Opacity and Transparency

On the 'Passive Legitimacy' of Capitalist Democracy

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Abstract: I present the contours of an explanatory model of legitimacy that directs the focus away from normative questions and onto specific mechanisms of reality construction at play in constituting social orders. The key assumption informing the model is that stable orders rely fundamentally on their capacities to construct separate spheres of social reality, by which they exempt critical parts of reality from the burden of legitimation. I argue that an order's legitimacy ultimately depends on its ability to confine the question of legitimacy by relegating authorship of reality to opaque sources that are separated epistemically from the institutional order. The effective reification of critical zones of reality is shown to be a functional precondition for institutional stability. I show that capitalist democracy, in particular, depends on this mode of constructing 'passive legitimacy', which constitutes a key obstacle for any attempt to transform it towards an ecologically and socially sustainable formation.

Keywords: legitimacy, opacity, reification, social constructivism, transformation, transparency

Political theorists often present the question of legitimacy as a genuinely modern problem. It only emerges once 'appreciation of the conventional character of social norms and institutions becomes widespread', as William Connolly (1984: 2) points out. In medieval societies, consequently, legitimacy was 'a muted issue', as it was 'confined within an understanding of divinely sanctioned hierarchies' (3). Although medieval theorists, too, pondered over

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the conditions of legitimate resistance against tyranny, the medieval understanding that the structures of reality are ordained by God 'squeezed . . . the space in which the question of legitimacy could be posed' (2). That is, the question was not altogether absent, but it did not penetrate the very core of social reality. The legitimacy of social order thus poses itself as a problem only once it becomes apparent that the latter is a human construction.

In this article, I pursue the idea that it is precisely this muting, confining and squeezing of the question of legitimacy that provides the key to the fundamental problem of how social order is possible at all. While political theory is concerned with answering the modern question of legitimacy once it imposes itself on society, the social-theoretical perspective put forward here foregrounds the need of its effective confinement as a precondition of social stability. I argue that a social order's capacity to engender a 'willingness to obey' and a 'belief' in its legitimacy, as Max Weber (2019: 401) defines the challenge to any type of 'rulership' (Barker 1990: 11), depends as much on its capacities to provide answers to questions of legitimacy as on its capacities to avoid them. Thus, legitimacy as a sociological category is fundamentally about constructing reality in such a way that only certain carefully delimited parts of it are exposed to the need of legitimation in the first place.

On this reading, the legitimacy of a social order largely depends on the architecture of its reality: on the mechanisms that organise the production and perception of social facticity and that coordinate and transform the causal relations between human wills and social facts. It is primarily a matter of constructing the stage on which the eternal drama of legitimation is set: of foregrounding and backgrounding, of constructing 'epistemic veils' that detach facts from their causal origin, of dividing reality into transparent and opaque spheres. This construction of the stage on which the public negotiation of legitimacy is performed is the most profound instrument of power, as it is that which allows power to turn into order. The power to construct the stages of reality is the power to control the will/fact boundary, that is, the mechanisms that determine what counts as a fact and is thus perceived as an object of knowledge rather than an object of contention. It is the power, in other words, to control the mechanisms of the de-politicisation and re-politicisation of reality. Medieval and modern societies both developed very powerful albeit

very different mechanisms to contain the question of legitimacy, that is, to hide society's constructed nature. While the resulting social formations could hardly be any more different, the principles constituting those mechanisms are ultimately the same.

There are two main theoretical influences informing my approach. One is the social-constructivist account of legitimation developed by Peter Berger and Thomas Luckmann. I take their analysis of the relationship between legitimation and reification to provide the key to what I will come to call passive legitimacy: the limitation of the scope of reality that requires legitimation. While legitimation in Berger and Luckmann refers to operations that serve 'to explain and justify the social order' (Berger 1990: 29), reification is 'the apprehension of the products of human activity as if they were something else than human products – such as facts of nature, results of cosmic laws, or manifestations of divine will' (Berger and Luckmann 1990: 89). Elements of reality that are perceived as reified are exempted from the need of justification, as no human will or intention can be held accountable for them. Hence, by constructing the mechanisms of reality production in such a way that critical elements are reified, the problem of legitimation is effectively 'muted' and 'confined' (Connolly 1984: 3). Berger and Luckmann, however, unnecessarily restrict their analysis of reification to religious forms of reality construction and thus to pre-modern types of institutional order. One of my tasks in this article is therefore to turn their analysis into a general model of legitimation and to demonstrate that reification as the construction of an external source of reality is the fundamental stabilising mechanism also in modern societies.

The second source of influence is Georg Simmel's (2018) analysis of the difference between a dyadic and a triadic social relation. I take his insights about the need for a 'third element' to stabilise a dyadic relation to be fundamental for understanding the nature of representation: the relationship between representatives and represented can be stabilised only with reference to a third element that functions as their common object of reference. From synthesising the social-constructivist account of reification and Simmel's logic of the triad, I derive some general 'architectural principles' of reality construction that can be applied to analyse any kind of social order.

The argument proceeds in four steps. First, I critically discuss the social-constructivist approach of Berger and Luckmann and its

shortcomings. Next, I present the key elements of a general social-constructivist theory of legitimacy, which I synthesise from the social-constructivist account of reification and Simmel's reflections on the triad. In a third step, I explain the modern crisis of what I call 'ontological reification' and its resolution through a shift to 'epistemic reification'. Finally, I elaborate on the modern mode of constructing legitimacy, which is based on the separation of opaque (source) and transparent (receiving) zones of reality. In a concluding section, some theoretical and practical consequences are briefly discussed.

The Social Construction of Legitimacy: Moving beyond Berger and Luckmann

Society for Berger and Luckmann is 'a dialectic phenomenon in that it is a human product … that yet continuously acts back upon its producer' (Berger 1990: 3). The dialectic of world construction consists of three analytically distinct moments: externalisation, objectivation and internalisation. Due to their 'world-openness', that is, their unique position in nature as animals whose adaptation to their environment is not fully driven by instincts, humans are forced to 'externalise' themselves in terms of acting on their environment and interacting with each other in ways that are not fully determined by their biological setup (Berger and Luckmann 1990: 47ff.). The products of human externalisation are objectified in that they attain the status of 'reality', which is 'a quality appertaining to phenomena that we recognize as having a being independent of our own volition' (1). This reality in turn is reappropriated or 'internalized' into human consciousness as an input that structures the conditions of new externalisations.

