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Twofold Freedom and Contingency

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Article abstract

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Twofold Freedom and Contingency

Abstract. *The paper shows that the semantic complex of freedom assumes the form of a twofold freedom as horizontally differentiated realms of meaning gain autonomy: on the one side, individual and interpersonal freedom, and, on the other side, the freedom and self-determination of social fields or subsystems, both of which presuppose, stabilize, and destabilize one another. This co-constitution is proven with three exemplary thinkers. Simmel sees money as a decisive factor in the genesis of the modern social form of freedom and individuality. His argument is brought into systematic comparison with Constant's prior work on individual freedom in European modernity, and with Luhmann's later notion of contingency and constitutionally guaranteed freedom of communication as prerequisite for factual differentiation. It is demonstrated that in Simmel's work, the modern variant of the social form of freedom is described as a specific interrelation that ties the objectification of culture to a depersonalisation of social differentiation as well as to a temporalization of dependencies.*

Introduction. Issues at stake

"Once certain primary motifs of law, art or morality have been created - perhaps following our most personal and innermost spontaneity - then the issue of what individual forms these will grow into is no longer in our hands" (Simmel, 1997: 66).[1] Simmel's observation in the second part of his "The Concept and Tragedy of Culture" exemplifies both the conditions of possibility and the fate of freedom in western Modernity, which has always been of a

[1] Simmel, 2001 [1911]: 211f.: "Wenn gewisse erste Motive des Rechts, der Kunst, der Sitte geschaffen sind [...] so haben wir es gar nicht mehr in der Hand, zu welchen eigenen Gebilden sie sich entfalten".

twofold kind: individual freedom and interpersonal freedom on the one hand; and, on the other hand, the freedom of self-differentiating, objective complexes of meaning that are supra-individual in nature, such as law, economy, politics, science, art, and religion. Dilthey called these cultural systems (*Kultursysteme*), Simmel called them objectivised forms (*objektivierte Gebilde*), while contemporary sociological theories have described them as social fields or subsystems.

In his cultural and sociological analyses, Simmel identified an increasingly manifest discrepancy between the material and cultural meaning (*Sachbedeutung und Kulturbedeutung*) of particular objects as the tragic and insoluble paradox of modern culture. At the same time, however, he claimed it was only by virtue of the twofold nature of these elements, the manner in which they were interwoven and the manner in which objective structures were re-subjectivised, that cultural meaning could come into being. Just as the improvement of the modern individual could only proceed through the 'supra-subjective logic' of objective material and immaterial things, so the genesis of these objects' cultural value – in contrast to the mere material value of the vast number and variety of cultural elements – could only proceed by re-subjectivising them.

At the same time, Simmel's structural analysis asserts that there is no necessity in the parallel between objective and subjective developments, since each unfolds by an inner logic that is fundamentally distinct. Some of the examples he uses to vary this theme of alienation include the division of labour, newspapers, formal motifs growing increasingly independent of their content and the "idle running of methods" ("*Leergang der Methode*") that no longer generate any cultural meaning (Simmel, 1997: 71).[2] Others include increasingly the autonomous fields of the economy, politics or art, which have come to only follow their own material logic and no longer serve cultural meaning of political power, the money form or art.

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[2] See the original German text in Simmel, 2001[1911]: 218.

Simmel's synthesis of structural and cultural analysis is clearly influenced by Dilthey's studies of the differentiation of cultural systems. Both writers' theoretical programmes are aimed at differentiating among material relations of meaning. They reject essentialist theories by taking reciprocality (*Wechselwirkung*)[3] as their starting point: substances are dissolved into interactions and events, while individuals are conceived as the 'intersections' of a plurality of systems or associations. In Dilthey's analysis, the same 'life act' (*Lebensakt*) by a particular individual can exhibit this manifold nature by meaning different things in the context of different cultural systems. However, what is historically new about Simmel's sociology is his analysis of the forms of multi-levelled interactions and reciprocality; not only those between 'life acts' and differentiated cultural systems, but also interpersonal interaction and those between material and immaterial objective cultural structures and individuals, conceived as persons, who are involved in a variety of different 'social circles'[4]. He is concerned here – in traditional terms – with overcoming the two-part subject-object

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[3] I use 'reciprocality' and 'reciprocal effect' as translation for the concept of *Wechselwirkung* to emphasize the synchronic mutual constitution of the interacting elements, which are not only meaningful interpersonal interactions and communications. They are certain the core of social reciprocal effects (*Wechselwirkungen*) but they are only special forms of those among others; Simmel includes forms of reciprocal effects with material and immaterial objectivations, objectivised structures, forms and concepts as well (see Simmel, 1992[1908]).

[4] Dilthey's "life acts" become in system theory communicative events whose meanings are determined by communicative associations, so that an event can simultaneously have different meanings by virtue of its multiple associations. The theory of the temporalisation of the final elements of social systems underlies this modified insight based on contemporary theoretical developments (see Luhmann, 1984). A more subtle co-reading of Dilthey with Luhmann's system theory was undertaken by Hahn (1999). For the interpretation of Simmel that both follows and diverges from Dilthey, see Tenbruck (1958: 598), who argues: "By introducing the forms of reciprocal effect, Simmel cuts through the immediate relationship in which for Dilthey the individual stands in relation to culture and its partial systems". On Dilthey's culture systems, see Dilthey, 1959[1883], especially p. 49ff. On the difference between individuals and persons see Bohn, 2006.

schema by means of a multi-part subject-subject-object-subject schema, which for Simmel always implies the selective circularity of cultural objectivations and their re-subjectivation, and which he claims to be the true measure of cultural complexity and modern individuality. These forms of multiple interaction and reciprocality are the proper object of sociology, and Simmel uses them to define its theoretical field. How, then, can the problem of twofold freedom be developed from the point of view of social theory, and which theoretical and which semantic and empirical answers are available to it?

In the realm of politics, constitutionality can be interpreted as an answer to the problem of balancing individual freedom and political power, since legal limits can be set upon political power in the interests of individual freedom. These limits themselves require that freedom become a right and, as Grimm puts it, "law becomes associated with the enabling of freedom" (Grimm, 2009: 599; own translation). Whether such political and legal enabling of individual freedom and constitutionality is actually a suitable model of global legitimation for exercising political power, whether it is possible to conceive of constitutions for controlling political power that operate beyond the limits of the nation state, depends crucially on human rights and freedoms being globally recognised, an outcome that is by no means certain (Grimm, 2002[1991]; Teubner, 2012).

While the utopian and universalist moral teachings of the European Enlightenment claimed equal validity for the western semantics of freedom across every political and religious border of every country of the world, contemporary analyses of a possible spread of constitutionalism and individual rights across the world proceed on an empirical basis, meaning they are more sensitive to cultural alternatives. Indeed, notions such as individuality, freedom and autonomy are specific to particular cultures and by no means self-evident to many other cultures across the world[5]. However,

[5] "Indeed, not all cultures perceive autonomy as important" (Xanthaki, 2007: 32). One example of alternatives to individual rights are the collective rights of

since the end of the nineteenth century a mutual assumption of freedom has established itself in the political field as an effective, albeit counterfactual, global structure, a structure that was first formulated in the context of the European international legal order, and later in public international law itself. This figure of public international law has its starting point in an analogy: a state's internal territory is strictly demarcated from the internal territory of other states in a manner analogous to the way that one modern individual's inner self is distinct from another's.

As Vattel, the classic exponent of European public international law puts it, states themselves become a *persona moralis* who freely and autonomously confronts other states similarly conceived as *personae morales,* and this relation is quite independent of the nature of their internal religious or political constitutions. This reciprocal ascription of freedom leads to the principle of non-intervention among states – a principle particularly emphasised by Vattel – as a means of maintaining order among them. However, even Vattel allows for exceptions to the postulate of non-intervention, particularly if a people requests help in instances of state forms of religious tyranny (Vattel, 1926[1758]). Nevertheless, from a sociological point of view it is not difficult to see that this is not only about the regulation of relations among states; rather the law reacts this way as religion, politics, economy, law and individual freedom – which also and importantly includes freedom of religion – enter a new relationship with each other (Gabriel, Gärtner, Pollack, 2012; König, 2012).

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indigenous peoples, as they were adopted, after twenty years of negotiations, in the UN Declaration of Human Rights of Indigenous Peoples. For example, the recognition and right to cultural development among ethnic and cultural pre-colonial indigenous peoples was already established in article 75.17 of the Constitution of the Argentinian Nation of 1860, but was only brought to life in the wake of the indigenous activism of the nineteen sixties and the supra-local human rights movement of the nineteen seventies. A shift in the category of the "indigenous" from one that describes someone foreign to oneself to one that describes oneself is accompanied by a change in the recognition of merely individual categories to a recognition of collective categories in international law.

