

nowadays property was formally left in the hands of the property owners while they were nevertheless expropriated, without compensation or the benefit of legal protection in terms of regulated expropriation procedures: "thus forms of socialization arise by way of confiscatory legislation, forms that even doctrinaire Marxism had not foreseen."<sup>26</sup>

Simultaneously with the central institution of private law, that is, property, the guarantees closely connected with it were naturally affected as well, especially freedom of contract. The classical contractual relationship presumed complete independence in the determination of the conditions of the contract. In the meantime it had been subjected to considerable restrictions. To the degree that legal relationships tended to converge on socially similar types, the contracts themselves also tended to be schematized. Normally the mounting standardization of contractual relationships curtailed the freedom of the economically weaker partner, whereas the already mentioned instrument of collective contracts was intended to bring about equality in market position. Wage agreements between employers' associations and labor unions lost their character as matters of private law in the strict sense; they took on a practically public character because the agreed upon series of regulations functioned as a surrogate law: "The function of employers' associations and unions, when they come to terms on a comprehensive labor agreement, is less akin to the exercise of private autonomy than to legislation in virtue of delegation."<sup>27</sup> Even from a juridical standpoint original private autonomy had become degraded into something derivative to such an extent that it was often no longer considered necessary for the validity of contracts. The legal effect of factual contractual relationships became equivalent to classical legal relationships.<sup>28</sup>

Finally, the system of private law became infracted by the increasing number of contracts between the public authority and private persons.<sup>29</sup> The state entered into pacts with private persons on the basis of *do ut des*; here too the inequality between the partners and the dependence of one upon the other dissolved the foundation of the strict contractual relationship. Gauged in terms of the classical model these pacts were nothing

more than pseudo-contracts. When, in the exercise of their social welfare functions, authorities today extensively replace legal regulation by the instrument of the contract, such contracts have a quasi-public character irrespective of their form as agreements under private law; for "our legal system" actually rests "upon the idea that contracts under private law stand on a level below the law, not on the same level with it; and our public law leaves room for contracts only for relationships on the same level. . . ."<sup>30</sup>

With the state's "flight" out of public law, with the transfer of tasks of public administration to enterprises, institutions, corporations, and semiofficial agencies under private law, the flipside of the "publification" of private law also became apparent: the privatization of public law. Especially when public administration itself used the instruments offered by private law in its performance of distributing, providing, and supporting tasks, the classical criteria of public law became obsolete.<sup>31</sup> For neither did its organization under public law hinder, say, some service-providing township from contracting with its "customers" under private law; nor was the far-reaching normative regulation of such a legal relationship incompatible with its nature as an act under private law. Neither a monopoly position and absence of contractual freedom nor the involvement of a public administrative agency in the creation of a legal relationship required that such a relationship come under public law. The public element of public interest fused with the private element of contractual formulations under private law to the extent that along with the concentration of capital and interventionism a new sphere emerged from the reciprocal permeation of the state by society and of society by the state. This sphere could be meaningfully conceived neither as purely private nor as genuinely public, nor could it be unequivocally located in a realm to which *either private or public law* pertains.<sup>32</sup>

### 17 The Polarization of the Social Sphere and the Intimate Sphere

To the degree that state and society permeated each other, the institution of the conjugal family became dissociated from its

connection with processes of social reproduction. The intimate sphere, once the very center of the private sphere, moved to its periphery to the extent that the private sphere itself became deprivatized. The bourgeoisie of the liberal era spent their private lives prototypically in occupation and family; the realm of commodity exchange and of social labor belonged to the private sphere as much as the "household" relieved of any directly economic functions. These two realms, at that time structured in concordance, now began to develop into different directions: "And indeed one can say that the family became ever more private and the world of work and organization ever more 'public.'"<sup>35</sup>

