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Clandestine Publics

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I.

The notion of "clandestine publics", with which the following reflections will be concerned, involves such an obvious contradiction that there hardly seems to be any necessity for actually describing this contradiction: Is not the public precisely characterized by its distinctiveness from the clandestine, the secret, from what is concealed? It indeed seems that the public is, in the first place, determined through a general visibility or audibility, which constitutes the precondition for the possibility that it, the public, can be witnessed, contested, or negotiated. Only thus can it become the object of an exchange, or establish the possibility of an open argument ideally accessible to "all", whether, in the concrete case, it is about a public trial at court, a parliamentary debate, an article in the newspaper, or a discussion event.

The constitutive demarcation of the public from the secret that becomes evident in such a determination is moreover of historical importance: The repulsion of a "public representation of power" of a feudalistic or absolutistic type, exercised through the exhibition of the insignia of power[1], through *modern* publicity in the sense of a characteristic sphere of bourgeois forms of societal organisation is linked with the rejection of the secret as a "clearly acknowledged and necessary dimension of political agency"[2], personified by the secretaries and privy concillors of the princes and kings. The *publicum* would thus not only be opposed to the *privatum* - like in the self-interpretation of bourgeois society -, but first and above all to the *secretum* administered by the *secretarii*[3]; the public would be separated from the secret by a boundary that establishes a relation of exteriority, indeed of mutual exclusion between the two of them, which leaves to the secret at the most certain temporary margins. Consequently, historical narratives convey the idea of a succession, suggesting an "age of secrecy" having been replaced by a - bourgeois - "age of publicity".

Such a construction remains nevertheless unsatisfying, not only in view of the very present practices of secret services run by the states (along with the concomitant conspiracy theories, which show a mixture, quite characteristic for the modern era, of shudder and fascination in face of the secret) or the existence of places like, for instance, the U.S.-run camp in Guantanamo Bay that are systematically withdrawn from public witnessing. It remains unsatisfying, above all, because it fails to take account of the *intrinsic* bond that links together the "public" and the "secret".

Such an intrinsic bond can be grasped, as I have argued in another article[4], in the way Kant has taken recourse to a *principle of publicity* (i.e. the *capability* of publicity and the *need* of publicity of maxims of action relating to the right of others) in order to found a system of *public law* which is supposed to guarantee the harmony of politics and morality (or of positive law and justice): In fact, Kant's argument, trying to link back the regulation of "public" affairs (i.e. affairs concerning the polity as such) to a general "form of publicity", reveals to be fragile precisely at the point where an injustice committed by the actual sovereign (for instance, in the form of a tyranny injuring, as Kant says, "the rights of the people") is confronted with a "rebellion" that is just as actual. For Kant, the latter is in the wrong because, as opposed to the sovereign, its maxim would "necessarily have to be kept secret" in order to avoid the thwarting of its own intentions (in Kants reflection: the overthrow). Thus, far from guaranteeing the justice of public law, a fundamental asymmetry of power is revealed in the very heart of the "principle of publicity", structurally contaminating, so to speak, this principle with a "secret" that shifts the crucial question from the *capability of publicity of legal claims* towards the

capability of representation of public law.

A second level on which we encounter the inner entanglement of the public and the secret can be demonstrated by having recourse to the concept of "public spheres of production" that has been coined by Oskar Negt and Alexander Kluge in their book *Public sphere and experience*, published in 1972: In difference to the classical concept of a reasoning public - ideally orientated towards the general interest -, Negt/Kluge consider public spheres of production as a "direct expression of the sphere of production", as a way of taking advantage of existing public sphere structures through capitalist private and production interests, which is nevertheless characterized by a certain incorporation of the "interests of the workers in the production process to the extent that they are absorbed by the context of capital"[5]. What results from this entanglement of production interests and various life interests, is the specific "production of ideology" of these public spheres of production, which primarily aims at constructing a context of legitimation:

