

The Power to Rule the World

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I.

Lately, a notion of regime has been reintroduced into the language of social and among them law studies which is intriguing because, for some engaged with critical theory, it still refers to some system of power whose legitimacy is not exactly beyond any doubt. A regime within the political or the physical comprises a set of conditions or measures, which fit in and work within a certain environment without necessarily being completely understood or even spelled out. A regime combines formal and informal rule, or outspoken and silent expectations and commitments. It is both an institution and a style, or even a "combination of styles around institutions" (White 1992, p. 226), and it makes use of this combination in order to be able to float with respect to both its range and its core.

Andreas Fischer-Lescano and Gunther Teubner propose to use the notion of regime to describe a global order of law, which is multi-rational, highly fragmented, but still networked (Fischer-Lescano/Teubner 2004, 2006). Lacking any hierarchical hint to where its unity may consist in, that global order of law exhibits a heterarchical circularity, which is highly flexible with respect to cause, argument, and enforcement, and draws on many sources of law, be they national, international, corporate, or market.

This paper tries to emphasize the use of a notion of regime by shifting it back a little to the sphere of the political. Whereas the law provides for means to ignite, handle, and settle conflicts within a society, which has every interest not to let conflicts roam unrestricted (Luhmann 1995, chap. 9, and 2004; Teubner/Zumbansen 2000), the political deals with ways to develop and constrain a power to rule the world. Focusing in a rule pre-committing itself with respect to possible failure, the political both harnesses and delimits ways to arbitrarily, or willingly intervene into matters of fact, social order, and time and process. Modern attempts to insist on a pre-commitment of the political to legal rule have obfuscated both the reference of the political to the threat, exercise, and containment of force and violence (Weber 1968; Parsons 1963), and to the possible link between the use of force and violence, on one hand, and the production, distribution, and control of the arbitrary, of free will, on the other. It took Niklas Luhmann more than thirty years of writing about power to rediscover

that power is indeed about the gain of arbitrary action on the side of both the ruler and the ruled and that it consists in making sure that this gain is not lost again while all the way ensuring its containment as well (from Luhmann 1979, originally 1974, to Luhmann 1997, p. 355-7).

This paper looks into a possible notion of regime to describe how that kind of power is framed within a world society, which possibly right now is on its way to transform itself from the modern society based on the printing press to a next society based on the computer and its derivatives (Baecker 2007, 2007/8). Yet, in order to be able to do so, it first reframes an appropriate understanding of power, and then looks at earlier instances of rule in tribal society, ancient society, and modern society. Regime will be assumed to follow *nomos*, privilege, and reason in its way of framing the rule of power. We will use George Spencer Brown's notation of concatenated distinctions to develop a model of the rule of the world (Spencer Brown 1969), drawing on that notation's advantage of describing a topology of nested spaces which consists in a heterarchy of variables including relations of number, order and exchange, and of confirmation, cancellation, and subversion (McCulloch 1989; Günther 1979).

II.

The power to rule the world depends on meeting a resistance, which under the threat of force gives way to a compliance, which compared with the execution of the force is considered the lesser evil, that compliance then waiting to get a chance to break free again and to avoid further obedience. Meeting a resistance the ruler has to be able to threaten without having to execute the threat, or to execute it only when thereby threatening with even more. The compliance has to contain its own reward, beginning with the avoidance of the execution of the threat. The time spent with waiting for a chance to break free again is the time to be used by the power to get its will, to continue to validate the threat, and to reward the compliance.

A possible Spencer Brown (1969) expression coding the way power gets its way reads as follows:



Power, thus, is not just marked and distinguished by a will getting its say but by a resistance being lured into compliance. Note that there is a clear-cut ambiguity as to who it is who occupies the powerful position in this play, because compliance framed by possible resistance lets the ruled exercise a deliberate power as well. Is it the ruler who is luring the ruled into compliance, or the ruled luring the ruler into spending rewards? Is it the ruled who complies with a threat in order to calm down the ruler, or is it the observer who welcomes the threat because it calms down the ruled? Note that with respect to power everybody is in a position of a third, or of an observer, making calculations as to what are the gains of the rule and what may be the gains of a possible unrest, bringing to bear the results of that calculation on the definition of the situation everybody is in.

