



Regulation and Transparency as Rituals of Distrust: Reading Niklas Luhmann Against the Grain

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Niklas Luhmann, Legitimation durch Verfahren (1969)

Whenever something scandalous unfolds in public life today, calls for tighter regulation and more transparency are part of the routine reaction by journalists and politicians. Both demands are coupled with the promise of more comprehensive procedures that will help to restore public trust and prevent similar scandals in the future. In this sense, regulation and transparency are advocated as different means for similar ends. This chapter shares the view of a functional equivalence between regulation and transparency. However, it argues that their functioning is to be seen

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less as a set of procedures to rebuild trustworthiness than as a set of rituals to express systemic distrust. In other words, this chapter suggests that regulation and transparency perpetuate and aggravate the problems which they are supposed to resolve.

The argument is made through a critical reading of two dated yet seminal studies published in quick succession by the German sociologist Niklas Luhmann: *Vertrauen* (1968; translated into English as *Trust and Power*) and *Legitimation durch Verfahren* (1969 [*Legitimation Through Procedure*]).

Trust in Trust

Luhmann's interest in trust was guided by the assumption that instead of losing significance over the course of modernization, trust had in fact become more significant.¹ Or as Luhmann's convoluted style put it:

So it is not to be expected that scientific and technological development will bring events under control, substituting mastery over things for trust as a social mechanism and thus making it unnecessary. Instead, one should expect trust to be increasingly in demand as a means of enduring the complexity of the future, which technology will generate.²

This passage sheds preliminary light on Luhmann's approach. It describes a process that Luhmann expects, despite its being incomplete at the moment, to become more prominent in future. It also represents a theory of civilizational progress that Luhmann associates with an increase in technocratic complexity. Moreover, it rejects the technocratic expectation that modernization will, thanks to the rationality of scientific

¹ Some of the following reflections have appeared in my essays (Hirschi 2015, 2014a, 2014b, 2016).

² (Luhmann 1973b: 15–16) German original: “Demnach ist nicht zu erwarten, dass das Fortschreiten der technisch-wissenschaftlichen Zivilisation die Ereignisse unter Kontrolle bringen und Vertrauen als sozialen Mechanismus durch Sachbeherrschung ersetzen und erübrigen werde. Eher wird man damit rechnen müssen, dass Vertrauen mehr und mehr in Anspruch genommen werden muss, damit technisch erzeugte Komplexität der Zukunft ertragen werden kann” (Luhmann 1973a: 17).

methods, lead to better control of social and individual processes. “Trust,” for Luhmann, describes an anti-technocratic category that is intended to highlight society’s inability to cope with more complexity with the help of greater rationality.³ To reduce complexity, and thus to remain capable of action, society must adapt archaic judgment and decision techniques to the conditions of modern life. Luhmann considers trust to be such an archaic technique. He also regards establishing trust in and through procedures as the successful adjustment of this technique to the challenges of modern complexity.

But how does trust work? Luhmann’s definition at the end of his study stresses the contrast with the standards of scientific epistemology:

Trust reduces social complexity by going beyond available information and generalizing expectations of behavior in that it replaces missing information with an internally guaranteed security. It thus remains dependent on other reduction mechanisms developed in parallel with it, for example those of law, of organization and, of course, those of language, but cannot, however, be reduced to them.⁴

As such, trust is always “beyond explanation” (*unbegründbar*) and needs to be understood as “a blending of knowledge and ignorance” (Luhmann 1973b: 26). If trust functions as the bets hedged by optimistic everyday gamblers, it makes little sense at first sight to think of it as a crucial device for orienting behavior in modern society, which is subject to unprecedented change. “Overdrawing” (*Überziehen*) existing information seems more hazardous, the more quickly information loses validity; just as “generalizing” expectations about behavior becomes more awkward, the less stable and conforming behavior is.

³Jürgen Habermas is mistaken in criticizing Luhmann’s systems theory as an “advanced technocratic consciousness” while at the same time attacking his functionalist affirmation of the existing social order. The particularity of Luhmann’s theory rather seems to be that it is both functionalist and anti-technocratic (Habermas 1971: 145).