"Instead of the mechanism of exclusion characteristic of the classical public sphere, what characterizes the public sphere of production, which is linked with the classical one, is the oscillation between exclusion and intensified incorporation: *non-legitimable actual circumstances fall into produced non-publicity*; power relations in the production process that cannot be legitimated as such are recharged with legitimated interests of the general collectivity and thus appear within a context of legitimation. The place of the distinction between public and private is taken over by the contradiction between the pressure of production interests and the need for legitimation."[6]

In our context, the crucial point is of course Negt/Kluge's notion of a "produced non-publicity" which marks precisely the point where a context of legitimation between certain actual conditions, corresponding to production interests, and the "legitimated interests of the general collectivity" can no longer be produced. Moreover, the whole argument of *Public sphere and experience* makes it clear that this produced non-publicity is not simply something that is eclipsed from or forms a lacuna within the public discourse, but, above all, a - partly structural, partly directly active - *blocking of the specific societal articulation* that could be produced within a context of "non-legitimable actual circumstances": the production of non-publicity appears as an immediate effect of social marginalisation, which isolates and fragments the subjects that are submitted to it and, hence, permanently disorganizes the articulation of their nevertheless shared experiences.

Thus, the readings of Kant, on the one hand, and Negt/Kluge, on the other, pose a common - or, in any case, analogous - problem: namely the question of how an articulation of legal claims and social experiences is conceivable and possible even under the conditions of a certain collapse of the capability of representation of public law or of the structural-operative blocking of articulation within an existing societal context of production and legitimation.

II.

Exactly at this point, I would like to directly come back to our initial question regarding "clandestine publics", this time, however, in a concise and very concrete sense: namely in view of those to whose existence the word "clandestine" has been increasingly linked in recent years and who entered the scene of the political struggles of our time, beginning with the first occupations of churches in France in the mid-nineties, under the name of "sans-papiers".

Indeed, the situation in which sans-papiers find themselves in present Europe (and elsewhere) precisely reflects the two elements that I have touched upon above: that of a certain collapse of the capability of social representation through public law, which, in terms of its *real existence*, coincides with the historically grown and basically contingent legal systems of *nation states* as well as, in the framework of "European integration",

with the mutual adjustment and renewed forming up of these legal systems at a *supranational* level; and that of a "produced non-publicity", to be explained not solely by the existing legal discrimination, but also by the specific incorporation of sans-papiers in the context of economic production. In our days, the social figure of the sans-papiers specifically appears where these two elements touch or superimpose each other in the form of the two regimes that are probably crucial of our time: the juridical-political regime of the nation state and the economic regime of neo-liberalism. As we will see, the effect brought about by this superimposition is just as much characterized by a radical exclusion (as far as the regime of the nation state is concerned) as it implies a radical "inclusion" or a radical incorporation (as far as neo-liberal forms of production are concerned).

In order to understand the figure of the sans-papiers, we should not forget two things: On the one hand, even if it may be, in its present form, relatively new, it is not, however, without history. Its concrete genesis reaches back to the immediate run-up to the "recruitment stop" enacted in many European countries in the middle of the 1970ies, hence to the end of worker's immigration pursued by the state. A first "sans-papiers movement", accompanied by first hunger strikes, can be observed for the French context already in the years 1972/73, in reaction to a prohibition, passed by the ministries for interior affairs and labour, of the issuing of residence permits for those immigrants who did well have an employment but not yet a residence card.[7]

Already in the early eighties, after the recruitment stop in 1974 and a tightening up of laws concerning the possibilities of entry and the practice of deportations, in 1980 through the "loi Bonnet" (named after the conservative minister for interior affairs Christian Bonnet), the residence of 130.000 sans-papiers was being legalized in the course of a "regularization campaign" initiated by the left-wing government that had meanwhile come into power. At the same time, the regularization campaigns in Italy, Spain, and Portugal in the mid-eighties and early nineties, still several years before the emergence of the current sans-papiers movement, indicate a certain shift regarding the dynamics of migration, given that all of those countries had figured among the classical countries of origin in the times before the "recruitment stop". Europe as a "zone of welfare" has become larger (and, at the same time, slowly begins to form up to a "fortress"), the demarcation line between the "welcoming" countries and the countries of origin runs henceforth between (Western) Europe and the "Third World" as well as (since 1989, and in a more dynamic manner) between Western Europe and Eastern/South-Eastern Europe.