Importantly for our argument, objectivation comes in three distinct degrees or 'orders' (Table 1): objectivation proper (first order), legitimation (second order) and reification (third order). Objectivation starts whenever the externalisations of one subject become available as 'elements of a common world' to another subject, that is, once they form part of an intersubjective reality (Berger and Luckmann 1990: 34). Externalising activities are subject to processes of habitualisation and routinisation. Habitualised action

Table 1: Orders of Objectivation in Berger and Luckmann

	Orders	*Processes*
I.	primary objectivation	routinisation, habitualisation, institutionalisation
II.	legitimation	justification, explanation
III.	reification	construction of supra-human ontologies

may become institutionalised once it is 'typified' in the sense that 'actions of type X will be performed by actors of type X' (54). The 'essence of institutionalisation' is the 'social channeling of activity' (181–182), that is, the forming of patterns and regularities that narrow and specialise the choices of action and regulate the activities of individuals independently of their own volition. The institutional world is thus 'experienced as an objective reality' (60). At this level of first-order objectivity, however, reality remains notoriously precarious. The meaning and purpose of institutions can always be problematised and challenged; obedience to rules is never granted. This is the point where the concept of legitimation enters the scene.

As a '"second-order" objectivation of meaning' the function of legitimation is 'to make objectively available and subjectively plausible the "first-order" objectivations that have been institutionalized' (92). It involves operations of both justification and explanation and therefore comprises a normative and a cognitive dimension. Legitimations are answers to questions about the 'what', 'why' and 'how' of institutional arrangements (cf. Berger 1990: 29–30). The authors distinguish between different levels of legitimation that range from the everyday transmission of linguistic objectifications (as in the vocabulary of kinship that both explains kinship relations and includes specific prescriptions of behaviour that go along with those descriptions) to ever more theoretically coherent explanations and justifications of entire sectors of institutionalised social reality. The ultimate level concerns the construction of 'symbolic universes', that is, of coherent bodies of theoretical explanations and justifications of social reality as a whole that 'integrate different provinces of meaning and encompass the institutional order in a symbolic totality' (Berger and Luckmann 1990: 95). Symbolic universes function as 'sheltering canopies over the institutional order' (102), which provide that the institutional order is 'taken for granted in its totality as a meaningful whole' (104).

Importantly, now, the symbolic universe itself 'does not require further legitimation' (104), as it is 'self-legitimating by the sheer facticity of its objective existence in the society in question' (105). The logic of legitimation ends with the symbolic universe as the 'highest level of generality' (105) at which an institutional order can be explained and justified. But how is this possible? How can a symbolic construction ever elude the need of further legitimation; how can it deflect or mute any problematising assault on its symbolic integrity? It is at this point that the concept of legitimation (as second-order objectivation) dovetails with the concept of reification (understood as third-order objectivation) in Berger and Luckmann. Reification, to reiterate, is 'the apprehension of the products of human activity as if they were something else than human products – such as facts of nature, results of cosmic laws, or manifestations of divine will'. It 'implies that man is capable of forgetting his own authorship of the human world and further, that the dialectic between man, the producer, and his products is lost to consciousness'. This relegation of authorship to a non-human origin is 'an extreme step in the process of objectivation', as it transforms the human world into a non-human 'inert facticity' (89). We may infer that symbolic universes are able to fulfil their function as 'sheltering canopies' only to the extent that they succeed in reifying the institutional order, that is, in 'bestow[ing] upon them an ontological status independent of human activity and signification' that hides their constructed character (90). Indeed, the examples Berger and Luckmann provide for symbolic universes are all of a religious or mythological kind and pertain to archaic or traditional societies.

The great success of 'religious legitimation' throughout most of human history resides precisely in its reifying property, as Berger explains in *The Sacred Canopy*. Religious legitimation establishes an ontological barrier between the immanent realm of heterogeneous human wills and transcendent divine or cosmic will, which 'immunizes' the human realm against its own contingency. In Berger's words, 'the world as man's opus proprium is inherently precarious. The world as an opus alienum (of the gods, of nature, of the forces of history, or what not) is seemingly everlasting' (1990: 87).

Rather curiously, however, Berger and Luckmann seem unable to extrapolate their account of reification to the modern condition and to offer a consistent solution for the problem of secular

legitimation. When it comes to modernity, their escalating model of orders of objectivation becomes blurry and inconsistent. On the one hand, they insist on reification as an indispensable step in the objectification of the institutional order. On the other, they mark modernity as an age of 'relative dereification' (Berger and Luckmann 1990: 90) and seem to suggest the possibility of symbolic universes to be based on modern philosophy or science (110ff.). While one may conceive of such universes to provide consistent blueprints for a rationally justifiable institutional order (see attempts like that of Rawls 1971), they would hardly have reifying effects but rather underscore their constructedness and precariousness. Thus, it remains unclear which forces are meant to replace religious reification in the modern order. On one occasion, Berger and Stanley Pullberg acknowledge the Marxian conception of commodity fetishism as a modern form of reification. They also speak of such 'institutional reifications … as "the economy", "the state", "the nation" or "the revolutionary movement"' and attest a reifying functionality to 'the highly bureaucratized institutional system' of contemporary societies (1966: 68). However, they do not explain how this secular mode of reification functions. They shy away from comparing or integrating their own account of reification with that of Marx (2004) and Lukács (2021), perhaps for fear of being associated with a Marxist perspective offering 'the prospects of a structural transcendence of reification' (Brewster 1966: 74), a perspective Berger (1966) emphatically rejects. Nor do they offer an alternative, overarching explanatory model of reification that were able to integrate symbolic and non-symbolic modes of reification. Consequently, the concept of reification is reduced to a rather arbitrary descriptor of processes like bureaucratisation and rationalisation (Berger 1990: 132ff.; Berger and Luckmann 1990: 125). It turns from an explanatory into a descriptive category, tautologically stating the fact of modern social orders being reified as a consequence of their sheer facticity. In sum, Berger and Luckmann's account of modern legitimacy relapses into a squarely Weberian position (cf. Berger 1966: 77), which is particularly disappointing, as it gives away the enormous explanatory potential harboured in the concept of reification not as an effect but as a precondition of any stable social order.

