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Constitutional Imaginaries and Legitimation: On *Potentia*, *Potestas*, and *Auctoritas* in Societal Constitutionalism

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This article focuses on the presence of non-political power in societal constitutions and their imaginaries. The theory of societal constitutions recontextualizes constitutionalism beyond public law, statehood, and polity. However, it also raises the question of legitimation and the authority of these non-polity-based constitutional regimes operating independently of public reasoning. Societal constitutions enhance power through specific knowledge regimes and imaginaries transform them into generally shared systems of rules and norms. This constitutionalization of the systemic facts of power as legitimizing values of the system can be identified in political as much as societal constitutions. The theory of societal constitutions, therefore, needs to use Foucault's analytics of power and Teubner's democratic proceduralization of dissent as well as Luhmann's ironies of autopoietic social systems to formulate a genealogy of legal normativity and its societal legitimation.

The concept of constitutionalism is another name for the transformation of power into authority. It includes the constitution as a formal document establishing institutions of power and specifying their operations. It also defines both internal legal and external societal limitations of such constituted power. Finally, it specifies a set of values, principles and ideals which inform the meaning of constituted power. Constitutionalism thus connects the internal aspect of the constitution as a normative instrument of political power and its external aspect as both limitation and legitimation of the same power by social environment.

In ancient Rome, the concept of *potestas* referred to the power as enforcement and coercion. It was exercised by magistrates and directly linked to the *imperium* as the ultimate form of power in hands of the highest

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magistrates, such as consuls and praetors. On the other hand, the Roman Senate and jurists or *prudentes* exercised *auctoritas* based on legal knowledge. This authority of law makers, experts, and agents was as important for the Roman polity as its imperial power.

The *potestas/auctoritas* distinction subsequently informed the investiture controversy between secular and religious powers in medieval Europe and the historical emergence of modern constitutional politics.[1] Tensions between general governing skills and specific entitlements to government were formulated in medieval jurisprudence as the distinction between *gubernaculum* and *iurisdictio* (government and jurisdiction).[2] The transformation of political power into constitutional authority became a familiar story of the rise of modern democratic constitutionalism which further nurtured the constitutional imaginary of the self-ruled and self-governing polity constituted by a legal document incorporating its common political values, principles and ideals.

However, the sociological approach to constitutionalism must adopt another distinction, namely, the *potentia*/*potestas* which which was philosophically elaborated by Baruch Spinoza[3] and can be sociologically reformulated as the difference between the multiplicity of societal power (*potentia*) and the unity of institutionalized political power (*potestas*).[4] *Potentia* signifies a capacity in the most general sense and constitutes a relationship to the whole society. It is a societal force or might. On the other hand, *potestas* is already defined by specific institutions and constitutes a relationship of political domination. It is identified with the political right to legitimate rule and represents one of many societal manifestations and realizations of *potentia*. *Potentia* is constituted by society while *potestas* is already determined by the specific coupling between political enforcement and legal authorization. If *potentia* is a general capacity for execution or the execution itself, *potestas* can be defined as a *potentia* validated by politically recognized criteria of legitimacy.

Sociological perspectives of power, political domination, its organization and legitimation can be perceived as a modern reformulation of classical political and legal concepts which draw on the general distinction between societal power operating in different systems, sectors, and regimes of modern society and political power as the specific medium of the political

1 M. Oakeshott, *Lectures in the History of Political Thought. Selected Writings, Vol. 2* (2006) lecture 12.

2 C. McIlwain, *Constitutionalism: Ancient and Modern* (1940) 86–7.

3 See, for instance, A.S. Campos, *Spinoza's Revolutions in Natural Law* (2012) ch. 3.

4 Unfortunately, unlike the French distinction between *puissance* and *pouvoir*, the two Latin terms *potentia* and *potestas* do not have their English equivalents and the word power includes both of them. For the translation difficulties and the central importance of the *potentia*/*potestas* distinction for Spinoza's philosophy including philosophy of law, see, especially, M. Walther, 'Natural Law, Civil Law, and International Law in Spinoza' (2003–2004) 25 *Cardozo Law Rev.* 657.

system. The first paradox of societal constitutionalism thus consists of the infinite potential of society to transform itself into an organizing principle of political unity. Through this paradox, the *potentia*/*potestas* distinction also reveals the general distinction between the concepts of *society* and *polity* because the latter is inseparable from structures and symbols of authority while the former refers to the plurality of non-political power structures in the polity's social environment.[5] It is subsequently possible to rethink the constitution as a system organizing the most general distinctions between societal and political power and legal authority – *potentia*, *potestas*, and *auctoritas* both within and beyond national and international polities and the constitutional state as the typical organization of politics in modern society and its legitimacy holder.

In this article, I revisit the sociological concept of power and its limitation by the political system and further coding by legality. The innovative approaches of the theory of societal constitutions recontextualize constitutionalism beyond public law, statehood, and polity. However, they also raise the question of legitimation and the authority of these non-polity-based constitutional regimes operating independently of public reasoning. As Gunther Teubner's contribution to this volume shows, the theory of societal constitutions must respond to the question of democratic legitimation and its potential to accommodate both consensus and dissenting strategies at transnational level. I, therefore, argue that the theory of societal constitutionalism has to focus on the presence of non-political power in societal constitutions and its various forms of politicization and authorization. Global society is typical of the surplus of power and the shortage of authority, and its societal constitutions are the holders of power beyond politics constituted by different knowledge regimes and their legitimizing imaginaries. The societal power of systemic governmentality cannot be contained by political power in the form of either representative government, or administrative governance. Because societal constitutions enhance power through specific knowledge regimes, it is important to analyse how different imaginaries are used to transform these specific expert regimes into generally shared systems of rules and norms. This constitutionalization of systemic facts of power as legitimizing values of the system, which operates as the transformation of societal immanence into transcendental values, principles, and ideals can be identified in political as much as societal constitutions. The theory of societal constitutions, therefore, needs to use Foucault's analytics of power and Teubner's democratic proceduralization of dissent as well as Luhmann's ironies of autopoietic social systems to reformulate legal and moral philosophical distinctions between facts and norms as a genealogy of legal normativity and its societal legitimation.

