

Petar Bojanić
In-Statuere

GEFÖRDERT VOM



Bundesministerium
für Bildung
und Forschung

Series of the
Käte Hamburger Center for
Advanced Study in the Humanities
»Law as Culture«

Edited by Werner Gephart

Volume 28

Petar Bojanić

In-Statuere

Figures of Institutional Building

English translation by
Edward Djordjevic




VITTORIO KLOSTERMANN
Frankfurt am Main · 2022

recht als kultur
käte hamburger kolleg
law as culture
center for advanced study

Bibliographische Information der Deutschen Nationalbibliothek
Die Deutsche Nationalbibliothek verzeichnet diese Publikation in der
Deutschen Nationalbibliographie; detaillierte bibliographische Daten
sind im Internet über <http://dnb.dnb.de> abrufbar.

1. Auflage 2022

© Vittorio Klostermann GmbH · Frankfurt am Main · 2022
Alle Rechte vorbehalten, insbesondere die des Nachdrucks und der
Übersetzung. Ohne Genehmigung des Verlages ist es nicht gestattet,
dieses Werk oder Teile in einem photomechanischen oder sonstigen
Reproduktionsverfahren oder unter Verwendung elektronischer Systeme
zu verarbeiten, zu vervielfältigen und zu verbreiten.
Gedruckt auf alterungsbeständigem Papier  ISO 9706
Satz: mittelstadt 21, Vogtsburg-Burkheim
Umschlaggestaltung: Jörgen Rumberg, Bonn
Umschlagabbildung: Werner Gephart, Babylonian Production
of Normativity in Europe II (with the Help of Pieter Bruegel),
(elektronische Collage, 2016/2022).
Druck und Bindung: docupoint GmbH, Barleben
Printed in Germany
ISSN 2193-2964
ISBN 978-3-465-04604-2

Contents

Introduction	
0	Propositions 9
Preamble	
1	Theater of Institutional Design 21
2	The First Scene of Institutional Building. Babylon <i>Incorporatio</i> 32
I. Violence and Institution	
1	The Institution of Sovereignty. Fictional Entities and Violence 41
2	» <i>L'institution révolutionnaire</i> « (The Revolutionary Institution) 58
3	<i>L'esprit de l'institution</i> . Origin and Theory of the Institution in Rousseau 78
4	Just Institution. How (and When) to End War(s)? 87
II. »We« and Document	
1	The Possibility of <i>We</i> (<i>Wir</i> ; <i>Wirsein</i>). On the Conditions of Institutional Action in Heidegger 101
2	Originary Institutionalization (Husserl's <i>stiften</i> , <i>urstiften</i>) 112
3	Institution of We and Community in Rosenzweig 118
4	Does to Institutionalize Mean to Document? 131
5	Obligation and Institution. The Document and Engaged Acts 140
6	Charter and Institution 147
7	What Is an Act of Engagement? Between the Social, Collegial and Institutional Protocols 153
III. Institutional Realism	
1	Realism and Institution. What is (in) <i>corporatio</i> ? 169
2	Deontic Power of Institutions. »Background« as »Ultimate Institutional Structure« 177

3	Institution and Life as Institution. Uterus: Mother's Body, Father's Right	183
4	How to Be Together <i>beyond</i> Corporations and Firms? Hegel at the ›End of Capitalism‹	196
5	Institution of Poverty. The Status of House in Institutional Building ..	206

IV. Group and Negative Facts

1	<i>Social Gestures</i> as the Condition of Efficiency and (Existence) of Social Acts	217
2	Social Acts, Negative Social Acts, Negative and A-Social Actions	229
3	The Institution of Group(s) and Genocidal Acts	243
4	<i>With</i> – The Group as Event and Origin of Event. On Empathy (Compassion) as the Constitutive Element of the Group (Institution) ..	252
5	Collective Responsibility. On Imputing and Imputability of a Group ..	262
6	Debt, Negation, and Nothing. Less than Nothing (<i>meno di nulla, moins que rien, weniger wie Nichts</i>)	275
7	Inclusion/Exclusion. On the Conditions of Common or Critical Engagement	288

V. To Live Together

1	»Discipline« as Category and »Institutional Discipline«	295
2	Police. On the Institution of Universal Violence and Violence of the Universal	305
3	Institution as Project. The Acts of Project(ion)	314
4	On the Temporality of the Project. Position of the Future in Project-Time	321
5	Public Philosopher and Philosophy of the City	330