In what follows I therefore present the basic elements of an explanatory model of legitimation that I hope to be able precisely

to capture the shift from a symbolic (in my terms: 'ontological') to a phenomenal ('epistemic') mode of reification that marks the advent of modernity as a change in the architectural principles of reality construction. What needs to be explained by a general theory of legitimacy is precisely the fact that under conditions of secular immanence, no symbolic order can be constructed that has the power of a protective canopy, and yet a stable social order is possible. Modern ontology, I argue, is notoriously precarious due to its incapacity to reify the social order. Without alternative modes of reification, modern societies would be unable to develop a stable, self-maintaining pattern of internal organisation and tumble, time and again, into the 'terrors of anomy' (Berger 1990: 90). The modern ontology of human immanence, therefore, can only ever be provisionally stabilised through mechanisms of reification that force its precarious symbolic order into 'uneasy alliances' (Pitkin 2004) that suspend the different manifestations of paradox at its core (Mouffe 2000; Ricoeur 1984). Far from being a 'relatively dereified' era, modernity employs mechanisms of reification that are arguably as powerful as those of religious 'cosmisation'.

The Social Construction of Legitimacy: Key Elements

The core distinction informing the proposed model is that between active and passive legitimation. Active legitimation refers to all activities of justification and explanation of an institutional order and is more or less equivalent to the usage of 'legitimation' in Berger and Luckmann. Its mode of operation is the construction and maintenance of meaning through symbolic signification. Elements of social reality need active legitimation once they become problematic, that is, once their 'taken-for-grantedness' as given facts is undermined. Passive legitimation, in turn, refers to all activities that limit, restrain and confine the necessity of active legitimation. The passive legitimacy of a social order is its capacity to exempt and withhold crucial parts of social reality from problematisation and thus from the need to be actively legitimated. Active and passive legitimation complement each other: the higher the passive legitimacy of a given social reality, the lower the demand for its active legitimation, and vice versa. Every social order rests on a more

or less dynamic relationship between active and passive forms of legitimation. To employ an astrophysical metaphor, passive legitimacy is like the dark matter without which the visible matter of active legitimation cannot exist. For a stable institutional order to emerge, active legitimation must be embedded in a substrate of passive legitimacy. The crucial question is how this relationship is functionally organised and by which means passive legitimacy is generated.

There are three cardinal ways of generating passive legitimacy, which I term reification, exclusion and performance (Table 2). Of the three, reification is arguably the most fundamental. For limitations of space, I will focus on reification and mention the others briefly. Reification refers to the construction of an external source of reality and its separation from the institutional locus of power. That way, power comes to be apprehended as a mediating or reactive agency, but not as the source of social facticity. Thus, institutionalised power is relieved from being perceived as the original author of social facts. The effect of reification is thus the minimisation of the scope of social reality requiring active legitimation. Reification always has to do with the design of or intervention into the very architecture of social reality, through constructing different realms of reality and severing or manipulating the causal links between them.

Exclusion, in turn, is the effective limitation of the number of individuals in front of whom social reality needs active legitimation. While reification minimises the scope of reality to be legitimated, that is, the sheer amount of potentially problematic phenomena, exclusion minimises the range of individuals power is accountable to. Examples are slave societies, the liberal state of limited franchise and arguably the fully developed welfare democracies, which each had its own methods of excluding relevant populations

Table 2: Modes of Passive Legitimation

Mode	*Function*	*Operation*
reification	limitation of scope of reality requiring active legitimation	construction of external source of reality
exclusion	delimitation of segments of population to which reality must be legitimated	slavery, limitation of franchise, imperialism
performance	focussing attention on favourable outputs of institutional order	prioritising on policies of material prosperity and security

from the possibility to hold power accountable. By creating the category of slaves as non-citizens whose labour power is exploited to the benefit of citizens, for example, the state generates passive legitimacy in a double sense: it diminishes the range of contentious politics within the citizenry in that there is no (or less) need to distribute and justify burdensome labour among citizens; and it creates an entire category of people to whom it is not obliged to legitimate reality – they are pure objects of coercion. While those in power are in constant need to provide 'legitimation stories' to their citizens – that is, to those individuals with whom they enter into a political relationship and from whom they expect allegiance – this need is suspended for slaves and other individuals 'who are nakedly objects of coercion' and whose obedience can be extorted by force (Williams 2005: 95). While these methods are obvious in the case of slavery and limited franchise, contemporary democracies exclude by downloading unfavourable aspects of reality generation (like degrading labour and environmental burdens) to other parts of the world and by appropriating favourable phenomena from those places (Anderson 1974; Brand and Wissen 2021; Lessenich 2019). Reification and exclusion are interdependent in that a higher degree of reification is required if the possibilities for exclusion are limited and vice versa.

The third strategy of passive legitimation is performance, by which is meant the capacity of an institutional order (or individual leader) to deliver phenomena that are overwhelmingly perceived as favourable (like security, material prosperity and environmental quality). The idea is that a regime's performance effectively limits the scope of its problematisation: it reduces the citizens' appetite for unpleasant questions, let alone resistance (cf. Weber 2019: 375). Here, the interrelationship between performance and exclusion is obvious: a regime's performance may depend on its ability to appropriate favourable phenomena from outside its limits of accountability, which is the general pattern of imperialism (Brand and Wissen 2021). On the other hand, a regime can reduce its dependence on performance by strengthening the role of the reified source of reality. A religious order, for example, can reduce its performative pressure by presenting the whole of reality is divinely willed (cf. Berger 1990: 59). The full implications of the dynamic interrelationship of reification, exclusion and performance must be developed elsewhere.