Contemporary studies understand human rights as counter-factual historical structures and semantics with specific local and cultural variants, but they too revolve around problems of the relation of political, religious, cultural, individual and collective freedom. Today an increasingly implausible reason-based universalism confronts on the one hand an anthropologically universalist position and on the other a self-relativising conception based on theories of power or culture. It also faces the open question of whether it still makes sense to pursue a universal theory of human rights when historical analysis conceives of them as *socially* contested rights.[6] Social movements, NGOs and an active world public are increasingly the current site of these conflicts. What is clearly proving to be the guarantor of the global spread of human rights is not juridification in the form of individual states ratifying human rights conventions. Rather, neo-institutional studies suggest that it is as a semantic point of reference for social movements and human rights activists, who make appeal to the promises associated with them, that human rights are by the detour of this 'paradox of empty promises' gradually moving away from a bare institutional façade towards a reality that transforms social practices (Hafner-Burton, Tsutsui, 2005; Hafner-Burton, Tsutsui, Meyer, 2008; Hafner-Burton, 2013).

From the point of view of social theory, the paradoxical form in which human rights developed – combining a trans-national jurisdiction with the territorial principle of state sovereignty – means they can be interpreted as catalysts for eroding established forms of inclusion and therefore as part of a transformation of forms of social differentiation. At the same time, they function as an impartial compensatory instrument for the effects of structurally-determined inclusion and exclusion in modern social subsystems. From a world-societal point of view, it is not in its normative but in its

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[6] See, for example, Antweiler (2013); Kastner (2013): 231, who the author points to the eminent genealogical line of so-called critics of human rights: Edmund Burke, Jeremy Bentham, Karl Marx, Carl Schmitt, Richard Rorty.

decontextualized symbolic efficacy that the formula for human rights lends itself to promoting plurality among heterogeneous practices that appear incompatible with one another (Luhmann, 1995; Kastner, 2013).

The following analysis keeps both these aspects firmly in mind. It acknowledges the interpersonal freedom, the freedom of the individual as human being, citizen, individual, person, legal subject, member of a religion, trader and investor, researcher or artist. At the same time, it examines how this freedom correlates with the freedom that was initially established among states in the legally codified form of international law, and later as structural expectations among such subsystems as law, politics, economy, art, science and religion. Even without a unified legal codification, the autonomy of these systems is part of a vast global social reality; it is an established assumption, one that is both contravened and routinely enforced.

Thus in what follows, the analyses of individual and society should in no way be understood as mere addendums to the main argument. Rather, from the point of view of social theory, interpersonal and individual freedom and the forms of differentiation in modern society mutually enable each other. Social theory analysis understands the semantics of freedom neither simply as the consequence of historical revolutionary events nor as a problem of moral philosophical doctrine, be it with or without universal applicability. Rather, real gains in freedom, tacit assumptions about freedom and the semantics of freedom are treated as elements in a complex of social expectations that are supported by institutions, semantic constructions and forms of social differentiation. The following argument will trace a semantic line, while at the same time changing analytical concepts for semantic ones; so in addition, the concept of contingency is also

used as a new analytical category in sociology and freedom becomes a widely circulating more flexible semantic[7].

In a first step, I shall turn to *individual freedom*, unanimously described in the literature as a typically modern form of freedom. For this I shall consult Benjamin Constant, who distinguishes modern freedom as *individual freedom* from ancient freedom as *collective freedom*. In a second step, I shall undertake a reconstruction of the relationship between freedom and social differentiation using Georg Simmel's highly relevant reflections on the subject, which ascribe the medium of money a special rank in the genesis of modern forms of freedom. The many different layers of the modern semantics of freedom can be brought together at a single point: modern freedom, I shall argue, is constitutively linked to self-referentiality and contingency. However, unlike the more obvious qualities of inwardness, autonomy or self-improvement in the sense of self-realisation or moral integrity, it is not limited to the modern individual but is to be found everywhere that self-referentiality becomes an operative condition of modern forms of socialisation. As Simmel puts it:

> The paradox of culture is that the subjective life, which we feel in its continual flowing and which pushes of its own volition

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[7] On the concept of semantic as with social structures co-constituted structures of sense see Luhmann, 1980-1995. In this meaning semantic as generalized sense is related to societal differentiation and can be distinguished from sociological and scientific analytics. "Unter Semantik verstehen wir demnach einen höherstufig generalisierten, relativ situationsunabhängig verfügbaren Sinn." [...] Es sind „semantische Strukturen, die bestimmte Selektionslinien wahrscheinlicher machen als andere, Sensibilitäten in bestimmten Richtungen verfeinern und in anderen abstumpfen. Es ist, mit anderen Worten, die akute Erfahrung von Komplexität, Kontingenz und Selektivität in Handlungsverknüpfungen, die solche übergreifenden Symbolkomplexe generiert, sie werden durch Selektionsdruck gezwungen, sich zu formieren" (Luhmann, 1980, Bd1: 19, 23f. On the concept of contingency as a double negation of necessity and impossibility see Luhmann, 1984: 152 *passim*). For an application of the concept to historical processes see Ermakoff (2015).

> towards its inner perfection, cannot, viewed from the idea of culture, achieve that perfection on its own, *but only by way of those self-sufficient crystallized structures* which have now become quite alien to its form. Culture comes into being - and this is what is absolutely essential for understanding it - by the coincidence of two elements neither of which contains culture in itself: the subjective soul and the objective intellectual product (Simmel, 1997: 58, emphasize, CB)[8].

Included in this analysis are therefore the general freedom of action and communication, as well as freedom in the sense of the autonomy of differentiated social fields. Thus academic freedom is not identical with the freedom of academics, nor artistic freedom reducible to the freedom of artists and their constitutionally guaranteed right to develop their personalities – even though modern legal systems clearly offer few other ways of conceptualising this (Luhmann, 2009[1965]; Baker, 1992; Trute, 1994). Reflections supporting this observation can be found in the work of Niklas Luhmann, and in a final step I cite examples of his studies on contingency, freedom of communication and subjective rights.

Pluralisation of Freedoms: Benjamin Constant

What is it precisely that is new and typically modern about individual freedom for Constant? Which changes in structure, semantics and medium hide behind the transformation in the regime of individual and collective freedom, and how does

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[8] Simmel, 2001[1911]: 198: "Es ist das Paradoxon der Kultur, daß das subjektive Leben, das wir in seinem kontinuierlichen Strome fühlen, und das von sich aus auf seine innere Vollendung drängt, diese Vollendung, von der Idee der Kultur aus gesehen, gar nicht aus sich heraus erreichen kann, sondern nur über jene, ihm jetzt ganz formfremd gewordenen, zu *selbstgenügsamer Abgeschlossenheit kristallisierten Gebilde*. Kultur entsteht - und das ist das durchaus Entscheidende für ihr Verständnis -, indem zwei Elemente zusammenkommen, deren keines sie für sich enthält: die subjektive Seele und das objektiv geistige Erzeugnis"(Hervorhebung, CB). On the concept of 'self-referentiality' see Bohn, Petzke (2013).

Constant describe them? For Constant, individual freedom can be said to be the true freedom of our time. It is guaranteed by political freedom. This means that political freedom is indispensable[9].

Constant's Liberal concept of freedom also assumes a reciprocal relation between political and individual freedom in which each one makes the other possible. Political and individual freedom determine each other, neither one can develop without the other, neither may be sacrificed for the other. Political freedom – that is, politics that is only politics and is therefore self-referential – is to be defended because it alone guarantees individual freedom. And it acts as a guarantor for a plurality of other freedoms, which Constant analyses in his writings: freedom of religion, freedom to develop trade and economy, freedom of speech and of the press, the freedom to choose one's profession and one's spouse and the freedom to enjoy (private) property. In his famous speech of 1819 to the Athenée Royale, in which he argues for a representative form of government, Constant touches upon the distinction between the collective freedom of Antiquity and the individual freedom of Modernity.

According to him, freedom for the ancients – he is speaking of citizens' direct participation in the politics of the ancient city-states – was nothing more than political participation. He describes the power of the community, and the complete subordination of the individual to its rule, as 'collective freedom'.[10] Freed from the burden of work by the slave economy, the citizens of Antiquity had ample time to deal with their political affairs, since they had no

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[9] "La liberté individuelle, je le répète, voilà la véritable liberté moderne. La liberté politique en est la garantie, la liberté politique est par conséquent indispensable" (Constant, 1997[1819]: 612).

[10] For Constant, this schematic difference between collective and individual freedom can also be drawn among the ancients themselves. Thus, for example, he distinguishes between conditions in Athens, Sparta and Rome. I am grateful to Jan Assmann for his explanation that freedom in ancient Egypt and ancient Judaism acted as an empty space in semantic terms. In these ancient cultures, belonging rather meant serving the community and was not associated with freedom.

occupation to distract their attention from the business of state. However, Constant interprets this participation in the highest offices of state as a form of consolation for enslavement in the private realm. For the free people of Modernity, the situation is quite different: they devote themselves to their professional activities to satisfy the needs of society, and are no longer prepared to renounce personal freedom or private happiness. Thus representative government constitutes an appropriate form of political organisation for the new concept of individual freedom. While modern political power limits itself by institutions, which protect citizens from tyranny and arbitrary rule, political power in the ancient world was limited only by the direct participation of free citizens – not by slaves or the not free ones – in the affairs of politics. When this was controlled, political power could also be tyrannically exercised. By contrast, under modern conditions arbitrary rule endangers morality, convulses systems of credit, ruins trade and endangers the businesses on which the prosperity of the people is based (Constant, 1997[1815]). To avoid arbitrary rule, however, positive guarantees and bodies are required: Constant mentions jury courts as a means of protecting press freedom, along with other independent representative bodies. All this serves to protect individual freedom, which for Constant advances the cause of every human community. It is clear that the historical events he is referring to are the political upheavals of post-revolutionary France.