Conclusion

0	What Is the Counter-Institution? Europe as Counter-Institution	343
---	--	-----

References	355
------------------	-----

Index of Proper Names	383
-----------------------------	-----

Introduction

0 Propositions

It would be difficult for me to make a list in any given order, but I am certain that preceding any operation or set of actions that could be termed ›institutional acting‹ – acts that produce the institution or refer to it, acts ›conducted‹ by an institution – is a very complex and rather vague set of conditions or unconditional conditions. Considerations of two principal pre-institutional conditions – for several individuals to act together or immediately perform certain similar, simultaneous or pertinent acts and patterns in a directed, precise and disciplined fashion (which is to say, properly) – make this book only a threshold, placing it at the doorstep of the institution: a »book-preamble«, an unending introduction into the institutional. A precondition for a number of individuals to live together (in one another's proximity), in a form that can be arranged, or reconstructed and repeated, is also a cessation of violence, or at least its sporadic, dispersed, and inconsistent use. The conditions for a certain action to be jointly conducted properly, which is to say, the precondition for a group to sustain itself, to survive, indeed to live (without killing or violently dying out altogether), is the immediate suspension of two kinds of violence: arbitrary violence of the individual (spreading fear, terror, terrorism; of the kind that a hundred years ago was done by or ascribed to an »anarchist«), and the *proper* and consistent use of violence *together* (war, even defensive war, war for democracy, and war against terror and terrorism). Despite this second kind of violence being institutional, and despite war itself being an example of an institution – quite possibly implying that »war violence« immediately precedes all forms of »institutional acting« we are here dealing with – I am entirely uncertain whether it is possible to speak reasonably of a »transformation« of violence or victorious war into justice, legality, order, or the institution, or indeed insist on a »conversion«, »transition«,¹ »transformation« of subversive individual violence or war and group use of violence into any kind of joint correct »institutional acting« (Raimo Tuomela uses the phrase *institutional acting*, while Christoph Hubig uses *institutionelle Handlung*). It seems to me that the appearance of diverse institutional acts, practices, or actions (above all those that never eliminate, nor institutionally neglect remaining actors, others) is better described as the interruption or cessation of violence or war. A group of individuals (certainly

¹ In the introduction to *Anger and Forgiveness*, Martha Nussbaum uses these verbs for the operation of replacing cruelty and force with »legal institutions«, »health of the city«, and »procedures of reasoned argument« (pp. 1–13).

two or three at the inception)² produces institutional acts if its actors temporarily act in the same direction (properly, directly, directedly), but also at the same time while simultaneously and consciously counting on each other (taking care in counting one another to include belonging to a group and its harmony with others), are *a priori* consciously counting on all those not yet or not necessarily a constituent part of the group or part of some other group (or multiple groups at once) – in a word, the broader community of groups. In that sense, a group of individuals is certainly qualified to successfully conduct certain violent acts, but it does not do so, having acquired the status of a new entity or institution (»institutional« status), and is thus always hospitable to others, never completely or finally formed and constructed. If, on the other hand, the conditions of proper joint acting are fulfilled, the amount of so-called »negative acts«, »negative social acts«, or even simply »bad acts« (personal acts and »asocial« acts; written about by Adolf Reinach, Alfred Ayer, Gilbert Ryle, Huw Price, Bruce Vermazen and others) will be reduced, pushed back, diminished, even entirely eliminated.

In this new context of ways and procedures that might suspend violence, end war, and institutionalize peace,³ war itself »figures« as one of the most important institutions ensuring the more or less long-term unity of a group, although it comes at the cost of major damage or even destruction of another, rival group; meaning that without war and victory in it, without »victorious war«,⁴ the collective identity of a group would remain indiscernible. In addition to my interest in this problem, I am also interested in the position of negation in the great institutional construction, as well as the status and significance of various forms of negative or nullifying acts for a society and its institutions. In the preamble of this book,

² One of the designations of a group is that it comprises at least three members, which implies »interpersonal relations« (*relations interpersonnelles*, because two are always in a »personal relation«). Walter Ruprecht Bion mentions an interesting proverb: »*Deux, c'est l'intimité, trois, c'est la foule*«. Bion: *Recherches sur les petits groupes*, p. 64. Probably when we speak of »group belief« it means at least three members. Cf. Lackey: *What is Justified Group Belief?*.

³ I am referring to the books *Nasilje. Figure suverenosti* (Violence. Figures of sovereignty, 2007), *Granica, znanje, žrtvovanje. O poslednjem ratu* (Border, Knowledge, Sacrifice. On Final War, 2009) and *Sila i oblici rata* (2012). The last book has been translated (with a few minor changes) into English as *Violence and Messianism*, and also into Italian, French, Spanish, and Russian.

⁴ In his doctoral thesis, dedicated to Otto Gierke, one of the first theorists of group acting, Erich Kaufmann thematizes victorious war as the ultimate norm that decides on the existence of a legally ordered state (or group). »The social ideal is not »the community of free-willed persons«, but victorious war, as the ultimate means for the highest purpose.« Kaufmann: *Das Wesen des Völkerrechts und die clausula rebus sic stantibus*, p. 153. »Victory« is a carefully chosen word, since, on the one hand, it belongs to protocols of game and balancing (equilibrium) that constitute the institution (e.g., the institution of the game called tennis, with a given set of rules, but also requiring exchange and equilibrium of action), while, on the other hand, it assumes competition and gamesmanship, profit and gain, but also underhandedness, all of which eliminates poor players from the game and ultimately leads to the cessation of the exchange. A good serve (an ace) brings victory and confirms the institution, while it represents one of the rules of the institution of tennis, can, if it is the victorious point, bring the exchange to a close, breaking the relation between the players (and is a negative action).