Let us now consider those elements of the model from which we can derive the architectural principles of reality construction, that is, the principles guiding the construction of passive legitimacy that allows stable orders to emerge. The first is the proposition (common to the literature of the 'constructivist turn' in political representation) that all order is representative, or, put another way, that representation is constitutive (Disch et al. 2019; Thomassen 2017). Any order qua order has an executive instance which enforces the existing rules of that order and, in so doing, represents that order; the 'ruling' instance always has a representative function – it represents the law, the 'people', God, nature, reason or any other instance from which the order is claimed to derive its rules. Put another way, any kind of social order – whether democratic, totalitarian, monarchic or archaic – is based on the circumstance that some kind of power or ruling instance executes some kind of rule or will which it claims to represent (Saward 2006).[1] The constructivist point, then, is that the represented is being constructed in the process of representation. This also means that every order by virtue of being representative has a necessarily vertical character (Diehl 2019; Manin 2009), since the instance executing the rules of the order necessarily has some means of enforcement at its disposal.

To this I add the second proposition that a strictly immanent (dyadic) form of representation is paradoxical and therefore impossible to stabilise. This means that the dyadic relation 'ruler-ruled' cannot be stabilised without reference to an external third instance that objectifies that relation by constituting an independent sphere of reality in respect to which the dyad can organise its relationship. Thus, only by turning the dyad of representation into a triad can it be stabilised. This proposition draws on Simmel's (2018) reflections about the sociological significance of the 'third element' that turns a dyadic relation into a triad (Simmel and Wolff 1964). For Simmel, the transition from the dyad to the triad is constitutive for the process of socialisation, the logic of which rests in the fact that 'isolated elements are unified by their common relation to a phenomenon which lies outside of them' (cited in Noteboom 2006: 371). Simmel's intuition suggests that the condition of possibility of a stable relation between two elements is the existence of a third element that constitutes something like the 'constitutive outside' (Staten 1986) of that dyadic relation: without that third element constituting an 'objective' point of reference against which

the dyad may align its patterns of interaction, the dyad would remain erratic and instable. Representation always needs a common point of reference, to which it can establish itself as a stable relation. To fulfil this ordering function, the third element must be of a higher order of objectivity than the dyad itself: it must be of a coercive facticity that imposes itself on the dyad. In other words, it must be of a reified kind.

We know from Berger and Luckmann that humans are able to produce reified realities that shelter their institutional order. However, there are different ways of doing this, which Berger and Luckmann do not distinguish. The ways in which reified external sources of reality are constructed, however, make a decisive difference in terms of the types of social order they can support. With the introduction of the distinction between ontological and epistemic reification, then, the key elements of the conceptual framework are complete. Ontological reification refers to the symbolic construction of ultimate realities from which human reality emanates. These ultimate realities are the worlds of the gods or of cosmic laws that constitute the essence of all being. Ontological reification bestows on human institutions 'an ontological status independent of human activity and signification' (Berger and Luckmann 1990: 90), which discharges them from being perceived as arbitrary, fallible or interested. It separates the realm of human will from supra-human will. Crucially, however, ontological reification is unable to escape the realm of wilfulness: it reifies through symbolically immersing reality into a will that is of a higher ontological order.

Epistemic reification, by contrast, operates on the phenomenal level and separates the realm of human will from that of social facticity. While ontological reification subordinates human to supra-human wills, epistemic reification cancels wilfulness altogether and replaces it with facticity. Epistemic reification does so by constructing epistemic veils, that is, mechanisms that cancel the causality and the subjective attributability within social relations. Social phenomena are no longer the products of particular wills or causally traceable subjective interests but are pouring out of black boxes (Deutschmann 2015: 381–382), whose opacity deletes their causal genesis and turns them into objective 'facts'. The construction of such black boxes as machineries of objectification can be traced to ancient Athenian institutions like the ballot, the lot or the 'jury selection machine' which cancel the connection between individual wills and collective

outcomes (Keane 2010: 48; Manin 2009). The legitimating function of such institutional devices rely precisely on their conferment of objectivity through the cancellation of causal links between input and output. On the societal level, however, the mechanism of epistemic reification turned into an organising principle only in modern times with the possibilities to award a key reifying function to the price mechanism in an ostensibly 'self-regulating' market (Polanyi [1944] 2001), and with the increasing reliance of the state on a new kind of facticity that is expressed in numerical terms (Poovey 2004) and provides the basis for 'statistical reasoning' as the new foundation of state action (Desrosières 1998).

It is this shift from medieval ontological reification to modern epistemic reification that allowed for the emergence of representative government and of what would later develop into representative democracy. To be sure, epistemic reification as a strategy to construct a black box that produces social facticity that serves as a basis of order has existed throughout the ages, as in the Athenian example above or in the construction of external threats that unite ruler and ruled behind a common goal (to fend off that threat), but until modern times it has not been the dominant strategy. Equally, ontological reification as a strategy to exempt crucial parts of reality from the need of legitimation through the construction of ontological narratives lives on in modernity under the name of ideology, but ideology alone cannot stabilise society. The point is rather that the great civilisational shift from the Middle Ages to modernity was made possible by a fundamental shift from ontological to epistemic reification as the respective organising principle. The enabling condition of this shift is that in a capitalist market economy, 'the economic reproduction process as a totality is no less opaque than God as the basis of all being' (Deutschmann 2015: 382), which means that in both cases – medieval and modern – the source of reality is reified. The difference in the mode of reification, however, was fundamental in allowing a new type of representation to emerge. Ontological reification means that the ruling instance represents the symbolic *realissimum* vis-à-vis the ruled instance, as it is the ruler who 'speaks for the gods' (Berger 1990: 34) and whose role is to represent and enact divine will in the human world. The type of order ontological reification stabilises is therefore invariably vertical.

