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Trust Through Publicity? Some Reflections and Research Perspectives on Political Discourse from the Enlightenment to the Twentieth Century

Abstract

The relationship between political trust, the public sphere and transparency or publicity has thus far been analyzed mainly from the perspective of political philosophy and the political and social sciences. Within historical research, however, it is rarely discussed. This article combines systemic and historical approaches to this complex and ambivalent relationship and places it in the context of the development of public spheres. From the perspective of the history of ideas and discourses, the article argues that the emergence, shifts and ambivalences of political public spheres played a significant role in the development of the relationship between trust and transparency in the modern age. Using examples from the epoch of the Enlightenment and liberalism, particularly with regard to constitutional debates in the nineteenth and twentieth centuries, the contradictory place of trust and control in publicity demands and the political discourse can be demonstrated. It becomes apparent that, in the development of constitutional democracy, an institutionalized distrust—among others, by means of publicity or transparency—established a basis whereon political trust could emerge. Thereby, a primarily problem-oriented, genetic perspective proves to be particularly fruitful in examining the relationship between political trust, publicity and transparency, including its structural complexities and ambivalences.

Keywords: *trust, distrust, control, publicity, transparency, public sphere, political ideas, constitutional order, power*

The relationship between political trust, the public sphere and publicity or transparency has thus far been analyzed mainly from the perspective of the political and social sciences or political philosophy. Within historical research, in contrast, it is rarely dis-

cussed.[1] Simultaneously, increased transparency is often regarded in public and scientific debates—especially within the context of the spread of transparency discourses from the 1970s and 1980s onwards—as a factor that can contribute to regaining trust in political institutions. This concept of transparency thereby implies primarily not only disclosure and the availability of information, but also the ability to comprehend and reconstruct decisions, structures and processes in the political realm. In addition to this "affirmative" approach to transparency, a critical perspective has for some time become apparent in the political and social sciences, contesting or relativizing the positive connection between (increased) transparency and (rising) trust.[2] Corresponding research has demonstrated that measures to increase transparency do not necessarily lead to a gain in trust, but can, on the contrary, result in an increase of distrust and uncertainty—for instance due to information overload—or greater doubts about the reliability and credibility of information. At the same time, the emergence of trust in institutions seems to be possible even if those institutions are largely non-transparent.[3]

These ambivalent effects are often explained by means of systems theory. Accordingly, distrust is not merely the opposite of trust, but its functional equivalent, which

1   On the history of trust, see Ute Frevert, *Vertrauensfragen. Eine Obsession der Moderne* (Munich: C. H. Beck, 2013); Ute Frevert, ed., *Vertrauen. Historische Annäherungen* (Göttingen: Vandenhoeck & Ruprecht, 2003); Geoffrey Hosking, *Trust. A History* (Oxford: Oxford University Press, 2014); from the angle of the history of political ideas: László Kontler and Mark Somos, eds., *Trust and Happiness in the History of European Political Thought* (Leiden: Brill, 2018). On the history of transparency, see Jens Ivo Engels and Frédéric Monier, eds., *History of Transparency in Politics and Society* (Göttingen: Vandenhoeck & Ruprecht, 2020); Stefan Berger and Dimitrij Owetschkin, eds., *Contested Transparencies, Social Movements and the Public Sphere. Multi-Disciplinary Perspectives* (Cham: Palgrave Macmillan, 2019); Michael Schudson, *The Rise of the Right to Know. Politics and Culture of Transparency 1945–1975* (Cambridge, MA: Harvard University Press, 2015).
2   As an overview of transparency research in social sciences and its different—"affirmative", "dismissive", "asymmetrical"—perspectives, see Vincent August and Fran Osrecki, "Transparency Imperatives: Results and Frontiers of Social Science Research," in *Der Transparenz-Imperativ. Normen – Praktiken – Strukturen*, ed. Vincent August and Fran Osrecki (Wiesbaden: Springer VS, 2019), 1–34. On the relationship between trust and transparency in broader contexts, see Lora Anne Viola and Paweł Laidler, eds., *Trust and Transparency in an Age of Surveillance* (London: Routledge, 2022).
3   Vincent August, "Theorie und Praxis der Transparenz. Eine Zwischenbilanz," *Berliner Blätter, Special Issue* 76 (2018): 129–156, 131–132, 139–140; August and Osrecki, "Transparency Imperatives," 13–14. See Onora O'Neill, *A Question of Trust. The BBC Reith Lectures 2002* (Cambridge: Cambridge University Press, 2002), 63–79 and Sandrine Baume, "Does Transparency Engender the Confidence of the Governed? A Contribution to Political Thought," in *Economics and Other Branches—In the Shade of the Oak Tree. Essays in Honour of Pascal Bridel*, ed. Roberto Baranzini and François Allisson (London: Routledge, 2014), 425–433, 431–433.

implies an inherent tendency to self-reproduction and self-reinforcement.[4] If distrust constitutes a motivational basis for transparency measures, it can therefore potentiate itself and thus not only foil the purposes of transparency, but also restrict the room for manoeuvre of the actors involved.[5] Such interpretations on the abstract level thus focus mainly on the functional and instrumental aspects of the relationship between political trust and transparency. However, the problem of the historical genesis and conditionality of this relationship—as expressed, for instance, in political discourses and constitutional debates beginning in the seventeenth and eighteenth centuries—remains insufficiently considered.[6] Yet, by historicizing this relationship, its connection to the development of social and political conflicts—and the formation of public spheres in which those conflicts were settled and reflected—becomes apparent.

Against this backdrop and from the perspective of the history of ideas and discourses, this article argues that the emergence, shifts and ambivalences of political public spheres played a significant role in the development of the relationship between trust and transparency (or publicity) in the modern age. As we shall see, further research possibilities—much of it fruitful for the social and cultural history of social movements—arise from the combination of both these sets of historical problems. After a brief overview of the systemic aspects of the concept of trust, the contradictory place of trust and control in publicity demands and the political discourse of enlightenment and liberalism, particularly with regard to constitutional debates in the nineteenth and twentieth centuries, will be analyzed, followed by a discussion of the historical shifts in the public sphere and its semantics as well as its normative content. In the conclusion, historical and systemic perspectives on the relationship between trust, publicity and the public sphere will be interconnected in order to reveal possible implications and consequences.

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4   Niklas Luhmann, "Trust," in idem, *Trust and Power*, ed. with a revised translation and new introduction Christian Morgner and Michael King. Original translation by Howard Davis, John Raffan and Kathryn Rooney (Cambridge: Wiley, 2017), 1–114, 79–85.

5   August, "Theorie und Praxis der Transparenz," 139–140; see also Caspar Hirschi, "Regulation of Transparency as Rituals of Distrust. Reading Niklas Luhmann against the Grain," in *Transparency, Society and Subjectivity. Critical Perspectives*, ed. Emmanuel Alloa and Dieter Thomä (Cham: Palgrave Macmillan, 2018), 225–241. On effects of distrust, see Constantin Goschler, "Intelligence, Mistrust and Transparency: A Case Study of the German Office for the Protection of the Constitution," in *Contested Transparencies, Social Movements and the Public Sphere. Multi-Disciplinary Perspectives*, ed. Stefan Berger and Dimitrij Owetschkin, 153–171.

6   See, however, references to the history of political thought, for instance in Baume, "Does Transparency Engender the Confidence of the Governed?," or August, "Theorie und Praxis der Transparenz." In broader contexts of political theory and history, see also Pierre Rosanvallon, *Counter-Democracy. Politics in an Age of Distrust*, transl. Arthur Goldhammer (Cambridge: Cambridge University Press, 2008).