in describing the first-known institutional ur-scene of building a monstrous corporation in Babylon, I insist on the traditionally unclear and complex function of negation and negative engagement of *Adonai* (the highest institutional instance) in destroying the tower, dissolving the group and sowing linguistic confusion among its builders. Further, I understand negation in the context of invisible and extreme violence, the possibility of genocidal acts, as well as a way to probe Immanuel Kant and various theories of negative quantities, negative numbers, and the institution of debt, in addition to certain anti-institutional practices, resistance to the institution, as well as the distinction between negative acts and negative social acts. Towards the end of the book, when I thematize »opposition«, and the word »counter« (*contre*), as well as the idea or institute of the »counter-institution«, certainly a pseudo-alternative attempt at institutionalizing and incorporating negation into a general institutional project, which is to say abolishing everything not an institution or that has not as such been institutionalized. Two propositions further complicate my endeavor: that there is nothing which is not institution or is outside the institution, and, in a deontological register, that nothing should or ought to be outside the institution, that is, exist outside the good or just institution. They do so by showing the various forms of institutional coercion and negation of freedom of certain actors to simply ›act‹ non-institutionally (negative social acts, such as inaction, various abstinences, or withdrawing from action). If there is such a thing as non-institutional or extra-institutional acting,⁵ my intention would be to reveal in these actions not only resistance to coordinating action and balanced play with others (other actors) or subjection to rules and norms of an institution or community at large, but also some residual traces of pre-institutional violence that sometimes elicits from groups (and often some institutions) very aggressive, even brutal, comportment. The great French revolutionary and institutionalist Louis Antoine de Saint-Just, who understood the revolution as a comprehensive institutionalization of society (as they exist, above all, to protect society from corruption), ascribed asocial acting (although doubtful as acting at all) that denies all *affectio societatis* and thus negates or subverts the institution and institutional responsibility to those who were ›neutral‹ (who did not participate, are neither ›for‹ nor ›against‹, are not ›present‹) – these were the main enemies of the revolution. I differentiate such deformed ›acting‹ and in general the ›institute‹ of neutral

⁵ This fiction is above all a »French matter«, enduring at some intensity since Madame de Staël to Foucault. Against Hegel's understanding of the institution of objective spirit, for example, Madame de Staël takes existing institutions to be neither »states of affairs« nor »states of the spirit«, which is why it is necessary to emancipate the spirit (meaning philosophy or action) from existing institutions. Cf. Gehlen: *Moral und Hypermoral*, p. 102. In her famous text, *On Literature Considered in Connection to Social Institutions*, De Staël insists that in a country in which enlightenment cannot penetrate the institutions there really exists or remains a facile philosophy or thinking that does not amend the lives of people. How can there be an extra-institutional field or a quasi-institutional potential not yet fertilized or built into already existing institutions?

or asocial actors (who *de facto* either do nothing or do so »poorly«), from forms of (in)action that are only seemingly opposed to protocols of institutionalization. I would like to produce a classification of negative acts as well as the presence and significance of asocial acts for the constitution of a group; further, I am interested in protocols and strategies of diminishment and neglect of such (in)activities, and the possibility of their elimination. Several problems present themselves: the first refers to the determination of asocial acts (of which negative acts are only a part), which I would define provisionally as acts that actively or passively endanger the relations that exist within a group, or (potential) relations of one group with other groups (i. e., apologies, complaints, justifications, tardiness, sluggishness, neglect, unresponsiveness, irresponsibility, hypocrisy, underhandedness, lying, delays, etc.). To what extent can such acts be ignored and go unheeded? Does the institution as »openness« (two words that should be synonymous) *a priori* diminish the significance and danger of such operations to the survival of the group or institution, that is, does the arrival of new members and increase of social connections perform this task? How can we preserve the right to difference and exception or the »right« to, for example, reject bearing and using fire arms for the sake of defense of one's group (recalling that the stamp *Asozial* and black armbands were infamously used for a particular group of prisoners in Dachau that included homosexuals, emigrants, political prisoners – in a word, those who did not conform to the demands of the Third Reich)?

The book must also give a convincing answer to the question of why violence or certain negative acts still cannot be entirely left outside the doorstep of institutional action. Committing violence together, eliminating the unfit from one's own group or destroying other opposed groups and formations have perfectly bound and united group members, and forcefully shaped its identity, collective consciousness and responsibility. The cessation of destruction and killing would bring an end to an enforced period of group unity. Is it then possible to find another directed common activity (at once, all together) that would have nothing to do with sacrificial rituals of killing or hunting, or rituals of persecution of others? The idea that violence can be transformed, which is to say preserved in a different and acceptable form, appears as a perfect fiction to keep a group, large or small, together. If the community is still active, that is, still acts jointly, with its members in close proximity to one another, sharing language, goods, money, affection, labor, etc. – this is a good sign that force has been, at least seemingly, successfully transformed, bad acts either hidden well or incorporated into a group holding together. What remains of war or readiness for war, killing, and slaughter, is only the group itself, being drawn into the group, memory of (non-)deeds past and successful violent (heroic) acts. Sacrifice, as one of the first institutions of transformed violence, is not efficient because it alters reality, but because it holds us together, giving form to the group through continuous repetition. Similarly religion, that

is, the trust in the ordering power of words and voices (like the efficacy of prayer when conducted together or learned communally), or else utterances made jointly (aloud) of forgotten text that recounts the fierce battle for living space of our ancestors, of experience of catharsis in theater, victory in sport, etc. Still, however successful and exemplary these illustrations of collective intentionality or communal focus of group actors towards the group – which also include banalities, such as soldiers marching, mentioned by Sartre, or its transformation into a podium dance, mentioned by Margaret Gilbert – a group stripped of violence as its primary integrative factor is truly forced to carefully and always anew construct the principle bringing and holding its members together in time, moving them in a single direction. Transforming or leaving behind violence for an entirely new and different form of acting or conduct is decisive for the possibility of creating a new institution.