The phrase, "world of work and organization" betrayed already something of the tendency toward the objectification of a realm that once was a domain of private control—whether one's own, as in the case of the property owner, or that of another, as in the case of the wage laborer. The development of the large industrial enterprise depended directly on the state of capital concentration, that of the large bureaucracy depended on it indirectly. In both, forms of social labor evolved which specifically deviated from the type of work in a private occupation. From the perspective of a sociology of work, the formal categorization of a business enterprise as belonging to the private realm and of a bureaucracy as belonging to the public realm lost its differentiating power. In whatever way a large enterprise might still be under the control of individual owners, large shareholders, or administrative executives, with regard to private power of control it nevertheless had to become objectified to such an extent that the "world of work" was established as a sphere in its own right between the private and public realms—in the consciousness of the employees and workers and also of those whose powers were more extensive. Of course this development was also based on the material deprivatization of a formally preserved autonomy on the part of owners of the means of production. This has been repeatedly analyzed (under the heading of the separation of ownership and control) with respect to large stock companies, because here the restriction upon the direct exercise of property rights in favor of top management and a few large shareholders

became particularly evident. Through self-financing such enterprises often became independent of the capital market; in the same degree they expanded their independence from the mass of the shareholders.<sup>34</sup> Whatever the economic effect, the sociological outcome represented in an exemplary way a development that removed from the large enterprise in general, regardless of its particular form, the character of a sphere of private individual autonomy typical of both business and the workshops of the self-employed in the liberal era. This was recognized early on by Rathenau and summed up in the formula that large enterprises developed into "social institutions" (*Anstalten*). Legal institutionalism seized upon this suggestion and elaborated it into a theory of its own.<sup>35</sup> Although similar doctrines presented by James Burnham and Peter F. Drucker in relation to the American situation became postwar best sellers, they scarcely bore fewer ideological traits. Nevertheless, they did have a certain descriptive value: their diagnosis of the "disappearance of the private" in the sphere of social labor hit the mark.

Initially large enterprises assumed certain status guarantees for their employees and workers, either by putting them in charge of parcelled-out areas of jurisdiction, by granting social securities and services, or by their efforts—however problematic in each case—toward integrating the employed at the work place. But more extreme than these objective changes were the subjective ones. The summary statistical category of "functionaries" (*Diensttuende*) by its very name betrayed a new attitude toward work. The distinction, at one time sharply demarcated (also on the subjective level) by private property, between those who could work in their own private sphere and those who had to do so in that of others was erased in favor of the status of "function performance" (*Dienstverhältnis*). In comparison to the "civil service functionary" (*öffentlicher Dienst*) this status did not involve the rights (and duties) of the civil servant, to be sure, but it assumed the characteristics of a depersonalized work relationship linking the employee to an institution rather than to other persons. With large enterprises, the dominant organizational type of social labor became a social structure neutral to the separation of private and public spheres:

The industrial firms build apartments or even help the employee to become a home owner; they organize concerts and theater performances, offer continuing education classes; they provide for the elderly, widows and orphans. In other words, a series of functions originally fulfilled by institutions that were public not only in the legal but also in the sociological sense, are taken over by organizations whose activity is non-public. . . . The *oikos* of a big firm at times permeates the entire life of a town and brings forth that sort of phenomenon that is correctly labelled "industrial feudalism". . . . *Mutatis mutandis*, the same holds true for the great administrative bureaucracies of the metropolises which lose their public character (in the sociological sense) to the same extent that they are transformed into big enterprises.<sup>36</sup>

American authors could therefore investigate the social psychology of the so-called organization man irrespective of whether they happened to be dealing with a private firm, a semipublic corporation, or a public bureaucracy—"organization" simply referred to any large enterprise.

In comparison with the typical private enterprises of the nineteenth century the occupational sphere gained independence as a quasi-public realm in relation to a private sphere reduced to the family. Today time not spent on the job represents precisely the preserve of the private, while the "job" begins with the step into occupational activity. This process presented itself, however, as a deprivatization of the occupational sphere only in the historical perspective of the property-owning private person. Conversely, it appeared as a privatization to the workers and employees and did so to the extent that they were no longer subject exclusively and without regulation to a patriarchal regiment but instead to a psychological arrangement promoting the human relations on the job that create a pseudo-private well-being.<sup>37</sup>

In the same measure that the occupational sphere became independent, the family withdrew back upon itself. What has characterized the structural transformation of the family since the liberal era is less the loss of productive functions in favor of consumptive ones than its progressive disengagement from the functional complex of social labor in general. For even the patriarchal conjugal family of the bourgeois type had long ceased to be a community of production; nevertheless, it was

based essentially upon family property that functioned capitalistically. Its maintenance, increase, and passing on was the task of the private person as both the owner of commodities and head of the family. The exchange relationships of bourgeois society deeply influenced the personal relations between the members of the bourgeois family. With the loss of its basis and the replacement of family property by individual incomes the family lost, beyond its functions *in* production (which it had already shed to a great extent), those *for* production. The reduction (typical in our day) of family property to the incomes of its individual wage and salary earners additionally deprived the family of the possibility of self-support in cases of emergency and of self-provision for old age.