⁴(Luhmann 1973b: 93) German original: “Vertrauen reduziert soziale Komplexität dadurch, daß es vorhandene Informationen überzieht und Verhaltenserwartungen generalisiert, indem es fehlende Information durch eine intern garantierte Sicherheit ersetzt. Es bleibt dabei auf andere, parallel ausgebildete Reduktionsleistungen angewiesen, zum Beispiel auf die des Rechts, der Organisation und natürlich auf die der Sprache, kann aber nicht auf sie zurückgeführt werden” (Luhmann 1973a: 105).

Luhmann's contrast between "simple" and "complex" social systems takes this into account. Under simple conditions, trust (*Vertrauen*) arises directly from familiarity (*Vertrautheit*) with the social surroundings:

Familiarity in this sense makes it possible to entertain relatively reliable expectations and, as a consequence, to contain the remaining elements of risk as well. In itself, however, familiarity denotes neither favorable nor unfavorable expectations, but the conditions under which both are rendered possible. Familiarity is the precondition for trust as well as distrust, i.e. for every sort of commitment to a particular attitude towards the future.⁵

In more complex societies, however, the relative lack of precisely this type of familiarity demands a more abstract form of trust. Luhmann concludes:

Yet the very complexity of the social order creates a greater need for co-ordination and hence a need to determine the future—i.e. a need for trust, a need which is now decreasingly met by familiarity. Under these circumstances, familiarity and trust must seek a new mutually stabilizing relationship which is no longer grounded in a world which is immediately experienced, assured by tradition, and close at hand. Assurance for such a relationship can no longer be provided by shutting strangers, enemies, and the unfamiliar outside some boundary. History then ceases to be remembrance of things experienced and is instead simply a predetermined structure which is the basis for trust in social systems.⁶

Luhmann explains the transformation of trust in terms of the standard formula of his modernization theory. If "personal trust" exists on the level

⁵(Luhmann 1973b: 19) German original: "Vertrautheit in diesem Sinne ermöglicht relativ sicheres Erwarten und damit auch ein Absorbieren verbleibender Risiken, ist aber selbst weder günstige noch ungünstige Erwartung, sondern Bedingung der Möglichkeit für beides. Vertrautheit ist Voraussetzung für Vertrauen wie für Mißtrauen, das heißt für jede Art des Sichengagierens in eine bestimmte Einstellung zur Zukunft" (Luhmann 1973a: 19).

⁶(Luhmann 1973b: 20) German original: "Vertrautheit und Vertrauen müssen unter diesen Umständen ein neues Verhältnis wechselseitiger Stabilisierung suchen, das nicht mehr in der unmittelbar erlebbaren, traditional bestimmten Nachwelt gründet, also nicht mehr durch eine Grenze zum Unvertrauten und daher Fremden und Feindlichen abgesichert werden kann. Geschichte kann dann nicht mehr als erinnerebare Erfahrung, sondern nur noch als schon entschiedene Struktur sozialer Systeme Vertrauensgrundlage sein" (Luhmann 1973a: 21).

of an everyday familiarity with the world, and if social complexity increases, then this familiarity transforms into a “new kind of trust in systems.” This, in turn, helps to reduce increased complexity again. Systemic trust is oriented not only toward social systems, but also toward humans as “personal systems.” Thus, change concerns less the objects of trust than its foundations—there is a shift “from bases of trust which are defined in primarily emotional terms to those which are primarily presentational.”⁷

What this might mean in more concrete terms can be devised in Luhmann’s follow-up study *Legitimation durch Verfahren*, “Legitimation Through Procedure,” where he specifies the functioning of modern trust with respect to the procedural character of decision-making processes. The book focuses on administrative procedures, first those at court, second those in politics. It almost entirely ignores scientific procedures, which is not quite unproblematic for his argumentation, as I shall show below. A further problem to be explored more closely is Luhmann’s indifference towards the costs that its faith in procedure incurs for modern society. Ultimately, this raises the question as to whether, under certain conditions, procedures do not tend to increase rather than reduce complexity. Luhmann’s indifference might be related to the fact that in the late 1960s these problems were still less evident than, say, since the sovereign debt crisis of 2008. In effect, however, this indifference stems from a particular feature of Luhmann’s thinking, which Jürgen Habermas has aptly pointed out (Habermas 1971: 160–167): Luhmann cultivates an affirmative functionalism, in which everything in society is supposed to make social sense. Thus, he barely considers the possibility of modern “achievements” that produce chronic dysfunctions by serving particular interests while harming society as a whole.