5 See, for instance, M. Haas, *Polity and Society: Philosophical Underpinnings of Social Science Paradigms* (1992).

FROM LEGAL CONSTITUTIONS AND SUBJECTS OF POWER TO THE POWER OF NORMALIZATION SYSTEMS: ON *POTENTIA*

Sociological inquiries often draw on the image of society as a network of power relations or institutionalized domination in which its members can enforce their will and realize their interests. This classic image informs Weber's ideal types of legitimacy[6] as much as Durkheim's concepts of social solidarity and collective consciousness.[7] The idea that power is both a limiting structure and a productive societal force belongs to the sociological tradition as much as different critical theories and normative philosophies of politics and law.

This modern perspective is often inspired by Spinoza's original distinction between *potentia* and *potestas* which was recently adopted by critical philosophy, especially by Gilles Deleuze and Antonio Negri[8] and their followers within critical political and legal theory.[9] In this context, the politics of privileging the state *potestas* is commonly contrasted to the progressive activism of *potentia* opening up new political possibilities and imaginaries of self-affirmation and self-determination.[10] The people and its community are heroically and tragically described as *potentia* trampled upon by the *potestas* of state repression.[11] Political philosophies and traditions from Hobbes to Schmitt are explored in order to address possible asymmetries, priorities, privileged positions, normative possibilities, and even complex political and ideological visions associated with this distinction which is expected to both alert the reader to existing social injustices and provide for healing solutions to the ills of global society.[12]

However, Spinoza's distinction between *potentia* and *potestas* also invites less morally apocalyptic[13] and more sociologically enlightening interpreta-

6 M. Weber, *Economy and Society, Vol. 1* (1968) 212–99.

7 E. Durkheim, *The Division of Labour in Society* (1933).

8 See, especially, G. Deleuze, *Spinoza: Practical Philosophy* (1988); A. Negri, *The Savage Anomaly: The Power of Spinoza's Metaphysics and Politics* (1991); A. Negri, *Subversive Spinoza: (Un)contemporary variations* (2004); A. Negri, *Spinoza for Our Time: Politics and Postmodernity* (2013); see, also, E. Balibar, *Spinoza and Politics* (1998).

9 S. Ruddick, 'The Politics of Affect. Spinoza in the Work of Negri and Deleuze' (2010) 27(4) *Theory, Culture & Society* 21–45.

10 M. Gatens (ed.), *Feminist Interpretations of Benedict Spinoza* (2009); W. Montag, *Bodies, Masses, Power: Spinoza and His Contemporaries* (1999); H. Sharp, 'Why Spinoza Today? Or, "A Strategy of Anti-Fear"' (2005) 17 *Rethinking Marxism* 591.

11 E. Dussel, *Twenty Theses on Politics* (2018) 13–35.

12 C. Altini, '"Potentia"as "potestas": An interpretation of modern politics between Thomas Hobbes and Carl Schmitt' (2010) 36 *Philosophy & Social Inquiry* 231.

13 This philosophy of human apocalypse is particularly strong in the popular writings of Giorgio Agamben; see G. Agamben, *Homo Sacer: Sovereign Power and Bare Life* (1998) 44; see, also, D. Vardoulakis, 'The End of Stasis: Spinoza as a reader of Agamben' (2010) 51 *Culture, Theory and Critique* 145.

tions even in the realm of critical philosophy. Spinoza's philosophy of immanence is surprisingly close to Michel Foucault's critique of sovereignty and the genealogy of power of the social norm and biopolitics.[14] Furthermore, Foucault's notion of power as normalization and governmentality[15] of subjects in society defined by specific styles of reasoning, collective patterns, practices, strategies, and technologies constituting the self include thoughts similar to Durkheim's idea of the commonplaces of rule and social discipline outside the state government[16] and the Weberian sociological reading of Nietzsche's philosophy of the will to power.[17] Foucault's analytics of power as normalization and governmentality, therefore, offers new possibilities as to how to formulate the distinction between power as a productive force and restrictive domination even within the theory of societal constitutionalism and social welfare.[18]

Foucault famously argued that modernity means the decline of the juridical notion of sovereignty and the political centrality of the state. According to him, power has to be analysed in terms of force and not as relations and institutions privileging law as manifestations of power.[19] Neither can power be comprehended in the Marxist sense of repression and alienation or the liberal sense of consensus and participation. As Foucault noted in his lecture on the theory of sovereignty and disciplinary power:

> Power must, I think, be analyzed as something that circulates, or rather as something that functions only when it is part of a chain. It is never localized here or there, it is never in the hands of some, and it is never appropriated in the way that wealth or a commodity can be appropriated. Power functions. Power is exercised through networks, and individuals do not simply circulate in those networks; they are in a position to both submit to and exercise this power. They are never the inert or consenting targets of power; they are always its relays. In other words, power passes through individuals. It is not applied to them.[20]

Formulating the two limits of modern power which are irreconcilable and in permanent conflict, namely, a right of sovereignty dispersed in the social body and a mechanics of coercive disciplines guaranteeing the cohesion of this body, Foucault added:

14 P. Gratton, 'Spinoza and the Biopolitical Roots of Modernity' (2013) 18(3) *Angelaki: J. of the Theoretical Humanities* 91.
15 M. Foucault, 'Governmentality' in *Power. Essential works of Foucault 1954–1984, Vol. 3,* ed. J.D. Faubion (2000) 210.
16 S. Lukes, *Power: A Radical View* (2005, 2nd edn.) 95–7.
17 D. Owen, *Maturity and Modernity: Nietzsche, Weber, Foucault and the Ambivalence of Reason* (1997).
18 F. Ewald, *L'état providence* (1986).
19 M. Foucault, *'Society Must Be Defended': Lectures at the College de France, 1975–76* (2003).
20 id., p. 29.