Epistemic reification, by contrast, shifts the terms of representation: now, ruler and ruled are epistemically united at the same level

of reality: they are both receivers of 'objective' facts like prices and other data that emanate from the external black box. The rulers no longer represent a supra-human reality vis-à-vis the ruled, but they now represent the ruled in the face of an ostensibly coercive and naturalised reality that is common to both instances. To be sure, the representative relation remains vertical in that the representative instance enforces a law to which the represented instance is bound. But the decisive difference is that the dyad (representative-represented) is now directing its gaze away from each other, as the source of reality is no longer embodied in the ruler, but both gaze, shoulder by shoulder as it were, into a huge fire or even a volcano of facts that is (constructed to be) external and equidistant to both. The triad (reified-source-ruler-ruled) changes its form from a vertical line of command into a triangle, the base of which becomes the 'transparent' realm of deliberation and will formation about how best to deal with the incoming facts of a reality that is perceived as externally generated (Figure 1 and Figure 2). This shift from ontological to epistemic reification is what lies at the heart of modernity.

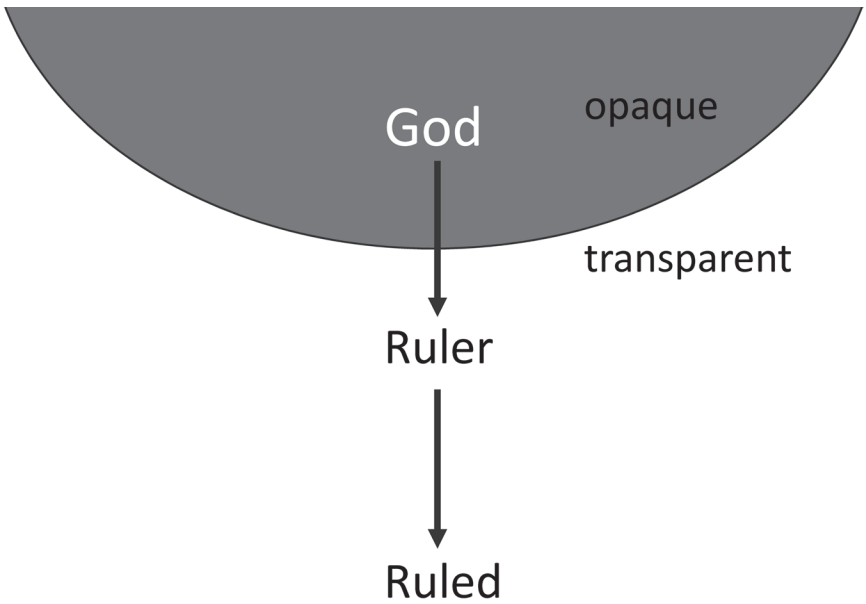

Figure 1: Ontological Reification

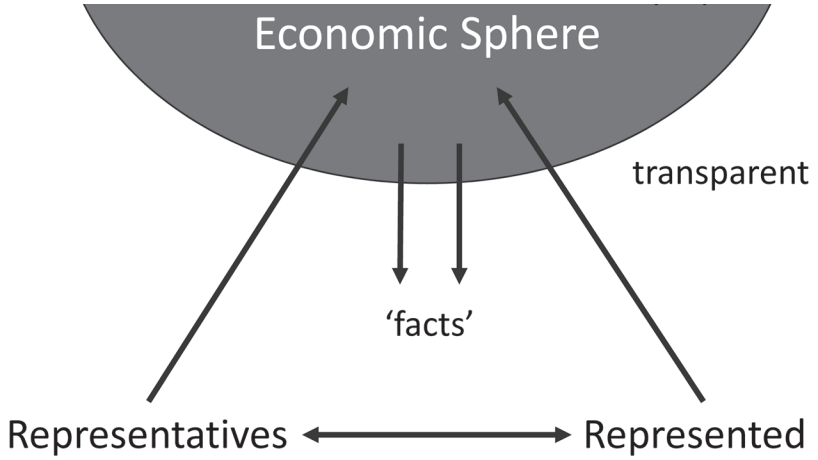

Figure 2: Epistemic Reification

The Modern Ontological Crisis and Its 'Epistemic' Solution

The ontological reification of the medieval order meant that the ruler represents the divine order, as he 'is conceived of as the agent of the gods, or ideally even as a divine incarnation' (Berger 1990: 34). With the ensuing process of secularisation, the 'plausibility structure' (47) of that ontological construct started to erode and social reality was increasingly perceived as a human product in one way or the other. This meant that the triadic order was reduced to a dyad, as it lost its reified third element. 'Losing increasingly the transcendency that placed it … above human interests', Durkheim (1984) points out, 'the social organization no longer has the same power to resist. Yet at the same time it is more strongly under attack. As the work of wholly human hands, it can no longer so effectively oppose human demands' (cited in Beckert 2002: 83).

Bereft of the passive legitimacy the reified third element had provided, the question of legitimacy is now unmuted and must be answered within a dyadic structure. The problem of the dyad is, however, that it is ultimately an impossible order. Since the ruling instance must represent something in order to give a name to its power, the reintroduction of a third element is inevitable. Now,