As in his theory of trust, Luhmann grounds his concept of procedure on his hypothesis about the nature of historical development. However, he dates the crucial transition earlier—approximately at a stage when “archaic law” was replaced by “the law of early modern high culture.” (As the corresponding footnote suggests, this would correspond to Greek

⁷ (Luhmann 1973b: 22) German original: “Übergehen von primär emotionalen zu primär darstellungsgebundenen Vertrauensgrundlagen.” (Luhmann 1973a: 23).

antiquity.) Luhmann associates this transition with the assertion of new decision structures: the ritual invocation of a “supernatural decision” yielded to codified procedures, which began with “open-ended possibilities” and resulted in binding decisions (Luhmann 1983: 40). Luhmann’s next sentence explains on a theoretical level what this historical change means:

In contrast to the course of ritual, which is without alternative, it is characteristic of procedures that the uncertainty over their outcome and its consequences and the openness of alternative behaviors are included and dealt with in the context of action and its motivational structures. Not the pre-defined concrete form, gesture, the correct word drive a procedure, but the selective decisions of those involved. These decisions eliminate alternatives, reduce complexity, absorb uncertainty, or transform the undefined complexity of all possibilities into a definable, graspable problematic. (Luhmann 1983: 40)

Thus, procedure is also reined in by systems theory. Yet how, then, is procedure related to trust in its modern form of “systemic trust”? For Luhmann, the answer—at least in 1969—is irritatingly simple: procedures themselves are social systems even if they are of limited duration. Luhmann’s explanation, which somewhat contradicts his later systems theory, is that procedures represent “a complexity-reducing context of action” (Luhmann 1983: 41). In this logic, trusting procedures inevitably assume the character of systemic trust, which emerges from procedures that offer both participants and observers the opportunity to anticipate and to reconstruct decision processes.

For Luhmann, “how” decisions occur is crucial, rather than “what” they entail. Administrative procedures do not promise greater rationality in his eyes, but simply greater legitimacy of the decisions taken. It is an “illusion,” he argues, to “interpret” the establishment of procedures “as a means of establishing the truth.” It is also characteristic that, historically, he attributes this illusion to “the fact that the Enlightenment typically underestimated the problem of complexity” (Luhmann 1983: 26). Luhmann thus remains faithful to his anti-technocratic stance, which he had already adopted in his theory of trust.

Trust, Procedures, Legitimation

Soon after the publication of *Legitimation durch Verfahren*, Luhmann's stance faced staunch criticism, especially from lawyers and legal philosophers. This was hardly surprising given that he explained his theory of procedure in terms of court practice. In his preface to the new edition of *Legitimation durch Verfahren* (1975), Luhmann firmly rejected his critics' argument that the legitimacy of procedures could not be divorced from the epistemic quality of decisions (Luhmann 1975: 1–8). Yet no matter how expertly he defended his theory, his functionalism, which is characteristically devoid of any content, is not quite without pitfalls. It can be upheld only by the radical separation of administrative procedures from scientific ones. Thus, while the former establish legitimacy, the latter establish truth. Although this functional distinction is central to Luhmann's account, he never works it out in explicit detail. Besides, it is fairly unconvincing, from both a historical perspective and a sociological one. Court proceedings are first and foremost epistemic procedures, especially in criminal law: they establish justice by producing the greatest possible truth, and do so by deploying an evidential machinery that is constantly rearmed on epistemic grounds. Vice versa, scientific procedures also produce legitimation to an outstanding degree: they build trust by representing epistemological work as a systematic, entirely rationalized process and by glossing over any potential uncontrollability and coincidence, improvisation, and bricolage. Both historically and typologically, administrative and scientific procedures are more closely entwined than Luhmann's theory alleges.