> The discourse of discipline is alien to that of the law; it is alien to the discourse that makes rules a product of the will of the sovereign. The discourse of disciplines is about a rule: not a juridical rule derived from sovereignty, but a discourse about a natural rule, or in other words a norm. Disciplines will define not a code of law, but a code of normalization, and they will necessarily refer to a theoretical horizon that is not the edifice of law, but the field of the human sciences. And the jurisprudence of these disciplines will be that of a clinical knowledge.[21]

Foucault's approach gets criticized for dissolving power by reformulating the modern philosophical problem of the constitution of the subject through subjection to power, and making resistance to power part of its expansive strategies and technologies.[22] Nevertheless, Foucault's placement of technologies of governing our physical and social relationships and selves outside the strategic power games of individuals seeking liberties and influence over others, and the institutional power of political domination, points to the important societal and knowledge dimension of power which is neither codified by legality and enforced by politics, nor reducible to the social relationships and interplay of individual and collective will and intention.[23]

Foucault's concept of governmentality includes the problem of normalization and the normalizing practices of society through its systems of scientific knowledge, education, criminal justice, health care, psychiatry, welfare policies, and so on.[24] His discussion of the productive and normalizing operations of power effectively dismantles the normative political and juridical notion of power as liberation from different kinds of political and societal oppression.[25] The power of the social norm is expansive and driven by activity and stimulation rather than acceptance and repression. It is not a power of the self-governing people but a societal power administering, organizing, multiplying, regulating, and optimizing the lives of the population. It is a power of generating forces in the population's life, not a power of the self-constituent political subject of the people.[26]

Unlike the normatively formulated *potestas* of obligations and authorizations, this *potentia* of normalization consists of societal capacities, technologies, strategies, and knowledge. As Foucault put it in his study of the forms of power and knowledge, no knowledge is formed without a system of power communication and no power is exercised without the appropriation,

21 id., p. 36.
22 Lukes, op. cit., n. 16, p. 97.
23 A. Hunt and G. Wickham, *Foucault and Law: Towards a Sociology of Law as Governance* (1994).
24 J. Caputo and M. Yount (eds.), *Foucault and the Critique of Institutions* (1993).
25 For the relationship between normative critical theory and Foucault's philosophy, see, especially, M. Kelly (ed.), *Critique and Power: Recasting the Foucault/Habermas Debate* (1994).
26 M. Foucault, *The History of Sexuality: Volume One, The Will to Knowledge* (1979) 136–7.

distribution, and restraint of a knowledge.[27] Criticizing the philosophy of existentialism and its vitalism and calls for authenticity, he even stated:

> Behind the completed system, what is discovered by the analysis of formations is not the bubbling source of life itself, life in an as yet uncaptured state; it is an immense density of systematicities, a tight group of multiple relations … One is not seeking, therefore, to pass from the text to thought, from talk to silence, from the exterior to the interior, from spatial dispersion to the pure recollection of the moment, from superficial multiplicity to profound unity.[28]

The societal power of systemic governmentality is impossible to contain by political power in the form of either representative government or administrative governance. It does not recognize political borders and institutional limitations of the modern nation state and informs power techniques and strategies evolving at supranational and transnational global levels.[29]

THE CONSTITUENT POWER OF SOCIAL IMAGINARIES: THE FIRST COMMENT ON LEGITIMATION

Societal power, *potentia*, is a generic condition of the constitution of political power, *potestas*, and its exercise as *auctoritas* is the legitimate rule of law. In a completely different philosophical context, John Searle refers to this active force and potentiality as 'background/network power'[30] and defines it as a set of normative limitations on all members of a polity which externally legitimizes the government as 'the ultimate institutional structure'[31] of politically organized societies. In other words, while political power requires a functioning government for its legitimation, this functioning is not enough for legitimation. The self-legitimation of government by the efficiency of its power always remains deficient. It is not just a matter of institutions and individual or collective interests and, as such, cannot be fully captured by the medium of money, legality or scientific truth. The steering capacity of *gubernaculum*[32] always calls for some kind of *iurisdictio* in the juridical or alternative societal forms.

Using the concept of background power, Searle actually revisits the idea that political power must be constituted, limited, and legitimized by its social environment. Instead of divine or natural laws, this societal legitimation of positive law and power constructs a very special notion of the public sphere

27 id., pp. 92–102.
28 M. Foucault, *The Archaeology of Knowledge* (1972) 76.
29 For the legal context, see, for instance, L. Friedman, 'Borders: On the Emerging Sociology of Transnational Law' (1996) 32 *Stanford J. of International Law* 65.
30 J.R. Searle, *Making the Social World: The Structure of Human Civilization* (2010) 155.
31 id., p. 161.
32 For the autopoietic systems theoretical view of societal steering and its limits, see N. Luhmann, 'Limits of Steering' (1997) 14 *Theory, Culture and Society* 41.

which functions as an external normative reservoir of political legitimacy. In this rich tradition of moral philosophy and normative social theory, societal power is defined as the power of the common space, mind and will turning society into the imagined community of a self-governing people and one political nation.

The modern social imaginary of the public sphere, reason, and formation of the collective political will draws on the difference between the social and political order and considers non-political norms and structures conditions and criteria of political legitimacy. According to this view, the modern polity can be observed and judged from outside. As Charles Taylor noted, this social imaginary, apart from the public sphere, draws on the social autonomy of the economy and the defence of individual rights which further requires that political society operates on the basis of the consent of those living in it. Modern polities is thus socially differentiated, morally individualized, politically legitimized by consensus, and its symbolic rationality is driven by the image of the social contract guaranteeing equal and direct access by all members of society to its political order.[33] According to Taylor, this image of polity is part of a new concept of the order of modern society which is determined by societal practices and their meaning and 'the ways people imagine their social existence' rather than by a set of fixed ideas.[34] In short, the social imaginary operates as a reservoir of a common understanding and 'a shared sense of legitimacy.'[35]

Taylor's concept of social imaginaries is important because it shifts the emphasis from the performance of social and political institutions and practices to the symbolic system of images and normative self-descriptions of society as the moral and meaningful unit. The concept of social imaginaries, therefore, also critically reflects on the specific role of political and legal philosophies which often look for normative conditions and reasons for unity and certainty in an otherwise morally pluralistic and contingently evolving modern society. For instance, Jürgen Habermas depicts the public sphere as the basic structure of civil society connecting the authentic experiences of life-world and the rationality of functionally differentiated systems of law and politics.[36] In the more specific context of legal philosophy, yet the same spirit of Enlightenment, Ronald Dworkin similarly claimed that there was one right solution even to hard cases if judges apply the right principles; that is Dworkin's legal theory. According to its author, this theory offers recourse to a morally, legally, and politically unified society guided by common and 'objectively valid' principles.[37] The holistic perspective of political com-

33 C. Taylor, *Modern Social Imaginaries* (2004) 87, 157.
34 id., p. 23.
35 id.
36 J. Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society* (1989).
37 R. Dworkin, 'Objectivity and Truth: You'd Better Believe it' (1996) 25 *Philosophy and Public Affairs* (1996) 87.

munities under such a rule of principled law does not allow for alternative legal theoretical views. They have to be eliminated as incorrect and false if Dworkin's theory of true legal principles is to guide the polity without academic, political, and juristic doubts.

