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The Condition of Becoming Public

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As familiar as the term "public" may seem to us as a central category of political modernism, reaching a precise understanding of it raises a number of difficulties. These difficulties already become apparent in the question of the translation of the German word "Öffentlichkeit", the characteristic political-social meaning of which was established in the late 18th century as a translation of the French "publicité": In English (and the case is similar for French), the German "Öffentlichkeit" is translated in certain contexts as "public" or "publicity"; however, where "Öffentlichkeit" stands for a general category of social organization, "public sphere" or "public space" is usually preferred. While this indicates a certain ambiguity in the German term, it also expresses a problem: translating "Öffentlichkeit" as "public sphere" causes a level of meaning to vanish that is nonetheless central to the modern idea of the public - specifically that "Öffentlichkeit" not only refers to a *category* in political modernism, but most of all a *principle* of social organization. This means that it is not simply a given "sphere" (or plurality of spheres) - regardless of how it is organized - of modern societies, but rather a central *mode* of their organization and constitution.

It is this problem, the question of the social constitution of "publicness" or "publicity" (*Öffentlichkeit*) that I would like to take as the starting point for the present essay. It should be noted that this is not solely a matter of reconstructing the meaning of "publicity" as a principle of social organization, but rather also of calling attention to the conditions of a certain disappearance of this meaning of "publicity". This disappearance is also symptomatically evident in that the English word "publicity" (like the French "publicité"), to which the meaning of a principle of social organization is certainly attributed in contexts of political theory, has been largely overlaid in everyday language with meanings that refer to the areas of advertising, marketing or media attention industries.

Findings of this kind suggest interweavings that are difficult to decipher between the "ideal history" of the theoretical *concept* of publicity and the "real history" of the development, interspersed with crises, of those *structures*, in which "publicity" has respectively been concretely effective or endangered or perverted as a principle of social organization. An entire history of the modern era could be written against this twofold background starting from a history of the principle of "publicity". At the provisional end of this history there is a series of characteristic phenomena, which would in turn newly justify speaking of a crisis of publicity: from the barricaded new camp structures à la Guantanamo Bay to the "remote" sweat shops of the so-called "Third World" cut off from the major flows of information; from the transfer of political decision-making processes from parliaments to transnational organizations determined by corporate interests, all the way to systematically blotting out and distorting contexts of migrant experience while simultaneously integrating the labor force of migrants in the economic apparatuses of production.

All of these phenomena bear witness not only to a "lack" of publicity, but even more so, as Oskar Negt and Alexander Kluge noted as early as 1972, to how "non-legitimizable factual circumstances [...] [yield to] produced non-publicity"[2]; and "produced non-publicity", which I will return to, is nothing other than the modern name for the dimension of political agency that was the actual political counter-model to the modern principle of publicity before the invention of the bourgeois opposition between "public" and "private": namely the *secret*[3]. It is therefore not a coincidence that it is precisely the aforementioned phenomena of crisis that have led in recent years to growing protest and a number of new political practices and organization forms. It remains to be investigated, however, how these new practices and organization forms relate to the idea and reality of publicity in particular. For it is difficult to avoid the impression sometimes that this relationship - particularly as a *critical* relationship to publicity, but one that simultaneously relies on a kind of "ideal" publicity as a principle of political transformation - is marked by an ambivalence that was also already diagnosed by Negt and Kluge: "Alternating between an idealizing and critical view of publicity does not lead to a dialectical, but rather to an ambivalent result: publicity sometimes seems to be something that can be used, at other times something that one has no use for."[4]

In order to overcome this kind of ambivalence (which, like every ambivalence, is manifested often enough in disorientation), it is necessary, according to Negt and Kluge, "to investigate the identical mechanisms of the ideal history and the history of the decay of publicity "[5]. Some of the elements of an investigation of this kind are to be addressed in the following.