Secondly, we have to point to the fact that, in perfect correspondence with the outlined development, many of the sans-papiers who began, in the mid-nineties in France, to increasingly get politically organized, to occupy churches, and to engage in hunger strikes, did not at all find themselves in a situation according to which they would never have had a regular residence status; rather, due to the Pasqua laws of 1993 and the "loi Debré" of 1997, they had actually lost their status and thus been "illegalized" in a literal sense. We can conclude from this fact that the notion of "sans-papiers" should not be exclusively understood as a strict description of a certain legal status; it rather refers to a situation of *legal uncertainty*, a situation that is characterized by the fact that rights are *not guaranteed*. For precisely this reason, it is justified to speak of a legal and political *precarisation* - a precarisation which expands into all social rights that are linked with a *guaranteed* legal residence status.

Nevertheless, we are dealing with a legal exclusion of a structural character, which does not seem to be corrigible within the framework of the nation state regime and its constitutive linking of guaranteed rights and nationality. The problem becomes clear if we consider, for instance, the aporia inevitably linked with the logic of "extraordinary regularizations": as the "Déclaration de l'Ambassade Universelle" (the founding document of the Universal Embassy in Brussels, which is inhabited by sans-papiers[8]) puts it, these regularizations represent, in the best case, a "temporary cleansing of the prominent clandestineness" - in reality, in view of the defined criteria and the large number of refused applications or applications that have not even been sent in, not even this.

But in what does this "prominent clandestineness", which constitutes an inignorable social fact of our time, consist (we can assume that the number of migrants living as sans-papiers especially in the states of Western Europe runs into millions; that it equals, thus, the populations of a number of smaller EU-member states)? What kind of societal production forms the basis of the social fact of "prominent clandestineness"?

First of all, these questions direct our attention to the motivational conditions as well as to the various predicaments that underlie current migration processes. Of course, these conditions cannot be reduced to a single denominator, but rather refer to a complex bundle of political, social, ecological circumstances and, especially, to a series of straight economic backgrounds: in this context, Saskia Sassen[9] has for instance pointed to the manifold disastrous effects that austerity policies imposed by the IMF have on local forms of economic production in the countries of origin, as well as to the ousting of local producers through multinationals that "extend their markets" or new forms of exploitation in the places of production delocalised into "countries with low wages".

In this light, migration appears to an important extent as an effect of a global production of poverty that is linked with the mechanisms of international labour division and financial politics, permanently exposing the new sub-proletarian strata of this world to the "immense collection of commodities" of the rich countries and strata and, at the same time, supplying the production of this collection of commodities with their labour force. In most cases, however, it is nevertheless less the members of the poorest strata that leave their regions of origin (a large part of the migration movements remains confined to a regional level), but those who, due to their education, experiences or language competences, expect to have a good chance for a successful emigration.

In Europe herself, on the other hand, whole branches of economy are hardly able to survive anymore without the labour of sans-papiers (as well as of other migrant groups with a subordinate legal status): A striking example of this is the sector of agricultural production, which has fallen into an enormous price pressure due to the dominance of trade and the concentration of supermarket chains and which, in view of seasonal fluctuations in production, is moreover characterized by a particular need for "flexible" manpower.[10] As for the field of industrial production, the French sociologist Emmanuel Terray has coined the apt term of "delocalisations on the spot" in order to point to the profitable logic of employing sans-papiers in different branches of production like the textile industry, offering entrepreneurs all of the advantages of "authentic" delocalisations (lower wages, longer working periods, absence of social contributions, low degree of unionized worker's organisation, etc.) without entailing the usual disadvantages (transport costs, costs for executives sent abroad, communication impediments, etc.).[11] Finally, we have to add to this a large number of services (catering trade, communication work, cleaning work, care work, sex work) that are carried out by sans-papiers under most precarious conditions.