Sociology has ever been outspoken about power being a physical as much as a temporal and social process. A modern society which considers itself as one which broke free from aristocratic rule and therefore likes to consider power a rather evil, if only unreasonable means to get one's will, is met by a sociology which points to the positive use of power in modern society as well, be it in politics, in organizations, or in the family. It analyzes the physical means and the different ways to demonstrate the threat, the time spent with both reaping and rewarding while threatening all along, and the individual constellations of people ruling, obeying, and watching each other (Weber 1968; Parsons 1963a, 1963b; Crozier/Friedberg 1980; Luhmann 1979).

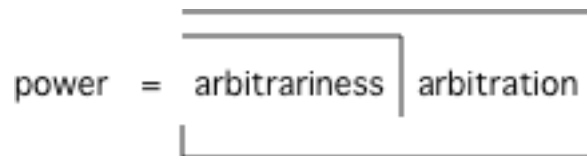
Thus, looking at the social constitution of power means to draw in the states of the world any power refers to in order to legitimize threat, compliance, and reward. The power to rule the world is considered to be as much about the world as about the power to rule. No ruler will tell you about its will as long as it is uncertain what there is to be willed, that uncertainty, however, being the very stuff that keeps the ruled on their guard. No ruled will tell you what it is willing to comply with as long as there is no command being put into the alternative of threat and reward, that command therefore having to be delivered in order to bind the ruled even if there is no will to be willed. The world ruled by power is a physical world, a temporal world, and a social world inextricably knotted into each other.

A closer look at the intricate relationship between the power to rule, on one hand, and the world, on the other, reveals what power indeed may be about and why rule is such a difficult thing to secure. If you look at both sides of the process which enables power to institutionalize itself, that is at a resistance giving way to compliance due to realizing the truth of a threat, on one side, and at complying with the compliance waiting to get a chance to break free again, on the other, you will notice that the positive execution of power is all about a free will framed by conditions which restrict it. The ruler's will is restricted by the ruled's

resistance and by the demanding conditions of their compliance; and the ruled's will is restricted by the ruler having its will.

Looking at power we are indeed looking at arbitration coming about. Power does only emerge at the prize of *Willkür*, acts of arbitrariness, acts of caprice, acts of despotism being discovered (Luhmann 1997: pp. 355-7): The ruler discovers its ability to will this or that, depending on the risks incurred, and the ruled discovers its choice between obedience and refusal, a choice soon to be extended towards other alternatives once the ruled has learnt that it has a choice at all. Both, however, a moment later discover that their empowerment to arbitrariness comes at a certain prize which may be called commitment, both to oneself and to the other (Elster 2000), thereby discovering, perhaps, that there are indeed an other and even a self. Thus, the world being ruled by power is a world becoming real in the form of the constraints it entails and the positions it indicates, distributes, and locks into each other.

We may give our Spencer Brown expression another twist which lets us look at the form of arbitrariness being framed by arbitration:



By arbitrariness we mean the range of free will discovered by acts of power, of *Willkür*, of caprice, even of despotism being risked and watched; by arbitration we mean the process of re-embedding acts of arbitrariness within a physical, temporal, and social world, largely surpassing the more narrow meaning of arbitration as a legal procedure to resolve and settle disputes even if this technique is a perfect example of what we mean by a process of re-embedding.