Against these normative political and legal philosophical claims, Taylor, despite his sympathies for Habermas, Locke, Grotius, and many other of the finest philosophers, offers a second-order observer's view of this process of legitimation by theoretical knowledge and shows that such attempts at reconciling the meaningful existence and functional differentiation of modern society are already part of the specifically modern social imaginary. Images of the public sphere facilitating a rational discourse and political consensus outside the constraints of power constitute the normative and legitimizing condition of power in the Enlightenment spirit of *veritas, non auctoritas facit legem* (truth, not authority, makes law).[38]

Expanding Taylor's argument, it is possible to state that modern society observes itself and constructs its 'true' self-images and normative imaginaries with or without philosophers, moralists, and social reformers searching for political principles, moral ideals, values, and deontic foundations of legitimate power. This fact itself should lead to further investigations of specific societal constitutions of power and its legitimizing imaginaries and procedures within and beyond the systems of positive law and politics.

Sociology is not an exclusive science of power structures, yet neither can it ignore societal processes of power formations, operations, and legitimations. It needs to avoid both the reductionist approaches of political sciences and the inflationary uses of the concept of power typical of critical theory and philosophy. Its job is to find a measured conceptualization of societal power and its constitutionalization both within and beyond politics and law which would neither overburden the concept of power, nor make it redundant. It needs to avoid the pitfalls of both psychological reductions of power as merely an influence on the individual's behaviour and critical humanist perspectives of power as cultural hegemony, consensual legitimacy, cosmopolitan values, and so on.

Foucault's conceptualization of power may be excessive, yet it clearly demonstrates the impossibility of reconstituting the authentic life and uncovering the truth about humanity in the systems of knowledge and power circulating in the social system. The only truth one can learn about power is its functionality and inseparability from the body of society and its knowledge. Furthermore, the legal philosophical and political distinctions between facts and norms, morality and legality or the public and private spheres need to be critically analysed and assessed to show that legality's basic norm actually depends on other societal norms and connections which make it operate and produce normative effects. Legality can exert its

38 Habermas, op. cit., n. 36, p. 82.

normative force only as the delegated and effectuated force of society. Legal and moral philosophical distinctions between facts and norms need to be reformulated as a genealogy of legal normativity.

Unsurprisingly, the law's societal power is plural, adopting different normativities delegated by other societal regimes, networks, and systems. In the following parts of this article, I therefore focus on the societal constitution of political power, its function, and legal authorization, and subsequently return to the social imaginaries to analyse their complex legitimizing function and impact on constitutional imaginations including political subjects and dissent in transnational legal regimes.

THE SOCIETAL CONSTITUTION OF THE MODERN POLITICAL SYSTEM: ON *POTESTAS*

In one of her more sociologically inspired texts, Hannah Arendt contrasted power with violence and concluded that, while being an intrinsic part of power structures, violence also destabilizes them because of the lack of choice of those subjected to violent coercion. According to her, the use of physical violence requires the surrender of its subjects and the impossibility of responding with any other action, because:

> Power and violence are opposites; where the one rules absolutely, the other is absent. Violence appears where power is in jeopardy, but left to its own course it ends in power's disappearance. This implies that it is not correct to think of the opposite of violence as nonviolence; to speak of nonviolent power is actually redundant. Violence can destroy power; it is utterly incapable of creating it … violence cannot be derived from its opposite, which is power …[39]

Arendt accepted the necessity of what Weber called the organizational structure and coercive apparatus[40] and importantly formulated the problem of power as the possibility of choice and selection of action on both sides – the powerful and those subjected to their power. In a similar way, Niklas Luhmann stated that 'power increases with freedom on *both* sides, and, for example, in any given society, in proportion to the alternatives that society creates.'[41] The one-sidedness of the structure of physical coercion can operate only in simple societal conditions. However, the complexity of modern society requires many more efficient structures and organizations opening the possibilities of alternative actions. The coercive apparatus, therefore, is subjected to the basic power structure in which events can always go according to, or against, the intent and will of the powerful.

39 H. Arendt, *On Violence* (1969) 56.
40 M. Weber, *Economy and Society, Vol. 2* (1968) 952–3.
41 N. Luhmann, 'Power' in N. Luhmann, *Trust and Power* (2017) 115, at 123.

As Luhmann highlights, this possibility of forming 'complementary avoidance alternatives' is 'power in its raw state' and shows that it has the structure of a binary code.[42] Nevertheless, the primary code of power/powerless can lead to excessive levels of contingency and the secondary coding of power by the binary code of legality and the right/wrong distinction is required to stabilize the performance of power operations. The 'raw', socially diffuse, and insufficiently organized power is clarified and enhanced by the impersonality of the code of legality and differentiation between lawful and unlawful power.[43]

In this context, it has to be emphasized that even unlawful power is power and any form of *potentia* has to be seriously taken into account by those in *potestas* and *auctoritas*. This is the other side of Hobbes's statement *auctoritas, non veritas facit legem* (authority, not truth, makes law).[44] Power is constituted by the double coding of power/powerless and lawful/unlawful, yet this compatibility of power and legality also means that these two codes are different and the 'might is right' identification would be a far too simplistic and reductionist theory of power.[45]

The differentiation of power into societal power, *potentia*, and political power, *potestas*, is possible only because the modern political system could originally monopolize power, concentrated in the hands of the sovereign state, while excluding other forms of societal power, such as the power of the systems of science, economy or religion, from its operations. Societal power represents an externality of the political system which involves the risk of its permanent destabilization by non-political interventions into political operations. Before the distinction between lawful and unlawful power can be applied, societal power, therefore, must be formalized and institutionalized by the political system[46] and separated from other social systems and their binary coding, such as truth/falsity of knowledge in science, profit/loss in economy, or transcendence/immanence in religion. As Luhmann states, 'society's political system takes over the creation, administration and control of power for society.'[47]

In this self-constitution by self-limitation and functional differentiation, the political system must distinguish between those forms of societal power which can be transformed into political power and other forms which need to be separated and excluded from politics as externalities belonging to the social environment. This is exactly why the biggest problem of political

42 id., p. 145.
43 For the complexity of relationships between autopoietic law and politics, see, for instance, M. King and C. Thornhill (eds.), *Luhmann on Law and Politics: Critical Appraisals and Applications* (2006).
44 T. Hobbes, *Leviathan* (1904) ch. 26, p. 196.
45 Luhmann, op. cit., n. 41, p. 173.
46 W. Rasch, *Niklas Luhmann's Modernity: The Paradoxes of Differentiation* (2000) 151.
47 Luhmann, op. cit., n. 41, p. 156.

modernity consists of keeping so much societal power outside the political system and establishing the societal limits to which power can be politicized and society depoliticized.