A strong indication in this respect is that one particular feature of administrative procedures becomes difficult to explain if their epistemic function is denied. This, as the example of court evidence has suggested, is their structural instability. This results from their constant urge to change procedural processes. Ever since procedures have existed, they have been refashioned and expanded with the promise of "better" decisions. To this extent, their legitimation inevitably depends on how those directly involved, those affected, and those observing gauge the quality of decisions based on the existing procedure. Yet this does not

mean, as some of Luhmann's critics believe, that decisions based on procedures are "objectively" better than others. It merely suggests that social belief in the qualitative superiority of procedures is needed for them to emerge in the first place, and for them to endure. This premise, however, foregrounds questions that are only of marginal interest to Luhmann's "complexity-reducing reductionism." Foremost among these questions is whether, from a certain vantage point, unquestioned faith in procedures re-ritualizes decision-making structures. This may happen because systems that neither need to nor are able to apply procedures simulate these to legitimate themselves or because quality issues not stemming from how procedures are organized are covered up by their reorganization. I shall return to this point after considering another illuminating aspect of Luhmann's theory of procedure.

Luhmann maintains that if trust in procedure is underpinned by the predictability of the decision process, while the content of a decision remains uncertain, then this is associated with a precise expectation about how those involved ought to behave: they occupy specific, clearly distinct roles; and although these roles are not entirely detached from the available possibilities for action beyond the procedure, they are nevertheless clearly distinct. The more important the autonomy of a procedure is, the stricter the role requirements are. Criteria such as impartiality and independence serve to minimize environmental influences on decision making. They prevent conflicts of interest among those involved, that is, the possible impairment of internal roles by external ones. At the same time, roles can restrict the possibilities for action available to their bearers beyond a procedure. For instance, it is difficult to participate in a procedural decision only to subsequently mount public opposition against it.⁸

On the subject of role consistency, Luhmann, for once, becomes quite specific. Considering the role of judges, he observes: "The representation of a procedure must rule out from the outset that the judge all of a sudden behaves like a dentist or the summoned party like a lottery-ticket seller" (Luhmann 1983: 92). The same applies to electoral processes: "In an election, a voter does not primarily behave as if he were a hairdresser, a

⁸ Drawing on Luhmann, Barbara Stollberg-Rilinger offers a general explanation of this issue in her introduction (Stollberg-Rilinger 2010: 9–31, esp. 11).

husband, a stamp collector, or a Methodist. For instance, he cannot contribute to the election by offering to cut the candidates' hair or to pray for them, but remains bound to the role of the voter" (Luhmann 1983: 48). Although this may sound banal at first sight, the opposite is true: accepting a role not only involves (outwardly) fulfilling the associated behavioral expectations, but also (inwardly) adopting the corresponding behavioral norms. A defense lawyer who does not feel compelled to achieve the best possible verdict for his client undermines the legitimacy of court proceedings. The same is true of a university professor who selects his or her preferred candidate ahead of the actual appointment procedure. Each procedure involves a certain course of events and a certain code of conduct. It has both a collective component, which applies to all involved actors, and an individual one, which defines role-specific requirements. Common to all roles is that they require those involved to take an intrinsic interest in the matter under discussion. Equally fundamental is the attitude that a decision will be taken, but that no one knows in advance which one it will be.⁹

Knowing in advance that a decision will be taken while not knowing its content ensures that the procedure is synchronized with the decision process (Luhmann 1983: 3). Luhmann speaks of "synchronization" to highlight the fact that formal and actual decision-making need not be identical. In itself, this distinction is normative because it delimits a range of tolerance for informal action in procedures that, at least presumably, does not affect legitimating a decision. At the same time, it makes intuitive sense, since there is little to suggest that a decision process functions exactly as staged by the respective procedure. Even scientific experiments, which enjoy a particular status of accuracy due to the reproducibility requirement to which their results are subject, require the involved scientists to possess a high level of improvisational judgment—also because deciding when an experiment ends proves difficult in procedural terms.¹⁰

The range of tolerance between formal and informal decision-making increases the flexibility of those involved, and at best enhances procedural efficiency. Yet efficiency arguments alone do not suffice to explain this

⁹ See also Luhmann's more specific assertions (Luhmann 1983: 51).