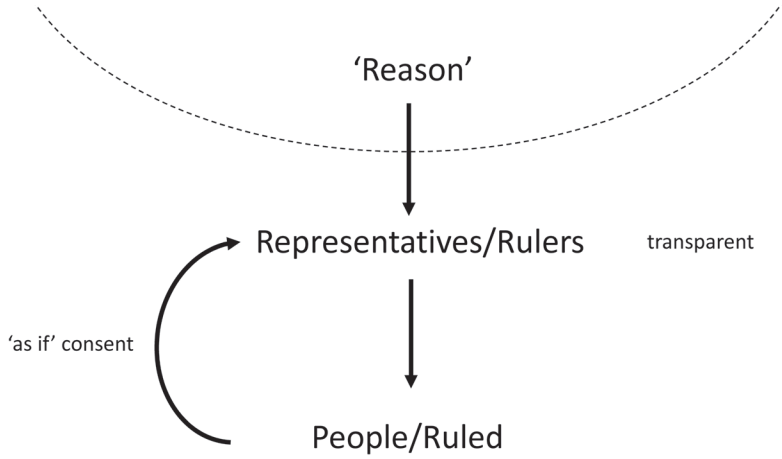

Figure 3: Transcendental Secular Ontology

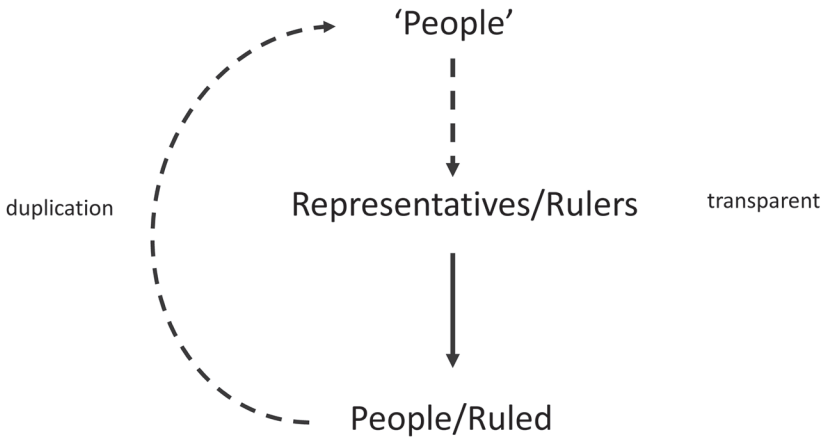

Figure 4: Immanent Secular Ontology

keeping within the register of ontology, there are only two possibilities to do so: the third element to be placed at the top of the structure can be either the 'people' itself, that is, a symbolic duplicate of the 'ruled' instance (as in Rousseau and Hobbes), or an abstract concept of a higher (transcendental) order like the 'law of nature' (Locke, Grotius) or 'reason' (Kant). Both strategies lead to contradictions and complications that deny the order stability (Figure 3 and Figure 4).

The immanent route of deriving sovereignty from the ruled leads into a highly explosive 'political paradox', resulting from 'the people's relation to itself as both ruler and ruled' (Honig 2007: 9). This paradox can either be frozen into a rigid vertical order as in Hobbes, who eliminates the people from the top through their contractual self-subjugation to a sovereign ruler, or it can be kept in full swing as in Rousseau, who fixates the idealised popular will as the sovereign general will at the top of the order, thereby risking its continuous clashing with particular wills or (even more dangerously) with alternative versions of the general will. The liberal route of deriving legitimate authority from transcendental eternal laws, in turn, is a functional analogy to divine ontology and runs into similar problems of structural verticality. The idea of course is to replace the dangerous and arbitrary realm of will with that of law – a law derived from transcendental criteria of reason – to establish an ultimately objective foundation of order and to render civil government a matter of judgement rather than will (Urbinati 2008: 101ff.). This implies that reason alone is sovereign and that there must be human agents defining, interpreting and executing it. Again, the order congeals into a vertical line of command. The prevalent liberal solution was to exclude those individuals from the representative dyad, who were not entrusted to be 'reasonable', which had been, for centuries, most of the population.

Both solutions ultimately converge in the democratic compromise that the people is sovereign as long as its will is reasonable: in Rousseau, the reasonableness of the general will is safeguarded by the authoritative 'lawgiver', and both Locke and Kant make the (tacit or hypothetical) consent of (a propertied minority of) the population the condition of legitimate authority (cf. Laslett 1988: 111; Loick 2018: 62–63; Taylor 2004). However, the problem remains that the ontological formula does not suffice to stabilise the order, as it is impossible in practice to agree on what counts as the authentic 'will of the people' (Cowans 2001) or on what the standards are in each case to determine its 'reasonableness'. The modern ontology remains locked in the vertical order of its medieval predecessor because it is impossible, by ontological means, to establish a stable horizontality (let alone identity) between the ruling and the ruled. Even if that identity is emphatically proclaimed, as in Rousseau, it tends to flip back into the vertical question of who is able to execute

the true and authentic expression of the people's will (Rosanvallon 2006), which unleashes an often violent 'chicken-and-egg circle' (Honig 2007: 2) of bitter fights over actual sovereign power, as in the case of the French revolutionary terror (Lefort 1988; Rosanvallon 2006).

The ontological third elements of the modern triad remain imperfect placeholders for the reified *realissimum* of divine will, as they lack the potency to create any passive legitimacy. The concept of natural law is modelled to fill the void God left in the secular ontology (Taylor 2004: 5) and Rousseau, too, is eager to substitute the popular will for divine will when he proclaims that 'the voice of the people is indeed the voice of God' (2018: 8). On their own, however, none of those concepts have the power to tame the problem of legitimation modernity had unleashed. Instead of establishing a political bond between representatives and represented, the ontological third elements 'people' or 'reason' effectively prevent the emergence of any such bond, as neither the symbolic people nor the concept of reason can objectify the dyad. That bond rather is to be made of a different stuff than symbolic formulae: it can only be constructed epistemically, that is, by the constitution of a shared reality that consists of a realm of facticity rendering both, ruler and ruled, epistemically equivalent in that both are subjected to a source of reality that is equally external to both and that becomes their shared object of knowledge and shared field of intervention. Only on this basis can the modern ontology be made to work. Put another way, the secular ontological formula is a necessary but not sufficient condition of modernity's legitimacy. It provides the necessary symbolic ingredients for active legitimation without being able to securing the passive legitimacy required for active legitimation to fulfil its task (see Figure 3 and Figure 4).

In short, the social-constructivist position developed here holds that the secular dyad cannot be stabilised via the symbolic construction of a third element. The fact that the 'locus of power' in modern democracy remains 'an empty place' – as Claude Lefort (1988: 17) famously proclaims – cannot simply be explained by the modern 'mutation of the symbolic order' (16) alone. The locus of power can be kept structurally empty only if it functions as the locus of a reactive power and not of a power to author reality. The circular quest for legitimate sovereignty can be terminated only if the matter

in dispute – sovereignty – is all but eliminated from the scene and relegated to a wholly different sphere of causation. Sovereignty, then, is reduced to matters of governing, steering and administrating a reality that is not internally generated. It is the sovereignty of the helmsman to steer a ship across rough waters (a role at which the crew can take turns!), not the sovereignty to create the conditions of the sea.