Trust from a Systemic Point of View

The ambivalences in the relationship between trust and transparency outlined above are essentially due to the fact that they both constitute complex and multidimensional phenomena with their own specific normativity.[7] In the case of trust, this multidimensionality becomes manifest not only in the differentiation between trust and confidence,[8] or between personal trust, trust in institutions and trust in "abstract systems,"[9] but also in trust's ambivalent relationship to power and power asymmetries—as well as to democracy and politics writ large.[10] Following a systems theory approach, trust appears primarily as a mechanism for the reduction of social complexity.[11] From the perspective of Jürgen Habermas's concept of communicative action, in contrast, trust is instead considered as a basis or source for a generalized communication medium, such as influence or prestige.[12] These media serve, under "the growing pressure for rationality," as "relief mechanisms" for the coordination of actions. Based on "rationally motivated trust," they thereby can "condense" processes of "mutual understanding in language" and "reduce the expenditure of communication and the risk of disagreement."[13]

With regard to such complexity, as early as the beginning of the twentieth century, Georg Simmel distinguished trust as a form of knowledge from trust as "faith" or

7   See Martin Hartmann, *Die Praxis des Vertrauens* (Frankfurt: Suhrkamp, 2011); Emmanuel Alloa, "Transparency: A Magic Concept of Modernity," in *Transparency, Society and Subjectivity. Critical Perspectives*, ed. Emmanuel Alloa and Dieter Thomä, 21–55.

8   According to Luhmann, trust as an expectation is connected to risk in terms of the results of one's own action, whereas confidence relates to processes and issues that cannot immediately be influenced by this action. Unlike trust, confidence does not imply any alternatives of action being considered. See Niklas Luhmann, "Familiarity, Confidence, Trust: Problems and Alternatives," in *Trust: Making and Breaking Cooperative Relations*, ed. Diego Gambetta (New York: Blackwell, 1988), 94–107, 97–99; with critical accents regarding Luhmann, see also Anthony Giddens, *The Consequences of Modernity* (Cambridge: Polity Press, 1990), 30–33.

9   Giddens, *The Consequences of Modernity*, 79–88; Luhmann, "Trust," 43–67.

10   Hartmann, *Die Praxis des Vertrauens*, 13–14, 399–405. See also Mark E. Warren, ed., *Democracy and Trust* (Cambridge: Cambridge University Press, 1999).

11   Luhmann, "Trust."

12   This conception is based on the reception of Parsons' theory. See Talcott Parsons, "On the Concept of Value-Commitments," *Sociological Inquiry* 38 (1968): 135–159, 155; see also Talcott Parsons, *Social Systems and the Evolution of Action Theory* (New York: Free Press, 1977), 188–191, 198–202.

13   Jürgen Habermas, *The Theory of Communicative Action,* vol. 2, transl. Thomas McCarthy (Boston: Beacon Press, 1987), 181.

"feeling."[14] As a form of knowledge, trust appeared in Simmel's theory as "the hypothesis for future behaviour, which is certain enough to thereby ground practical action," and correspondingly as "a middle position between knowledge and the ignorance of others."[15] Modern society, "modern life," was regarded by him as "in a much broader than economic sense a 'credit economy.'"[16] Similar to his contemporary Max Weber, Simmel also noted the growing significance of trust's non-personal, objectified forms and its increased linking to functions, positions and performances.[17]

In modern times, this trend also corresponded to a shift in trust semantics. Trust in God, considered first by Martin Luther and more widely into the eighteenth century as the only legitimate and robust form of trust, retreated more and more in favour of social trust, wherein its relational and reciprocal aspects became increasingly relevant. At the same time, trust was also increasingly generalized beyond close social relationships.[18] In the nineteenth and particularly in the twentieth century, finally, the semantics of trust experienced a boom, spreading nearly ubiquitously—and to some extent inflationary—in different social fields.[19] In this respect it was not dissimilar to the time-delayed early boom of the concept of transparency. Since trust in modern societies seemed to become a guiding theme of social action, it could be perceived as a "signature of the time" and, in some ways, as an "obsession" of modernity.[20]

Within this context, trust in general proved to be a social resource for enabling the coordinated action of actors who were largely anonymous to each other.[21] From a sociological angle, trust, in its fact dimension, reduced complexity; in the social dimension, it guaranteed stable framework conditions for actions and interactions,

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14   Georg Simmel, *Sociology. Inquiries into the Construction of Social Forms*, vol. 1, transl. and
     ed. Anthony J. Blasi, Anton K. Jacobs, and Mathew Kanjirathinkal (Leiden: Brill, 2009),
     315; Georg Simmel, *The Philosophy of Money*, ed. David Frisby, transl. Tom Bottomore and
     David Frisby (London: Routledge, 2004), 177–178. On the differentiation of trust concept
     in Simmel, see Martin Endreß, *Vertrauen* (Bielefeld: transcript, 2002), 13–16.

15   Simmel, *Sociology*, 315.

16   Simmel, *Sociology*, 312.

17   Simmel, *Sociology*, 316; Simmel, *The Philosophy of Money*, 485–486; on Weber, see Endreß,
     Vertrauen, 16–17, 26.

18   Frevert, *Vertrauensfragen*, 29–43; Ute Frevert, "Vertrauen – eine historische Spurensuche," in
     Vertrauen. Historische Annäherungen, ed. Ute Frevert, 7–66, 13–20, 55–60. On trust in God,
     see Hartmann, *Die Praxis des Vertrauens*, 355–374.

19   Frevert, *Vertrauensfragen*, 24–25.

20   Frevert, *Vertrauensfragen*, cit. 24, 26; see also Baume, "Does Transparency Engender the
     Confidence of the Governed?," 430. In this regard, too, there were similarities to transparency which sometimes appeared as "major obsession of our time." See Alloa, "Transparency: A
     Magic Concept of Modernity," 47.

21   Martin Hartmann, "Einleitung," in *Vertrauen. Die Grundlage des sozialen Zusammenhalts*,
     ed. Martin Hartmann and Claus Offe (Frankfurt: Campus, 2001), 7–34, 14.

and, in the temporal dimension, ensured the building or maintenance of steady social relations and thereby the continuation of social orders.[22] In the political realm, trust implied further specifics that were also reflected in its relationship to the emergency of a bourgeois public sphere and to demands directed toward the "publicity" of state action, state administration and state establishments, as well as political decision processes as a whole. In this respect, the possibility for the durable stabilization of these orders by means of reciprocal trust relations and for the creation of the conditions necessary for generating and providing such relations by these orders themselves became a central question of political thought and political action, beginning with the transition to early modern and modern political orders.[23]

Between Trust and Control: Domination, Publicity and Constitutional Order

Against this backdrop, the age of bourgeois revolutions and enlightenment, particularly in terms of the struggle of the "third estate" against the feudal-monarchic domination, proved to be crucial in the historical development of political trust—as an idea and as practice. In this era, conceptual patterns, constellations of political forces and practices emerged that entailed the increasing political role and growing significance of political trust. It was primarily the English Revolution and the Civil War in the 1640s during which trust became a significant factor in the distribution and exercise of power. From the perspective of Parliament, trust appeared as a means to encourage the monarch to fulfil his duties—conceived in the form of contract—in relation to the people. Such trust was tied to conditions, in particular to the conduct of the rulers in terms of existing laws and agreements. An infringement of these conditions resulted in sanction mechanisms and trust thus implied a delegation of power that remained revisable and reversible.[24]

At the end of the seventeenth century, in the aftermath of the Civil War, such forms of trust obtained a theoretical foundation in John Locke's concept of the polit-

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22   Endreß, *Vertrauen*, 11, 80. On the differentiation between the fact dimension, the temporal dimension and the social dimension within the scope of the concept of meaning dimensions, see Niklas Luhmann, *Social Systems*, transl. John Bednartz Jr., with Dirk Baecker (Stanford: Stanford University Press, 1995), 74–92.

23   Daniel Schulz, "Vertrauen und Kontrolle in der politischen Theorie des Republikanismus," in *Vertrauen*, ed. Martin Kirschner and Thomas Pittrof (St. Ottilien: EOS, 2018), 67–93, 75.