Naturally, this book deals with the sluggishness of institutions in a time of new and future wars, and a time of continuous violent activity disseminating fear across the world and across borders (at airports as borders). In a time when institutions are degraded and lapse back into violent techniques that more easily ensure the unity and survival of a group, I have chosen to begin this book with a *de facto* defense of a »group on the move«, and the difficulties and problems it faces: namely, a group of migrants, coming from somewhere, is forced to pry open the doors of institutions it encounters, and build institutions it does not. And I have chosen to close the book with a vision of Europe as a new counter-institution, a Europe in permanent crisis, yet ever reducing the sovereignty of its constituent states, but open to those who wish to join or return.

Group (Ever) On the Move

What does it take for a group that can count itself »internally« to account for its members and add them up,⁶ to become a new entity (have a new name, be an agent or subject) different and above all of its members? What is *institutio*? Is »institution« still a word used all too easily for a field that remains still unknown (Charles Parsons; Raimo Tuomela; John Searle)? I will reduce hundreds of definitions and variations of institutions and the institutional to only a few: the institution is an artefact – pure human invention, something nature cannot produce on its own

⁶ The thematization and theory of the group appears relatively late in Western thought. It probably first appears in Otto von Guericke's Rector speech at the beginning of the twentieth century. Cf. Guericke: *Das Wesen der menschlichen Verbände*, pp. 3–32. Later, Tomoo Otaka's book surpasses earlier efforts in the Anglo-American philosophical world with the term »social group«. Cf. Otaka: *Grundlegung der Lehre vom sozialen Verband*.

(Samuel Pufendorf; Antoine Furetière; Étienne Bonnot de Condillac); the institution concerns the structure, investment, and engagement of all interested actors, and not only a few; *institutio* is the beginning of something entirely new, above all with a written document or charter, implying the discovery of the common good or *commons*, and which in turn creates new actors, generations and inheritors; the institution designates the discovery of place, its disposition and occupation.

What is *actus instituendi*? Communal learning for the sake of being together means that institutional act(s) surpass the interjections of a tutor (which generally concern the work of individual members and work with each of them). Therefore, one of the main conditions of the institution is really communal learning and study conducted by the group – discipline. If a group begins to project its own future plan or is planning its future and future activities (Michael Bratman), and in doing so is also thinking about all those who will only join it later – i. e., thinking about other groups, or the community at large – or else if the group is working on the development, expansion and construction of a big city (not merely shelter or fortress, meaning that architecture is one of the key figures of institutional and disciplined acting, and is thus a latent presence throughout this book as the key »institutional thesis«), then the degradation of the institution back into a group will indeed be slowed down. On the one hand, therefore, the institution is an instrument (the words have a tautological connection), which the group uses, through specific protocols, to preserve its unity and its »groupness«; on another level, in the face of further uncertainty and violence, in the face of terror from others (foreigners, refugees, minorities, or maniacs), the institution reduces to a group, setting up an opposition and opening up space for the constitution of a rival group and thus conflict. Still, such institutional closing must be temporary, because in reality only the group (of migrants) arriving from somewhere (as in the building of the great Babylonian institution) initiates the new process of institutionalization and gathering of all. Does that mean that the institution or institutionalism is necessarily a cosmopolitan effort and that any institutional act immanently counts on all those who are not present or who ought to be present?

Yet, I remain skeptical that cosmopolitanism is a sufficiently fertile protocol to generate answers to the dramatic set of problems we face today. In the same vein, we should not follow Kant or some passages in Hannah Arendt, nor Jacques Derrida's 1997 fanciful daydreams of a »a new city«, »a different notion of the communal right to the city«, or right to a »free city« [*une ville franche*],⁷ nor the Biblical analogy of »city of refugees« he thematizes in detail, and which in fact structures the famous text in which he calls for readiness. Although in writing about cosmopolitanism, Derrida uses the word »institution« several times, and calls for the institutionalization of such refugee cities, I am not sure how applicable these

7 Derrida: On Cosmopolitanism and Forgiveness, p. 9.

cities, or the Hebrew word *miqlat* (from the root *qlt*, meaning to absorb, shelter, stow away), are to the refugees we see today in the squares of our cities, or even to the group of refugees that arrived many centuries ago to the city we will recall as Babylon. *Miqlat* refers to one who has killed unintentionally, and who bears a certain type of responsibility (the accent is always on responsibility). Equally, I am unsure of the applicability of ›temporariness‹ mentioned by Derrida, or the temporariness of the *miqlat* status (which is abolished with the death of the high priest), the temporariness of guest and hospitality. The aporia of hospitality lies in this very temporariness, whence it can be absolute and unreserved; yet does not refer to today's refugee group fleeing violence, whose city is destroyed and can never be rebuilt in the same spot. Does this mean, alternately, that the group must incorporate itself in its new place, along with us all, reconstruct the encountered institutions, and alongside us seek solutions for our great new common city?

I find the conditions for such a perspective in Michael Dummett's 2001 book, *On Immigration and Refugees*, published in the same collection as the English translation of Derrida, as well as in the text that inspired Dummett, Pope John XXIII's *Pacem in Terris*. Far clearer in supplying Dummett with his positions than the endless hesitations and reservations found in Kant, Pope John insists on immigrants being given citizen status, because being a citizen of one state does not strip one of their belonging to the overall human family, that is, citizenship to universal society, humanity overall. There are, nevertheless, three unavoidable difficulties in any thematization of immigration and refugees or a group on the move and its efforts to institutionalize and undertake the great endeavor of total institutionalization.