The classical risks, especially of unemployment, accident, illness, age, and death are nowadays largely covered by welfare state guarantees incorporating basic support measures, normally in the form of income supplements.<sup>38</sup> These aids are not addressed to the family, nor is the family itself expected to provide subsidiary support to any considerable extent. Against the so-called basic needs, which the bourgeois family once had to bear as a private risk, the individual family member today is publicly protected.<sup>39</sup> In fact, not only was the catalogue of "typical risks" expanded beyond the classical emergency situations to include assistance of all sorts (i.e., such services as finding shelter and employment, occupational and educational counselling, health maintenance, etc.); compensations were more and more supplemented by preventive measures whereby "prevention as a matter of social policy is de facto identical with intrusion into new, hitherto private spheres."<sup>40</sup> The social-political compensation for the largely eroded basis of family property stretched beyond material income supplements to functional aids for managing life. For along with its functions in capital formation the family increasingly lost also the functions of upbringing and education, protection, care, and guidance—indeed, of the transmission of elementary tradition and frameworks of orientation. In general it lost its power to shape conduct in areas considered the innermost provinces of privacy by the bourgeois family. Thus, in a certain fashion even the family, this private vestige, was deprivatized

by the public guarantees of its status. On the other hand, the family now evolved even more into a consumer of income and leisure time, into the recipient of publicly guaranteed compensations and support services. Private autonomy was maintained not so much in functions of control as in functions of consumption; today it consists less in commodity owners' power to dispose than in the capacity to enjoy on the part of persons entitled to all sorts of services. As a result there arose the illusion of an intensified privacy in an interior domain whose scope had shrunk to comprise the conjugal family only insofar as it constituted a community of consumers. Once again both aspects asserted their right. A series of functions under private control was replaced by status guarantees; within the narrower framework of these rights and obligations bestowed by the social-welfare state, however, this primary loss in private power of control had the secondary effect of reducing a burden, since the consumption of income, support, and leisure opportunities could be indulged in all the more "privately." In the tendency, observed by Schelsky, toward polarization of large firms enriched by "public" substance, on the one hand, and groups that withdrew into an interior realm of constricted super-private existence, on the other, and hence toward "an increasing split between private and public life,"<sup>41</sup> a complicated developmental history found expression.

Parallel to its release from economic tasks the family lost power as an agent of personal internalization. The trend, diagnosed by Schelsky, toward the elimination from intrafamilial relationships of all aspects not directly relevant to task performance corresponded to a development in the course of which the family was decreasingly relied upon as the primary agency of society. The frequently invoked dismantling of paternal authority, that is, the tendency toward the leveling of the intrafamilial authority structure that can be observed in all advanced industrial nations,<sup>42</sup> was also part of this configuration. To a greater extent individual family members are now socialized by extrafamilial authorities, by society directly.<sup>43</sup> Recall here only those explicitly pedagogical functions that the bourgeois family had to hand over formally to the schools and informally to anonymous forces outside the home.<sup>44</sup> The family, increas-

ingly disengaged from its direct connections with the reproduction of society, thus retained only the illusion of an inner space of intensified privacy. In truth it lost its protective functions along with its economic tasks. The economic demands placed upon the patriarchal conjugal family from without corresponded to the institutional strength to shape a domain devoted to the development of the inner life. In our day this domain, abandoned under the direct onslaught of extrafamilial authorities upon the individual, has started to dissolve into a sphere of pseudo-privacy.

This surreptitious hollowing out of the family's intimate sphere received its architectural expression in the layout of homes and cities. The closedness of the private home, clearly indicated to the outside by front yard and fence and made possible on the inside by the individualized and manifold structuring of rooms, is no longer the norm today, just as, conversely, its openness to the social intercourse of a public sphere was endangered by the disappearance of the *salon* and of rooms for the reception of visitors in general. The loss of the private sphere and of ensured access to the public sphere is characteristic of today's urban mode of dwelling and living, whether technological and economic developments have quietly adapted the old forms of urban dwelling to new functions or new suburban settlement forms have been developed on the basis of these experiences.