24   Frevert, "Vertrauen – eine historische Spurensuche," 21; Frevert, *Vertrauensfragen*, 147–148.

ical order.[25] Within the scope of this concept, the government—or more specifically the legislature—was understood as recipient of a mandate. Compliance with this mandate was to be evaluated by the people. On the part of the people, trust indeed meant a transfer of power to parliament and government. This transfer, however, took place only on the condition that the government or the rulers aligned with the common good. Correspondingly, in the case of a breach of trust by the rulers—if they defaulted their mandate, for example—the power transferred to them could be revoked: "For all *Power given with trust* for the attaining an *end*, being limited by that end, whenever that *end* is manifestly neglected, or opposed, the *trust* must necessarily be *forfeited*, and the Power devolve into the hands of those that gave it, who may place it anew where they shall think best for their safety and security."[26]

In such a concept of trust, a kind of "democratization" of trust became manifest, since trust in this respect—unlike in Thomas Hobbes's mid-seventeenth century conception—did not imply a complete renunciation of power. From the perspective of Hobbes, in the state of nature trust was impossible. A lack of trust must thus be compensated by an absolute power of the ruler who, in return, guaranteed security.[27] In the "democratized" model, on the contrary, power asymmetries were partially evened out, as the governed, the people, retained a certain power with regard to their representatives—due to the possibility and the right to check and control the exercise of power on the part of those agents.[28] A century later, during the French Revolution, the abolition of the venality of offices also partially resolved the distance between the governed and their rulers, the "administrated" and the "administrators." Due to the principle of the election of officials, established in 1789, the authority of officeholders

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25 John Locke, "The Second Treatise of Government. An Essay Concerning the True Original, Extent, and End of Civil Government," in idem, *Two Treatises of Government*, ed. with an introduction and notes Peter Laslett (Cambridge: Cambridge University Press, 1988), 265–428.

26 Locke, "The Second Treatise of Government," § 149, 367. See also Hartmann, *Die Praxis des Vertrauens*, 441–445; Frevert, *Vertrauensfragen*, 148–149.

27 Thomas Hobbes, *Leviathan*, ed. Richard Tuck (Cambridge: Cambridge University Press, 1991). See Schulz, "Vertrauen und Kontrolle in der politischen Theorie des Republikanismus," 79–80; Gary S. Schaal, *Vertrauen, Verfassung und Demokratie. Über den Einfluss konstitutioneller Prozesse und Prozeduren auf die Genese von Vertrauensbeziehungen in modernen Demokratien* (Wiesbaden: VS Verlag für Sozialwissenschaften, 2004), 64–67. On Hobbes, see Hartmann, *Die Praxis des Vertrauens*, 406–439; for a comparison between Hobbes and Locke, see Peter Schröder, "Fidem observandam esse—Trust and Fear in Hobbes and Locke," in *Trust and Happiness in the History of European Political Though*, ed. László Kontler and Mark Somos, 99–117.

28 Hartmann, *Die Praxis des Vertrauens*, 460.

should primarily be founded on trust. In this way, the state itself would also be fundamentally democratized.[29]

In this regard, trust proved to be a means of securing the participation of the bourgeois middle classes in power, or as a medium in which the relationship between the governed and their rulers, or between different political powers and institutions, could be regulated. No later than the enlightenment era, however, it was increasingly included in the context of demands for publicity and transparency of state action, within legislative and administrative structures and across political and judicial matters.[30] In these demands, the claim to power on the part of the rising bourgeois classes, became strikingly manifest.[31] A basic precondition for this process was the formation of a bourgeois public able to critically debate and thus constituted a subject of the public sphere. In this way, this public became a carrier of public opinion, and "publicity" accounted for a critical function of that opinion.[32]

Like enlightenment itself, publicity was constructed as deeply normative, often using the metaphor of light. It was associated with virtue and morality, with truth and the good.[33] Notably, for Immanuel Kant, publicity constituted a norm and a general

29   Pierre Rosanvallon, *L'État en France: de 1789 à nos jours* (Paris: Seuil, 1990), 49–50.

30   On possibilities of distinguishing between transparency and publicity, see Sandrine Baume, "Publicity and Transparency. The Itinerary of a Subtle Distinction," in *Transparency, Society and Subjectivity. Critical Perspectives*, ed. Emmanuel Alloa and Dieter Thomä, 203–224. See also Sandrine Baume, "Transparency in Public Affairs: The Rise of a Successful Political Metaphor," in *Cultures of Transparency: Between Promise and Peril*, ed. Stefan Berger, Susanne Fengler, Dimitrij Owetschkin, and Julia Sittmann (London: Routledge, 2021), 17–29; 18–19. From a critical perspective on the relationship between transparency and enlightenment, see Emmanuel Alloa, "Why Transparency Has Little (If Anything) To Do with the Age of Enlightenment," in *This Obscure Thing Called Transparency. Politics and Aesthetics of a Contemporary Metaphor*, ed. Emmanuel Alloa (Leuven: Leuven University Press, 2022), 167–187. For an overview of the historical development of the idea of transparency in the political realm, see Dimitrij Owetschkin and Stefan Berger, "Contested Transparencies: An Introduction," in *Contested Transparencies, Social Movements and the Public Sphere. Multi-Disciplinary Perspectives*, ed. Stefan Berger and Dimitrij Owetschkin, 1–32, 8–14.

31   See the classic work by Jürgen Habermas, *The Structural Transformation of the Public Sphere. An Inquiry into a Category of Bourgeois Society*, transl. Thomas Burger & Frederick Lawrence (Cambridge: Polity, 2015).

32   Habermas, *The Structural Transformation of the Public Sphere*, 2, 26.

33   Bernhard Wegener, *Der geheime Staat. Arkantradition und Informationsfreiheitsrecht* (Göttingen: Morango, 2006), 122–138; Aleida Assmann and Jan Assmann, "Das Geheimnis und die Archäologie der literarischen Kommunikation. Einführende Bemerkungen," in *Schleier und Schwelle. Archäologie der literarischen Kommunikation V,* vol. 1: *Geheimnis und Öffentlichkeit*, ed. Aleida Assmann and Jan Assmann (Munich: Fink, 1997), 7–16, 13–14; Volker Gerhardt, *Öffentlichkeit. Die politische Form des Bewusstseins* (Munich: C. H. Beck, 2012), 142–144.

principle of law, by which an "agreement of politics with morals" could be achieved.[34] From such a point of view, publicity served first as criterion for the legitimacy of political action. In Kant's conception, two sides of publicity—as a duty of state power and as a right of citizens—were interconnected and tied to the idea of progress and enlightenment.[35] During the French Revolution, publicity and openness, as a legal claim with regard to parliament, were thus realized. The openness of parliamentary proceedings to the public, substantiated among others by the abbé Sieyès, was regarded by the bourgeois classes as a symbol of representation and a means for emancipation of the parliament. It was codified in the French constitution of 1791.[36]

At the end of the eighteenth and into the early nineteenth century, publicity was increasingly considered as a means to (re)gain trust in politics and to dissipate distrust, through which trust again took on conditional traits. Whereas state arcanum politics as well as secrecy on the whole were presumed to be a source of distrust, publicity was considered to generate trust and work against distrust.[37] Accordingly, Kant also linked publicity to "the removal of all distrust toward the maxims of politics."[38] Jeremy Bentham, a founder of Utilitarianism, also considered publicity as an effective instrument "to constrain the members of the assembly to perform their duty" and "to secure the confidence of the people, and their assent to the measures of the legislature," as well as "to enable the governors to know the wishes of the governed" and "to enable the electors to act from knowledge."[39] Similarly, for Benjamin Constant in France, publicity appeared to counteract doubt and suspicion in relation to governing persons.[40]

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34   Immanuel Kant, "Toward Perpetual Peace. A Philosophical Project," in idem, *Practical Philosophy*, transl. and ed. Mary J. Gregor (Cambridge: Cambridge University Press, 2006), 311–351, 347–351.

35   On Kant, see Habermas, *The Structural Transformation of the Public Sphere*, 102–117; Gerhardt, *Öffentlichkeit*, 161–187.

36   Alexander Weiß, *Theorie der Parlamentsöffentlichkeit. Elemente einer Diskursgeschichte und deliberatives Modell* (Baden-Baden: Nomos, 2010), 43–64. See also Pierre Rosanvallon, *Good Government. Democracy Beyond Elections*, transl. Malcolm DeBevoise (Cambridge, MA: Harvard University Press, 2018), 150–151.

37   Frevert, "Vertrauen – eine historische Spurensuche," 27; Frevert, *Vertrauensfragen*, 162.

38   Kant, "Toward Perpetual Peace," 351.

39   Jeremy Bentham, *Political Tactics*, ed. Michael James, Cyprian Blamires, and Catherine Pease-Watkin (Oxford: Oxford University Press, 1999), 29–33.