The first difficulty is the advantage given to things and ownership of things over people. To consistently follow liberalism and capitalism in whatever form is above all an attempt to level and equate humans with things. Michael Dummett explains succinctly: »all borders should be open«,⁸ which follows from the principle of the free market: if things and money move freely across the Earth, so should humans. Analogously, there is still no human *right to stay* (Walzer) since *ius situs* or *lex situs* necessarily refers to things (possibly owners of things), and not persons and the possibility and right of their common occupation of a space.

The second difficulty refers to the general impossibility or at the very least near insurmountable obstacle of collective and simultaneous regulating the status of a (big) group of refugees who have crossed one or more borders, seeking the *right to stay* in one or several sovereign states. Today's immigrant context is only a partial novelty in the great population shifts in history. It is not only a matter of endangering the identity of a country or group of people in a given place, required to accept a large group of guests; nor simply the danger of quickly (all too quickly?)

⁸ Dummett: *On Immigration and Refugees*, p. 48.

eroding the identity of a culture (as opposed to gradually, as in the case of the population move from Algeria and Tunisia into France in the last century); what is at stake is also the necessity to entirely reform international law and with it the status of refugees in such a way to allow them access to European citizenship.

The third difficulty regards the law, such as the law of asylum and the right to cross borders. It is less a matter of unclear articles and deliberately vague and opaque conventions (about which Dummett writes), rather a more long-term (on very rare occasions, also short-term) processes of institutionalization that have nothing to do with strict legal procedure. In »We Refugees«, when she writes about »so-called Jewish problems«, Arendt confirms that we are indeed a kind of economic »immigrants or newcomers«: we have indeed left our country, but only with the desire to »build our own lives anew«, to which end we must remain »strong and very optimistic«.⁹ Possibly, a kind of life energy and pure will to change drive a joint *incorporation* to overcome in time not only the obstacle of borders or laws, but the crucial one of the destruction of the group, the dispersion of its members and dissolution of the first person plural: »we«.

»I« within »We« / I – (A Single) Part of a Group and Institution

The slow and burdened writing and production of this book¹⁰ – which can never really be completed – is perhaps only a sketch of a real book of history of institutional acting and constructing institutions (once upon a time, Avner Greif announced one such systematic book, but then abandoned it) is probably the consequence of the problem or impossibility of joint writing (»How to [*correctly*] write *together*«?) and »accounting for everyone« and the meticulous »taking into account« myriad elements from sundry sides. Apart from great and unfinished projects of entirely diverse theorists, across various languages of the institution and institutional (Helmut Schelsky, Niklas Luhmann, Johann August Schülein, Cornelius Castoriadis, Avner Greif, Mary Douglas, Amartya Sen, Paolo Napoli, Benedetto Croce, Roman Schnur, Jack Knight, Robert Grafstein, Douglass North, Ota Weinberger, etc.), and texts that belong to completely different genres and disciplines – the greatest problem is that the term »institution« and institutional protocols have imperfectly overlapping meanings in different languages, and consequently considerations of joint work, groups, cooperation and institutional act-

⁹ Arendt: *We Refugees*, p. 110.

¹⁰ A sketch of this book was published in Serbian a few years ago. Cf. Bojanić: *O institucionalnom delovanju. Kako je moguće ispravno raditi, pisati, hodati, disati, živeti zajedno?*

ing. The result is a field of fractured and incommensurable traditions of thought. This is particularly conspicuous in philosophy and it would be easy to show that »social ontology« (to use Husserlian vocabulary, although he was not the first to use the phrase) and the various theorists who belong to the phenomenological and pseudo-phenomenological tradition, as well as the founders of sociology, practically announce and forecast what has been carefully demonstrated in recent years by Searle, Tuomela, Margaret Gilbert, Tony Lawson, or Geoffrey Hodgson, all the while constructing an entirely new philosophical discipline. I have endeavored to follow these differences without separating so-called analytic and continental philosophies and their respective contributions in the construction of subject and field of »social ontology«. I am certain that without an attempt to thematize the distinction between *institution* and *establishment* (both words introduced by Hume), without elucidation of the first translations – and consequent mistakes and shifts in meaning – of the Latin words *impositio* and *institutio* into European languages, without meticulous differentiation of several quasi-synonyms referring to the notion of institution in German or, for example, elaboration of the Russian word событие (event, but literally with-being, meaning that whether something is an event is determined by the existence of a group, since »we« happened because something happened that constituted the connection among those now »we«) – it is not possible to understand the complexity and uncertainty of successful and efficient institutional acting.¹¹ The first person plural of to be in English, for example, (»we are«) does not reveal the same possibilities as Sartre uncovers in the French with »*nous-objet*« and »*nous-sujet*« because »We [*nous*] are looking at them« does not have the same ontological value as »us«, as in »They are looking at us [*nous*]«.¹²

I have resolutely collected these elements in the past years (and there are more and they are more complex in the main body of the book), and have done so jointly with colleagues across disciplines and institutions. The diversity and amount of input imply the need for a specific common presentation, even common (group) writing. Therein lies my problem, and the problem of possibly writing as a group about a group or institution. It is at once the reason there are no comprehensive studies (or very few) on the subject of institutional acts. As part of a group or various research groups and institutions, I have consistently endeavored to transmit the »spirit«, or better still, the dilemmas and variables of joint work into this text, thus emulating common writing, and have only partially succeeded in this (after

¹¹ In Russian, to institutionalize is учреждать [*utschrezhdat*]. Only in this language is the institutionalization connected to order, with the line, the sequence comprised of individuals. Чередить [*Tscheredit*] means to gather or undergird, and is close to the French *dispositif*. The institution is an arrangement of a system of objects. In »Norms, Institutions, and Institutional Facts,« Neil MacCormick uses the example of queue formation (for a shop) as a spontaneous construction of a group, that is, an institutional fact. MacCormick: Norms, Institutions, and Institutional Facts, pp. 301–345.