Opacity and Transparency: Epistemic Reification as the Organising Principle of Modernity

The social-constructivist perspective portends that the perceived legitimacy of a social fact depends not on the fact's features but on its origin. If the market price of, say, gasoline or meat rises sharply due to the imponderables of the world market, the general public typically accepts, endures and shrugs off the price increase as a nuisance that cannot be changed.[2] If, on the other hand, a government decides to implement a policy to increase any such prices, for example with the goal to protect the climate, the public's response can be tremendous and destabilising, as the case of the 'yellow vest' protests in France suggests (Mehleb et al. 2021). Although the result may be the same (an increased consumer price), the difference in perception is that between a fact (market price) and a will (government policy), or between objectivity and subjectivity. While a phenomenon generated by governmental action is subject to the need of justification, a market price is perceived (under certain circumstances) as a fact of nature, as a thing that is completely independent of any subjective contents. The market price is the perfect reified fact.

The naturalness of the market price is a theme that first appeared in mid-eighteenth century (Foucault 2010: 31) and became a commonplace in the nineteenth. Economist Léon Walras, for example, held that the 'externality of the price' can be understood 'as analogous to the naturalness of social laws', since the price of wheat, for example, 'does not result either from the will of the buyer or from the will of the seller or from any arrangement between the two' (cited in Beckert 2002: 77). Durkheim, too, knew 'the price is experienced by the individual actor as a datum he cannot escape',

as Jens Beckert (2002: 77) points out: 'Price thus contains the elements Durkheim uses to describe social facts'. The price mechanism is a reification machine in that it produces profound epistemic opacity. It eclipses the causal relations that make up the history of the commodity as a social and socio-natural relation, encapsulates this history of causation within a cipher and eradicates it from the phenomenal surface of perception. The 'natural price', according to Friedrich Hayek, cannot be determined 'by any human laws or decrees' but depends 'on so many circumstances that it could be known beforehand only by God' (1993: 132). The price mechanism creates a slick phenomenal surface consisting of numerical facts (prices) that are tied to things (commodities) and are epistemically severed from their conditions of emergence, from their embeddedness in socio-natural relations.

The reifying function of the price mechanism, however, could attain its overwhelming social significance as a generator of passive legitimacy only once the economy was sufficiently disembedded from traditional institutions to constitute a fully external source of reality. This process, which Polanyi ([1944] 2001) describes in *The Great Transformation*, required the commodification of previously not freely tradeable goods like land, money and labour. The constitution of a 'free' labour market, that is, the subjection of every working person's biography and existence to the market mechanism, was particularly crucial in this respect. Under conditions of a fully developed capitalist market society, the price mechanism has indeed the power to divide reality into different realms, that is, to eclipse the causal relations of production from view and to establish a horizontal level of reality in which all are epistemically equivalent as recipients of a reified facticity.

This perspective chimes with the Marxist notion of commodity fetishism in important respects. The commodity form, for Marx, 'is nothing but the definite social relation between men themselves which assumes here, for them, the fantastic form of a relation between things'. It is striking that Marx takes flight 'into the misty realm of religion' to point out an analogy between the reification through commodification and what I have dubbed ontological reification: 'There [in religion] the products of the human brain appear as autonomous figures endowed with a life of their own, which enter into relations both which each other and with the human race.

So it is in the world of commodities with the products of men's hands' (2004: 165). Both the world of the gods as products of the human brain and the world of commodities as products of human hands have the power to become autonomous realities that structure and stabilise the respective institutional order. Marxists, of course, conceive of reification as a form of ideology, that is, 'the imaginary relationship of individuals to their real conditions of existence' (Althusser 2008: 36). Reified social relations obscure the real conditions, which presupposes the existence of a 'real' social objectivity that can be obscured and must be uncovered. Social objectivity is an essence that needs to be recuperated through class struggle. And 'to deny that there is an essence means to side with appearance, with the total ideology which existence has … become' (Adorno 1973: 169). The social constructivist perspective, however, does indeed deny the existence of an essence to social reality. Reification, from this perspective, is a process that conceals the constructedness of social reality, that is, a process that obliterates the radical contingency of the social. It is a functional precondition, I submit, of any social order. Where the Marxist sees a foundational social essence behind reification, the social constructivist sees pure contingency. Doing away with the reified structures of reality does not pacify society (in terms of an end of politics), but it re-politicises it in revealing that social reality could always be different. This is the critical capacity of social constructivism.

Now, the crucial difference between a social order that is stabilised through ontological reification and one stabilised through epistemic reification is that in the former case the ruler represents the external source of reality vis-à-vis the people (he rules 'in the name of God' over the people), whereas in the latter, the ruling instance represents the people vis-à-vis an external reality with regard to which they are epistemically equivalent (rulership is 'in the name of the people', but with reference to a shared external reality). While in the first case, there is an ontological bond tying the ruler to the external source, in the second there is an epistemic bond tying representatives and represented together at the receiving end of a reality that is (ostensibly) produced outside their relationship. For this epistemic bond to emerge, a new type of facticity is required that can express reality in an ostensibly neutral way. I refer here to the shift from interpretive descriptions of reality to

quantitative representation, as in prices, but also in statistical representations of society in terms of income, employment, health, education, production, fertility and so on. The increasing reach of the market and its mercantile practices since the eighteenth century has led to a pervasiveness of practices of quantification, that is, to a numerical representation of reality that became 'the bedrock of systematic knowledge', as Mary Poovey (2004: xii) writes in *A History of the Modern Fact.* The epistemic bond unifying the representative dyad relies on the fact that the origin of reality is inaccessible and opaque, but the facts pouring out of that opaque source can be measured, systematised and turned into a common object of knowledge upon which the entire institutional edifice of representative politics can be based. 'Creating a political space', Alain Desrosières (1998: 9) notes on the role of statistics, involves 'the creation of a space of common measurement'. An important aspect of modern society is its institutional ability to educate its individuals in the handling, navigation and interpretation of these common facts that constitute the fabric of its reality. The modern individual is trained to become proficient in the mastery of the shared world of facts continuously pouring out on everyone from a sphere that is larger than and external to their will. The 'organic solidarity' Durkheim (1984) ascribes to the modern condition is thus of an epistemic rather than a moral kind: it is based on the equality of otherwise isolated individuals with regard to a shared realm of facticity they are forced to navigate.