40   Benjamin Constant, "Principles of Politics Applicable to all Representative Governments," in idem, *Political Writings*, transl. and ed. Biancamaria Fontana (Cambridge: Cambridge University Press, 1988), 171–305, 232–234. See also Baume, "Does Transparency Engender the Confidence of the Governed?," 428–429; Rosanvallon, *Good Government*, 161–162. On Constant, see Peter Geiss, *Der Schatten des Volkes. Benjamin Constant und die Anfänge liberaler Repräsentationskultur im Frankreich der Restaurationszeit 1814–1830* (Munich: Oldenbourg, 2011); Florian Weber, *Benjamin Constant und der liberale Verfassungsstaat. Politische*

In Germany, during the Restoration and *Vormärz*, many liberal intellectuals, including, among others, Jena historian Heinrich Luden and Leipzig publisher Heinrich Brockhaus, advocated for a realization of publicity in all state issues, using similar arguments to Bentham and Constant. The implementation of publicity became a central liberal demand in constitutional debates in the German Confederation.[41] Nevertheless, publicity and openness, connected with trust, could also be used by rulers and governments as a means to stabilize and legitimize their domination—the more so as the emergency of publicity claims and demands for openness could ostensibly appear as an indication of a crisis of legitimacy.[42] In France, on the eve of the 1789 revolution, temporary finance minister Jacques Necker pointed out that a disclosure of state finances was an effective measure to create trust in state and administration, as well as being beneficial for the state itself.[43] In the states of the German Confederation, publicity was also regarded—after the wars against Napoleon and during the transition to constitutional orders—as an expression of trust between the authorities and citizens.[44]

Similarly, the Congress of Vienna sparked the establishment of publicity for parliamentary debates in assemblies in German states, with the exception, however, of Prussia and Austria, where parliamentary publicity was either not implemented or only in a limited fashion. Publicity of parliamentary sessions was allowed, among others, in Württemberg (1817–19), Baden (1818), the Grand Duchy of Hesse (1820), the Kingdom of Saxony, Hannover, the Electorate of Hesse and in Brunswick (all in 1831).[45] In essence, the permission for the publicity of parliamentary debates in assemblies—in contrast to revolutionary France, but also to parliamentary-monarchic England—turned out to be a paternalistic benefit of the rulers in the German Con-

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Theorie nach der Französischen Revolution (Wiesbaden: VS Verlag für Sozialwissenschaften, 2004).

41   Lucian Hölscher, *Öffentlichkeit und Geheimnis. Eine begriffsgeschichtliche Untersuchung zur Entstehung der Öffentlichkeit in der frühen Neuzeit* (Stuttgart: Klett-Cotta, 1979), 120–121, 126–127; Frevert, *Vertrauensfragen*, 162; Christoph Jahr, "Parlament, 'Publicität' und Versammlungsöffentlichkeit. Überlegungen zur politischen Theorie und historischen Praxis in Deutschland bis 1933," in *Zerfall der Öffentlichkeit?*, ed. Otfried Jarren, Kurt Imhof and Roger Blum (Wiesbaden: Westdeutscher Verlag, 2000), 39–48, 40.

42   Using the example of the English Parliament in the early nineteenth century, see Andreas Wirsching, *Parlament und Volkes Stimme. Unterhaus und Öffentlichkeit im England des frühen 19. Jahrhunderts* (Göttingen: Vandenhoeck & Ruprecht, 1990).

43   Rosanvallon, *Good Government*, 148–149; Rosanvallon, *L'État en France*, 27–28; Geiss, *Der Schatten des Volkes*, 138–139.

44   Hölscher: *Öffentlichkeit und Geheimnis*, 126.

45   Hölscher: *Öffentlichkeit und Geheimnis*, 166–167; Lucian Hölscher, "Öffentlichkeit," in *Geschichtliche Grundbegriffe. Historisches Lexikon zur politisch-sozialen Sprache in Deutschland*, vol. 4, ed. Otto Brunner, Werner Conze, and Reinhart Koselleck (Stuttgart: Klett-Cotta, 1978), 413–467, 458–459.

federation. In return, citizens, for their part, were required to prove their "maturity," that is trustworthiness.[46]

Hegel's philosophy of right—as "the philosophy of middle-class society come to full self-consciousness"[47]—is exemplary of such a constellation. In contrast to Kant, Hegel did not consider publicity to be a principle of enlightenment or an instrument of critique. Moreover, publicity and public opinion revealed a deep split in bourgeois society, which, from Hegel's perspective, accounted for a kind of Hobbesian "battle-field where everyone's individual private interest meets everyone else's."[48] Under these conditions, publicity became a means of state integration.[49] He regarded the openness of Estate assemblies to the public as "a great spectacle and an excellent education for the citizens," or even "the chief means of educating the public in national affairs,"[50] whereas confidence and trust in deputies of the Estates—as the basis of representation—could only emerge within the scope of corporative order, specifically within corporations.[51] In this respect, Hegel also considered elections not so much as an expression of trust but rather "either [as] something wholly superfluous or else reduced to a trivial play of opinion and caprice."[52]

46 Hölscher, "Öffentlichkeit," 458–459; Hölscher, *Öffentlichkeit und Geheimnis*, 126–127. With respect to debates in the *Vormärz*, see Philipp Erbentraut, *Theorie und Soziologie der politischen Parteien im deutschen Vormärz 1815–1848* (Tübingen: Mohr Siebeck, 2016), 203–205. On the development of parliamentary publicity in Germany, see Wegener, *Der geheime Staat*, 223–257.

47 Herbert Marcuse, *Reason and Revolution. Hegel and the Rise of Social Theory*, 2nd ed. (New York: Humanities Press, 1963), 183.

48 Georg Wilhelm Friedrich Hegel, "The Philosophy of Right," in idem, *The Philosophy of Right & The Philosophy of History*, transl. T. M. Knox and J. Sibree (Chicago: Encyclopedia Brittanica, 1952), 1–150, 97 (§ 289).

49 Habermas, *The Structural Transformation of the Public Sphere*, 120.

50 Hegel, "The Philosophy of Right," 148 (§ 315, addition).

51 Hegel, "The Philosophy of Right," 97 (§ 288), 103 (§ 309), 148 (§ 309, addition). See also Andreas Wirsching, "Das Problem der Repräsentation im England der Reform-Bill und in Hegels Perspektive," in idem, *Demokratie und Gesellschaft. Historische Studien zur europäischen Moderne*, ed. Magnus Brechtken et al. (Göttingen: Wallstein, 2019), 21–39, 33–34. On Hegel, see Thomas M. Schmidt, "Vertrauen und Anerkennung. Hegels Konzept politischer Vertrauensbildung," in *Politisches Vertrauen. Soziale Grundlagen reflexiver Kooperation*, ed. Rainer Schmalz-Bruns and Reinhard Zintl (Baden-Baden: Nomos 2002), 143–153; Weiß, *Theorie der Parlamentsöffentlichkeit*, 64–80.