¹² Sartre: L'être et le néant, p. 486.

all, I am not a ›We‹. However, I do feel that after this text I remain within those groups (as the author whose signature appears on this book, holding a privileged place over other parts gone into its writing), and that thus this book or sketch of a future real jointly-written book truly falls within the notion of ›group act‹ and not merely a presentation of a common effort that has exhausted itself. In that sense, many parts of this book still remain to be amended and edited.

Portions of this book have in previous years been presented in a number languages and cities. Hence, the tone of certain chapters aims to preserve the style of speaking to colleagues and collaborators. The lectures I have given to PhD candidates in Belgrade, Rijeka, Turin on ›architectural philosophy‹, ›social ontology‹, and ›theory of institutions‹ have helped refine and polish my understanding of these concepts. The numerous conferences I have helped organize with Jean-François Kervégan, Maurizio Ferraris and Tiziana Andina have, of course, given me the opportunity to develop various portions of this book. Discussions with Jonathan Wolff, Étienne Balibar, Axel Honneth, Michael Walzer, John Searle, Margaret Gilbert, Raimo Tuomela, Peter Eisenman, Francesco Guala, Emmanuel Picavet, Hans Bernhard Schmid, Paolo di Lucia, Monika Betzler, Giuseppe Lorini, Markus Gabriel, Jocelyn Benoist, Adriano Fabris, Emmanuel Alloa, Paolo Napoli, Roberto Esposito, Ugo Mattei, Giuseppe Mastruzzo, Dario Gentili, Giusi Strummiello, Elettra Stimilli, Judith Butler, Virgilio Cesarone, Christoph Hubig, Luca Illetterati, Bernard Stiegler – have all continuously advanced my understanding of institutional acting. Finally, I must thank Edward Djordjevic, Miloš Čipranić and Jure Leko for help with the language and the final preparation of the manuscript. Various foundations and institutions have helped my research and that of my collaborators in joint projects, that is, my colleagues in institutions I have headed and even founded – holding negotiations and reaching agreements was always most inspiring and highly instructive for my comprehension of how institutions work and how work is conducted within them. Without the experience of establishing and collaboratively running institutions, this book would certainly be impossible.

I owe special gratitude to another great institutionalist, Werner Gephart, the *scienziato e artista*: his friendship and invitation to be a fellow of the Käte Hamburger Kolleg, ›Rechts als Kultur‹ in Bonn allowed the time for this book to come into existence. It was his idea for this book to be published in the series of which he is editor.

Preamble

1 Theater of Institutional Design

How do we begin to describe institutional protocols, even in a fragmentary manner, without strict thematization? How to begin a sketch of what I call *In-statuerere*? What are the various moments or conditions required for something to subsist in time and space, to maintain its invisible stability of a statue (*statuerere*)? Can this be designated by the word «institution»? Here are three key protocols:

Institution (*Stiftung, Anstalt*) is a set of acts, factors, and facts, which under the right conditions and following certain rules, are able to endure standing together. The complex and polysemic connection of the figure and the figurative to the institution and its practices (Deleuze) probably has an advantage over other kinds of designations of something that in the first place stands upright and endures in time (*in-statuerere*). The institution (or the multiplicity of actions that institution-alize [Parsons]) is above all an architectural and artificial creation: it is created by people, and does not concern either nature or God (the construction of the Tower of Babel is the first scene of institutional creation). It protects joint work from decay and stabilizes ties among people through their joint and engaged acting. Institutional generative and regenerative potential is conditioned by its necessary openness to new engaged members and innovative actors. The ontological incompleteness and institutional deficit due to constant latent absence of new engaged and institutional members and acts, could be represented as a fictional social body (Santi Romano) always lacking a piece of reality. A few established characteristics and paradoxes of the institution are that the institution depends on other institutions and is always connected to them, that its origin includes force and violence (Hume) and that war is one of the first institutions, that the institution is coercive in that it at once satisfies instincts (Hume) and limits desires of the individual (Searle), that it precedes the individual and individuals (Mauss), that the institution of language is crucial and precedes all other institutions, indeed is the institution's *a priori*. To these we should add the projective and documentary substance of the institution and the institutional. As a project, the institution guarantees the survival of the group as a group of diverse actors and elements in time and space, while documentary and archival protocols confirm that the institution exists and endures standing.

Engagement (*Impegno; Engagement; Compromiso*) is a type of social act crucial to the constitution of a group or institution. An act is engaged above all when it is public or announced (otherwise it is a negative or an unannounced social act performed in silence). It is a provocative act that calls or addresses others, all others (*com-mittere* also means to send), not just members of a given group, and an

incitement of those present to draw closer. *To commit* refers to an act that spurs those around into action, or else obligates them to do something by acting as members of a future joint body, *a committee*. According to Margaret Gilbert, »joint commitment obligates the parties one to the other to act in accordance with the commitments.«¹³ However, engagement is particular in that it requires a high degree of commitment (»to give one's all«, »complete commitment«), as well as a kind of sacrifice (for others, with others, even towards others and in their stead, sacrifice as binding together), which is also at once acting that calls to others to join, to repeat »our« act, thus constructing future joint work (for more on the difference between *commitment* and *engagement*). In this sacrifice we grow closer to others (the word *engage* comes from the verb *vado*, from the Germanic *wadi*, and the Latin *vas*, *vadis*, meaning »advancing towards another«¹⁴). We are bound to others in offering a »gage«, in »en-gaging« (*mettre en gage* or *donner en gage*), thus also »burdening« and »obligating« them to follow our action. Two words or two protocols – the French-English-German engagement (*engagement*) and the English-French commitment (*commettre*) – imply that we are speaking of a specific kind of obligation (neither perfect or imperfect) responsible for the constitution of *group agency*, an *engaged group* or institution.