¹⁰ For a classic study on late modern physics (Galison 1987).

range, or else one would need to assume that formal structures align themselves with informal processes. The legitimizing function of procedures, at which Luhmann's argumentation is actually aimed, is probably far more important. It implies that decisions are not simply produced in procedures, but are also represented therein (Stollberg-Rilinger 2010: 11). This dual function becomes even more pronounced the more procedures are conducted in public. In terms of a theory of legitimation, representation forces actors to engage in a formality of procedures that is not absolutely necessary for their establishment. Strikingly, however, Luhmann's treatment of representation separates this problem from the range of tolerance between formal and informal decision-making. In fact, he gives the latter very short shrift: the more the normative range of tolerance is exceeded, the more procedure congeals in ritual. It celebrates a decision that has been taken beyond its procedures. Luhmann cites two characteristic examples: political elections "involving a predefined single list of candidates" and "show trials" (Luhmann 1983: 51). These examples are significant because Luhmann pushes the problem of re-ritualized procedures behind the Iron Curtain instead of treating it as an integral part of his history of modernization in the Western world.

Legitimation by Procedural Rhetoric: The Case of Regulation

Luhmann's theoretical substantiation and ideological strengthening of procedural trust helps us to grasp the scale of the problems associated with the re-ritualization of procedures. Modern society involves an array of professions whose representatives live on this trust. Over the last three centuries, the demand for these professions has moved only in one direction: sharply upwards. Typologically, they can be divided into two groups. First, administrators and regulators, that is, procedural meta-practitioners, who apply their procedures to extraneous procedures so as to monitor processes, verify results, and enforce improvements. Second, public commentators, who appear in procedures as second-order actors: they react to, and act back on, procedures through the media. Both groups strive to

maintain trust in procedures at a high level for various reasons. Moreover, they both contribute unintentionally to the ritualization of procedures. Considering each of these groups separately helps to understand how exactly they achieve their particular effects.

Let us begin with supervisory and administrative authorities: their professional capital stems largely from the legal sciences; wherever these authorities are active, work routines are permeated by the law. Historically, this professional group spearheaded the expansion of state power while at the same time it functioned as a job-creation cartel for the legal profession.¹¹ This group meanwhile feels equally comfortable in state regulatory bodies as in the “compliance” divisions of private enterprises. Its expansive force results largely from the fact that its representatives have turned a systemic contradiction into a strength: they appear as independent authorities whenever the concrete outcomes of their regulated procedures are concerned; at the same time, however, they have vested interests in the general status of procedures. Waning systemic trust in procedures clouds their professional prospects. This requires such authorities to always react to procedural problems in the same way: with new procedures. “New” as a rule means more elaborate and more intense monitoring, which keeps the self-regulated spiral of expansion turning. Here, then, complexity is increased, not reduced.

This is how this professional group contributes to the ritualization of procedures. The more complex the procedures, the greater the incentive to subvert them. Executing actors may consider it more efficient to cancel elaborate procedures through informal decision-making and to maintain the respective procedure merely as an apparent legitimation than to execute it within a normative range of tolerance. In such cases, the executors’ systemic trust is too weak for these actors to feel obligated by the procedural code of conduct. At the same time, the regulators’ systemic trust is too strong to abolish the dysfunctional procedure. Accordingly, ritualization involves a discrepancy in trust between regulators and executors. For the regulatory authority, a conflict exists between system needs and actor

¹¹ A current example is the SEC (U.S. Securities and Exchange Commission), which regulates US financial services providers and is run almost entirely by lawyers whereas the few economists in the authority are marginalized (Macey 2013: 270).

interests. An obvious solution presents itself to the authority: namely, to take disciplinary action by enforcing stricter regulations. The procedure must now also offset the diminished trust in its executors. It becomes a compensatory instrument, and as such further accelerates ritualization. The regulatory authorities maneuver themselves into a dilemma with no predefined way out. Their role as meta-practitioners requires regulators to assert new procedural modalities and processes while this leads to cancelling a basic condition for procedures to succeed: its executors' intrinsic motivation to fulfill the existing procedural norms.