52 Hegel, "The Philosophy of Right," 103 (§ 311), see also 148 (§ 309, addition). In this regard, see Karl Marx's critique of Hegel's concept of representation. As Marx wrote, for Hegel, on the one hand, "representation is grounded on trust." On the other hand, however, "the actual election, this realization of trust, its manifestation and appearance, is either something wholly superfluous or else reduced to a trivial play of opinion and caprice." Hence, "in one breath Hegel establishes the absolute contradictions: Representation is grounded on trust, on the confidence of man in man, and it is not grounded on trust." See Karl Marx, *Critique*

In contrast, for the liberals of the *Vormärz*, publicity and the public sphere proved to be at once an instrument and a programme.[53] Publicity of parliamentary debates, from their perspective, should make possible the realization of representation as well as the participation of citizens in the arrangement, discussion and improvement of state order and legislation.[54] As Karl Theodor Welcker highlighted, all public affairs should be open to the public [*das Öffentliche soll öffentlich sein*].[55] Welcker—co-editor of the influential *Staats-Lexikon* together with Karl von Rotteck which "became the book that every educated liberal household in south Germany had on its shelves"[56]—thus referred to the different meanings of the concept of public. For Welcker, the concept of "public" signified first the political, or that which concerns the state and the commonwealth [*Gemeinwesen*], second, that which concerns all individual citizens, all participants of a collective and their common rights and duties, and finally, that which is not secret.[57]

During the revolution of 1848/49 in German states, those demands for publicity and openness were expressed in the concepts of constitutional order being discussed in the National Assemblies in Frankfurt and Berlin. In their relation to trust, such demands were reflected in the notion of a "state of trust" [*Vertrauensstaat*], coined by Königsberg democrat and deputy of the Prussian National Assembly Johann Jacoby.[58] This notion also reflected a wide-ranging demand for publicity and the political participation of citizens. Whereas fulfilling demands for publicity and openness was considered to be a precondition for the trust of citizens in the state, this form of relationship between the state and its citizens remained reciprocal. Accordingly, political rights and power participation as well as the renunciation of secrecy should serve as

of Hegel's *"Philosophy of Right"*, transl. Annette Jolin and Joseph O'Malley, ed. with an introduction and notes Joseph O'Malley (Cambridge: Cambridge University Press, 1970), 126.

53   Hölscher, *Öffentlichkeit und Geheimnis*, 165.

54   Wegener, *Der geheime Staat*, 229–233.

55   Carl Theodor Welcker, "Öffentlichkeit," in *Das Staats-Lexikon. Enzyklopädie der sämtlichen Staatswissenschaften für alle Stände*, 2nd ed., vol. 7, ed. Carl von Rotteck and Carl Welcker (Altona: Johann Friedrich Hammerich, 1848), 246–282, 249.

56   Thomas Nipperdey, *Germany from Napoleon to Bismarck 1800–1866* (Princeton: Princeton University Press, 1996), 261. On Welcker and Rotteck, see Hans-Peter Brecht and Ewald Grothe, eds*., Karl von Rotteck und Karl Theodor Welcker. Liberale Professoren, Politiker und Publizisten* (Baden-Baden: Nomos, 2018).

57   Welcker, "Öffentlichkeit," 249. One is faced with a number of difficulties in translating the German term Öffentlichkeit into English. See, among others, Stefan Berger and Dimitrij Owetschkin, "The Idea of the Public Sphere and Social Movements as Agents of Transparency: Historical Perspectives," in *Cultures of Transparency: Between Promise and Peril*, ed. Stefan Berger, Susanne Fengler, Dimitrij Owetschkin, and Julia Sittmann, 205–224, 218 (note 4). Broadly, Öffentlichkeit can be translated as "publicity," "publicness," "public sphere" or "public."

58   Frevert, *Vertrauensfragen*, 160.

proof of the state's trust in its citizens. Conversely, citizens should also be able to demonstrate their trust by means of the free election of their representatives.[59] Due to the defeat of the revolution, such far-reaching publicity demands were initially not put into practice. However, the principle of parliamentary publicity—although within the scope of "the development of a state based on the rule of law but without democracy"[60]—essentially prevailed in German constitutions beginning with the Frankfurt Constitution of 1849.[61]

The classic bourgeois concept of publicity and the public sphere also comprised a further, significant dimension. As shown above, the idea of the public sphere, formed in the contestation between the bourgeois classes and the absolutistic state and in their struggle against its previously unquestioned secrecy claims,[62] was not limited to the creation of trust relations and conditions. Moreover, the public sphere, including its constitutive principle of publicity, proved primarily to be an instrument of critique and control of power and domination.[63] In this respect, publicity demands implying such a control mechanism also contained an element of distrust towards the rulers and their politics. A specific tension thus resulted that reflected a "duality of trust and distrust."[64]

Such a "duality" had already become apparent during the English Revolution and the Civil War. For instance, in the 1640s, "An Agreement of the People," which was to a certain extent "the first modern democratic manifesto," implied not only a guarantee of civil and electoral rights and universal access to public offices, but also determined conditions for the legitimacy of power and thereby included—in the face of possible dangers resulting from prevailing of interests or misuses of power—a "reserve of mistrust."[65] In the eighteenth century, during the French Revolution, the principle of control over power and its representatives was linked to the idea of a bond between the

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59   Frevert, *Vertrauensfragen*, 160–170; Frevert, "Vertrauen – eine historische Spurensuche," 26–27; Ute Frevert, "Vertrauen in historischer Perspektive," in *Politisches Vertrauen. Soziale Grundlagen reflexiver Kooperation*, ed. Rainer Schmalz-Bruns and Reinhard Zintl, 39–59, 55–56.

60   Jürgen Habermas, "Further Reflections on the Public Sphere," in *Habermas and the Public Sphere*, ed. Craig Calhoun (Cambridge, MA: MIT Press, 1992), 421–479, 431.

61   Wegener, *Der geheime Staat*, 239–240.

62   On the relationship between state and secrecy, see Jörn Knobloch, ed., *Staat und Geheimnis. Der Kampf um die (Un-)Sichtbarkeit der Macht* (Baden-Baden: Nomos, 2019); Rüdiger Voigt, ed., *Staatsgeheimnisse. Arkanpolitik im Wandel der Zeiten* (Wiesbaden: Springer, 2017); Wegener, *Der geheime Staat*; Andreas Mix, *Die Ambivalenz des Geheimnisses. Zum Verhältnis von Demokratie und Öffentlichkeit* (Frankfurt: Campus, 2020).

63   See Habermas, *The Structural Transformation of the Public Sphere*.

64   Rosanvallon, *Counter-Democracy*, 2.

65   Rosanvallon, *Counter-Democracy*, 2–3.

citizens and the constitution or between citizens themselves that rested upon trust. In this way, a close entanglement of trust and control was also expressed symbolically.[66]

Similarly, in the political thought of enlightenment and liberalism, distrust and control in connection with publicity and the public sphere appeared as an essential component of order. On that score, the institutionalization of parliamentary publicity should serve—in addition to strengthening trust—to control government actions and to supervise the elected representatives of the people.[67] In this regard, Bentham's "régime of publicity," which should provide, among other things, "securities against misrule," was already a "system of distrust."[68] Indeed, Bentham considered a "public opinion tribunal" to be a significant instrument of control. In such a "tribunal," the governed should quasi take on the role of "judging" the governing and in this way establish a counterforce and a moral sanctioning entity.[69] Following Bentham, German liberals, such as Welcker, also highlighted not only publicity and public opinion's control function with respect to a possible misuse of state power, but also the crucial importance of press freedom.[70] The backdrop of liberal concepts was thus built by the principle of institutional guarantees for trust in parliament, government or the political order that were to be created by the institutionalization of distrust.

In this regard, the German liberal discourse in the *Vormärz* was also influenced by Constant,[71] for whom public opinion played the role of "tribunal." According to Constant, publicity was also linked to the accountability of the governing,[72] which he considered to be a protection against the state and its authority.[73] As such, trust or confidence in democracy was something that itself needed to be limited.[74] Constant thus followed the tradition of a "liberal" distrust of power, which can be traced back to Montesquieu and the making of the American constitution. In this form, distrust

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66   Schulz, "Vertrauen und Kontrolle in der politischen Theorie des Republikanismus," 83–84.

67   Hölscher, *Öffentlichkeit und Geheimnis*, 165.

68   Bentham, *Political Tactics*, 37; Jeremy Bentham, "Securities against Misrule," in idem, *Securities against Misrule and other Constitutional Writings for Tripoli and Greece*, ed. Philip Schofield (Oxford: Oxford University Press, 1990), 23–111.

69   Bentham, "Securities against Misrule," 27–29, 54–73; Jeremy Bentham, *Constitutional Code*, vol. 1, ed. F. Rosen and J. H. Burns (Oxford: Oxford University Press, 1983), 35–39; Jeremy Bentham, *First Principles Preparatory to Constitutional Code*, ed. Philip Schofield (Oxford: Oxford University Press, 1989), 56–59. See also Baume, "Publicity and Transparency," 215–216.

70   Welcker, "Öffentlichkeit," 273–278; see also Wegener, *Der geheime Staat*, 180–185.

71   On the influence of Constant, see Lothar Gall, *Benjamin Constant. Seine politische Ideenwelt und der deutsche Vormärz* (Wiesbaden: Steiner, 1963).