Constant's critique is not only directed at the Restoration of the Bourbon monarchy, but also very emphatically at the revolutionaries and the contemporary reflections of people like the Abbé de Malby, whom Constant vehemently attacks in his writings, while strangely sparing Rousseau; Robespierre is clearly another target of his, but never directly referred to. His argument is that, by trying to make the people both equal and sovereign, they privileged the power of the community and therefore emulated the ancient ideal of collective freedom, instead of preparing the way for modern individual freedom. According to Constant, it is precisely for this

reason that his contemporaries misjudge the urgent task of modern political power, which is to enable citizens to develop their own autonomy and individuality. This requires new political and legal institutions and a redefinition of the exercise of state power.

> "The ancients sought to distribute social power among all the citizens of the same country: this was what they called freedom […] The moderns seek protection of their private enjoyments, and they call liberty the guarantees afforded these enjoyments by the institutions" (Constant, 1997[1819]: 603, own translation)[11].

As a proponent of modern Liberalism, Constant sees the institutional guarantees of individual happiness and private enjoyments (*jouissances*) as the core of a contemporary semantics of freedom. The concept of individual freedom can already be found in Hobbes' concept of freedom based on natural rights. For Hobbes, natural freedom is nothing more than individual freedom, and no longer collective freedom. As freedom it is a natural right. However, Hobbes associated this with the most elementary level of control over one's own body and understood the protection of one's own life as a natural right. Although the individual has a right to life, he lacks the necessary means to protect himself and for this reason needs the Leviathan, on whom he must confer the authority for protecting this right. Thus already in Hobbes, the primary task of the modern state is that of guaranteeing and protecting natural rights, and to do this it is indispensable to maintain the peace. While for Hobbes the state becomes a machine for solving social problems, Constant follows the notion, developed by Western European natural law theorists of the eighteenth century, of the state as an instrument for protecting individual rights. While for

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[11] "Le but des anciens était le partage du pouvoir social entre tous les citoyens d'une même patrie: c'était là ce qu'ils nommaient liberté. Le but des modernes est la sécurité dans les jouissances privées, et ils nomment liberté les garanties accordées par les institutions à ces jouissances".

Hobbes there is only one kind of freedom to protect: "natural liberty, which only is properly called liberty" (Hobbes, 1996[1651]: 147)[12], Constant speaks of a plurality of freedoms, which he nevertheless conceives of as being derived from individual freedom. While for Hobbes the state merely guarantees life, for Constant it guarantees first and foremost that its citizens' private enjoyments, moral improvement (now become a private matter) and private happiness will not be interfered with. Since the modern citizen determines for himself his own definitions of morality and happiness, these are all so different that they cannot be predefined by the collective or by political power.

Constant's concept of individual freedom resolutely conforms to modern Liberalism's anti-Aristotelianism, in that he refuses to identify the motives of the individual with the aims of the polity – an identification that is central to Aristotle's *Politics*. Thus, the process of rebalancing the relationship between self-referential political freedom and individual freedom must on the one hand consider politics' lack of material competence for what Constant sweepingly refers to as *la vie privée,* and on the other the pluralisation of forms of self-realisation, which are no longer exclusively focused on the political field – having become, to a significant degree, relegated to social spheres outside politics. The pluralisation of forms of self-realisation is accompanied by the differentiation of the modern personality, a development paradigmatically described by Simmel. This personality increases its own freedom by means of multiple relations and forms of dependency that have become interchangeable. I shall return to this later. It corresponds to a conception of the modern individual, established since the European eighteenth and nineteenth centuries, as one whose happiness and moral improvement is based on their autonomy, and

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[12] Hobbes goes on to say: "Whether a Common-wealth be Monarchical or Popular, the Freedom is still the same" (Ibid., p. 149). A hundred years later, Locke famously declared the protection of property to be the paramount task of government.

therefore does not coincide with any instance external to themselves – whether it be God, the sovereign or the collective.

Constant's writings on modern individual freedom are both analytic and semantic. Their analytical component reacts to a long-term transformation in the form of social differentiation and identifies individual freedom, which presents itself in a multitude of forms and requires political protection, as an indispensable part of this transformation. At the same time, his writings and lectures have a political intent. The new patterns of differentiation they identify are used as part of a programme of the Liberal reform movement, becoming battle cries in the contemporary struggle over how the new social order is to be interpreted and institutionally shaped. Thus for Constant's contemporaries – and even for today's Critical Theory – the concept of striving for the *good life,* whose aims are supposedly identical for both the individual and the community, is the basis of a normatively-grounded social theory. It imagines that normative integration can produce both critical potential and the guarantee of social stability based on a counter-factual notion of the good life that is binding upon all[13].

Money, Power and Societal Morphogenesis

As Simmel and Luhmann show, in Modernity the meaning of society's normative integration is relativised in favour of a variety of stabilising mechanisms; among these are power, law, money, art,

[13] Juliane Rebentisch takes a different view, analysing aesthetic critique and aesthetic transformation as a way of enabling a particular form of freedom and using a diachronic perspective to show this to be a thoroughly controversial element in political semantics (see Rebentisch, 2014[2012]). Axel Honneth's proposal to normatively reconstruct a theory of justice by developing it as a social analysis (Honneth, 2011: 28ff., and *passim*) follows the Hegelian tripartite division between bourgeois society, contract and politics, and politics, state and the family, and the idea of making these retrospectively dependent on institutions in order to distinguish between legal, moral and social freedoms. Here, art is given the task and the responsibility of observing pathologies, and not of enabling and realising freedom. Neither religion nor science has any systemic place in this scheme.

intimacy/love and truth. The stabilising effect of political power that limits itself through laws is based on the distinction between morality and legality described above. Since morality became a private matter and part of how the modern individual affirms itself, political power, having become autonomous, can now only be legitimised by the rules it sets upon itself, and no longer by morality. The medium of money acquires an equally important stabilising function for the new form of differentiation, one that operates beyond political reflection. Constant imagines that the forms of trade made possible by the money economy will broaden individual freedom and stabilise the new order: "Ultimately trade creates in people a strong inclination towards personal independence. Trade meets their needs, satisfies their desires and does all this without the influence of state power" (Constant, 1997[1819]: 600; own translation)[14].

Thus, a politics that has become self-referential is not enough in itself to satisfy individuals' needs and their pursuit of happiness and enjoyment. For the latter, an economy is needed, which for its part establishes itself in the course of society's morphogenesis as a self-referential universe of meanings, one whose self-referentiality is made possible through the medium of money. All Liberal political movements, from those of the nineteenth century down to contemporary variants of Neo-Liberalism, have reduced this programme of making the economy autonomous to the programme of an autonomous market. And this despite the fact that the chief witness of classical Liberalism, Adam Smith, thought beyond this formulation by recommending public schools as a means of compensating for the untrammelled forces of the market (Holmes, 1984 and 1985). This calls to mind the transformation of the security state into the welfare state, which in the nineteenth century becomes the contested reality between Liberalism and

[14] "Enfin le commerce inspire aux hommes un vif amour pour l'indépendance individuelle. Le commerce subvient à leurs besoins, satisfait leurs désirs, sans l'intervention de l'autorité".

Socialism and the semantic of freedom associated with social justice. Indeed, the medium of money, which is such a prominent aspect of Constant's analyses, and which recurs in Simmel's work, lends property a greater mobility. This description reacts to the structurally-determined social consequences of the transition from landed property to monetary property. Unlike landed property, which is constantly vulnerable to interventions by the state, money can escape or hide. However, it was specifically those forms of trade that transcended the territory of the state that promoted an expansion in human freedom and in so doing became outstanding catalysts of the new order.

This insight in Constant's analyses can today be read as a study of a globalisation driven by the medium of money. As was anticipated, this kind of trade could escape the grip of the nation state and at the same time bring people closer together as citizens – in the sense of Kantian citizens of the world – by establishing common areas of cultural understanding[15]. Even in the eighteenth century, this observation was leading to controversial conclusions: in 1748 Montesquieu wrote: "although the commercial spirit binds nations together, it does not bind private individuals together in the same way" (Montesquieu, 1951[1748]: 586, own translation)[16].

This emphatically introduces a structural feature of modern sociation, which in one respect disassociates people and in another associates them, and is further developed around 1900 in Simmel's theory of individual freedom. Simmel describes mutual indifference and the removal of chains of reciprocal obligation as one of the

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[15] "Trade has brought the nations closer together and given them almost the same customs and habits; though their leaders may be enemies, the peoples of the world are like the citizens of one and the same country" (Constant, 1997[1819]: 615, own translation; orig.: "Le commerce a rapproché les nations, et leur a donné des mœurs et des habitudes à peu près pareilles; les chefs peuvent être ennemis; les peuples sont compatriotes").

[16] "Mais, si l'esprit de commerce unit les nations, il n'unit pas de même les particuliers."

essential conditions and consequences of modernity's structural expansion of freedom. He identifies the medium of money as the outstanding catalyst of this social transformation.