The Formalism of the Classical Principle of Publicity (as Formulated by Kant)

It has often been noted that one of the central problems of the classical modern concept of publicity is found in its formalism. It is not only that this formalism, with Kant for instance, leads to a consolidation and rigidifying of the "material" designations that are tacitly implicit in the concept of publicity - particularly those designations that determine the exclusion of certain social groups (women, those without property, etc.) from public life; it also fosters the possibility of an instrumentalization and appropriation of existing structures of publicity, thus perverting the political meaning of "publicity" by subordinating its formal claim to generality - to including the general public in political discussions - to "private", in other words particular interests. Precisely in its formal universalistic claim, "publicity" thus proves to be a perfect instrument of hegemonization, i.e. the universalization of the particular for the purpose of imposing and maintaining certain power relationships. It was in this that O. Negt and A. Kluge saw the failure of the bourgeois principle of publicity. On the one hand, what was a strict self-purpose for Kant, turned out to be a means in the practice of bourgeois society[6], and on the other hand, it is precisely in this instrumental real history of the principle of publicity that the "inner violence" of its formulation as an ideal concept becomes evident – namely, that "the main battle must be carried out against all particularities"[7], which primarily means: against the materiality of the social situation on which publicity is ultimately based.

In order to understand the meaning and significance of the statement, let us call to mind the essential elements of the classical principle of publicity as formulated by Kant: First of all, it is important to emphasize that Kant did not speak of a *principle* of

publicity (*Publizität*) in conjunction with a "public sphere" or "public reasoning", but rather in conjunction with *public law*, which was to establish and guarantee the "harmony between politics and morality"[8]. The principle of publicity as the principle of public law consists, briefly, in that "every legal claim" must be "capable of publicity" in order to guarantee this harmony between politics and morality. For justice (as a moral category) can "only be conceived as publicly known" ["*öffentlich kundbar*": literally "publicly announceable"][9]; this is negatively evident in that a maxim relating to the rights of other people, which "must be kept secret if it is to succeed", would "inevitably [excite] universal opposition to my project", and this opposition can be "due only to the injustice with which the maxim threatens everyone"[10]. In positive terms, this means that agency must be based on maxims, "which stand in *need* of publicity" in order to suffice the "proper task of politics", namely to "accord with the public's universal end, happiness"[11].

One of the most interesting elements of this Kantian formulation of the principle of public law undoubtedly consists in the way in which the aforementioned motif of the secret comes up in it, specifically in a twofold mental figure: first of all, the secret is mentioned, as we have seen, where the illegitimacy of maxims is proved in general by the fact that they must be kept secret so as not to evoke "universal opposition". The "secret", which was considered a "clearly acknowledged and necessary dimension of political agency"[12] until into the 18th century, is thus fundamentally discredited – in keeping with the bourgeois-liberal tendencies of the era – as a political category, and "publicity" is established as the central legitimization for political agency. It seems that a clear dividing line exists, separating publicity and thus the lawful/just on the one side (both terms coincide in Kant's

writing, since it is a matter of a "transcendental" idea of law, i.e. one that is independent from all empirical conditions) from the secret and thus unlawful/unjust on the other.

Immediately afterward, though, where Kant discusses the consequences that are to be drawn from the principle of publicity for state law, the secret comes up a second time, and here the way it relates to justice proves to be more than ambiguous. The issue is the question of the lawfulness of deposing the tyrant, and Kant states expressly: "The rights of the people are injured; no injustice befalls the tyrant when he is deposed. There can be no doubt on this point."[13] Nevertheless, Kant concludes from the "the transcendental principle of the publicity of public law" that every "rebellion" is fundamentally illegitimate with exactly the same argument that he used before – namely that the maxims of the rebellion must necessarily be kept secret, otherwise its purpose will be made impossible. In relation to the unjustly acting "chief of state", however, it is interesting that he reduces this argument solely to the question of the maintenance of power; in fact, the tyrant "can openly say that he will punish every rebellion with the death of the ringleaders, however much they may believe that he was the first to overstep the basic law"[14]. Kant, who himself began his considerations, as we have seen, with a discussion of the injured rights of the people, thus accepts a consequential problem that thwarts his entire thesis of the "principle of publicity" as guarantee for the harmony of politics and morality: here the publicity of the legal claim does not at all ensure the justice of its maxims, but rather only the "*irresistible* [supreme] power"[15] (*unwiderstehliche Obergewalt*), which is the sole foundation of the "capability of publicity" in the case of the situation of a possible rebellion. In other words, should an unjust chief of state provoke "universal opposition" against his unjust maxims, he finds himself

in the right again at the point where he crushes this rebellion: thus the principle of publicity does not guarantee the justice of the law here, but rather the unconditionality with which it prevails and is maintained – specifically even in the extreme case of its absolute injustice.

