeois constitutional state.

### **11 The Contradictory Institutionalization of the Public Sphere in the Bourgeois Constitutional State**

According to civil society's idea of itself, the system of free competition was self-regulating; indeed, only on the presupposition that no extra-economic agency interfered with the transactions in the market did the latter promise to function in a fashion that ensured everyone's welfare and justice in accord with the standard of the individual's capacity to perform. The society solely governed by the laws of the free market presented itself not only as a sphere free from domination but as one free from any kind of coercion; the economic power of each commodity owner was conceived quantitatively to be of an order precluding it from having an influence upon the price mechanism, and thus from ever providing direct power over other owners of commodities. Such a society remained subordinate to the market's nonviolent decisions, being the anonymous and, in a certain way, autonomous outcome of the exchange process.<sup>52</sup> The juridical guarantees of its basic economic constitution also pointed in the direction of a private sphere neutralized as regards power, at least in tendency, and emancipated from domination. The elimination of authoritarian arbitrariness through legal safeguards, that is, binding state functions to general norms, together with the liberties codified in the system of bourgeois civil law, protected the order of the

“free market.” In terms of their sociological meaning, state interventions without empowerment by law were blameworthy primarily not because they violate principles of justice laid down by natural right but simply because they were unpredictable and thus would preclude exactly the kind and measure of rationality that was in the interest of private persons functioning in a capitalist fashion. Otherwise those “guarantees of calculability,” already discovered by Max Weber in regard to industrial capitalism, would be lacking: the calculation of profit opportunities demanded a system in which exchange transactions proceed in accord with calculable expectations.<sup>53</sup> Delimited jurisdictional areas and observance of legal formalism were therefore criteria of the bourgeois constitutional state;<sup>54</sup> a “rational” administration and an “independent” judiciary<sup>55</sup> were its organizational conditions. The law itself, by which the executive and the judiciary had to abide, was to be equally binding for everyone; in principle, no one was to enjoy a dispensation or privilege. In this respect the laws of the state were like those of the market: neither allowed exceptions for citizens and private persons; both were objective, which is to say, not manipulable by the individual; the individual owner of goods had no influence on the market price; and they were not directed at individuals (the free market prohibited collusion).

The laws of the market, of course, prevailed because they were intrinsic; this was precisely why classical economics endowed them with the appearance of an *ordre naturel*. The laws of the state, in contrast, needed to be explicitly enacted. To be sure, the prince could possibly also function as the legislator insofar as he was willing to bind his commands and all state activity to general norms, whereby the latter, in turn, would have to be oriented to the interests of bourgeois commerce. For a state to be constitutional *per se* did not necessarily require that the public sphere be constitutionalized within the framework of a parliamentary form of government (or at least one in which authority was vested in parliament). The physiocrats indeed had something like this in mind; their so-called legal despotism held out the prospect that precisely under the enlightened monarch public opinion would be sovereign. Even during the liberal phase, however, the interests competing with



industrial capital (especially the landed interest, be it that of the manorial lords or that of the great land owners turned bourgeois) were still so strong that they dominated even the British Parliament until 1832 and delayed the repeal of the Corn Laws for another fourteen years.<sup>56</sup> Hence the enlightened monarch of the physiocrats remained a pure fiction; in the conflict of class interests the character of a state as a constitutional state would not guarantee per se legislation geared toward the needs of bourgeois commerce. Only with power to legislate itself did the public, constituted of private people, obtain this certainty. The constitutional state as a bourgeois state established the public sphere in the political realm as an organ of the state so as to ensure institutionally the connection between law and public opinion.