Money Form and Individual Freedom in Simmel's Work

One of the main themes in Simmel's sociology is the manner in which modern individuality and freedom is induced and facilitated by social differentiation. However, it is Simmel's study of the modern money economy that offers an exemplary and striking analysis of the relations between interpersonal and individual freedom and social differentiation (Simmel, 2007[1907]). He does not choose the medium of money by chance; rather he is concerned with identifying systematic connections between the money form and the genesis of forms of modern freedom and belonging, relationships which go beyond a mere claim of correlation. Simmel ascribes modern money economy as special kind of reciprocal dependency, which at the same time allows for a maximum of freedom. Thus famously in Simmel's sociology, the form of individuality characterised by belonging to many different associations, a form that is typical for modernity, is shaped and articulated by reciprocality and the 'point of intersection between social circles', and constitutively linked to the social form of freedom. The fundamental insight of Simmel's social theory, that individuals live in reciprocality with each other and that these reciprocality give rise to trans-individual social forms, cultural objectifications and self-referential universes of meaning – which themselves play a part as elements in the social operations described as reciprocality – also has consequences for the categorical determination of the social form of freedom. As mentioned at the beginning, a specific characteristic of this insight of social theory is that substances are dissolved into forms and events of reciprocality are understood as the subject of sociological descriptions[17].

[17] I refer here to a reading of Simmel's sociology as differentiation theory, structural theory, form theory and cultural theory. This enables us to place Simmel

From this sociological point of view, then, individual freedom is not the pure "inner condition of an isolated subject" which must be protected, but a "phenomenon of correlation", a particular form of relationship that loses its meaning when it loses its counterpart (Simmel, 2007[1907]: 299). Modern individual freedom is therefore both a relationship and a form of self-referentiality. Simmel describes self-referential freedom as being synonymous with the development of modern individuality, as the "conviction that we are developing the essence of our selves by our own desires and feelings" as a "feeling of inner independence", as the "feeling of individual self-sufficiency", as independence from the will of others, which begins with "independence from the will of specific individuals", and he defines the category of freedom as a very specific relation to others, and precisely not as a lack of relationship or the absence of sociality (Simmel, 2007[1907]: 298f)[18]. How, then, does this paradoxical relationship – so characteristic of Modernity – between extra-societal individuality and belonging, between self-referentiality and social relationship, take shape?

Simmel's solution to the problem can be conclusively summarized in three systematic arguments, bringing together the objectification of culture, the depersonalisation of social differentiation and the temporalisation of dependencies. That is to say, it is characteristic of modernity that an objectification of life contents in trans-individual form in the objective, factual dimension is accompanied by an increasing depersonalisation of differentiation in the social dimension, together with the temporalisation of various

in a theoretical tradition descending from Dilthey to Luhmann, and to emphasize the simultaneity of cultural and structural analysis (and recently Martin Petzke's 2011 article, which is influenced by structural and cultural theory; see also Tenbruck (1994[1959] and note 4, above).

[18] Als "Überzeugung mit allem einzelnen Wollen und Fühlen, den Kern unseres Ichs zu entfalten", als "Gefühl der inneren Unabhängigkeit", als "Gefühl des individuellen Fürsichseins", als Unabhängigkeit von dem Willen anderer, die mit "der Unabhängigkeit von dem Willen bestimmter Anderer" beginne (Simmel, 1989[1900]: 396f.).

dependencies in the temporal dimension. It has frequently been observed that, for Simmel, the measure of a culture is the number of different social circles an individual operates in. At issue, however, is not only a quantitative increase in the number of associations the individual is a member of. More important is the change in the type of 'associative relations' towards an increasing objectification of interactions between individuals incorporated into them as *persons*.

For Simmel, it is only an individual's unique combination of forms of belonging – not the fact "that he is this *or* that, but that he is this *and* that" – that makes him a distinctive personality, which, though socially produced, does not exist socially as a unity. Simmel outlines this new form of individuality and belonging in several of his writings in contradistinction to Medieval corporations. Thus as a life community the guild does not distinguish between the human being as a human being and the human being as a member of an association; "it enclosed within its sphere the general economic, religious, political and familial interests alike" (Simmel, 2007[1907]: 344)[19].

It is at first money, which Simmel ascribes the capacity both to dissolve and create relations, that has given rise to forms of association which make it possible to collaborate with others without having to surrender any of one's own personal freedom and reserve. This becomes primarily clear in modern forms of inclusion and anonymous relationships of dependency. This partly inspires his discussion of the 'inclusion individual' of tradition, which is distinguished from the 'exclusion individual' of Modernity and which, by virtue of his uniqueness, distinctness and self-referentiality, operates in a radically 'extra-social' manner. It is the *person* who is incorporated into and enmeshed in social interactions, who reacts only to structural regularities and does not act as a

[19] "[...] sie zog das gesamtwirtschaftliche, wie das religiöse, das politische wie das familiäre Interesse gleichmäβig in ihren Kreis" (Simmel, 1989[1900]: 393, 465).

unique, distinct and self-referential *individual*[20]. Thus, for example, as mere functionaries, public officials are almost completely interchangeable. The predictability of bureaucratic procedures is based precisely on the fact that particular decisions are made independently of the official's personal qualities. Whatever personal qualities a buyer might have are a matter of indifference to a seller. Conversely, anyone with money is entirely free to spend it on whatever he wants, so long as he can afford it. Thus it is the modern individual's multiple affiliations by factual relevance to social circles or subsystems, and his relations towards particular outcomes, that liberate his extra-social self-referentiality and at the same time relieve sociality through relations of indifference that generate freedom.

For Simmel, cultivating "the personality out of the state of indifference to the contents of life, the way in which, from the other side, the objectivity of things evolves," is also how freedom comes into being (Simmel, 2007[1907]: 302)[21]. This is based on an observation that a rigorous training in impersonal concepts goes hand in hand with an analogous training in individual freedom. And Simmel strongly emphasises that he identifies the direction in which modern society is developing with an 'expansion of freedom' in the sense of individual freedom of choice. "The whole type of development indicated here is subject to the tendency for freedom to increase: though it does not remove the bonds, it makes the issue

[20] For the distinction between an individuality of inclusion and exclusion based on a theory of differentiation, see Luhmann (1989); on the distinction between an individual and a person, see Bohn (2006). My argument is that the medium of money is a crucial catalyst for inclusion in modern monetarised economies (see Bohn, 2009).

[21] Ein Herausbilden "der Persönlichkeit aus dem Indifferenzzustande der Lebensinhalte, der nach der anderen Seite hin die Objektivität der Dinge aus sich hervortreibt" (Simmel, 1989[1900]: 402).

of to whom one is bound the cause of freedom" (Simmel, 1992[1908]a: 458; own translation)[22].

According to him, human beings at an earlier stage of historical development paid for the fewer dependencies they had with a narrower range of personal relations, many of which were irreplaceable, while we are "compensated for the great quantity of our dependencies by the indifference towards the respective persons and by our liberty to change them at will" (Simmel, 2007[1907]: 296, 299)[23]. Freedom itself becomes a mode of association.

For Simmel, a change in degrees of freedom can be described as an alteration in the type of obligation prevalent in society, and is nothing other than a specific form of relationship for creating and dissolving social bonds. And once again, the medium of money appears as by far the most suitable bearer of the typically modern relation between attachment and dependence: although it creates relations between people, "it leaves them personally undisturbed; it is the exact measure of objective achievements, but is very inadequate for the particular and the personal"(Simmel, 2007[1907]:

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[22] "Überhaupt untersteht der ganze angedeutete Typus der Entwicklung der Tendenz auf Vermehrung der Freiheit: sie hebt zwar nicht die Bindung auf, aber sie macht es zur Sache der Freiheit, an wen man gebunden ist".

[23] Während "wir für die Vielheit unserer Abhängigkeiten durch die Gleichgültigkeit gegen die dahinterstehenden Personen und durch die Freiheit des Wechsels mit ihnen entschädigt" würden. Und weiter heißt es: "Die allgemeine Tendenz aber geht zweifellos dahin, das Subjekt zwar von den Leistungen immer mehrerer Menschen abhängig, von den dahinterstehenden Persönlichkeiten als solchen aber immer unabhängiger zu machen. [...] Die Ursache wie die Wirkung derartiger objektiver Abhängigkeiten, bei denen das Subjekt als solches frei ist, liegt in der Auswechselbarkeit der Personen: in dem freiwilligen oder durch die Struktur des Verhältnisses bewirkten Wechsel der Subjekte offenbart sich jene Gleichgültigkeit des subjektiven Momentes der Abhängigkeit, die das Gefühl der Freiheit trägt" (Simmel, 1989[1900]: 396, 398).

303)[24]. An example of such a transformation is the replacement of payments in kind by money payments, which appears in his analysis of the expansion of the principle of material differentiation, and is accompanied by phenomena of the increasing depersonalisation of social relations and abstraction of social categories. While payments in kind bind the recipient to render some personal service in return, and to other relations that are entirely asymmetrical, money payments in the form of wages, interest or taxes take no subjective elements into account, embracing instead a general tendency towards the abstraction of social categories. Examples of this are the categories of the wage labourer, the tax-paying citizen and abstract, relational categories like debtor and creditor, who are anonymous to each other.