Counter-institution (*contre-institution*; *Gegeninstitution*) is a separate, parallel institution, one even in opposition and resistance to existing institutions and various individual and group acts. It is characterized by the production of myriad critical and engaged acts whose aim is novelty, change, and deconstruction of ossified, authoritarian models. The term *counter-institution* seems to have first been used – without going into detail – by Saint-Simon, referring to England where there are some »adjacent« and »regulative« institutions. Counter-institution ought to be synonymous with, for example, a new institution or Europe. While we could associate old institutions with closed sovereign institutions of sovereign states, Europe would be a counter-institution. Yet, the state too can be a counter-institution if it opposes those institutions that represent individual interests or endanger and neglect others (Derrida). If old institutions encourage ignorance and prejudices of the times in which they were established (Saint-Simon), counter-institutional practices are the condition for the discovery of new, modified rules that then alter the ties among social actors. Counter-institutional practices could reveal the fundamental institutional paradox: institutions shape people, while at the same time people shape institutions; people are shaped in advance or at least primed to take on and produce new forms of institutions. Contemporary sociology deploys the term counter-institution only very rarely, with other terms, such as non-governmental organization, corporation, or civic association in more

¹³ Gilbert: Commitment, p. 899.

¹⁴ Kemp: Théorie de l'engagement, p. 16.

common use. However, in the 1960s, the term counter-institution was used to designate certain civic groups that resembled what Saint-Simon noted existed in early nineteenth-century England.

The operation or operations setting certain elements into relation, connecting them into an order – the word for which is *In-statuer* – is artificial and an architectural action. It is conducted by a group of people, rather than God or occurring in nature. The ›architectural‹ is thus the fourth protocol constructing the existence and subsistence of certain elements in time and space. There can be no institution without the various architectural states and movements: concept, design (*disegno*), project, platform, diagram, border, wall, transparency (of walls taken down), threshold, form, ground.

The first moment of an institution (which is always an architectural construction even when not material; e. g., there can be no institution without design and projection) could be the threshold as set in the ground, as the beginning of something entirely new in time and space. The threshold, then, is the first of an institution, since it is at the beginning of the *new* or new construction, and at once on the boundary from the old to the new. Both philosophy and architecture are essentially institutional practices, that is, practices that institutionalize all that exists and is in our hands, and that part of an institution which is first or comes first – or assumes ›first position‹ – and which I would name threshold. Of course, if we now went into detail and began to reconstruct the issue of whether all institutions have a threshold and under what circumstances they might not (quarantine is sometimes a completely closed institution, without threshold; the house, further, is sometimes entirely open, without threshold, in particular when we are ›online‹; or else the institution of property also deals with various threshold models, and so on), we would reach a parallel option to the position of the threshold: the counter-position of the threshold. If the threshold is the *primum* and beginning of the institution as such, then the fate of a new and always possible counter-institution is also decided ›on the threshold‹.

The threshold is above all a small wall, or the smallest possible wall that can still be stepped or jumped over. Meaning that there is no threshold without step or leap. Not only that: the threshold is a text, a formula, a password, an inscription, or document. In accordance with François Rabelais' idea of a new institution, one opposed to the bishopric or abbey, which brings freedom, education, and help to a large group of people (there is no institution that does not in its program contain various protocols of help), the threshold ought to be ›something impossibly small‹ or ›something possible to the smallest possible degree‹, and which ›leads us into the impossible‹. How is this possible? Across some ten pages of *Gargantua*, Rabelais, inspired by the architect Francesco Colonna, elaborates his crucial idea of how to design and construct Thélème (*thelema* is will in Greek), an institution with-

out walls (and thus without a threshold, without *confine*).¹⁵ Even though Rabelais invents certain filters and conditions about who may and may not be part of this institution, who has the right to enter, and even though there is only *appearance* of an entrance and *appearance* of an entrance inscription (like Plato's Academy)¹⁶ – the institution is still supposed to be available to all. There are no rules, deadlines, schedules; everyone does what they will and wish, but in accordance with the will of all other individual wills. This is possible, says Rabelais, above all if there are no walls: «où mur y a, et devant, et derrière, y a force murmur, envie et conspiration mutue» (I, 32).¹⁷

We have yet to fully grasp and justify this explicit ode to transparency (and condemnation of lies and hypocrisy), as well as democracy (but also to glass – meaning that the twentieth century is a material architectural response to Rabelais). We still lack a good argument in favor of free will, of a transparent and reciprocal exchange of love¹⁸ among actors: we still lack a good argument against rules and norms on which our institutions are founded.