Because of such provenance, however, this state was beset by a peculiar contradiction. The latter was betrayed first of all by an ambivalence in the concept of law:

In the political struggle against a strong royal government, the participation of representatives of the people as the essential characteristic of the law had to be increasingly emphasized and ultimately had to become decisive. If the participation of the people's representatives is politically a preeminent feature of the law, this explains . . . the obverse: whatever comes about with the participation of the people's representatives, is law. The rule of the law then means participation or ultimately rule of the people's representatives.<sup>57</sup>

On the one hand, therefore, the concept of law as an expression of will included as an element the claim, successfully asserted through recourse to violence, to the exercise of domination. On the other hand, however, the concept of law as an expression of reason preserved other, older elements of its origin in public opinion, still traceable in the connection between parliament and public. This is why Carl Schmitt gave first place not to the political definition of law but to the other: "Law is not the will of one or of many people, but something rational-universal; not *voluntas*, but *ratio*."<sup>58</sup> In its intention, the rule of the law aimed at dissolving domination altogether; this was a typically bourgeois idea insofar as not even the political safeguarding of the private sphere emancipating itself from political domination was to assume the form of domination.

The bourgeois idea of the law-based state, namely, the binding of all state activity to a system of norms legitimated by public opinion (a system that had no gaps, if possible), already aimed at abolishing the state as an instrument of domination altogether. Acts of sovereignty were considered apocryphal per se.

Since the critical public debate of private people convincingly claimed to be in the nature of a noncoercive inquiry into what was at the same time correct and right, a legislation that had recourse to public opinion thus could not be explicitly considered as domination. Yet the authority to legislate was so obviously won only in a tough struggle with the old powers that it could not be absolved from having the character of a "coercive power" itself. Locke called it "legislative power," Montesquieu "*pouvoir*"; in both authors' minds only the administration of justice (which merely "applied" the given laws) was without power and hence without a determinate social category as its bearer. Nevertheless, the distinction between legislative and executive power was modelled on the contrast between norm and action, between reason ordering and will acting.<sup>59</sup> Although construed as "power," legislation was supposed to be the result not of a political will, but of rational agreement. Even Rousseau's democratic conversion of the sovereignty of the prince into that of the people did not solve the dilemma. Public opinion was in principle opposed to arbitrariness and subject to the laws immanent in a public composed of critically debating private persons in such a way that the property of being the supreme will, superior to all laws, which is to say sovereignty, could strictly speaking not be attributed to it at all. In accord with its own intention, public opinion wanted to be neither a check on power, nor power itself, nor even the source of all powers. Within its medium, rather, the character of executive power, domination (*Herrschaft*) itself, was supposed to change. The "domination" of the public, according to its own idea, was an order in which domination itself was dissolved; *veritas non auctoritas facit legem*. This inversion of the Hobbesian statement was lost in the attempt to conceive of the function of public opinion both with the help of the concept of sovereignty and in the constitutional law construction of the *pouvoirs*. A public sphere as a functional element in the political realm

posed the issue of *pouvoir* as such. *Public debate was supposed to transform voluntas into a ratio that in the public competition of private arguments came into being as the consensus about what was practically necessary in the interest of all.*

Where the constitutional state did not emerge as a fact out of the older formation of a state structured by estates (as in Great Britain) but was sanctioned (as on the continent) by a piece of legislation on which it was founded, that is, a basic law or constitution, the functions of the public sphere were clearly spelled out in the law.<sup>60</sup> A set of basic rights concerned the sphere of the public engaged in rational-critical debate (freedom of opinion and speech, freedom of press, freedom of assembly and association, etc.) and the political function of private people in this public sphere (right of petition, equality of vote, etc.). A second set of basic rights concerned the individual's status as a free human being, grounded in the intimate sphere of the patriarchal conjugal family (personal freedom, inviolability of the home, etc.). The third set of basic rights concerned the transactions of the private owners of property in the sphere of civil society (equality before the law, protection of private property, etc.). The basic rights guaranteed: the *spheres* of the public realm and of the private (with the intimate sphere at its core); the *institutions* and *instruments* of the public sphere, on the one hand (press, parties), and the foundation of private autonomy (family and property), on the other; finally, the *functions* of the private people, both their political ones as citizens and their economic ones as owners of commodities (and, as "human beings," those of individual communication, e.g., through inviolability of letters).<sup>61</sup>