The secondary coding of legality transforms power of the politically constituted system into the rule of constitutive law. However, mediating political power through law is not restricted to the state or international organizations and applies to all sorts of societal situations in which legality can be used for the mobilization of power encoded in the most general principle of the rule of law. Those who are powerless can use legality and especially the ever more expansive discourse of human rights as a source of their empowerment[48] not just in democratic constitutional states but even in the politically more restrictive and legally more arbitrary conditions of authoritarian regimes.

Law is both the necessary and sufficient justification of political power. Nevertheless, it is typical of authoritarian and totalitarian politics that these power and legality codes are dysfunctional in them and distinctions between formal and informal power or legal and illegal activities remain unclear. Subsequently, political dissent, apart from the human rights and wrongs arguments, needs to be reformulated through the metaphysical or existential language of 'living in truth' and so on, to confront these dysfunctions and reconstruct both the power code as the possibility of avoidance alternatives and the legality code as the rule of law and constitutional democratic politics.

In this structural coupling between power and legality, the powerless become empowered by the rightness of their demands and the powerful can further augment and enhance their power by formulating it in the same secondary code of legality. Modern society thus uses the systemic difference between law and politics to paradoxically increase power by its legal limitation.[49] When the powerful are not right, they lose to the powerless who are in the right. At the same time, the power of the powerful is further strengthened by its legal justification[50] and the early modern political principle *princeps legibus solutus est* ('the ruler is exempt from the laws') which used to be accompanied by the prince's moral commitment to protect the common good against all sorts of evils and wrongs is replaced by the sovereignty of the legal constitution which incorporates the moral meaning of right and wrong into the language of constitutional rights and principles.

48 G. Teubner, 'The Anonymous Matrix: Human Rights Violations by "Private" Transnational Actors' (2006) 69 *Modern Law Rev.* 327.

49 C. Thornhill, *A Sociology of Constitutions* (2011) 181 ff.

50 N. Luhmann, *Law as a Social System* (2004) 381.

The political system must differentiate between political and non-political power to make sure that its power code does not 'degenerate' into coercion.[51] The question of which power it is impossible to politicize is particularly difficult in democratic societies because of their tendency to increasingly apply democratic procedures and values in non-political sectors of modern society. The expansive politics of democratization represents the typically modern risk of political totalization which is no less dangerous for the political system and its power code than the risk of depoliticization by the juridification of power and the replacement of democratic deliberation by differentiated expert legal knowledge and elitist epistemic communities of senior judges and lawyers.

The risk of total societal politicization is a specific modern example of the symbolic constitution of the 'common origin' which includes the justification of existing inequalities and informs the constitutional imagination and different imaginaries from early civilizations to postmodernity. This imagination is informed by founding myths and what Plato, in Socrates's words, called a 'royal lie'[52] bringing together the principles of commutative and distributive justice by making rulers and ruled alike believe that they have the same origin and descent, yet belong to different classes and have different roles and status in the polity.

The royal lie finds its specific expressions in modern ideologies and imaginaries from nationalism to socialism and religious utopianism. However, the distinction between the images of polity as *unity* and *difference* cannot be resolved by assigning supremacy to either unity or difference.[53] Like any other collective form of life, polity only can be observed and described as the unity of differences. Symbolic royal lies enhance the image of unity and encourage moral commitment to the polity, including individual sacrifice and belief in a common good while accepting the existence of societal inequalities and differences as a permanent feature of social life.

In modern constitutionalism, this symbolic rationality[54] facilitates arguments for both constitutional unity or sovereignty and the separation of different constitutional powers, their opposition, ceaseless contestations, institutional divisions, and configurations of dissent.[55] Images of the dif-

51 Luhmann, op. cit., n. 41, p. 170.
52 Plato, *The Republic* (2000) book three, 108–10.
53 N. Luhmann, *The Differentiation of Society* (1982).
54 See H. Vorländer, 'Constitutions as Symbolic Orders' in *Sociological Constitutionalism*, eds. P. Blokker and C. Thornhill (2017) 209.
55 For the symbolic rationality of law, see J. Přibáň, *Legal Symbolism* (2007) ix.

ferentiated unity and collective mobilization of republican constitutionalism are contrasted to the images of liberal constitutionalism emphasizing the differentiation and external societal limitation of political power. These exhaustively discussed and familiar constitutionalist distinctions have their competing heroes and role models nationally and internationally, from Madison and Hamilton to Arendt and Lemkin or Habermas and Dworkin. Nevertheless, they also can be explored and recontextualized by the sociology of constitutionalism which often criticizes the imaginaries of constitutionalism as focused too much on institutions of power, the normativity of public law, the public sphere, and the concept of politics as *the common*, shared by all members of a particular polity and imagined as the bonds of collective identity and the difference between 'us' and 'them'.

If society can observe itself only as the unity of differences, the theory of societal constitutions focuses on these differences and 'constitutional fragments'[56] of the allegedly common public sphere unified by the polity's constitution. Teubner's initial critique of political constitutionalism was inspired by his earlier theoretical views of global legal *pluralism* and inventive interpretation of Derrida's politics of sovereignty, constitution by *différance*, and, particularly, the concept of capillary constitutions[57] which was also used by Foucault to describe power expanding beyond the political body into the peripheries and extremities of the social body.[58]

Distant echoes of Foucault's criticism of Kant's notion of Enlightenment as a constellation when 'the universal, the free, and the public uses of reason are superimposed on one another'[59] can be heard in Gunther Teubner's critical theory of societal constitutions. Unlike Foucault's genealogy of the power of the social norm and mechanisms of disciplining and societal governance, Teubner's theory of societal constitutions calls for decoupling the constitution and power. The expansion of the concept of constitution into non-political systems, regimes, and sectors of society thus paradoxically depoliticized the very concept of constitutionalism as the non-juridical process of the self-constitutions of social subsystems, their functional differentiation, and legal assistance in these primarily societal processes.[60]

56 G. Teubner, *Constitutional Fragments* (2012).

57 In particular, see G. Teubner, 'Self-subversive Justice: Contingency or Transcendence Formula of Law?' (2009) 72 *Modern Law Rev.* 1, at 2–3; Teubner, id., p. 86; see, also, J. Derrida, *The Other Heading. Reflections on Today's Europe* (1992) 34; for other interpretations, see, for instance, V.B. Leitch, 'Late Derrida: The Politics of Sovereignty' (2007) 33 *Critical Inquiry* 229.