Modern society is mistaken in thinking that its freedom consists in its liberation from the rule of power. It just transformed the rule of power from aristocratic exclusion to democratic inclusion, possibly letting slip, however, the positive use of power into the blind spot of modern society, though closely watched by critical theory (Adorno 1968), which never stopped to monitor all kinds of exclusion that are maintained and concealed in discourse masquerading as reality, in *habitus* embodying its own practical reason, or in professions claiming expertise out of abstraction (Foucault 1991; Bourdieu 1990; Abbott 1988; Stinchcombe 2001).

III.

We propose, therefore, to look anew at the positive exercise of power in any society, including the modern one, reapplying the one mechanism of framing arbitration in respective accordance to the world being encountered. We look at four societies, relying on the four most obvious media epochs of society, tribal society dealing with language, ancient society dealing with alphabetical writing, modern society dealing with the printing press, and next society dealing with the computer and its derivatives (Baecker 2007).

Our question is which are the frames in any one of these societies that enable processes of arbitration to come about that on their turn encourage and constrain the discovery of arbitrariness. Our premise throughout is that few things are considered more risky and even dangerous than the exercise of arbitrariness even if it is considered necessary in adapting the conditions of society to their own maintenance and iteration. Arbitrariness is a way to talk about action that defies talk. That defiance is to be encouraged, and to be constrained, if a talk entangling itself within its own conventions wants to be sure of meeting a reality that is considered to be able to change. Think about a different direction to be explored to look for deer to be chased, about a new political constitution to be found to account for inappropriate people getting rich and wielding their influence, about entrepreneurs exploiting unheard of technical possibilities to flood the world with commodities and services, or about posers roaming about the world to boast their creativity: all of these social endeavors have to be welcomed and to be channeled at the same time since they ensure the contact between society and its reality.

IV.

Look at tribal society first. Power here is framed by *nomos* or *usus*, that is by the question whether ancestors would be prepared to agree with some proposal that is put forward, a question being raised and answered by the council of elders due to the circumstances demanding consideration and deliberation.

This gives us the following expression:



Nomos means to refer to custom and tradition in figuring out what to do why and whom to rule with respect to what threats and rewards. *Nomos* adds to, or even is an outcome of, the self-binding of power in that it both puts an end to any argument by pointing to the evidence of customs and traditions and starts new argument by being able to relate action to evidently changing circumstances. *Nomos* is re-entering the distinction between arbitrariness and arbitration into its own space, changing it thereby into a form which is used to explore that space according to triggers of circumstances considered to be unforeseeable even if applying to the rule maintained by tribal societies of a never changing world. But who knows what the bush's ghosts, neighboring tribes, and the whims of the weather, of the deer, and of the plants may be up to. If tribal society's structure consists of oral language flowing unrestricted and its culture of boundaries marked and protected by secrets restricting the flow of words, then *nomos* may be conceived of as a reservoir of narratives and practices that relate to boundaries being known and neglected only at a certain prize, being accepted and reinforced due to circumstances, and being shifted or even abolished according to the interpretive wit of the elders (Schmitt 1985, cf. 2003).

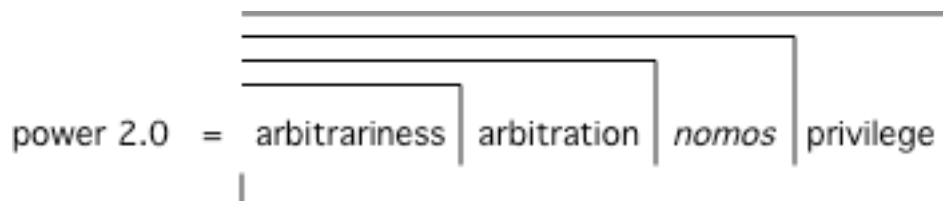
When he reviewed the anthropological literature Sigmund Freud had a keen eye for what is happening with and to power in tribal societies (Freud 1962). He realized that in order for the *nomos* to be able to frame and re-enter the distinction between arbitrariness and arbitration into the form of power which rules the world, the *nomos* itself had to be broken, violated or split according to an arbitrated act of arbitrariness which was able to mark and thereby put at risk the apex of the hierarchy: The king of those African societies that bordered on forms of high culture of their own were granted the privilege of breaking the incest taboo, thereby rewarding them with the highest prize those societies had to award and at the same time marking them as sinner or even criminal for possible further use if they should turn out not to know their duty and to embark up on unduly commands. No problem to kill them if that should happen. The probability of that happening, however, was minimal due to those societies putting great care into making sure that the king in his robe of honor could barely move and was securely locked away in his palace almost nobody else was allowed to approach. If there ever was a containment of power, which made sure that its use was framed by society's ability and intelligence of how, and when, and to what purpose to use it, African kingdoms knew all about it; and Freud described the mechanism.