In terms of the resulting architecture of reality, the representative order now takes on the role of a transparent sphere in which the facts pouring out from the opaque source are processed. This does by no means suggest that the state (if we can call the representative order that) is internally transparent or that how decisions are arrived at is necessarily transparent (the contrary is frequently the case; see Naurin 2007). Rather, it refers to the fact that any sovereign act of governmental policy or parliamentarian legislation is transparently attributable to these institutions. Whatever effects on reality the executive and legislative actions of the state produce, the state is transparently identifiable as their source. Representative politics is the realm of a transparent public negotiation of the various ways to intervene into an otherwise given reality. This, however, activates a mechanism of reality construction that becomes constitutive of the

representative order: that authorship of reality is denied by the state whenever its active legitimation is problematic or impossible.

The protective canopy of passive legitimation is sought whenever the transparent construction of reality would lead to the epistemic bond between the representing and represented instance to be torn. The formula keeping modern representative systems afloat is that reality is generated externally and only reacted to within the transparent sphere of representation. Taking on authorship of reality as such is an option only if the external source is dysfunctional and stops generating useful facts, as during and after a war. The 'golden age of capitalist democracy' after the Second World War was such a phase (cf. Streeck 2014). The key political mechanism available to representative order is thus the variable embracing and denial of authorship, depending on the category and quality of facts in question. The problem of carbon taxation is a point in case, exemplifying the difficulties for governments to embrace authorship for negative social facts even for the best of reasons. The success of neoliberalism in constructing an external source of reality to which there seems to be 'no alternative' is another. The consequences of this mechanism for the prospects of mastering the existential planetary challenges of this century should be a cause for concern.

Conclusion

The social-constructivist model of legitimacy presented here is necessarily incomplete. My ambition in this article could only be to sketch the contours of an explanatory account that needs to be fleshed out and elaborated in future work. My aim was to convey the fundamental logic informing the model: that the legitimacy of a social order largely rests on the order's capacities to invisibilise and 'mute' the very question of legitimacy itself. Stabilising a social order, I argue here, is primarily a question of coming to terms with the origin of social facticity, that is, with the question where social reality is generated and who can be held accountable for it. Stable social orders, this approach suggests, are based on the mastery of mechanisms of reality construction in the sense of relegating authorship of reality to epistemically separated, external spheres of emergence. In many cases, stable orders have the ability

to shift these boundaries: to acknowledge authorship whenever this is conducive to their legitimacy, and to deny it whenever the facts are unpalatable. I suggested a few mechanisms regimes can apply to that end, among which reification is the most fundamental.

I want to close by hinting at a few consequences this approach entails for the analysis of contemporary societal challenges. First among them is the question of agency and of the 'sovereign' shaping of societal reality, in particular with regard to the pressing challenges posed by the accelerating climate crisis. The account presented here may help explain why states seem unable to take the actions scientists agree would be necessary to avert the most existential threats of climatic change. According to the functional logic of passive legitimacy, the representing instance in a state is unable to take on authorship for facts that would be perceived as unpalatable interventions in the lives of the represented, like restrictions of consumer choice and increased prices of certain key goods and services. If these same facts were to be effected by external forces like climate-induced disruptions of the world market, financial crises, wars or the like (as has been the case with the energy and inflation crisis in 2022), they would not constitute a grave problem of legitimacy but, quite to the contrary, provide a field of social objectivity as a basis of state-led intervention. Put differently, based on its functional priority to minimise the scope of reality that requires legitimation, the state is inclined to act in a reactive manner, that is, to manage crises in progress rather than to inflict critical measures to avoid them. This pattern could be observed also in the Covid-19 pandemic: the state is able to mobilise almost unlimited capacities to intervene into reality, as long as the intervention is warranted as a reaction to incontrovertible, coercive and externally generated facts. The situation changes, as it did, once the reactive measures themselves are perceived by parts of the public as the origin of negative facts, that is, once negativity is internalised into the dyad. In that moment, the epistemic bond between that part of the population and their representatives tears as both no longer rely on the same perception of externality and internality.

This logic of selective authorship and the state's reliance on external sources of reality suggests severe functional limitations of state action that require further investigation. But the functional logic of legitimation presented here also poses new challenges to

democratic theorists: could it be that modern democracy, instead of being a source of societal autonomy, is but a passenger on the 'juggernaut' (Giddens 1997) that is modernity? Is its sovereignty in fact limited to the narrow corridor of deciding how to react to facts that are generated elsewhere? And how could that ever be changed? Could democracy itself perhaps become an 'independent source of reality' on the basis of which representation is organised? And would that entail the functional separation of democracy and representation after centuries of their co-evolving into an 'uneasy alliance' (Pitkin 2004)? These are but some of the questions that need to be addressed in future research.

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Notes

1. The transhistorical claim that every *political* order is representative refers to the simple proposition that insofar as it is political and not purely coercive, power always acts *in the name of* something or someone. Even tyrants typically claim to

derive their power from some higher instance like the people, the nation, God or some other ontological construct.

2. The price of pork/100kg in the EU rose from around 130 to 200 euros (54 percent) between 2019 and 2020 (Europa 2023a). The consumer price of gasoline net of taxes and duties more than doubled in some EU countries (e.g., Belgium) between March 2020 and November 2021 (Europa 2023b). In both cases, no mass protests, riots or governmental crises related to the price hikes are known.

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