58 J. Přibáň, *Sovereignty in Post-Sovereign Society* (2015) 54–5.

59 M. Foucault, 'What Is Enlightenment?' in *Ethics: Essential Works of Foucault 1954–1984. Vol. 1*, ed. J.D. Faubion (2000) 303, at 307.

60 For a critique of this depoliticizing element in Teubner's theory of societal constitutions, see J. Přibáň, 'Constitutionalism as Fear of the Political? A Comparative Analysis of Teubner's *Constitutional Fragments* and Thornhill's *A Sociology of Constitutions*' (2012) 39 *J. of Law and Society* 441, at 457.

Furthermore, against Luhmann's concept of constitutions as organizations of structural coupling between politics and law using the primary coding of power and secondary coding of legality, Teubner argues that it is non-political societal constitutions which externally limit power operating in the systems of politics and law. He persuasively criticizes normative political and legal theories and philosophies of constitutionalism, and emphasizes the pluralist constitution of society. His notion of pluralism draws on the sociological and anthropological perspective according to which no rule, principle or norm can constitute its force itself and in isolation from its social environment.[61] According to this view, it is necessary to look for the normative force in society and contrast it to other rules, principles, and norms with their different regimes of validity and enforcement.

Nevertheless, the most original constitutional imaginary of global legal pluralism and transnational regimes elaborated by Teubner and other scholars[62] did not dispose of some typically modern normative distinctions of both social and constitutional theory, such as the distinctions between political and civil society, legislated and living law,[63] or vertically organized *imperium* and horizontally evolving *communitas*. Societal constitutions were originally defined as civil, spontaneously evolving, horizontally organized and heterarchical alternatives to the political, administered, vertically organized and hierarchical structures of political constitutions.[64] The theoretical shift[65] from the public, national, monist, and unified to the private, transnational, pluralist, and fragmented networks and regimes included an appraisal of the civil realm, with its informal structures which were considered both operative and normative counterpoints to the formally administered system of political power. Sciulli's normative expectations of societal constitutions permeate Teubner's radical theory of transnational legal pluralism and constitutionalism evolving independently of constituent and constituted powers and its political subjects.[66]

61 H. Petersen and H. Zahle (eds.), *Legal Polycentricity: Consequences of Pluralism in Law* (1995).

62 See, for instance, J. de Munck, 'From Orthodox to Societal Constitutionalism' in *Multinationals and the Constitutionalization of the World Power System,* eds. J.-P. Robé et al. (2016) 135.

63 See Teubner, op. cit., n. 56, p. 9; he approvingly refers to D. Nelken, 'Law in Action or Living Law? Back to the Beginning in Sociology of Law' (1984) 4 *Legal Studies* 157, at 172–3.

64 Teubner, id., p. 60.

65 See, also, P.S. Berman, 'From International Law to Law and Globalization' (2005) 43 *Columbia J. of Transnational Law* 485.

66 See, for instance, G. Teubner, 'Societal Constitutionalism: Nine Variations on a Theme by David Sciulli' in Blokker and Thornhill (eds.), op. cit., n. 54, pp. 316–7.

In light of these initial conceptualizations of the theory of societal constitutionalism and their criticisms,[67] Teubner's most recent article, '*Quod Omnes Tangit*: Transnational Constitutions Without Democracy?'[68] represents a significant change because it returns to the two most defining political issues of any general theory of constitutionalism, namely, the problems of legitimation and constitutional subjects.

In *Constitutional Fragments*, Teubner called for turning different normative regimes, networks, and sectors of global society into new constitutional subjects while abandoning the old imaginary of political constitutionalism with the people/nation as its sovereign subject and constituent power. Depicting the pluralist constitution of global society and its legal regimes, he effectively proved that no symbolic bonds between rulers and the ruled could constitute the unity of one nation which could operate as constituent power and the ultimate foundation and reason of political existence.

The Enlightenment and Romantic images of popular sovereignty, nation state, and democratic constitutionalism were expected to give way to a global system of transnational constitutional regimes in which different groups and individuals could claim their interest and which, like other societal constitutions, were expected to function as legal assistance to societal self-constitutionalization.[69] If constitutional modernity means the differentiation of the economic, political, and legal rationalities, part of which was the process of inventing the people as the subject of sovereign power,[70] the constitutional postmodernity of societal constitutionalism involves abandoning this ultimate subject of politics and constituting non-human and non-political subjects imaginable as a fragmentation and a plurality of regimes and networks within the system of global law.

In '*Quod Omnes Tangit*', Teubner, however, admits that democratic legitimacy and its deficits are the 'Achilles heel' of transnational regimes and societal constitutionalism.[71] Addressing the 'hard core of democracy',[72] he even returns to the identitarian aspect of democracy and, contrary to his earlier statements, argues that the conditions of the global trans-

67 See, for instance, H. Lindahl, 'The Political Fragmentation of Constitutionalism' (2015) 6 *Jurisprudence* 177, at 180; G. Thompson, 'Review Essay: Socializing the Constitution?' (2015) 44 *Economy and Society* 480, at 491.

68 G. Teubner, '*Quod Omnes Tangit*: Transnational Constitutions Without Democracy?' in this volume, p. S5.

69 Teubner, op. cit., n. 56, p. 71.

70 E.S. Morgan, *Inventing the People* (1988).

71 Teubner, op. cit., n. 68, p. S7.

72 id., p. S11.

nationalization of law require a rethinking and recontextualization of democracy, including its relational aspect and the self-identification of the authors of rules and decisions and those affected by them, even if these new 'constituencies' and '*demoi*' of transnational regimes are fluctuating and involve the affected outsiders as much as the corporate members in possession of expert knowledge which are 'the sources of regime authority'.[73]

This shift means a return of both democratic legitimation and political subject into the theory of societal constitutionalization which, furthermore, reinvents the classical image of constitutional authority as the mutual recognition of the rulers and the ruled. Importantly, this relational element of authority includes the distinction between the self-constituent legitimate rule of law and mere performance- and efficiency-driven managerial governance.[74] Teubner reinterprets this as a replacement for the political imagination of democracy constituted within the nation state by a reconceptualization of *demos* defined by the general strategy of dissent and specific self-contestations internally constituted by individual transnational regimes.