The same is true of economic circulation mediated through money, which brings with itself a vast increase in freedom. The medium of money makes it possible to enter a relation of exchange, trade or credit that is objective, temporal and social: objective, in that it can be in return for any other object; temporal, in that it can take place at any moment in time; and social, in that it can be with any other person. If we add the spatial dimension and the medium's capacity to be transformed into different currencies, then relations can also be established in any other place. In quantifying the spread of this relation and the almost unlimited number of ways in which money can be used, Simmel finds an answer to the question he repeatedly poses in his study: "how far the money economy is able to increase individual liberty to its fullest extent, that is to release it from that primary form of social values in which one person has to be deprived of what the other receives" (Simmel, 2007 [1907]: 294)[25].

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[24] "…aber es läßt die Menschen außerhalb derselben, es ist das genaue Äquivalent für sachliche Leistungen, aber ein sehr inadäquates für das Individuelle und Personale an ihnen" (Simmel, 1989[1900]: 404).

[25] "(...) inwieweit die Geldwirtschaft imstande ist, das Gut der individuellen Freiheit seiner Gesamtsumme nach zu erhöhen, d. h. es aus jener primären Form

That these various forms of exchange increase the 'quantity of enjoyment' by increasing the absolute sum of subjectively perceived values is not the only argument advanced here. More important is an objectively expansionary relationship among trans-individual values by means of an 'intercellular growth'. This means an 'objective economic productivity' in the field of the economy as well as an increase in the quantity of goods through the circulation of money – letting money find the productive producer. In other fields, these inner-economic principles are comparable with the increase in knowledge as a result of new scientific findings, with a general sharing in intellectual property and intellectual goods – in other words, intellectual property rights – and with moulding life into "conceptual and aesthetic images", which Simmel describes as a growing "objectification of the contents of being". They stand paradigmatically for a new form of social values, which can be enjoyed without depriving others of them. At issue is always how to produce new trans-individual values which have not been drawn from an already existing supply. In this expansionary logic caused by the increase in trans-subjective values, Simmel sees an opportunity for civilising culture, and the possibility of reducing "humanity's tragedy of competition", though admittedly the latter follows its own logic in individual social circles and social fields (Simmel, 2007[1907]: 291). Simmel argues for developing the economy's own self-referentiality, since it is only by objectifying and depersonalising the economic universe in this way that individual freedom can be increased.

> Only through the growth of the economy to its full capacity, complexity and internal reciprocal effects does that mutual dependence of people emerge. The elimination of the personal element directs the individual towards himself and makes him more positively aware of his liberty than would be possible with

der sozialen Werte zu erlösen, in der dem einen genommen werden muß, was dem anderen gegeben werden soll" (Simmel, 1989[1900]: 390).

> the total lack of relationships (Simmel, 2007[1907]: 303, revised translation)[26].

Thus, for Simmel, self-referential individual freedom is also linked to the self-referentiality of related objectivised complexes of meaning. Constant had already spoken of how political freedom is indispensable to the development of individual freedom, and vice versa[27]. For Simmel, however, differentiated systems of meaning and their media do not just enable but also limit and specify individual freedom, a freedom that Luhmann will come to call the freedom to act and communicate. Just as the nature of the medium of money essentially supports the development of individual freedom, so Simmel finds its limits are grounded in material logics and the medium of money itself. The individual freedom that is mediated by money is not only limited by people's spending capacity based on income, but also by volatility of the value of money caused by forces internal to economy[28].

Contingency, Self-referentiality and Luhmann's Critique of Legal Theory

Freedom also appears in Luhmann's social theory as a semantic figure that is analysed and reconstructed in its structural and historical context. While in Simmel and Constant's work the central

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[26] "Erst indem die Wirtschaft sich zu ihrer vollen Ausdehnung, Komplikation, innerlichen Wechselwirksamkeiten entwickelt, entsteht jene Abhängigkeit der Menschen untereinander, die durch die Ausschaltung des persönlichen Elementes den Einzelnen stärker auf sich zurückweist und seine Freiheit zu positiverem Bewußtsein bringt, als die gänzliche Beziehungslosigkeit es vermöchte" (Simmel, 1989[1900]: 404).

[27] I do not intend to discuss Simmel's relationship with Liberalism here. For an example of this, see Dodd (2014: 323), which refers to the opposite poles of Liberalism and Socialism as contemporary intellectual political positions in the last chapter of "The Philosophy of Money". Here, Simmel argues that Liberalism gives rise to its own negation.

[28] For Simmel's theory of value, see Milà-Cantó (2005).

concept is still that of individual freedom, in Luhmann's social theory it is the concept of contingency. Freedom, being too emotive a term, is consigned to the realm of widely circulating semantics and no longer serves as an analytical concept[29].

Simmel had associated modernity's expansionary logics with objective differentiation and the quantitative increase in trans-subjective values, linking their effects to both the expansion in the total amount of individual freedom and its self-generated restriction in specific fields. Luhmann takes as his starting point for the expansion of modernity's structural and semantic potential the problem of *contingency,* which is specified in subsystems. Thus individual actions, functional procedures and communicative associations are all contingent, which is to say that they could always have been otherwise[30]. But although possible alternatives are contingent when considered in themselves, the way in which they interrelate with each other is not. In money economies that have become differentiated and self-referential, the principle of self-created scarcity prevails over the principle of legal conformity, because positive law no longer recognises the stipulations of natural law. Both principles simultaneously establish spaces of possibility and set limits upon them (Luhmann, 1992 and 1993; Hahn, 1998

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[29] As a structure in terms of an expectation of expectation, reciprocal freedom as double contingency is systematically assumed for Alter and Ego, in the theory of symbolically generalised mediums (Luhmann, 1997: 316ff). Thus, for example, power - distinct from compulsion and violence - is conceived as a way of avoiding alternatives which itself is based on the freedom of those participating in the communication of power. "Thus, the limit of power lies where the ego begins choosing one alternative of avoidance over another, and [in so doing] makes use of power to force the other to stop or to impose sanctions"; "Die Grenze der Macht liegt also dort, wo Ego beginnt, die Vermeidungsalternative zu bevorzugen, und selbst die Macht in Anspruch nimmt, Alter zum Verzicht oder zur Verhängung der Sanktionen zu zwingen"; Luhmann, 1997: 356). The medium of money corresponds to the freedom of its use and re-use in material, temporal and social forms, love is based on the freedom to choose one's own partner.

[30] On the concept of contingency as a double negation of necessity and impossibility see also note 7, above.

and 1987). In his early analysis of freedom as a basic right, Luhmann comes to the conclusion that the fundamental legal guarantee of freedom in western modern society is "nothing other than that a guarantee of opportunities for communication" (Luhmann, 2009[1965]: 23)[31]. In this analysis, which is concerned with the conditions of possibility of social differentiation and freedom, the basic right to property does not function to protect the individual and his personality, as the Liberal position would have it. Rather the basic right to property enables the inclusion of persons in monetarised forms of economic communication, and is therefore a condition of possibility for the generalisation of money as a medium of communication.

Two examples are instructive of how contingency and freedom interrelate within this theoretical architecture. The emergence of the consensual contract raises the question of why an act of free will should be legally binding. Its institutionalisation in the history of European law, from the period of Medieval Scholasticism down to the present, provides that when a person declares their act to be freely made, it is binding. And Luhmann derives from this the rule of the "non-contingent interlinking of the contingent as a condition of possibility for freedom" (Luhmann, 2013: 58)[32]. At issue is a semantic, socially institutionalised version of the problem of how to produce legally binding force under conditions of individual freedom. My second example is taken from a semantic study of the invention of the legal figure of subjective rights, and starts from the paradox of "subjective rights", since a right is always supposed to be objective and universally valid (Luhmann, 1981). Luhmann offers a structural interpretation of this figure as a dissolution of status-based reciprocal expectations among differentiated social segments because it makes possible the necessary structural increase in freedom for accepted forms of behaviour. In semantic terms, it

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[31] „[....] nichts anderes als eine Garantie von Kommunikationschancen".

[32] Die Regel der „nichtkontingenten Verknüpfung von Kontingentem als Bedingung der Möglichkeit von Freiheit".

functions as a forerunner for the great instruments of positivistic law, such as the statute and the contract, both of which are based on the individual's voluntary participation. The legal basis of an individual's rights now becomes the individual himself, who must now be understood as a subject. What is legally innovative about this new figure becomes especially clear when the semantics of freedom changes.