72   Constant, "Principles of Politics Applicable to all Representative Governments," 227–242.

73   Baume, "Publicity and Transparency," 215.

74   Rosanvallon, *Counter-Democracy*, 7.

was aimed at limiting authority and preventing the concentration of power, working as a kind of "preventive power."[75]

The ambivalent and complex effects of the institutionalization of distrust became evident in the establishment of parliamentary committees, designed to control the executive and their codification in the constitution. In Germany, corresponded parliamentary rights to information were included in the Frankfurt Constitution of 1849 as well as in the constitutions of certain German states after 1848, in single cases also prior to this. In the 1871 Constitution of the German Empire, however, these rights were missing. Moreover, in Germany, they remained in many cases informal and to a greater extend ineffective.[76] Before the First World War, namely in 1891 and in 1913, proposals by the Social Democrats in the *Reichstag* to include the right to establish parliamentary committees of enquiry in the constitution—or more specifically to provide a legislative basis for such committees with extended competences—failed.[77] In 1917–1918, Max Weber intensively advocated for the parliamentary right to investigation—as a mandatory and minority right.[78] The focus of the demand for publicity thereby shifted from citizen control of the parliament to the control of administration and government by parliament, bringing about an increasing professionalization and thus a growing opacity to the parliament itself.[79]

The legislative institutionalization of the right to parliamentary investigation took place over the course of the inclusion of enquiry committees (in line with Weber's sug-

75 Rosanvallon, *Counter-Democracy*, 6–7. Rosanvallon also distinguished from this "liberal" form of distrust a "democratic" distrust used to check and control the compliance of elected representatives with their promises and to prompt the government to serve the common good. In this regard, such distrust, in its institutionalized form, constituted an integral part of "counter-democracy." For Rosanvallon, "counter-democracy" accounted for a democracy form which should reinforce the traditional electoral democracy and—as a "democracy of indirect powers"—complement the established democratic institutions as well as extend their effects. See ibid, 8.

76 Wegener, *Der geheime Staat*, 241–243. See Johannes Masing, *Parlamentarische Untersuchungen privater Sachverhalte. Art. 44 GG als staatsgerichtetes Kontrollrecht* (Tübingen: Mohr Siebeck, 1998), 7–43.

77 *Stenographische Berichte über die Verhandlungen des Reichstags. 8. Legislaturperiode, I. Session 1890/91, Erster Anlageband* (Berlin, 1890), 237 (proposal no. 39); *Stenographische Berichte über die Verhandlungen des Reichstags. VIII. Legislaturperiode, I. Session 1890/92, Fünfter Band* (Berlin, 1892), 136. Sitzung, 9. Dezember 1891, 3288–3297; *Verhandlungen des Reichstags. XIII. Legislaturperiode, I. Session. Stenographische Berichte*, Bd. 289 (Berlin, 1913), 147. Sitzung, 23. April 1913, 5045–5060.

78 Max Weber, "Parliament und Government in Germany under a New Political Order. Towards a Political Critique of Officialdom and the Party System," in idem, *Political Writings*, ed. Peter Lassman and Ronald Speiers (Cambridge: Cambridge University Press, 1994), 130–271, 177–196. See also Wegener, *Der geheime Staat*, 244–246, 347–352.

79 Weiß, *Theorie der Parlamentsöffentlichkeit*, 89–99.

gestions) into the Weimar Constitution of 1919 (article 34).[80] For Hugo Preuß, whose draft was a basis for the constitution text, political institutions of control and prevention, as "institutions of distrust," however, must not "overgrow" and thus hinder democratic government by making an important function of parliamentarism—the "selection of democratic leaders"—impossible.[81] Notwithstanding, in the crisis-ridden Weimar period, parliamentary enquiry committees were often used as political weapon. They could thereby, depending on political orientation, be interpreted both as an instrument for transparentizing or for obscuring. In this way, they could themselves lead to a strengthening of distrust.[82]

Nonetheless, following constitutional discussion during the Weimar period, parliamentary enquiry committees were also included in the 1949 Basic Law of the Federal Republic of Germany (article 44).[83] Hence, distrust and control were also institutionalized. Similarly, by the first Federal President Theodor Heuss, distrust was regarded as an essential element of democracy, whereas he considered political trust in general to be indispensable.[84] This historical "duality of trust and distrust," or a "controllable trust"[85]—with its inherent tensions—would become intrinsic to liberal-democratic constitutional principles. In a democratic constitutional state, such an entanglement resulted in a kind of "sociomoral balance between trust and control" which simultaneously guaranteed stability and legitimacy.[86]

80 Masing, *Parlamentarische Untersuchungen privater Sachverhalte*, 44–48.
81 Hugo Preuß, "Das Verfassungswerk von Weimar," in idem, *Staat, Recht und Freiheit. Aus 40 Jahren deutscher Politik und Geschichte* (Tübingen: Mohr Siebeck, 1926), 421–428, 426.
82 Sandra Zimmermann, "Between 'clarity' and 'darkness.' The role of public disclosure in the Barmat-Parliamentary-Committees (1925)," in *History of Transparency in Politics and Society*, ed. Jens Ivo Engels and Frédéric Monier, 71–87; Sandra Zimmermann, *Transparenz durch Ausschüsse? Parlamentarische Untersuchungsausschüsse als Reaktion auf Korruptionsskandale in Deutschland (1873–1973/74)* (Göttingen: V&R unipress, 2023), 79–159. See also Franz Kohout, "Der Reichstag," in *Aufbruch zur Demokratie. Die Weimarer Reichsverfassung als Bauplan für eine demokratische Republik*, ed. Rüdiger Voigt (Baden-Baden: Nomos, 2020), 493–509, 499–501.
83 Masing, *Parlamentarische Untersuchungen privater Sachverhalte*, 63–70.
84 Theodor Heuss, "Zum Geleit," in *Die Volksvertretung. Handbuch des Deutschen Bundestags*, ed. Fritz Sänger (Stuttgart: Cotta, 1949 [reprint: Rheinbreitbach 1985]), 5–9, 8–9. See also Frevert, *Vertrauensfragen*, 195.
85 Winfried Steffani, *Parlamentarische und präsidentielle Demokratie. Strukturelle Aspekte westlicher Demokratien* (Opladen: Westdeutscher Verlag, 1979), 176.
86 Schulz, "Vertrauen und Kontrolle in der politischen Theorie des Republikanismus," 86. On the relationship between trust, constitution and democracy, see Schaal, *Vertrauen, Verfassung und Demokratie*.

The Dissolution of the Public Sphere and the Autonomous Public Spheres: Between Critical and Manipulative Publicity

Meanwhile, over the course of the nineteenth and twentieth centuries, perceptions and conceptions of the public sphere also shifted in notable ways. The classical liberal idea of the bourgeois public sphere increasingly retreated in favour of pessimistic versions that no longer regarded the public sphere and publicity as sources of emancipatory power.[87] Rather, following in the tradition of Alexis de Tocqueville and John Stuart Mill, publicity and, in particular, public opinion—in connection with the "tyranny of the majority"[88]—appeared more and more as a coercive force and a mechanism of censorship, social discipline and conformity.[89] Hence, the public sphere, previously an antagonist of feudal and absolutist authority and domination, quasi replaced them in their role as the target of criticism.[90] Distrust was now turned against the public sphere itself. From the second half of the nineteenth century onwards, the concept of publicity or the public sphere was—also in Germany—increasingly connoted with influenceability and manipulability.[91] At the time of the German Empire, publicity and public opinion were linked to socio-psychological theories of "mass."[92] Yet in the Weimar Republic, the concepts of public opinion were dominated by the perception of the systematic steering of that opinion by the press and public relations, as well as—from an antiliberal perspective, as for instance that of Carl Schmitt[93]—by the notion of the acclamatory functions of publicity and public sphere.[94]

87   Peter Uwe Hohendahl, ed., *Öffentlichkeit. Geschichte eines kritischen Begriffs* (Stuttgart: Metzler, 2000), 75.

88   Alexis de Tocqueville, *Democracy in America*, transl. by Arthur Goldhammer (New York: Library of America, 2004), 283–318; John Stuart Mill, "On Liberty," in idem, *On Liberty and other Essays* (Oxford: Oxford University Press, 1991), 3–128, 8–9.