As a consequence of the constitutional definition of the public realm and its functions,<sup>62</sup> publicness became the organizational principle for the procedures of the organs of the state themselves; in this sense one spoke of their "publicity." The public character of parliamentary deliberations assured public opinion of its influence; it ensured the connection between delegates and voters as parts of one and the same public. At about the same time trial procedures in court were made public too.<sup>63</sup> Even the independent judiciary needed checking by public opinion; indeed, its independence from the executive as

well as from private interference seemed to be guaranteed only in the medium of a critical public ready to swing into action. The most effective resistance to the principle of publicity was put up by the state bureaucracy, not primarily, however, because the secrecy of certain actions would be precisely in the public interest but because next to the army the bureaucracy built up under absolutism represented the only means of power in the hands of the princes against the interests of bourgeois society. Nonetheless, even within the framework of enlightened absolutism, an order of the Prussian king to his ministers of state dating from the year 1804 testified in exemplary fashion to the newly spreading insight "that a decent publicity is for both government and subjects the surest guaranty against the negligence and spite of subaltern officials and deserves to be promoted and protected by all means."<sup>64</sup>

Nowhere did the constitutional establishment of a public sphere in the political realm, itself painfully enough won through violence, betray its character as an order of domination more than in the central article stating that all power (*Gewalt*) came from the people. Otherwise the constitutional state predicated on civil rights pretended, on the basis of an effective public sphere, to be an organization of public power ensuring the latter's subordination to the needs of a private sphere itself taken to be neutralized as regards power and emancipated from domination. Thus the constitutional norms implied a model of civil society that by no means corresponded to its reality. The categories drawn from the historical process of capitalism, including its liberal phase, were themselves historical in character. They denoted social tendencies, but tendencies only. Thus, the "private people" on whose autonomy, socially guaranteed by property, the constitutional state counted just as much as on the educational qualifications of the public formed by these people, were in truth a small minority, even if one added the petty to the high bourgeoisie. Incomparably more numerous were the "common people," especially the rural population. And both the princes, supported by army and bureaucracy, and the great landowners, the landed nobility, continued to exercise power in accord with the political laws of precapitalist society.<sup>65</sup> Nevertheless, the

new constitutions, written and unwritten, referred to citizens and human beings as such, and indeed necessarily so, as long as "publicity" constituted their organizational principle.

The public sphere of civil society stood or fell with the principle of universal access. A public sphere from which specific groups would be *eo ipso* excluded was less than merely incomplete; it was not a public sphere at all. Accordingly, the public that might be considered the subject of the bourgeois constitutional state viewed its sphere as a public one in this strict sense; in its deliberations it anticipated in principle that all human beings belong to it. The private person too, was simply a human being, that is, a moral person. We have designated the historical and social location in which this self-interpretation developed. The consciousness of this, if you will, formless humanity grew up in the patriarchal conjugal family's intimate sphere that was oriented to a public. In the meantime, the public very much assumed its specific form; it was the bourgeois reading public of the eighteenth century. This public remained rooted in the world of letters even as it assumed political functions; education was the one criterion for admission—property ownership the other. *De facto* both criteria demarcated largely the same circle of persons; for formal education at that time was more a consequence than a precondition of a social status, which in turn was primarily determined by one's title to property. The educated strata were also the property owning ones. The census, which regulated admission to the public sphere in the political realm, could therefore be identical with the tax list. Indeed, the French Revolution already used the latter as the standard for the distinction between full citizens and those of lesser status.

This restriction of the franchise, however, did not necessarily have to be viewed as a restriction of the public sphere itself as long as it could be interpreted as the mere legal ratification of a status attained economically in the private sphere, which is to say, the status of the private person who both was educated and owned property. The universal accessibility to that sphere whose operation in the political realm was institutionalized by the constitutional state must be decided by the structure of civil society from the outset, and not only *ex post facto* by the

political constitution that it gave itself. The public sphere was safeguarded whenever the economic and social conditions gave everyone an equal chance to meet the criteria for admission: specifically, to earn the qualifications for private autonomy that made for the educated and property owning person. The contemporary science of political economy laid out these conditions; Jeremy Bentham was unthinkable without Adam Smith.<sup>66</sup>