Only a few stages of this process need be mentioned, which occur both synchronously and diachronously. One is the subjectivisation of natural law in Hobbes, the Western European natural law that conceives of the state as an instrument for protecting individual rights. After Kant, freedom comes to be guaranteed as a right, primarily as a way of enabling the individual to relate his behaviour to the moral law. According to Kant, true freedom is not freedom from laws but freedom in laws. He is a proponent of a powerful concept of freedom, one that unites freedom and duty in a single stroke, while viewing this paradoxical construction through the – now admittedly questionable – formula of self-imposed laws[33]. As a result, freedom becomes a fundamental concept of law, and the nexus between individual freedom and law becomes, as mentioned above, institutionalised in modern Western constitutions. Finally, the semantics and practice of the Western

[33] Khurana has described the paradoxical structure of a legislative autonomy based on reason as the self-undermining constitution of Kant's "Metaphysic of Morals"*:* autonomy in the legislative sense demands that we are only bound by those laws that we have given ourselves. This means that, in the act of legislating, the subject is not determined by anything external to it, while at the same time is able to offer reasons for adopting the legislation, in order for its act not to be arbitrary. In this sense, the law adopted depends on an anticipated law that has not been freely adopted in the same way. Khurana concludes from this that autonomy grounded in such a manner turns into an order of heteronomy. An alternative would be to conceive of freedom as a mode of its effect in the constitution of a practical relationship to oneself. This happens in the form of an appropriation that allows me to constitute myself in it and as a participant in rule-based practices, as whose initiator I can understand myself – and not as an act of adopting a law (Khurana, 2011: especially 12ff.).

European welfare state develop a version of subjective rights that guarantees the free development of the personality through the allocation of goods and opportunities. Freedom is always presupposed as a fact, it becomes in itself a source of law, one that is derived from a historically specific concept of the subject. The criticism associated with this kind of legal theory is that although modern European law is differentiated as a self-referential system of meaning, and although it makes unusually powerful use of the application of the law in comparison with other cultures, it does not actually rely either on the juridical control of decision-making practices nor on the study of the latest academic developments in legal theory[34].

Thus the law understands itself as a guarantor and protector of individual freedoms, but does not attempt to shape or reflect the legal system's own freedom as autonomy in terms of the twofold freedom already described. For example, the typically modern form outlined above, which comprises persons who are included in the system and individuals who exist outside it, is systematically overlooked, despite being highly relevant to legal practice. One need only consider the various legal provisions by which citizens are included: the right to education, the rights of the citizen, the right of

[34] "Legal doctrine is useful when it finds itself needed for developing concepts and definitions, with a combination of historical materials. No meaningful idea is left out. Subjective right is will, responsibility, interest and legal authority, just as if it were a question of holding together the totality of useable theories and offering them to be chosen when needed. The critique of that determinate version is then incorporated – and the concept can accordingly again be uncritically used by the needs of practice". Original: "Die Rechtslehre hilft sich, wo sie sich zu Begriffsarbeit und Definitionen genötigt sieht, mit einer Kombination historischer Materialien. Keine bedeutende Idee wird ausgelassen. Das subjektive Recht ist Wille, Zuständigkeit, Interesse und Rechtsmacht zugleich, so als ob es gelte, die Gesamtheit der brauchbaren Theorien zusammenzuhalten und für praktische Auswahl bereitzustellen. Die Kritik jeder bestimmten Version ist dann inkorporiert – und der Begriff kann entsprechend den Bedürfnissen der Praxis kritiklos weiterbenutzt werden" (Luhmann, 1981: 98; see also Luhmann, 2009[1965]).

marriage, property rights. The fact, however, that there are *subjective rights* is itself thanks to a settlement of the modern legal system. By contrast, legal theory takes abstract legal subjects as its starting point, who already have rights by virtue of being subjects. From the point of view of social theory, this is the consequence of positivising the legal system, a process that the legal system itself renders opaque. The treatment of individual freedom in Western European law is not simply based on the unique nature of individuals or 'subjects'. Its real basis is the factual differentiation of objective systems of social meaning, which is spreading across the world and which is challenged whenever it confronts new cultural irritations. It is evident that the pluralisation of different concepts of the law and the experience of different legal cultures has long ago put the universality of a Western European semantics of freedom into question.

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RICCARDO PRANDINI

Simmel and Luhmann on the parallel development of individual and social self-referentiality

In her contribution C. Bohn shows the 'twofold logic of modernity's freedom'. Commenting on Simmel's work, she points out the paradoxical condition in which social actors - as human beings - are entrapped. They are simultaneously included and excluded in society: free and constrained; social producer and socially produced, etc. Ours is a society in which observers observe a world that not only operates circularly, but whose they belong, and know it. Introducing the concept of *Wechselwirkung* at the core center of sociology, Simmel enormously helped us to explain the circularity of modern Western society. But this 'human condition' - if not simply avoided through theoretical oversimplifications of sociological individualism and holism - was dramatically pictured as a 'tragedy', a contradiction, a conflict: for example, the famous tragedy of culture occurred as the massive amounts of objective cultural products - gaining autonomy from social actors - overshadowed (and overwhelmed) the subjective abilities of the individual to understand and control them. To Simmel individuality, fragments, content, life are always doomed to be contrasted by collectivities, wholeness, forms, death: and this struggle is simultaneously the condition of possibility of the conflicting elements. The conflict between life and form is the best example.

Bohn elaborates on this *Weltanschauung*, referring directly to the twofold modernity's freedom: "the individual freedom (…) on the

one hand; and, on the other hand, the freedom of self-differentiating, objective complexes of meaning that are supra-individual in nature". She is very clear in claiming two crucial points: 1) the so-called individual freedom (and more generally the 'individuality' of individuals), necessitate the development of specific freedoms elaborated by self-differentiated social spheres ('sub-systems' in Luhmannian terms); 2) there is no necessity in the parallel between objective and subjective developments, since each of them unfolds by an inner logic that is fundamentally distinct.

In my short comment I would like to: 1) support the first point by two examples, stressing that individuals are not 'part' of society. Society is not made by individuals: individuals are outside society and, due to this separation, they are indispensable for society operations. Society is made of communications, that do not coincide with the thoughts of participating individuals, "although they require that there are individuals thinking about what is communicated (said, read, broadcasted)" (Esposito, 2017); 2) complicate critically the second point, arguing that the parallel developing logics of societal sub-systems and individuality are considered in a very different way by Simmel and Luhmann. The latter observes how society draws new distinctions to overcome the never-ending emergence of paradoxes in its communicative streaming, in order to continue its autopoiesis. To him the conflict between life and forms or the tragedy of culture are only semantic devices useful to impede that communications break down. On the contrary, Simmel always tries to find a balance between the circularity of cultural objectivations and their re-subjectivation, which he claims to be the true measure of cultural complexity and modern individuality.

The first point can be argued following the classic work of Simmel about the correlation between interlacing-differentiated social circles and the development of modern personalities. In Bohn theorization, modern individual's multiple affiliations liberate their personal powers and at the same time relieve sociality through relations of indifference generating modern freedom. "The

Philosophy of Money" is a thick narration of the emergence of freedom through indifference. Simmel shows that at an earlier stage of historical development, human beings pay a narrower range of personal relations, many of which were irreplaceable, for the fewer dependencies they had; in modernity, instead, social actors are "compensated for the great quantity of our dependencies by the indifference towards the respective persons and by our liberty to change them at will" (Simmel, 1990[1900]: 269). To disentangle the paradoxical co-evolution of more social constraints and more individual freedom - a condition where freedom itself becomes a way to manage social bonds - it is necessary to introduce a new symbolic and generalized medium of communication: money. Through money society accomplishes to draw a new distinction between the 'person' (the social side of human being) and the 'individual' (the not socialized side). Only by means of this distinction, it is possible to distinguish the human being in a public 'person' and a private 'individual'. A 'zone of indifference' is interposed between sociality and individuality, allowing to observe oneself as more free and independent. However, this observation is only possible because of its 'blind spot': individual freedom is based on social constraints. In other terms, new dependencies generate new independencies, or as Luhmann puts it: modern society is structured by the non-contingent correlation of the contingent as a condition of possibility for freedom. Everything can be observed as contingent, but at the same time we experience a strictly structured society. We must define this not only as the 'contingency' of social action, but as double contingency: the circular condition in which the possibilities of each action depend on the possibilities of the others and vice versa.

This paradox is illustrated by Bohn through the example of modern constitutionality. For Luhmann the constitution represents a 'structural coupling' between politics and law (Prandini, 2013) and Bohn affirms that it can be interpreted as an answer to the problem of balancing individual freedom and political power, since legal limits can be set upon political power in the interests of individual

freedom. She affirms that in order to control the arbitrariness of power, individual freedom itself has to become a right: that is why rights become the "enabling powers" of freedom (Thornhill and Blokker, 2017). From the period of Medieval Scholasticism down to the present, the legal discovery of subjective rights is a paradox as a right is always supposed to be objective. On the one hand, freedom is already presupposed as a fact and becomes in itself a source of law; on the other hand, subjective rights are only possible because of a settlement of the legal system. Its real basis is the differentiation of material systems of social meaning (the law's system), no matter if academic developments in legal theory recognize this social dependency or not. From the point of view of social theory, individual freedom and the modern functional form of social differentiation enable each other mutually (Teubner, 2006).