William H. Whyte furnished the American model of such a suburban world. Under pressure to conform arising from interaction with neighbors—prefigured architecturally in the laying out of common courtyards for several houses—there evolved in the socially homogeneous milieu of the prototypical suburb "a lay version of Army post life."<sup>45</sup> The intimate sphere dissolved before the gaze of the "group": "Just as doors inside houses . . . are disappearing, so are the barriers against neighbors. The picture in the picture window . . . is what is going on *inside*—or, what is going on inside other people's picture windows."<sup>46</sup> Thin walls guaranteed, if need be, a freedom of movement protected from sight but not from hearing; they too assumed functions of social communications difficult to distinguish from social control. Privacy was not the given me-

dium of home life, but rather one that had first to be brought about: "To gain privacy, one has to *do* something. One court resident, for example, moves his chair to the front rather than the court side of his apartment to show he doesn't want to be disturbed."<sup>47</sup> In proportion as private life became public, the public sphere itself assumed forms of private closeness—in the "neighborhood" the pre-bourgeois extended family arose in a new guise. Here again private and public sphere could not be clearly distinguished. The public's rational-critical debate also became a victim of this "refeudalization." Discussion as a form of sociability gave way to the fetishism of community involvement as such: "Not in solitary and selfish contemplation . . . does one fulfill oneself" in the circles of the bourgeois public—private reading has always been the precondition for rational-critical debate—"but in doing things with other people . . . even watching television together . . . helps make one more of a real person."<sup>48</sup>

Yet the tendency toward the destruction of the relationship between public and private spheres is to be observed not only where modern urban development favored this trend; it was the same elsewhere, where the existing architecture was, as it were, drowned by it. Bahrdr has shown this in the arrangement of "blocks," which in former days, with their fronts toward the street and their backward-facing separate gardens and yards, made possible both a practical internal division of the dwelling and a meaningful ordering of the city as a whole. Today this arrangement has been overtaken, to mention just one factor, by changes in the function of streets and squares due to the technical requirements of traffic flow. The resulting configuration does not afford a spatially protected private sphere, nor does it create free space for public contacts and communications that could bring private people together to form a public. Bahrdr summarizes his findings as follows:

"The process of urbanization can be described as a progressive polarization of social life under the aspects of "public" and "private." In this regard we must note that there always exists a reciprocal relationship between the two. Without a protective and supportive private sphere the individual is sucked into the public realm which, however, becomes denatured by this very process. If the element of

distance that is constitutive of the public sphere is eliminated, if its members are in too close touch, the public sphere is transformed into a mass . . . at the moment the social problem of the modern city consists not so much in that life in it has become all too urbanized, but rather in that it has again lost essential features of urban life. The reciprocity of the public and the private spheres is disturbed. It is not disturbed because the city dweller is mass man per se and hence no longer has any sensibility for the cultivation of the private sphere; but because he no longer succeeds in getting an overview of the ever more complicated life of the city as a whole in such a fashion that it is really public for him. The more the city as a whole is transformed into a barely penetrable jungle, the more he withdraws into his sphere of privacy which in turn is extended ever further; but at length he comes to realize nevertheless that not the least reason why the urban public sphere disintegrates is that public space has been turned into an ill-ordered arena for tyrannical vehicle traffic."<sup>49</sup>

The shrinking of the private sphere into the inner areas of a conjugal family largely relieved of function and weakened in authority—the quiet bliss of homeyness—provided only the illusion of a perfectly private personal sphere; for to the extent that private people withdrew from their socially controlled roles as property owners into the purely "personal" ones of their noncommittal use of leisure time, they came directly under the influence of semipublic authorities, without the protection of an institutionally protected domestic domain. Leisure behavior supplies the key to the floodlit privacy of the new sphere, to the externalization of what is declared to be the inner life. What today, as the domain of leisure, is set off from an occupational sphere that has become autonomous, has the tendency to take the place of that kind of public sphere in the world of letters that at one time was the point of reference for a subjectivity shaped in the bourgeois family's intimate sphere.<sup>50</sup>

## 18 From a Culture-Debating (*kulturräsonierend*) to a Culture-Consuming Public

The social psychology of the type of privacy that evolved during the eighteenth century out of the experiential context of the conjugal family's audience-oriented intimate sphere pro-