In all these sectors, we find the legal precarisation of sans-papiers immediately linked with a more general process of economic and social precarisation. Classical forms of worker's action in view of inacceptable conditions - or simply of claiming a minimum of rights and securities - are, even in cases of withheld payments of wages, usually only possible at the risk of being deported (whereas the entrepreneurs, due to intermediary subcontracting structures, most frequently remain unprosecuted): to the very extent that the figure of the sans-papiers is subject to a fundamental legal and political exclusion, it is at the same time incorporable into the socio-economic context of production as a, so to speak, ideal embodiment of "flexible" manpower.

III.

This brings us to our final question: Under these circumstances, how can the possibility of an articulation be conceived that would be capable of challenging and transforming the existing structures of the "public" - both at the level of public law and at the level of prevailing discourses of legitimation? What is at stake in this question touches quite obviously on more than on the possibilities of "dissidence" or on the formulation of political claims (albeit that these may of course represent an important part of such an articulation). We would rather have to take into account a counter-speech, a "counter-public", which is not exclusively, and perhaps not even prioritarily, characterized by an opposition to hegemonic structures and public discourses, but at least just as much by the production of a social context of experience and articulation in zones where the blocking of such a context - the marginalization and fragmentation of the horizons of experience to which it opens up - appears as an immediate effect of power.

I will confine myself here to dealing with the question of a counter-public or, rather, counter-publicity thus conceived by referring to an idea which seems to guide an important part of the practice of the Universal Embassy in Brussels that has already been mentioned[12]: the idea of a testimony or witnessing, in which the construction of a political articulation of sans-papiers is undertaken by way of attentively taking account of subjective experiences (concerning working conditions, relation forms, experiences with the state apparatus or in deportation camps, etc.). In this practice, the collective political recourse to the subjective can in itself be seen as bearing a certain potential of resistance, as it profoundly questions the predominant splitting off of the merely "private" and "individual" from abstract ideas of the "political".

But how, on closer inspection, can the claim of a testimony be understood? - A theoretical approach to the status of the testimony can be found in the last part of Giorgio Agamben's book *Remnants of Auschwitz*. Agamben tries here, explicitly in the sense of a certain resumption of the question of a (lived) subjectivity, to consider the testimony as a model of an articulation that is always precarious. He finds an important starting point in Foucault's concept of the archive which, inserted in between the abstract linguistic construction system of all the sentences that are in principle possible (*langue*) and the totality of what is concretely and actually said (*parole*), represents a "system of relations between the said and the unsaid" and thus subjects the formation and transformation of statements (*énoncés*) or discursive events to certain rules. Agamben's point consists now in repeating Foucault's operation and, at the same time, shifting it by laying open a field which extends in between the language (*langue*) "as the potentiality of speech" and its contingent taking place, or the linguistic event (that is, the level of the archive). In exactly this field the testimony is situated, namely, "in opposition to the archive, which designates the system of relations between the unsaid and the said," as a "system of relations [...] between the sayable and the unsayable in every language - that is, between a potentiality of speech and its existence, between a possibility and an impossibility of speech."[13]

Agamben's explanations - just as the context in which he places them (the testimonies of survivors of Auschwitz) - suggest that the mentioned "impossibility of speech," referring, after all, to a prevented *Being-able*-to-*actually*-take-place of a fundamental possibility of language, has its grounds in processes of a "desubjectification, of the destruction and destitution of the subject"[14], exposing the subject to a world determined by necessities and impossibilities. Therefore, the subject does not any longer appear in Agamben, like in the classical theories of the subject, as the place of self-consciousness or self-positing, but "as that which remains between a subjectification and a desubjectification, a speech and a mutism." [15] For exactly this reason, however, it can - even though this place remains always precarious - become the place of a testimony, bear testimony even of the specific desubjectification which it is subject to.