89   Habermas, *The Structural Transformation of the Public Sphere*, 129–140; Hohendahl, ed., *Öffentlichkeit*, 42–43, 66–72.

90   Hohendahl, ed., *Öffentlichkeit*, 75.

91   Hölscher, "Öffentlichkeit," 464–465.

92   Exemplarily: Wilhelm Bauer, *Die öffentliche Meinung und ihre geschichtlichen Grundlagen. Ein Versuch* (Tübingen: Mohr, 1914). See also Hohendahl, ed., *Öffentlichkeit*, 69–72; Habermas, *The Structural Transformation of the Public Sphere*, 240; Hölscher, "Öffentlichkeit," 464–465.

93   Carl Schmitt, *Constitutional Theory*, transl. and ed. Jeffrey Seitzer (Durham: Duke University Press, 2008), 272–279.

94   Habermas, *The Structural Transformation of the Public Sphere*, 196; Hohendahl, ed., *Öffentlichkeit*, 85–88.

A similar trend also continued, from the experiences of the Nazi era into the early postwar period and beyond. In West Germany, the public sphere was yet again interpreted from the perspective of its dissolution, mirroring the culturally pessimistic atmosphere of the Adenauer era, expressed, in part, in the critique of "mass," "technology" and "alienation."[95] Within the tradition of the Frankfurt School, it was primarily Jürgen Habermas who—in addition to Theodor W. Adorno[96]—regarded this decline as a consequence of the dissolution of the separation between the public and private realm, as well as an effect of increasing commercialization, the concentration of the media and the rise in cultural commodification. The result of this process, according to Habermas, was the emergence of a "power-penetrated" public sphere, which, due to the impact of private interests and mass media, lost its political function of control and critique of authority and domination to a large extent. Such a "refeudalized" and depoliticized public sphere, shaped by "public relations," instead fulfilled "advertising functions" and became "a vehicle for political and economic propaganda."[97]

Within this context, the role and function of trust in political discourse and political practice changed as well. While trust increasingly applied to the relationship between electors and elected,[98] it also became a target of "public relations" and "political marketing" strategies borrowed from consumer advertising.[99] This became apparent, for instance, in West German election campaigns.[100] Thus, such creation of trust—within the scope of influencing voting decisions analogous to advertising pressure on buying decisions[101]—appeared as one of the functions of the "power-penetrated" and manipulative public sphere. Notwithstanding, during the early 1960s, the outcome of "the struggle between a critical publicity and one which is merely staged for manipulative purposes," remained "open" for Habermas.[102] In this period, the examination of publicity and the public sphere was associated with the emergence

95   Axel Schildt, *Moderne Zeiten. Freizeit, Massenmedien und "Zeitgeist" in der Bundesrepublik der 50er Jahre* (Hamburg: Christians, 1995), 324–350.

96   Theodor W. Adorno, "Opinion Research and Publicness," in *Group Experiment and Other Writings. The Frankfurt School on Public Opinion in Postwar Germany*, by Friedrich Pollock, Theodor W. Adorno, and Colleagues, transl., ed. and introduced Andrew J. Perrin and Jeffrey K. Olick (Cambridge, MA: Harvard University Press, 2011), 179–183.

97   Habermas, *The Structural Transformation of the Public Sphere*, 175. On the development of Habermas's concept of the public sphere, see also Berger and Owetschkin, "The Idea of the Public Sphere and Social Movements as Agents of Transparency," 212–216.

98   Frevert, "Vertrauen in historischer Perspektive," 56.

99   Frevert, *Vertrauensfragen*, 199–206; Habermas, *The Structural Transformation of the Public Sphere*, 216.

100   Thomas Mergel, *Propaganda nach Hitler? Eine Kulturgeschichte des Wahlkampfs in der Bundesrepublik 1949–1990* (Göttingen: Wallstein, 2010).

101   Habermas, *The Structural Transformation of the Public Sphere*, 216.

102   Habermas, *The Structural Transformation of the Public Sphere*, 235.

of democratization discourses and the early liberalization of West German society.[103] Against this backdrop, the debate surrounding publicity and the public sphere was part and parcel of a wider discursive orientation about political values.[104] Correspondingly, for Habermas too, the extent to which critical publicity could prevail against manipulative publicity, represented an indicator for "the degree of democratization of an industrial society constituted as a social-welfare state."[105]

Over the course of the democratization processes and the shifts in political culture and forms of participation in West Germany from the 1960s to the 1980s, aspects of pluralization and differentiation as well as the emergence and effects of alternative or counter public spheres increasingly came to the fore in debates surrounding the public sphere.[106] Under changed historical conditions, in particular in connection with the soaring expansion of communication technologies, the crisis of the welfare state, the rise of new social movements and a "new obscurity,"[107] Habermas's concept of the political public sphere was modified and interconnected with notions of lifeworld and civil society. The public sphere henceforth was understood as a highly complex, differentiated network of manifold, autonomous partial public spheres, in which "processes of opinion and consensus formulation" were institutionalized.[108] Such autonomous

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103   Moritz Scheibe, "Auf der Suche nach der demokratischen Gesellschaft," in *Wandlungsprozesse in Westdeutschland. Belastung, Integration, Liberalisierung 1945–1980*, ed. Ulrich Herbert (Göttingen: Wallstein, 2002), 245–277; Ulrich Herbert, "Liberalisierung als Lernprozess. Die Bundesrepublik in der deutschen Geschichte – eine Skizze," in *Wandlungsprozesse in Westdeutschland. Belastung, Integration, Liberalisierung 1945–1980*, ed. Ulrich Herbert, 7–49. On concepts of the public sphere in the post-war period, including generational aspects, see Christina von Hodenberg, *Konsens und Krise. Eine Geschichte der westdeutschen Medienöffentlichkeit 1945–1973* (Göttingen: Wallstein, 2006), 31–86.

104   Hodenberg, *Konsens und Krise*, 86.

105   Habermas, *The Structural Transformation of the Public Sphere*, 232.

106   Karl Christian Führer, Knut Hickethier, and Axel Schildt, "Öffentlichkeit – Medien – Geschichte. Konzepte der modernen Öffentlichkeit und Zugänge zu ihrer Erforschung," *Archiv für Sozialgeschichte* 41 (2001): 1–38, 4–7. As a classic example for "counter public spheres" within the scope of "1968" in West Germany, see Oskar Negt and Alexander Kluge, *Public Sphere and Experience. Toward an Analysis of the Bourgeois and Proletarian Public Sphere*, transl. Peter Labanyi, Jamie Owen Daniel, and Assenka Oksiloff (Minneapolis: University of Minnesota Press, 1993).

107   Jürgen Habermas, "The New Obscurity: The Crisis of the Welfare State and the Exhaustion of Utopian Energies," in idem, *The New Conservatism. Cultural Criticism and the Historians' Debate*, ed. and transl. Shierry Weber Nicholsen (Cambridge, MA: MIT Press, 1989), 48–70.

108   Jürgen Habermas, *The Philosophical Discourse of Modernity. Twelve Lectures*, transl. Frederic Lawrence (Cambridge, MA: MIT Press, 1990), 359–360; Jürgen Habermas, *Between Facts and Norms. Contributions to a Discourse Theory of Law and Democracy*, transl. William Rehg (Cambridge, MA: MIT Press, 1996), 373–374. On the most recent modifications to Habermas's concept, see Jürgen Habermas, "Reflections and Hypotheses on a Further Structural

public spheres carried by civil society actors and structures could, to a certain extent, influence administrative power by exercising a "communicative," discursive generated power, thereby also fulfilling a critical function.[109] However, within the political public sphere as a whole, according to Habermas, these processes were overlaid by "the manipulative deployment of media power to procure mass loyalty, consumer demand, and 'compliance' with systemic imperatives."[110] This constellation thus appeared to be a new version of the "antagonism between critical publicity and manipulative publicity" described in the 1960s.[111]

From a wider historical perspective, the tension between publicity as a manipulative influence on the public sphere and its critical participatory function,[112] as reflected in the political discourse in Germany from the *Vormärz* to the Bonn Republic, was an essential factor in the emergence and development of democratic constitutional orders, shaped by the entanglement of trust and control discussed above. At the same time, a far-reaching normative potential also became manifest in this historical process. Such a normative potential was, moreover, inherent to the conceptions of the public sphere themselves. It thus also played a central role for political actors and movements associated with these concepts and, to a greater extent, accounted for their historical impact.