These profound theoretical changes accommodate recent research into the sociology of transnational political constitutionalism and the global recontextualization of typical issues, such as the tension between populism and expertise, the justification of governance, and human rights. They have been innovatively elaborated and refined, for instance, by Blokker's sociological theory of constitutional populism[75] and Kjaer's theory of global constitutionalism and governance.[76]

In this context, Teubner's reflections on democratic politics effectively mean that the general principle *quod omnes tangit* ('what touches all') becomes the basic political norm of globally operating transnational regimes and their legal pluriverse. Instead of consensus building, this pluriverse constitutes itself by internal proceduralization of dissent and institutionalized self-contestations of rules and decisions which vary due to the epistemic diversity of transnational regimes. The *quod omnes tangit* principle, therefore, needs to be supplemented by the principle of 'epistemic subsidiarity'[77] which reflects on the variety of types of legitimizing knowledge circulating in global law and supports the development of self-contestation procedures in different regimes.[78]

These two principles legitimize transnational regimes both internally, as the democratic inclusion of all affected parties, and externally, as the societal

73 id., p. S21.
74 For the legal philosophical context, see, especially, L.L. Fuller, *The Morality of Law* (1969) 210.
75 P. Blokker, 'Politics and the Political in Sociological Constitutionalism' in Blokker and Thornhill (eds.), op. cit., n. 54, p. 178.
76 P.F. Kjaer, *Constitutionalism in the Global Realm: A Sociological Approach* (2014).
77 S. Jasanoff, 'Epistemic Subsidiarity: Coexistence, Cosmopolitanism, Constitutionalism' (2013) 2 *European J. of Risk Regulation* 133.
78 Teubner, op. cit., n. 68, p. S27.

exclusion of totalizing knowledge and arguments coming from other social systems, such as economy, science or religion. Furthermore, they reformulate the concept of *demos* by removing the supremacy of consensus and unity from its political self-identification. Teubner's initial critique of the existentialist concept of *demos* as the constitution's sovereign power and subject is thus further qualified by his proceduralist understanding of *demoi* as agencies constituted by the system's internal self-contestations and dissent capacities.

All these recent innovations may even represent a radical rethink of the distinction between *le politique* and *la politique* announced, but not yet fully elaborated, to offer an alternative version of politics in societal constitutionalism in *Constitutional Fragments*.[79] However, they also raise some questions regarding the function, operations, and limitations of these principles, political subjects, procedures of self-contestations and dissent, and the pluralistic structures and knowledge formations of global societal constitutions.

The first question relates to the function of the *quod omnes tangit* principle in non-political societal self-constitutions. Should it be the generally applicable norm of self-constitutions of specific social systems and regimes, it would pose the risk of the total politicization of societal constitutions by the rule of democracy, irrespective of the variations, reconceptualizations and operative transformations from consensus building to the proceduralization of dissent and self-contestations.

However, if it is not the basic political norm permeating all societal constitutions, is it something more than mere external political assistance to the self-constitution and self-identification of social systems, which actually plays a very limited role and does not affect the general operations of these systems because, by definition, the autopoietic system's self-constitutive operations cannot be affected by operations of its social environment? This second question is closely related to the earlier criticisms of Teubner's definition of societal constitution as primarily systemic non-juridical social processes of self-reference and self-identification assisted by the system of law.[80]

Finally, the question of constitutional subjects invites various interpretations, from the conventional focus on individual and collective positions in the system of power to the more sociologically challenging explorations of knowledge production and its constitutive role. The third question thus involves the problem of the self-constitution of the system's *episteme*, its different subjects and knowledge as the source of the system's constitutional authority including the intrinsic political tension between democracy and technocracy, respectively, the public and expert reason.

79 Teubner, op. cit., n. 56, pp. 114–16.
80 id., p. 71; for criticisms of this position, see Přibáň, op. cit., n. 60, p. 451.

Teubner's comment on democratic legitimacy as the Achilles heel of transnational constitutionalism indicates a more general problem in global society, that is, the surplus of power and the shortage of authority. The absence of a global constitutional polity and its fragmentation into the different subjects of varied societal constitutions cannot obscure the fact that these constitutions are power organizations which cannot be exclusively legitimized by their social efficacy and steering capacity.

The general distinction between legitimation by the governing capacity and authorized power, *gubernaculum* and *iurisdictio*, finds its specific formulation in Teubner's poetic expression of the functioning of transnational regimes as 'tunnel vision'. It is caused by the regimes' highly specialized policy fields and expert knowledge which, therefore, require the adoption of international public law principles, especially constitutional toleration and constitutional compromise.[81]

These normative strategies and procedures of authorization in global legal pluralism cannot be easily dismissed, for instance, by the labelling of pluralism as 'the laziest of all compromises',[82] because Teubner's notion of pluralism and the call for transnational constitutional compromises and toleration are primarily informed by the systemic and epistemic plurality of global law and cannot be simply re-interpreted as normative expectations of political pluralism. Using Unger's concept of 'institutional imagination',[83] Teubner invites his reader to engage in the construction of new imaginaries of legal legitimation and authorization suitable for the global legal system, operating independently of the differences between international and transnational, public and private, or substantive and procedural law. However, Teubner's approach also shows that the theory of societal constitutions cannot ignore the constitutional imaginaries of modern national and international politics and law and their potential to address legitimation deficits in globalized societal constitutionalism.

Global societal constitutions are organizations of non-state and non-political power legitimized by the internally constructed subjects and externally restricted by the impossibility of turning their specific policy regulations and knowledge into holistic notions of good governance or cosmopolitan ethics and politics.[84] They operate independently of the foundationalist and essentialist constitutional recourse to the pre-existent

81 Teubner, op. cit., n. 68, p. S25.
82 N. Luhmann, *Observations on Modernity* (1998) 27.
83 Teubner, op. cit., n. 68, p. S13, see, also, Teubner, op. cit., n. 56, pp. 84–6, 166.
84 For further discussion, see W. Twining 'A Cosmopolitan Discipline?' (2001) 1 *J. of Commonwealth Law and Legal Education* 13.

national or any other polity and subject.[85] They reformulate the idea of constitutional polity's self-rule as the self-constitution of societal power. They are the holders of power beyond politics and legitimation beyond legality.