Hence, a practice of witnessing, as it is undertaken at the Universal Embassy and elsewhere, is situated at the precarious and yet kept dynamic boundary between the sayable and the unsayable, the public and the non-public, between communicatability and the fragmentation, isolation or blocking of speech - and, finally, between an articulated "experience in the production of experience" (Negt/Kluge) and an objectifying, desubjectifying societal production of "clandestinity". Counter-publicity is constituted in this practice, let me

repeat this crucial point, not simply because it counters the dominant "viewpoints" with a different kind of "viewpoints". It is constituted, above all, because such a practice counters the mechanisms of exclusion, through which classical forms of publicity are constructed, with an activity that undermines the exclusion by letting occur, at the very boundary which separates the public from the "secret" - the non-representable and non-legitimable -, an articulation which challenges the prevailing framework of representation and legitimation. An articulation, at the same time, which translates the social fact of the situation of sans-papiers in present Europe into a communicable social evidence and thus links the processes of political organisation with a specific knowledge and discourse production, taking account of the concrete social experience of sans-papiers.

Thus, the notion of "clandestine publics" may well appear as a theoretical paradox: The crucial point about it is that it refers to a practice that takes place precisely within this paradox. As for a theory of publicity, we should at least draw the consequence from this to consider publicity not solely by taking into account its formal characteristics and its (conflictual) variety of appearances, but this kind of practice, that is, by taking into account the constitutive and practical relation to a non-public, starting from which it can be renewed.

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[1] See J. Habermas, *Strukturwandel der Öffentlichkeit. Untersuchungen zu einer Kategorie der bürgerlichen Gesellschaft*, Frankfort-on-the-Main: Suhrkamp 1990, pp. 58–67, here: p. 60.

[2] L. Hölscher, *Öffentlichkeit und Geheimnis. Eine begriffsgeschichtliche Untersuchung zur Entstehung der Öffentlichkeit in der frühen Neuzeit*, Stuttgart: Klett-Cotta 1979, p. 7.

[3] On the historical transformations concerning the figure of the secretary see B. Siegert / J. Vogl (eds.), *Europa. Kultur der Sekretäre*, Zurich/Berlin: Diaphanes 2003.

[4] Vgl. "Die Bedingung des Öffentlich-Werdens", www.eipcp.net/transversal/1203/nowotny/en; the Kantian reference text is Appendix II to Kant's writing *On perpetual peace*.

[5] O. Negt / A. Kluge, *Öffentlichkeit und Erfahrung. Zur Organisationsanalyse bürgerlicher und proletarischer Öffentlichkeit*, Frankfort-on-the-Main.: Suhrkamp 1972, p. 37.

[6] Ibid., p. 38 (in the original text, the whole passage appears in bold type; the italics in the quotation are added by me, S. N.).

[7] See B. Goussault, *Paroles de sans-papiers*, Paris: Les Editions de l'Atelier / Les Editions Ouvrières 1999, p. 12.

[8] Cf. www.universal-embassy.be/article.php3?id_article=16.

[9] S. Sassen, "Les migrations ne surgissent pas du néant", in: *Manière de voir 62, Mars/Avril 2002: Histoire(s) d'immigration* (hg. v. *Le monde diplomatique*), pp. 10–14.

[10] Cf. on this point: Europäisches BürgerInnenforum / CEDRI (eds.), *Bittere Ernte. Die moderne Sklaverei in der industriellen Landwirtschaft Europas*, Basel et al. 2004.

[11] Cf. E. Terray, "Le travail des étrangers en situation irrégulière ou la délocalisation sur place", in: E. Balibar / M. Chemillier-Gendreau / J. Costa-Lascoux / E. Terray, *Sans-papiers: l'archaïsme fatal*, Paris: La Découverte 1999, pp. 9–34.

[12] ... and also, albeit in a less explicit manner, a part of the specific literature relating to the situation of sans-papiers, like for instance the book *Paroles de sans-papiers* by Bénédicte Goussault that has been quoted above.

[13] G. Agamben, *Remnants of Auschwitz. The Witness and the Archive*, New York: Zone Books 1999, p. 145.

[14] Ibid., p. 147.

[15] G. Agamben, "Une biopolitique mineure" (Interview with Stany Grelet and Mathieu Potte-Bonneville, published in *Vacarme* nr. 10, Winter 1999/2000), http://vacarme.eu.org/article255.html.