The fifth and last protocol issues not from resistance or antagonism contained in the power and potential of the word ›counter‹ of the counter-institutional protocol. Rather, here is something new: critique, or better, joint critique, a register of provocation and democracy.¹⁹ The institution always implies inclusivity and generativity: the elements not yet part of it are as-if present, already tied within its existence (are its institutional fiction). We are speaking of all possible and impossible elements, since every institution potentially has room for all. It is for this reason justified to claim that *there is nothing outside the institution*. These

¹⁵ The «Abbaye de Thélème», is the first utopia of French literature, constructed by François Rabelais in Book I (Chapters 52 to 57) of *Gargantua and Pantagruel*. René Loureau claims that this is the first example of a counter-institution. Loureau: *L'analyse institutionnelle*, pp. 29–31.

¹⁶ The opening line of Rabelais' manifest is «*Cy n'entrez pas, hypocrites, bigotz ...*» On the connection with the inscription at the entrance of Plato's Academy, see Saffrey: «*Cy n'entrez pas, hypocrites ...*».

¹⁷ Rabelais: *Gargantua*, p. 170; «where wall [mur] is, front and rear, there is abundant murmur [mur-mur], envy, and mutual conspiracy.» Rabelais: *The Complete Works*, p. 116 (transl. D. M. Frame).

¹⁸ In the 1860 poem with the opening line «I hear it was charged against me ...», Walt Whitman repeats Rabelais' intention. «I hear it was charged against me that I sought to destroy institutions; / But really I am neither for nor against institutions; / (What indeed have I in common with them? Or what with the destruction of them?) / Only I will establish in the Mannahatta, and in every city of These States, inland and seaboard, / And in the fields and woods, and above every keel little or large, that dents the water, / Without edifices, or rules, or trustees, or any argument, / The institution of the dear love of comrades.» Whitman: *Leaves of Grass*, p. 136.

¹⁹ By which I do not mean democracy as a metainstitutional concept or protocol as it appears in Karl-Otto Apel: «Stellungnahme der Diskursethik zur Hommann'schen Letztbegründung der Institutionenmoral durch die Demokratie qua politische Metainstitution aller Institutionen». Cf. Apel: *Transzendente Reflexion und Geschichte*, 316 ff. I analyze the famous old democratic institute of *ius provocationis* elsewhere. The right of any citizen to question the decision of a judge and seek its reconsideration before the public and the people. This is probably the first deliberative model in the history of Western thought. Cf. Bojanić: *Provocatio*.

elements impact, correct, criticize, and amend one another. In this way they alter the forms of their association, anticipating the arrival of new, as yet imaginary members. Affinity, sympathy, friendships, groupings, joint survival – these are the preliminary models of true institutional practice. It seems that just such a theater of operation could explain ›what joint critique is‹ or what is the status of critique – *statut critique* is mentioned by Derrida when speaking of *critique vulgaire* and distinctions in Bourdieu – within a group which meets from time to time. So, a group of elements (imaginary or otherwise) meets in order to constitute itself as a group (the word consortium contains the Latin *consort*, *sort* is the partner sharer). In order for any of this to take place, ›critical engagement‹, or even just ›critique‹ or ›engagement‹, must be immanent to this construction *con-sort*. How does critique happen in a group, or what allows for it, or what is its origin? At issue is the reflection (sometimes it is judgment or disputation or neurosis) upon everything each one of us individually places before the others or before us. A critique implies that we are part of a group body, a *universitas* (which is opposed to the individual, and which Cicero, translating the Greek words *kath'holon* and *ho'lotés*, uses five times), that is ever in crisis because it could at any time dissolve. We, the group, are always reforming anew, and constructing ourselves as *universitas*, we construct some kind of totality of knowledge (*universitas* is necessarily *et universum*, *et totum*, *et omne*) or a plurality of various protocols of truth.²⁰ Critique, then, destroys us, but simultaneously, holds us together, because this ›capacity‹ (to be critical, to critique, to question, to cause crisis) or ›protocol‹ is immanent to joint work and presence.²¹ A university or consortium produces certain knowledge or complete knowledge; at the same time, it sometimes produces a complete individual (Cicero would say man) or a group of people, a kind of new university or new institution or *counter-institution*. Of course, joint critique or engagement is an instrument (*instrumentum* and *institution* are synonyms in many texts) that constructs such a complete and well-formed individual. Paradoxically, such an ideal individual is such if and only if he can be a partner or sharer. This is important. This already disqualifies leadership and inequality. We can easily see that the ideal researcher is not usually thought of within the boundaries of such categories (to be a partner, to produce acts easily expanded by others). It seems that this is the very reason we

²⁰ My sentence here stands in opposition to Karl Jaspers' opening line of his *Die Idee der Universität* (1946). »The university is a community of scholars and students engaged in the task of seeking truth.« (*Die Universität hat die Aufgabe, die Wahrheit in der Gemeinschaft von Forschern und Schülern zu suchen*.) Jaspers: *The Idea of University*, p. 1; Jaspers: *Die Idee der Universität*, p. 9.

²¹ In several places in his book *Des Universels*, Étienne Balibar mentions critique or »un discours critique« or »ce genre d'attitude critique«, still tied to »les catégories de l'universel, de l'universalité, de l'universalisme« (he makes no mention of the university). Cf. Balibar: *Des Universels*, pp. 131, 129. Here is Jean-Claude Milner's definition that explains the universal: »like a road that carries the multiple towards the one by way of the everything« (*comme un chemin qui relie la multiple à l'un par l'intermédiaire du tout*). Milner: *L'universel difficile*, p. 825.