The power of expert knowledge is the source of authority in societal constitutions due to its ability to produce social norms and establish the conditions and criteria of efficient governance. The tension between democracy and technocracy in societal constitutions may be managed by the internal constitutions of *demoi* with the *potentia* of dissent and its execution through the procedures of self-contestation. However, this suggestion favoured by Teubner also has to consider the irreconcilability of codes of law and normalization and its recursive impact on what Foucault described as the juridico-discursive model of power[86] which may not be central, yet continues to be an intrinsic part of the constitution of modern society.

It is less important to have a theory of power than its analytics,[87] including the analytics of the process of the retreat of the representation and exercise of power through the medium of legality. If law becomes incapable of coding power and serving as its symbolic representation, alternative forms of normativity and knowledge will take its place and legality's abstract enhancement of power will be coupling with the power of these social norms and non-juridical normalizations. The theory of societal constitutions, therefore, has to analyse not only power without legitimacy but also powerful imaginaries constituting the possibility of legitimation and the 'jurisprudence' of different knowledge regimes – clinical, educational, scientific, digital, and so on.[88] Understanding this jurisprudence of different disciplines of knowledge assumes identifying and analysing their constitutional imaginaries, including the subjects of societal constitutions.

The theory of the societal constitutions (and jurisprudence) of both legal and non-legal knowledge regimes must involve a genealogy of constitutional imaginaries and their legitimation potential. It has to diverge from recent sociological theories of legal pluralism and reflexive law promising to replace state law and formal institutions with civil society and informal networks.[89] Power would not become more legitimate if it were constituted in the transnational private and public spheres of global society instead of in the coercive apparatuses of the nation state and international organizations. The sheer number of books published on the 'global transformations' of law,

85 See, also, B. Tamanaha, 'A Non-essentialist Version of Legal Pluralism' (2000) 27 *J. of Law and Society* 296.
86 Foucault, op. cit., n. 26, p. 82.
87 id.
88 Foucault, op. cit., n. 19, p. 36.
89 See, especially, B. de Sousa Santos, 'Law and Community: The Changing Nature of State Power in Late Capitalism' (1980) 8 *International J. of the Sociology of Law* 379, at 391.

ethics, politics, and society in the last several decades actually warns any researcher against hasty promises of new legitimation formulas evolving in this context.[90]

Societal constitutionalism should not disconnect from the idea of sovereignty and territorial control only to reconnect with some reflexive ideas of the collective self-rule of the multitude and the plurality of political subjects constituted at global level. It is not subjects and their actions that constitute the subsystems of societal constitutions and legitimize their power because the subject is constituted by the system itself. Systems do not recognize subjects but produce them. New imaginaries of globally reflexive constitutional identities of the multitudinous self cannot fulfil the promise of substituting for the reified essentialist images of nationhood and statehood and legitimize transnational polities the contested collective identity, because these contestations depend on the systemic rationality of transnational regimes, rather than on the political will and subjects' actions.

The reflexive and differentiated images of *demoi* pushing back the expansive power of expert knowledge and conditioning it by the varied procedures of democratic legitimation are not enough for the legitimation of transnational societal constitutions. Rather, it is important to analyse how these constitutions manage to turn the affected populations into legitimate *demoi* and how they translate their specific expert knowledge into generally shared rules and normative regimes. This constitutionalization of the systemic *facts* of power as legitimizing the *values* of the system and the transformation of societal immanence into transcendental ideals can be identified in political as much as societal constitutions. It thus needs to be recontextualized by using Foucault's analytics of power and Teubner's democratic proceduralization of dissent as much as Luhmann's ironies of autopoietic social systems.

Instead of searching for constitutional reflexivity or the lifeworld's reservoir of meaning and positive values restricting the factual power of social systems and externally legitimizing them beyond the limits of society, one has to be critical of the very concept of political subjectivity and acknowledge the profound irony of the paradoxically liberating effects of systemic alienation and operationalization of values.[91] There is no legitimation to be found in the lifeworld's authenticity contrasted with systemic rationality. No plan of fixing the economic base can save us from illegitimacies fluctuating in the societal superstructure. No eternity clauses

90 Among many, see, for instance, D. Held et al., *Global Transformations: Politics, Economics and Culture* (1999); M. Shaw (ed.), *Politics and Globalisation: Knowledge, Ethics and Agency* (1999); D. Archibugi (ed.), *Debating Cosmopolitics* (2003); G. Ziccardi Capaldo, *The Pillars of Global Law* (2008).

91 G. Teubner, 'Alienating Justice: On the Social Surplus Value of the Twelfth Camel' in *Law's New Boundaries: Consequences of Legal Autopoiesis*, eds. D. Nelken and J. Přibáň (2001) 28.

and fundamental values inscribed in constitutional documents can guarantee political, legal, and societal stability, continuity, and persistence without their immanent and effective enforcement. It is actually the recognition of the functional differentiation and heterarchical systemic plurality of modern society that leads to the rejection of the fact-value dichotomy and bivalence-driven models of legitimation and their replacement by 'cybernetic irony' and 'the ironic code' of systemic polyvalence in which both political and non-political subjects 'appear to be something between a local hero and a local loser'.[92]

This cybernetic ontology,[93] systemic rationality, and functional differentiation fortunately puts even the sociology of constitutionalism beyond good and evil and replaces this binary moral coding so popular in legitimation theories with an ethics of complexity resigned to searching for absolutes, eternity clauses, and essences in our political and legal reality. However, this ethics of complexity, distancing itself from what Peter Sloterdijk described as 'the *furor metaphysicus*'[94] and its potential to authorize power structures by the ironies of societal polyvalence, is yet to be critically addressed in the context of other legitimation strategies, particularly those of systemic self-contestations and dissent formulated by Gunther Teubner in his latest imaginative study.

92 P. Sloterdijk, 'Luhmann, Devil's Advocate: Of Original Sin, the Egotism of Systems, and the New Ironies' in P. Sloterdijk, *Not Saved: Essays after Heidegger* (2017) 78–80.

93 G. Günther, 'Cybernetic Ontology and Transjunctional Operations' in G. Günther, *Beiträge zur Grundlegung einer operationsfähigen Dialektik* (1976) 249.

94 Sloterdijk, op. cit., n. 92, p. 75.