Conclusion: The Dialectic of Trust and Publicity

After this cursory overview of the development of the relationship between trust, publicity and transparency in political discourse, certain historical and systemic aspects can be interconnected, revealing essential issues and interrelations that underline the historical persistence of the ambivalences within that relationship. First, it becomes apparent that, in the development of constitutional democracy, an institutionalized distrust—among others, by means of publicity or transparency—established a basis whereon political trust could first emerge. From the bourgeois revolutions of the seventeenth and eighteenth centuries and the enlightenment and liberal conceptions

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Transformation of the Political Public Sphere," *Theory, Culture & Society* 39, no. 4 (2022): 145–171.

109   Habermas, "Further Reflections on the Public Sphere," 452. On the opposition of "communicative" or "communicatively generated" versus "administrative" or "administratively employed power," see Jürgen Habermas, "Popular Sovereignty as Procedure," in idem, *Between Facts and Norms. Contributions to a Discourse Theory of Law and Democracy*, 463–490, 483–490.

110   Habermas, "Further Reflections on the Public Sphere," 452; Habermas, "Popular Sovereignty as Procedure," 483.

111   Habermas, *The Structural Transformation of the Public Sphere*, 295 (note 126), 232–235.

112   Hölscher, "Öffentlichkeit," 465.

of the political order, such trust was, to a certain degree, the result of negated and dissipated distrust.[113] In response to this dialectic, institutionalized distrust and control mechanisms proved primarily to be an enabling condition for trust in the democratic constitutional order—for its trustworthiness—thus also guaranteeing the legitimacy of this order and the stability of the rule of law.[114] This revealed a wider paradox within the requirements for legitimacy in democracy: Institutionalization of distrust should serve to create and strengthen trust in a democratically organized political system and thereby provide the prerequisites and resources for trust building.[115]

In addition, the creation of trust could also be regarded as a kind of compensation for the effects of distrust and its institutions. As mentioned above, distrust—by reason of its inherent tendency to self-reinforce—could have a paralyzing impact and thus become dysfunctional.[116] A certain degree of trust thereby appeared to be a necessary precondition for the functioning of any political order based on institutionalized distrust. Correspondingly, the potentialities of this distrust must not be completely exhausted.[117] Beyond these dialectic relations, a historical examination of the relationship between trust and publicity illuminates a further crucial factor, which has thus far remained unaccounted for, but which nonetheless provides a starting point for further research. From the beginning, the idea of the public sphere, with its critical principle of publicity as represented by Kant and the *Vormärz* liberals, implied a utopian moment. Due to its normative claim to universal access, participation and enlightenment, it transcended the institutional boundaries of existing constitutional orders.[118]

Such a contradiction between idea and reality, on the one hand, potentially enabled a de-legitimization of these orders, by becoming a source of endeavours—such as the labour movement or other social movements, for instance—aimed at the far-reach-

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113 Rainer Schmalz-Bruns, "Vertrauen in Vertrauen? Ein konzeptueller Aufriss des Verhältnisses von Politik und Vertrauen," in *Politisches Vertrauen. Soziale Grundlagen reflexiver Kooperation*, ed. Rainer Schmalz-Bruns and Reinhard Zintl, 9–35, 11.

114 Schulz, "Vertrauen und Kontrolle in der politischen Theorie des Republikanismus," 86–90.

115 Endreß, *Vertrauen*, 77–79; Piotr Sztompka, *Trust: A Sociological Theory* (Cambridge: Cambridge University Press, 1999), 139–148. See also Piotr Sztompka, "Does Democracy Needs Trust, or Distrust, or Both?," in *Transparenz. Multidisziplinäre Durchsichten durch Phänomene und Theorien des Undurchsichtigen*, ed. Stephan A. Jansen, Eckhard Schröter and Nico Stehr (Wiesbaden: VS Verlag für Sozialwissenschaften, 2010), 284–291, 287–290.

116 August and Osrecki, "Transparency Imperatives," 13–14; August, "Theorie und Praxis der Transparenz," 139–140.

117 Gerhard Göhler, "Stufen des politischen Vertrauens," in *Politisches Vertrauen. Soziale Grundlagen reflexiver Kooperation*, ed. Rainer Schmalz-Bruns and Reinhard Zintl, 221–238, 222; Schaal, *Vertrauen, Verfassung und Demokratie*, 153.

118 Hölscher, "Öffentlichkeit," 458; Habermas, "Further Reflections on the Public Sphere," 442.

ing change of the existing order.[119] Yet for the protagonists of the French Revolution of 1789, the new—"transparent"—society to be established required a social order without power privileges, political arbitrariness and injustice, but completely, roundly, visible and obvious to everyone.[120] Correspondingly, in the face of the discrepancy between the possible and the real, a critical, transformative social impulse also emerged from the universal utopian substance implied in "the transparency of a better world."[121] On the other hand, the discrepancy, or "normative gradient [*normatives Gefälle*]"[122] between constitutional claim and constitutional reality—if the existence of a wider trust in the constitutional order per se is presupposed—could itself become a target of criticism within the scope of this order, as well as a starting point for demands for reform and efforts at rearrangement. Such efforts could thereby be regarded as steps towards improving and perfecting that order and its publicity dimension.[123] A characteristic example, in this respect, was reflected in the liberal discourse on the *Charte constitutionnelle* during the Restoration period in France.[124] Yet, different social movements pushing demands for equality and justice and asserting claims for inclusion and recognition could also be considered, in the participatory senses, in the continued realization of constitutionally fixed basic rights still not exhausted, but "already enjoy(ing) positive validity".[125] To speak through Habermas, "it is only as a historical project" that the democratic constitutional state, as it was established over the course of its development, pointed "beyond its legal character to a normative meaning—a force at once explosive and formative."[126]

Altogether, against this backdrop, a primarily problem-oriented, genetic perspective proved to be particularly fruitful in examining the relationship between political

119 Berger and Owetschkin, "The Idea of the Public Sphere and Social Movements as Agents of Transparency."

120 Michel Foucault, "The Eye of the Power. A Conversation with Jean-Pierre Barou and Michelle Perrot," in idem, *Power/Knowledge. Selected Interviews and Other Writings 1972–1977*, ed. Colin Gordon, transl. Colin Gordon, Leo Marshall, John Mepham, and Kate Soper (Brighton: Pantheon Books, 1980), 146–165, 152–154. See also Baume, "Does Transparency Engender the Confidence of the Governed?," 426; Stefanos Geroulanos, *Transparency in Postwar France: A Critical History of the Present* (Stanford: Stanford University Press, 2017), 117–119.

121 Jürgen Habermas, "Between Philosophy and Science: Marxism as Critique," in idem, *Theory and Practice*, transl. John Viertel (Boston: Beacon Press, 1973), 195–252, 239.

122 Habermas, "Reflections and Hypotheses on a Further Structural Transformation of the Political Public Sphere," 147.

123 Hölscher, "Öffentlichkeit," 458.

124 Fabian Rausch, *Konstitution und Revolution. Eine Kulturgeschichte der Verfassung in Frankreich, 1814–1851* (Berlin: De Gruyter, 2019), particularly 127–135.

125 Habermas, "Reflections and Hypotheses on a Further Structural Transformation of the Political Public Sphere," 148.

126 Habermas, "Popular Sovereignty as Procedure," 471.

trust, publicity and transparency, including its structural complexities and ambivalences. Such a perspective increasingly seeks to implicate an interplay and interdependence between political ideas and political practice—as an expression of social struggles and conflicts. In this way, it can provide fruitful approaches for further research, especially with respect to comparative aspects within different cultures and periods, and thereby extent contribute to a better understanding of the function and modes of reflection of the political in modernity.

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