It is obvious that we come up against the problem of sovereignty here, a fundamental contradiction between sovereignty and the principle of public law, or in other words, the discrepancy between law and justice that Walter Benjamin radically formulated: "Law making is power making, and to that extent, an immediate manifestation of violence."[16] (Kant himself also seems to concede this implicitly, in that he denies the deposed chief of state a right to a "revolt for his restoration" in the case of a successful rebellion.) At this point, however, I would like to pursue a different direction of questioning that directly relates to the problem of publicity. A pertinent suggestion in this respect is provided by Hannah Arendt, who writes about Kant's rejection of rebellion: "For Kant the alternative to an existing government is not revolution, but rather the coup d'état. And unlike a revolution, a coup d'état must, in fact, be prepared secretly, whereas revolutionary groups or parties were always concerned with publicizing their goals and winning significant portions of the population for them."[17] Kant's condemnation of the revolt is thus based on a "misunderstanding", and this misunderstanding ultimately applies to his concept of publicity itself, to the extent that "publicity" is not a contradiction to revolutionary action, but is, on the contrary, inseparably linked to it.

The Material Condition of Publicity and the Micropolitics of Becoming Public

In the second, more famous formulation of a concept of "publicity" that we find in Kant's work, namely in his "Answer to the Question: What is Enlightenment?"[18], we basically find the traces of the problem thus addressed: here "publicity" functions as a principle of political-social change, which is to promote the process of the enlightenment – this time not in terms of public law, but rather in relation to "public reasoning" or the "public use of reason", which must remain free and unconstrained (unlike the "private", which "may quite often be very narrowly restricted", specifically in matters that affect "the interests of the commonwealth", "so that [some members of the commonwealth] may, by an artificial common agreement, be employed by the government for public ends"[19]). At this point, I will dispense with an analysis of the problems and ambivalences of this text, in order to turn immediately to the question that is crucial here: Going beyond Kant, how does that which is behind Kant's concept of the "public use of reason" as a principle of political-social transformation relate to the concept of "publicity" as a principle of public law, which is to guarantee the justice of political legal claims, but which can become an instrument of legitimizing the absolute maintenance of power at the same time?

With the example of Kant's condemnation of rebellion we have seen that it is specifically the transcendentality of the principle of publicity – the abstraction from all concrete legal content and from concrete social circumstances – which leads to "public law" being contaminated internally, so to speak, by injustice. In other words: whereas the principle of publicity is fundamentally directed to the possibility of "universal" agreement by excluding injustice, the extreme possibility of "universal" exclusion flares up at its other end – namely at the point where the "capability of publicity" is due to nothing other than the dominant "superior power" and which

potentially marks the revolutionary situation. For this reason, particularly with Kant, the concept of publicity is located at the boundary between an existing legal order on the one hand and a political activity on the other; paradoxically, because the relationship of this political activity to an existing order is fundamentally problematic: it cannot be completely regulated by this order nor even represented by it, for which reason it is in a virtual conflict with it and possibly threatens it.

Giorgio Agamben has recently[20] very clearly pointed out the aporias that inevitably result from this kind of activity for every legal system, specifically in conjunction with the discussions about the adoption of a constitutional article establishing the right or even the duty of resistance against violations of fundamental freedoms and rights on the part of the public state power. (Agamben refers here to the pertinent debates in Italy and Germany after 1945; whereas an article of this kind was not adopted in Italy in the end, Article 20 [4] of the current constitution of the Federal Republic of Germany does, in fact, include a certain right to resistance against any attempt to eliminate the "constitutional order".) The problem with a constitutional article of this kind is, in short, that it would posit the constitution "as an absolutely inviolable and totalizing value"[21]. This would ultimately – especially in the case of an injustice for which the state power itself is responsible – legally standardize resistance. In this kind of situation, though, how and by whom could it be determined, whether certain actions correspond to the "right to resistance" or even the "duty to resistance" (so that its omission would consequently be punishable)? The problem of a right to resistance thus finally proves to be the – paradoxical – question of the "juridical significance of a sphere of action inherently outside the scope of

the juridical" and thus suggests the question of the existence of this kind of "sphere of human action that completely eludes law". [22]