The presuppositions of classical economics are well known. It conceived of a system whose immanent laws afforded the individual a sure foundation for calculating his economic activity rationally according to the standard of profit maximization. Each person made such calculations for himself, without collusion with others; the production of goods was subjectively anarchic, objectively harmonious. The first presupposition was thus economic: the guarantee of free competition. The second one postulated that all commodities were exchanged according to their "value"; the latter, in turn, was to be gauged in terms of the quantity of labor required for its production. In all this the commodities in question included both the goods produced and the labor power producing them. Since this condition was only fulfilled if each supplier produced his commodities himself, and if, conversely, each laborer possessed the means of production himself, the second presupposition amounted to a sociological one: the model of a society of petty commodity producers. It was related to the first insofar as the economic presupposition of the independent formation of prices implied the sociological one of a relatively widely and evenly distributed ownership of means of production. The third presupposition was a theoretical one first introduced by the elder Mill and handed down in a later formulation as Say's Law. According to this law, under conditions of complete mobility of producers, products, and capital, supply and demand would always be in equilibrium. This meant that no production capacities would be idle, that labor reserves would be fully utilized, and that the system would be in principle crisis-free and in equilibrium on a high level that at any given time was commensurate with the state of development of the forces of production.

Under these conditions, but only under these, would each

person have an equal chance, with ability and "luck" (the equivalent for the lack of transparency of the nevertheless strictly determined market dynamics), to attain the status of property owner and thus of "man," that is, the qualifications of a private person admitted to the public sphere—property and education. As was apparent from the polemical function of political economy itself, these conditions were by no means fulfilled even in the first half of the nineteenth century.<sup>67</sup> Nevertheless, the liberal model sufficiently approximated reality so that the interest of the bourgeois class could be identified with the general interest and the third estate could be set up as the nation—during that phase of capitalism, the public sphere as the organizational principle of the bourgeois constitutional state had credibility. If everyone, as it might appear, had the chance to become a "citizen," then only citizens should be allowed into the political public sphere, without this restriction amounting to an abandonment of the principle of publicity. On the contrary, only property owners were in a position to form a public that could legislatively protect the foundations of the existing property order; only they had private interests—each his own—which automatically converged into the common interest in the preservation of a civil society as a private sphere. Only from them, therefore, was an effective representation of the general interest to be expected, since it was not necessary for them in any way to leave their private existence behind to exercise their public role. For the private person, there was no break between *homme* and *citoyen*, as long as the *homme* was simultaneously an owner of private property who as *citoyen* was to protect the stability of the property order as a private one. Class interest was the basis of public opinion. During that phase, however, it must also have been objectively congruent with the general interest, at least to the extent that this opinion could be considered the public one, emerging from the critical debate of the public, and consequently, rational. It would have turned into coercion at that time if the public had been forced to close itself off as the ruling class, if it had been forced to abandon the principle of publicity. Critical debate would have become dogma, the rational insight of an opinion that was no longer public would have become an authoritarian command.

As long as the presuppositions enumerated above could be assumed as given, as long as publicity existed as a sphere and functioned as a principle, what the public itself believed to be and to be doing was ideology and simultaneously more than mere ideology. On the basis of the continuing domination of one class over another, the dominant class nevertheless developed political institutions which credibly embodied as their objective meaning the idea of their own abolition: *veritas non auctoritas facit legem*, the idea of the dissolution of domination into that easygoing constraint that prevailed on no other ground than the compelling insight of a public opinion.

If ideologies are not only manifestations of the socially necessary consciousness in its essential falsity, if there is an aspect to them that can lay a claim to truth inasmuch as it transcends the status quo in utopian fashion, even if only for purposes of justification, then ideology exists at all only from this period on.<sup>68</sup> Its origin would be the identification of "property owner" with "human being as such" in the role accruing to private people as members of the public in the political public sphere of the bourgeois constitutional state, that is, in the identification of the public sphere in the political realm with that in the world of letters; and also in public opinion itself, in which the interest of the class, via critical public debate, could assume the appearance of the general interest, that is, in the identification of domination with its dissolution into pure reason.

However that may be, the developed public sphere of civil society was bound up with a complicated constellation of social preconditions. In any event, before long they all changed profoundly, and with their transformation the contradiction of the public sphere that was institutionalized in the bourgeois constitutional state came to the fore. With the help of its principle, which according to its own idea was opposed to all domination, a political order was founded whose social basis did not make domination superfluous after all.