V.

Ancient society was brought forward by the introduction of alphabetical writing adding to the oral use of language. That society has to receive and accept the older societies' use of power, yet it has to transform it as well since *nomos* was celebrated but did not suffice any more to both empower and contain a society which was ridden by political and economic competition both within its strata as well as between those strata. Writing had unleashed an unprecedented ability to go for longer and therefore more improbable chains of action, soon to be called strategies, not to be interrupted any more by the sheer impact of people being present and looking at each other in interaction. In interaction in tribal society as in any other society action goes, so to speak, where speech flows. Writing in general and alphabetical writing in particular is the first technology to interrupt that flow and to force communication into a search for contexts that are not necessarily evident any more when people are talking about them and are made to serve nevertheless (Ong 1977, 1982). Plato went on to invent his concept of *forms (ideia)* which are thought to live in those contexts in-forming themselves, as it were, but unreliably so because they apparently had to be protected from just anybody's gaze, the *phenomenai* that are visible for everybody.

The *nomos* of once was reconsidered as *telos*, a Greek word for both cosmologically appropriate place, i.e. *nomos*, and for purpose, which had to be in accordance with cosmological order, to be sure, but gave a certain leeway for its reconsideration and reinterpretation. *Telos*, in ancient society, frames what we are used to call privilege, in that privilege has to legitimate itself in accordance with the cosmological order but can be conquered and must be defended such that people and positions while presumably safely sited by birth became loosely coupled and thus the object of power plays.

Thus our expression of power 1.0 in tribal society is modeled into a new expression of power 2.0 in ancient culture:



Privilege comes with birth; it depends on you being born as an aristocrat, a common, or a slave. But that does not tell you what power you will be able to wield or to have to bear with. Even a common if he knows his business about may turn into a gentleman whose privileges,

well framed, nobody doubts (Xenophon 1970). Agonistically competing for privilege you are bound to check up with the *teloi*, which are ancient society's culture form dealing with its structure of mobilization within strata. To check up with *telos* means to try to apply with it and to use rhetoric to shift it such that it meets what one is up to. Again, as with boundaries, it is only the world, which is constraining the interpretation, analyzed and recombined with respect to its physical, temporal, and social structure.

So privilege again is split into a kind of *carte blanche* one may explore and play with as one thinks possible, on one hand, and the accompanying question posed by oneself or others whether what one is up to is in accordance with rank and class, on the other. Many, but not all questions as to who was to rule whom are already answered by looking up rank and class. But privilege moderated by the distinction between virtue and vice could lend somebody an influence, or have him or her lose it, of which either gain or loss at birth nobody knew a thing. Stories about fate and its twists abound, which tell and show how people seek privilege and the power coming with it, and lose it due their ignorance of the world to be ruled. Exceptions to the rule with respect to both luck and disaster not matched by merit could be attributed to God testing the faithful.

VI.

Modern society had to transform this form again since the printing press produced a range of critical observations with respect to both social positions and the world to be ruled that neither *nomos* nor privilege could sustain, their internal flexibility notwithstanding. Both arbitrariness and arbitration now become related to entrepreneurial adventures, political parties, religious strain, scientific discoveries, and artists' works that defied all known traditions, which might have been used to check on their accordance to *nomos* or privilege.