It is specifically in this sphere that we must consequently ground the question of the potentials of social and political transformation of "public" agency – whether this involves the extreme case of a "universal exclusion" or the systematic marginalization of certain groups of society. What is at stake in a grounding of this kind, in terms of the question of the political significance of "publicity", is not only the lack of "media" representation of marginalized social contexts due to dominant discourses and publicity structures, but rather – and this is the reason for taking recourse to Kant – the collapse of the possibility of political-juridical representation itself in the sphere of public law. Consequently, the relevant forms of political agency are not only to be measured by how far they are able to penetrate into existing structures of media and institutional representation, but rather by the extent to which they succeed in opening up a space of political-social articulation at all on this side of the collapse of political-juridical representation. In short, it is a matter of *becoming*-public, that does not simply consist of the transition from a "not-being-public" to a "being-public" (from invisibility to visibility, from non-representation to representation), but rather of opening up a collectivity in the in-between spaces of representation, which inter-venes – literally – in public life as a social becoming.

What we have here, so to speak, is a structural dimension of the "secret", a way in which the secret necessarily haunts the era of public law that thought it had overcome this: as the non-representability of certain social contexts and forms of existence, in which new political subjects and spheres of action are constituted on this side of representation. Those who think this is abstract or

metaphorical should call to mind the so-called "clandestines": to which situation does the designation "clandestine" refer today, since it has been related to the form of existence of the sans-papiers? What is the secret of the clandestines? First of all, it consists of nothing other than their existence itself. However, there is no other reason for the "secrecy" of clandestine existence than the break predominating between the social fact of new migration movements (or the concomitant processes of social recomposition) and the nation-state systems of public law. Clandestinity forms a kind of "underground" with no surface, or rather: an underground that is identical – as its reverse side – with the surface itself and from which there is, for this very reason, no political escape within the framework of nation-state legal orders.

Yet how could the possibility of political transformation be imagined, the possibility of a becoming-public in this kind of underground? A possibility of this kind can be as little understood against the background of a classical-formalist concept of "public" and "publicity" as through the simple (often no less formalistic) reference to the existence of a plurality of "publics". "Publicity" indicates first and foremost, as it can be read from the real development of the bourgeois public, to an occurrence of constitution, a form of social organization that derives its precondition from a certain historical-social context of power. What is organized as "public life" is thus nothing other than the *context* of social experience[23] and articulation itself, which is built on this context of power.

The internal violence of this context of experience and articulation is not founded simply in a formal exclusion, but rather in that it cannot be experienced *as* a context – specifically because it is based on certain power relationships – equally by all. The ultimate consequence of the exclusion from public life is that it attacks

experience itself *as* social experience and, in some cases, as individual experience, which is founded in the social context but cannot be conveyed with it. As O. Negt and A. Kluge have shown for the proletarian life context, the social experience of marginalized groups is thus always linked with an "obstruction"[24] of experience. This obstruction is an atomization and fragmentation that blurs, distorts or extinguishes the social character of experience – and it can range all the way to individual traumatization.[25] What is obstructed is thus not initially articulation, but rather the possibility of a social experience itself, on the basis of which a new political subject can be constituted. The connection between a becoming-public and the possibility of political transformation is thus conversely not solely to be seen in making political aims public and winning significant portions of the population for them, as H. Arendt noted for the revolutionary situation. Nor can political work, especially if it relates to contexts of extreme marginalization such as the clandestine life context, simply be based on some "authentic" immediacy of the experience of those affected. Its perspective is found instead in translating individual, multiply broken experiences into a specific *social* context of experience and articulation: in turning "the life context itself into the object of production"[26] at the intersections of rejection, where the "violence of the context"[27] produces subjectivities that it simultaneously separates from itself.

Why do I call this "publicity"? Because – beyond the ambivalence between an ideal concept and the real perversion of publicity and on this side of the idea of a perfect representation of the social by public law – it repeats the constitutive meaning of publicity, its forms of exchange and its production of knowledge and potentials for action, and binds them to real processes of social becoming. It is in this, not in the industries of attention and not in the

reflection or self-reflection of alternative "scenes", that the political and micropolitical criterium for publicity as a social principle of organization is found.