This circularity leads to paradoxes (what is fundamental in subjective rights? Their subjectivity or their positive legality?), that have to be deployed. A new deployment is given by the reference to human rights conceived as unquestionable and fundamental values. Bohn recognizes that Constitutions and subjective rights develop together accompanied by the emergence of a new juridical semantic globally recognized as hyper-value: human rights. She observes that "from a world-societal point of view, it is not in its normative but in its decontextualized symbolic efficacy that the formula for human rights lends itself to promoting plurality among heterogeneous practices that appear incompatible with one another". Here again Luhmann docet! In his lectures on the indispensability of norms in contemporary societies (2008), he questions how it is possible that normativity doesn't end in 'arbitrariness' or decisionism' in a society which permits such a huge amount of contingency. If everything is possible differently, why is there something that endures? Or, expressed in another way: how is it possible to differentiate something new from something old? Luhmann rejects the older solutions represented by transcendental (religion), reasonable (positivism) or societal (political) foundation of law. He focuses his attention on a process, able to introduce new

'content' in the old 'medium' of law continuously, a very similar process to those individuated by Simmel within the dialectic between life and form. Luhmann affirms that "what one can observe is however a very primal way of generating norms on the basis of scandalous incidents to which the mass media gives global coverage" (2008: 33). In the streaming of societal communications what is needed is a new form of "punctuation" based on immediate and easy-perceivable threats:

> on a much more immediate level, scandal itself can generate a norm (that was not previously formulated at all) in cases like forced deportation and resettlement, the traceless disappearance of persons accompanied by state obstruction, illegal incarceration and torture, as well as political murder of every type. One who reacts indignantly and expresses counterfactual expectations in such cases does not have to reckon with dissent – almost as though the meaning of the norm was vouched for by sacred powers (Luhmann, 2008: 33).

Within the circularity of self-referential processes, a hetero-referentiality capable to deploy the paradox is necessary. This analysis changes the way in which the indispensability of norms becomes a problem:

> realistically viewed, it is not a matter of conclusive formulas for an edifice of norms, nor of principles, nor of a basic norm, nor even of a highest value that encompasses and trumps all others. But it is also not a matter of postponing decision until not coerced discourses have led to a reasonable result that will produce consensus among all sagacious individuals who only require certain procedural guarantees for this. Viewed cognitively, it concerns paradoxes – the self-blockage of knowledge that is not resolvable logically, but only creatively. And normatively viewed, it is about scandals with norm generating potential (Luhmann, 2008: 35).

So far we noticed the similarities between Simmel and Luhmann in diagnosing the circularity of Modernity, its contingency and

paradoxicality. But at the end of the day their philosophical styles seem to be absolutely different. Luhmann is definitely petrified by the idea of 'Wholeness'. Its critical reference point is the Hegelian's failure to find an Absolute Spirit capable to unify all the differences. Luhmann's thought aims to maintain the difference between system/environment, opening space to draw new distinctions. His theory is based on differences and ends with differences. That is why he cannot think about any final synthesis: "draw distinctions", this is the Commandment. The relationship between society (communications) and embodied psychic systems (though, not exactly individuals) is one of mutual closure. What really happens to psychic systems, in a hyper complex anonymous matrix of communications, it is not a sociological issue. Luhmann is only interested in observing new forms of 'person' and their differentiation from the 'individuality' which remains unknown.

On the contrary, Simmel was always interested in finding a synthesis among the fragmentariness of life: what he called a "Third realm", a future realm which was not one of simple reconciliation between opposed concepts of life, but a path in which life would take over and flow through contradictions. That is why, as Darmon and Frade underlined,

> Simmel's quest for the unveiling of meaning turned him away from an analysis of the encroachments of money on all spheres of life and the reification of relations, and thus away from a critique of contemporary capitalism, and rather led him to subsume this analysis under a more general understanding of money as symbol of life through its endless dynamic of form-giving and form-submerging (...). Money is, in each moment, the confluence of the contraries, movement and constancy, indifference and value (Darmon and Frade, 2012: 205).

His research of a balance through permanent imbalance was aimed to find a new and creative relationship between society and individuality which cannot be conceived as parallel and

autonomously developing, but rather as mutually challenging and enriching.

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MONICA MARTINELLI

Freedom Beyond Any Dualism

In this contribution, I would like to focus on some topics from Cornelia Bohn's extended analysis in order to highlight issues I consider crucial in Simmel's thought as they can open up the horizon beyond the paradoxical destiny of freedom in western

Modernity - the dualism into which the 'twofold freedom' can be trapped. I will briefly consider freedom as a matter of individual, of society, and of the correlation between both. Starting from the latter and moving towards the first, points about freedom as a matter of sociology will also be discussed.

i) The *individual-society correlation* is the common thread in Simmel's sociology. As outlined by Bohn, "the analyses of individual and society should in no way be understood as mere addendums to the main argument". Many misunderstandings about freedom derive from this negligence.

In his analysis on the two typical forms of modern individualism - "quantitative individualism" (or "individualism of singularity") and "qualitative individualism" (or "individualism of uniqueness"; Simmel, 1999: 146; my translation; see also Simmel, 1950a, 1957), connected with the modern individual cry for freedom -, Simmel affirms that both are noteworthy of the profound internal divide between the individual *and* the social dimension; as if opening up to what is external to the individual (to the otherness of the reality, of the world, of another 'I', etc.) may come about only *after* the construction of the individual identity, or configures itself as a mere functional expedient of isolated particularities.

In this frame, the pendulum always risks swinging between a completely singular, self-referential individual following the abstract idea of an absolute freedom (deprived of any bonds) *and* the desperate search for communitarian forms which brings together many unique individuals, leading them to trade freedom for security.

Despite being diametrically opposite, both the atomistic-individualistic and the organicist concepts have converged in thinking that *neither* society *nor* the individual can be seen as having a shared origin. In this way they both end up in a precarious condition - as proven by recent Western history, too. Several of Simmel's writings focus on the paradoxical consequences: greater dependence; more intense competition; isolation; a solipsistic tackling of problems.

Simmel – who defends individuality - unhinges the absolute individualistic notion. At the same time, he denies a substantial notion of society: "society is not an absolute entity" (Simmel, 2004b: 174).

Since his great early work, he stresses the importance of "proving the gnoseological impossibility of a division between social structures and the individual" (Simmel, 1991a: 185; my translation) - a scission that leads to sterile oscillations between the opposing mythologies of a subject without a world and of a world without a subject.

In this sense, he regards the individual *and* the social dimension as co-originated realities. Significantly, Simmel speaks of "the whole man/person" ("*der ganze Mensch*") who is not "what remains when what he shares with others is subtracted" (Simmel, 2001: 463; 2010: 147). For Simmel, "only individuals are forms that are relatively closed in themselves" but "with all their interaction with the environment" (Simmel, 2001: 446). Individuality is not identified by a self-referential curve. In fact, the interaction with the world constitutes "the premise of any experience and of any action, of any thought": this is "the fundamental fact" and experience of the human being (Simmel, 1996: 80).

Dualism reinforces a self-referential logic: the alterity of the opposite pole is walled in negativity.

In fact, if the individual and society are *not* co-originated, then the resolution of the tension between the opposite poles is searched in the exclusion of one of them (through fusion, or domination, or indifference). Society claims for itself the right to ignore human beings and their freedom: both are indeed a limit to the system's power. The consequence is a self-referential individual freedom. Such freedom ends up being "linked to the self-referentiality of related systems of meaning" - as outlined by C. Bohn.

The idea here is that the *unity* does not conceive oppositions or alterity; it is just on this point that Simmel critically reconsiders the modern thought on individual and freedom, as stressed on the pure

'I', released from all relations – an issue that supports the idea of a specular, self-referential societal system (see Simmel, 1991a).

In searching how to overcome this dualism, Simmel opens up the possibility of thinking about the unity itself in a different way, in order to grasp the unity which characterises the "whole man", whereby different dimensions coexist but remain different. The unity he looks at is neither a mere juxtaposition of different, self-referential elements, nor the construction of a superior entity having its own substance. He speaks of "dual unity" or "unified duality" (Simmel, 1997b: 60). The discourse is broad. I just want to underline that this duality is a fact of life, and that life is "the original fact" (Simmel, 1971a: 380). Life admits alterity - in fact 'life' *and* 'form' are opposed but not contradictory, correlated while maintaining their difference.

Duality is not a destination point. Simmel outlines a 'third space' that is given by the movement of self-transcendence – which is inherent to life - whereby opposite elements become related. This third space indicates the possibility of relation - *not a generic one*, since it is invested with a particular modality: it does not absorb/destroy one pole or the other, but it maintains the permanent tension between different poles – for example, subject *and* object, individual *and* society – open .

The movement of self-transcendence is the horizon whereby we can safeguard as well as the shared origin of the two poles. From an empirical point of view, this means that society cannot ignore the freedom of the individual, considering individual as a mere product of society. And "individual might safeguard his particular value, without sinking at the same time into the instability of subjectivism" (Simmel, 2004a: 37). The unity between the two poles is not a harmonious goal emerging after the overcoming of the oppositions, but a space whereby the alterity of the other pole is enabled. If individual and society cannot be considered as having the same origin, then freedom is something that must be repressed, because it is seen as a constant threat.

Should individual and social life be considered in their duality, the focus is put on the relational modality – the one which *does not* put issues such as the participation to the creation of a common cohabitation in the background – as freedom, for Simmel, is also a social project and a very positive relation (Simmel, 1950). That is why Simmel states that the deepest way to experience freedom is to enable others, letting them be able to give their own contribution to life: "the symptom of human freedom is that he gives freedom to others (...) There is a deep connection between one's own freedom and the freedom of others" (Simmel, 2004: 109; my translation).

ii) At *the societal level*, a dualistic view is both the cause and the effect of a "nervously excitable and degenerate society" (Simmel, 2008; 173).