Enforced procedures almost inevitably resemble ritual acts of compensation for systemic failure. What Luhmann projects onto Eastern bloc dictatorships is just as much to be verified in Western democracies, although in a different guise. What may seem to be a new problem in light of the regulatory frenzy that erupted after the collapse of the financial sector in 2008 has actually been a constant companion of modern government interventions based on the violation of the same, simple principle: any new procedural structure requires a corresponding procedural culture to fulfill the expectations placed on it. Yet since cultural change is less governable, and occurs more sluggishly in the wake of great pressure for reform than the implementation of structural measures, regulators and administrators soon struggle with the unintended consequences of their own attempts at reform. For as long as their own procedural trust does not suffer, it does not end.

This process, to cite a prominent example, is currently in full swing as regulators attempt to tame the international financial industry. Public confidence in regulatory authorities such as the U.S. Securities and Exchange Commission (SEC) still seems greater than in the regulated corporations. Nevertheless, a growing number of specialists monitoring developments in the financial industry are warning against the inefficiency and instability of a system whose lost reputation has been replaced with regulations. The economist Jonathan Macey, for instance, has criticized regulatory bodies for establishing a surveillance apparatus that their limited resources are unable to control and for therefore resorting to the symbolic policy of setting warning examples in court that are geared towards attracting media attention. In the meantime, says Macey, the regulated corporations have been relieved of the burden to cultivate their

image and can now pawn their ruined reputations to pursue their business interests even more ruthlessly.¹²

Transparency as Media Ritual

How does this compare to the ritualization effect of the media on procedures? Although other forces, actors, and institutions are involved than in the regulatory spiral, the structural consequences of these processes are identical. Transparency and regulation both place the actors involved in a procedure under close external scrutiny. Such monitoring tries to prize open the “black box” of the respective procedure and to control the authorized decision-makers. The latter feel less observed by the other actors involved in the procedure than by external, unknown ones, whose actions are barely observable. From an internal perspective, this alienates the respective procedure, and thereby makes it more difficult for actors to detach their procedural role from their other social roles. Their scope for autonomous action within the procedure dwindles. Tim Neu has aptly described the effect of this process: “When a division of roles becomes impossible, genuine openness about decisions is perilous, which explains why decision-making is outsourced and why procedures are even less able to establish legitimation” (Neu 2014).

Turning to the media, whereas Luhmann detects a potential conflict for orderly procedure, he does not associate this with the threat of ritualization. This might be due to his concentration on court proceedings. The problems of media coverage, as highlighted in *Legitimation durch Verfahren*, are characteristic of the courts—from the flurry of camera-bulb flashes through the rush to judgment to the public criticism of verdicts (Luhmann 1983: 124–130). Luhmann tries to defuse the problems through positing normative media guidelines, thereby revealing that he does not consider such strictures to pose a systemic threat to administrative procedures. It is difficult to say whether he still held this

¹² See Macey’s final chapter, “Regulation: The New Secular Religion.” His analysis of the current state of affairs is stronger than his historical model, which rests on the past utopia of a financial market that exists beyond regulatory pressure because cultivating corporate reputation was the basis of all economic success (Macey 2013: 269–275).

view after 1969. In his late study *Die Realität der Massenmedien* (1995; translated as *The Reality of the Mass Media*, 2000), Luhmann, who despised television, issued a provocative assertion heavily doused with systems theory: the media construct their own, self-enclosed reality, through which they condition our knowledge of the world. In this respect, he seems to go to the other extreme. Its particular production of reality makes the media system appear so autonomous that it needs to establish a relationship with judicial and political reality only to a limited extent. What we find out via the media scarcely points to external realities: “If we hear that a leading politician has made a decision, we are still far from knowing who has made that decision—with the exception of Lady Thatcher, perhaps” (Luhmann 1995: 31). If reality is so pluralistic, the problem of one system disturbing another from functioning can hardly ever occur.