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[1]The present essay is inscribed between two points of reference, which guide the course of argumentation but without being explicitly discussed: on the one hand it follows from an earlier article on the relationships between the concepts of world and public against the background of discussion on globalization and globalization criticism, taking up some of the central theses of this earlier text again and pursuing them further (S. Nowotny, "World Wide World. Gibt es eine Welt des Antiglobalismus?", in: G. Raunig [Ed.], Transversal. Kunst und Globalisierungskritik, Vienna: Turia + Kant 2003, 37-52, or "World Wide World. Is There a World of Anti-Globalism: www.eipcp.net/transversal/0303/nowotny/en). On the other hand, the following reflections can also be read as an attempt to understand the "location" where the political practice of the Universal Embassy is situated (cf. the article by T. Wibault in this issue) from a certain perspective and by means of theory; this is not intended to provide this practice with its own "explanation", but instead to test some of the important theses of political theory with it.

[2]O. Negt / A. Kluge, Öffentlichkeit und Erfahrung. Zur Organisationsanalyse von bürgerlicher und proletarischer Öffentlichkeit, Frankfurt/M.: Suhrkamp 1972, 38.

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

[4]O. Negt / A. Kluge, op.cit., 20.

[5]ibid.

[6]Cf. op.cit., 32.

[7]ibid., 31.

[8]Cf. I. Kant, Zum ewigen Frieden, "Anhang II: Von der Einhelligkeit der Politik mit der Moral nach dem transzendentalen Begriffe des öffentlichen Rechts" (1795), in: Werke Bd. 9, Darmstadt: Wiss. Buchges. 1983, 244–251.

The quotations in Englisch are taken from: Appendix II: Of The Harmony Which The Transcendental Concept of Public Right Establishes Between Morality and Politics, <http://www.constitution.org/kant/append2.htm>, but additional comments are included in brackets where this translation does not clearly convey the original German text in the sense of the author's intentions (translator's note).

[9]ibid., 244.

[10]ibid., 245.

[11]Cf. ibid., 250.

[12]L. Hölscher, op.cit., 7.

[13]I. Kant, op.cit., 245.

[14]ibid.

[15]ibid.

[16]W. Benjamin, "Zur Kritik der Gewalt", in: Gesammelte Schriften Vol. II 1, Franfurt am Main, Suhrkamp 1991, 198. (Engl. translation: Benjamin, Walter. "The Critique of Violence." Reflections. Shocken Books, 1986.)

[17]H. Arendt, Das Urteilen. Texte zu Kants politischer Philosophie, Munich: Piper 1998, 82.

[18]I. Kant, „Beantwortung der Frage: Was ist Aufklärung?“, in: Werke Bd. 9, 51–61. (Engl. translation: I. Kant: An Answer to the Question: "What is Enlightenment"? <http://eserver.org/philosophy/what-is-enlightenment.txt>)

[19]ibid., 55.

[20]Cf. G. Agamben, État d’exception. Homo Sacer II, 1, Paris: Seuil 2003, 24 ff.

[21]ibid., 25.

[22]ibid., 25 and 26.

[23]On the concept of "social experience" cf. O. Negt / A. Kluge, Öffentlichkeit und Erfahrung.

[24]ibid., 26 and elsewhere; the factory worker constrained to a certain scope of movement, as analyzed by Negt/Kluge, may serve as an example for this kind of obstruction, as the context of the experience of the business is already closed to him. (cf. ibid., 61).

[25]In this respect, in relation to the clandestine life context, I refer again to the text by T. Wibault in this issue and to some témoignages ("witness accounts", "testimonials"), which can be found on the Universal Embassy web site (http://www.universal-embassy.be/). The practice of témoignages conducted by the

Universal Embassy, testimonials of the experiences of the sans-papiers that are often difficult to articulate, which aims – in connection with elements of a political analysis – to make the social context of the sans-papiers existence comprehensible, seems to me to be an important form to counteract this "obstruction".

[26]O. Negt / A. Kluge, Öffentlichkeit und Erfahrung, 28.

[27]Cf. O. Negt / A. Kluge, Geschichte und Eigensinn 3: Gewalt des Zusammenhangs, Frankfurt am Main: Suhrkamp 1993.