Bohn observes that "self-referentiality becomes an operative condition of modern forms of socialisation". It seems to me that this issue constitutes exactly part of the problem that needs to be discussed.

For Simmel, the failure to acknowledge the duality – connected with the 'life-form' dual-unity – ends up producing a sterile condition (existential no less than social) as revealed in the separation between subjective dimension (vital drive, creative energy and imagination) *and* objective, historical forms (represented by human achievements and works, conceptual constructions, technical systems etc.). The resulting dualism between 'objective culture' and 'subjective culture' marks a regression of the culture and of the individuals (Simmel, 1971; 2004b) and lacerates human life.

On the one hand, objective forms, pursuing a self-referential development, are "independent of the spiritual dynamics which created them" till the reification of social structures (Simmel, 1997a: 94). On the other hand, where our existence as expression of the life "attempts to avoid" the paradox of the original duality, it presents "itself, as it were, formless", unlimited; in the end, the actual result "is unintelligible, inarticulate, not an expression of

anything at all, but merely a chaos", a formless chaos (ibid.) where the individual risks being completely fragmented and overwhelmed.

In both cases, the individual abdicates his freedom. In fact, on the one hand, in the uniform and unconditional flux, the individual is forced to continuously adapt to the flow of events: freedom is paralyzed, whether becoming just an adaptive action or being unable to choose since every choice is viewed as a limitation.

On the other hand, in the absolutization of objective forms, a broad-scale inversion is operated: becoming a goal of social and personal life, forms 'determine' personal development. Once again, the individual is undermined and has no alternative but to adjust to the surrounding context under the illusion that an unconditional increase in opportunities, attained through ever more powerful forms (i.e. technical means and systems), may mean increased freedom. In this frame, the "peripheral in life (…) has become master of its centre and even of ourselves" (Simmel, 2004b: 487-488).

According to Simmel, the improvement of individuals in modernity is not granted at all. In any case, the individual is the starting point for a change. Significantly, the challenge that Simmel perceives for his time is the following: "looking at how the individual might safeguard his particular value, without sinking at the same time into the instability of subjectivism" (Simmel, 2004a: 37; my translation).

The issue requires a different anthropological account easing the subject from all reductionisms inherent in the ambiguity of modernity. And easing him from a mere negative freedom – i.e. a freedom 'from': the others, the objects, the world etc. in order to affirm the Self. Because freedom is not a negative one; it has a positive meaning, it is first of all a freedom 'to' (see Simmel, 2004; 1950).

iii) According to C. Bohn, "the genesis of the objects' cultural value – in contrast to the mere material value of the vast number

and variety of cultural elements – could only proceed by re-subjectivising them".

I would add that the process of re-subjectivation is needed for individuals, too; as a condition of their human improvement. I thus arrive at *freedom as a matter of individual*. For Simmel, it is, in fact, the individual who has to figure out a meaningful path beyond a 'sick culture' from within. The question is: what kind of individuality?

It seems to me that this process of 're-subjectivation' could be understood more properly, in Simmel's analysis, as 'individuation': a process through which individuals become *'whole men'* taking distance from both hyper-individualization and objectivation, safeguarding the duality of their vital-spiritual existence. And in doing so, a dynamic (i.e. both enduring and free social bond) is stimulated, and an institutional pluralisation is authorized.

The process of individuation is different from that of individualization, especially because the latter ends to be a mere reaction to "impersonal cultural elements" which "seek to suppress peculiar personal dimensions": in fact, in order to save personal elements the result is "that extremities and peculiarities and *individualizations* must be produced and they must be over-exaggerated to be brought into the awareness even of the individual himself" (Simmel, 1971: 338).

The issue of individuality is as crucial as it is awkward. When Simmel describes the differentiation of the modern personality, it is clear what 'individuation' is not. He highlights the ambivalence emerging especially when we refer to freedom, as it is precisely in this context that subject and object have been separated according to a dualistic logic – till the 'object' does not exist, or is simply swallowed, or avoided, or mirrored - as expressed in the different modern personalities: the 'pure rational Self' hypnotized by its absolute freedom; or the functional Self, shaped and absorbed by modern socio-economic systems; or the 'ego' blinded by the fascination of the "carpe diem of hedonism" (Simmel, 1991b: 4); or the typical metropolitan 'blasé personality' lost in a sensation of

insignificance; or the sociological man as a mere transit-knot of strings already intertwined by social circles.

When an individual escapes the relationship with the objects following the illusion of an absolute freedom, he would become "the average man" (Simmel, 2010: 84). Such a man does not consider the objective structures as "stations through which the human subject must pass in order to acquire the specific personal value" without that "the creative movement of the soul" would die in its own products (Simmel, 1997: 57-59).

Significantly, Simmel writes that the very definition of freedom would be the least superficial once the concept of 'person' reaches its proper position (see Simmel, 1991a). The Simmelian 'whole man' tries to go beyond a mere unilateral perspective. And a 'whole man' does not mean a fulfilled individual. He is instead a "fragment" (Simmel, 2010: 165): i.e. it does not presupposes an already-fulfilled identity. If it were so, life would be just a technical problem to manage.

Whether the re-subjectivation is conceived as individuation, it would open up the subject itself and the objective structures (the social/institutionalized and technical forms) to the movement of life and its generative tension. That is why Simmel expresses his concern about a mode of action (and relation) that risks driving individuals away from life to the point of paralysing "the most personal and intimate part of the moral act that does not consider what but 'how' it is done" (Simmel, 1991a: 254; my translation).

All the dualisms that have fragmented the individual on the pretext of liberating it have shaped an individual incapable of freedom because his action ends up being merely adaptive: "an echo that mechanically appears only when an outer movement has occurred" (Simmel, 2010: 76), incapable of adding anything new or creative.

In other words, the objective domains absorb individuals, i.e. they select the individuals they need to reproduce themselves. In this frame, the individual – emphasized from the Modernity – risks

paradoxically to disappear: "the fact that man is the being who dares is solidly connected with his freedom. The one who is determined can not dare anything, even though his behaviour externally demonstrates this character" (Simmel, 2004: 111; my translation).

When Simmel refers the dynamic life-form to the cultural change, he does not think of the latter as a mere accumulation of forms in a quantitative sense without worrying about their vitality emerging from creative actions. What is to be delivered to future generations is not just forms, but the possibility to create and to give life to new forms – i.e. the possibility of freedom, of developing the sense-giving attitude of individuals, so that a meaning can emerge from the relation between objective needs and subjective motions.

When this happens, society becomes able to foster creativity and freedom of its members, tolerating and even supporting forms of social change not trapped into specialisms unable to state "by what ideals people live" and which cultural ideals are "ruling them as total human beings" (Simmel, 1971a: 380). Such forms can contribute to the construction of plural societies adequate for the personal side of social life, i.e. the human side or, in other words, the individual freedom.

iv) I arrive at my final point: *freedom as a matter of sociology*. Social relationships, patterns and forms of organised life develop around a certain vision of freedom. Simmel understood this point very well. Sociology as "science of freedom" is the title of the Italian edition of a Bauman's book over the state of the discipline. I think Simmel would agree with this title. Is it possible to think of sociology as the science of freedom?

Bohn observes that "real gains in freedom, tacit assumptions about freedom and the semantics of freedom are treated as elements in a complex of social expectations that are supported by institutions, semantic constructions and forms of social differentiation". This is precisely the frame of sociology.

We know that it is not easy for sociology to target its object. The problem is that 'society' is an overly evanescent notion – Simmel

affirmed that society does not exist. Such an evanescent notion can be hypostatized. That is why sociology often focuses on the individual following the appeal of the rational choice theory, shaped by the economic theory (considered the adequate social science to study freedom).

And yet Simmel taught us that the object of sociology is the individual-society relationship, beyond deterministic, mechanistic and individualising stances: it is clear that we find our integrity in the tie with others. Even though no human instance or social community can claim to guarantee the integrity of the person.

Sociologists offered different explanations to this relation. And yet, it is exactly by keeping in mind how the 'twofold' dimension of social life could degenerate in dualism *or* save the duality of life (and its 'stable tension') that a sociological analysis may be useful.

Moreover, Simmel teaches us that human freedom is not reducible to its conditions. Since it refers to the question of meaning. When the individual does not abdicate this point, it means that freedom is at stake. This is because he is able to take distance from the materialistic and technicist framework which aim at a freedom of purposes according to which what is achievable thanks to the means at our disposal is legitimated in itself, sinking individual into the solitude with its anguished question on the sense of life, prisoner in a network of pure means (Simmel, 1991b). This freedom pretends to function without a discourse of meaning, or rather without responsibility, which introduces the very possibility of a response that is not simply assimilated to the events.

I think the central issue of Simmel's social analysis could be expressed in this way: 'is it possible to experience a meaningful life in the contemporary world?'. In asking so, sociology deals with human freedom. A sociology preserving itself from entering into the controversial issue of freedom becomes unable to grasp the surrounding reality. Simmel's lesson is a generative inspiration for our time - a time of deep transitions -, recovering sociology's

vocation: aiming at giving a sensible contribution to the understanding of the human condition.

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