Luhmann’s joke about Margaret Thatcher is well chosen in one respect: especially politics reveals just how the media can transform formal procedures into ritual spectacle. Flying the flag of transparency, the media have gained ever greater access to political bodies in recent decades. They have not, however, delivered on their promise to provide the wider public with better insights into political decision-making. The advent of “transparent” politics led to consultation processes being ousted from political committees. The presence of the media restricts what can be said to such an extent that the precept of political acumen demands that such processes be separated from formal procedures so as to safeguard a solid basis for decision-making.

This process no longer merely concerns the parliamentary institution, the first to transform into a deliberative body without a deliberative function. Expert committees have undergone a similar process in recent decades. Especially their deliberations and recommendations on controversial and hence media-hyped issues like gene technology, drug use, or nuclear energy seldom serve political decision-making any longer (Hirschi 2012). Instead they are used more than ever to retroactively legitimate decisions. In such cases, the function of expert committees is confined to politicians on camera being able to claim “expert-based” action for measures decided on without consulting the respective committee. Whenever such a system is well established, politicians in need of real

advice must seek it through informal channels. This sets the course for old-style European cabinet politics to re-establish itself behind the curtains of a glossy political stage under constant media scrutiny.

Now, political procedures deprived of decision processes due to the media's creation of transparency might be expected to sooner or later also lose their public legitimation. Yet this hardly seems to be the case so far. How come? Presumably, this is due mostly to the functional logic of political media coverage. The historical and ideological point of reference for the media's campaign for transparency is the Enlightenment's aspiration to bring the actions of political decision-makers before the tribunal of public reason. This initiated the role of the public critic. The powerful promise of the eighteenth century was that reading newspapers and journals would enable citizens to pass qualified judgment on their government's achievements while politicians would, in turn, be encouraged to engage in politics in order to serve the citizenry. The Enlightenment promise rested on a particular ideology of progress: a public sphere constructed by critical media would bring forth greater reasonability and better decision-making abilities. What could have been better suited to bestowing credibility on this ideology than presenting public criticism as a well-ordered, rule-governed process? This purpose was achieved by hailing the public as a tribunal endowed with universal jurisdiction, where publicists would act as prosecutors or defense counsels, and the enlightened readership as the highest judicial authority. This picture gave the criticism voiced in the media the semblance of orderliness and fairness, and thus contributed largely to its political legitimation. However, the court metaphor was never particularly well suited to describing its functioning. Media assessments of political processes do not follow predefined steps, but may instead cover the entire spectrum from uncontrolled lynching through circumspect deliberation to heavily ritualized celebration. Just as little does the public possess the necessary homogeneity and sovereignty to reach conclusive verdicts in its judicial capacity. What emerges is a paradoxical constellation: although the language of judicial proceedings is applied to a sphere of action that eludes procedure-based organization, it still has a legitimizing effect. In a critical addendum to Luhmann, I therefore suggest that we speak of trust through procedural rhetoric.

This background makes it easier to understand why the media-generated ritualization of political procedures must receive equally media-generated legitimation. In Western democracies, procedural credibility is a constituent element of political reporting. Media culture functions according to a dual procedural principle, which applies both to the objects and to the subjects of reporting: politicians must take decisions based on transparent procedures while media professionals must verify these decisions based on critical procedures. Were the media to address its own ritualization effects, it would undermine its own legitimacy. Commentators on camera and editors in newsrooms—no matter how level-headed they might be in private—are therefore forced to continue staging the political theatre as if its main events take place in front of rather than behind the (media) scenes.

In light of this systemic coercion, I reach a different conclusion than Luhmann: When it comes to transparency, legitimation emerges from rituals that simulate procedures and thereby reduce complexity to the point of rejecting reality. At least the more naive souls among the media are likely to closely resemble the duped deceiver, who plays his role so well because he fails to recognize its political function.

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