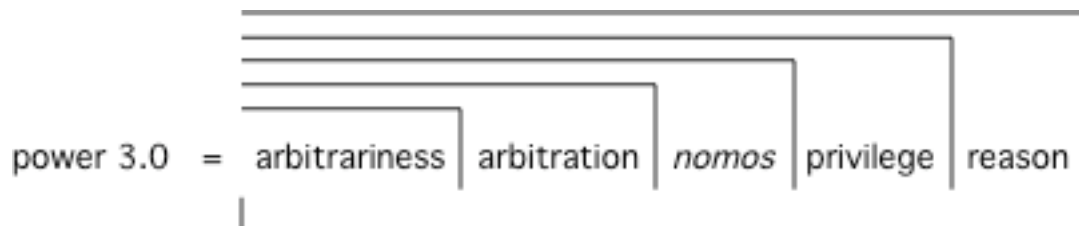
Renaissance and humanism did away with religion and with aristocratic rank, both of them reconfiguring into patrons and sponsors either able to finance the projects of the citizens put forward or failing to be of any further interest. Cities, churches, and eventually even states, under the name of "nations", had to find ways to turn into "projects" as well in order to be able to compete for capital (Tilly 1992).

Enlightenment invented reason to account for a dynamical world having nevertheless to meet resistance and to reward compliance. Reason is a means to be reasonable with respect to both purpose and means when embarking upon new projects and looking for the resources, the time, and the people ready to go with you. Reason means that as long as arbitrariness and arbitration refer to ends and means in close relationships of substitution, framed by

restrictions of non-interference into other domains of ends and means, any will has its range of deliberation and can look for a ruler willing to will it, and a ruled willing to do it.

Enlightenment thought that this will put an end to caprice and passion, letting only interests still have their say (Hirschman 1977), yet that did not count in a passion for new entrepreneurial ends and new technical means. Reason turned out to be reasonable in quite innovative and dynamic ways, which were rather difficult to account for.

The reference to reason gives us a new form, which reads as follows:



There is still arbitrariness and arbitration to deal with if power is to come about to rule the world. And there are still the rule of *nomos* and the privilege to account for if that power should consider redrawing the boundaries and redistributing the privileges everybody else is used to. But the positive build up of power can no longer be restricted to the world of boundaries and privileges. There are new chances to act arbitrarily, if not capriciously, and even despotic (see Marx 1990 on "despotic" businesses within "anarchic" markets), and there are new means and techniques of arbitration, ranging from democratic rule within politics to union power within businesses and women's emancipation within families. Yet do not confuse techniques of arbitration with successful liberation. Even modern society is not about complete freedom, which is why liberal and anarchic ideologies find reasons to still insist on it (Hayek 1980; Graeber/Grubacic 2004).

Reason means that one can switch means to meet ends, and, easy to overlook, ends to meet means. Power may rule wherever ruler, ruled, and observer get convinced of appropriate means with respect to legitimate ends, a power play accordingly dealing with questions of appropriateness and legitimacy (not to be confused with legality, the former referring to the exercise of a power a society considers necessary for self-control, the latter to the rule of law in the ignition and settlement of conflicts). Modernity has proven to give ample space for both criteria, and it has to do so because the dynamics of the printing press presenting society with an overflow of criticism of all things standing still, which it has to deal with, is backed no more by either convention or cosmos.

Instead the notion of equilibrium comes in, which applies to mind and soul as to social spheres of all kinds that reinvent themselves on a second-order level maintaining their stability while constantly changing. That is also why the notion of identity became necessary in the first place. Identity means to be in a state of equilibrium with yourself while circumstances, opinions, ideas, and interests may change according to opportunities which impose themselves (Montaigne 1987).

It is enlightenment's error that reason somehow is up to a *telos* of a *nomos* of its own, called progress by some, and doom, by others, calling for the occasional revolution among both (Lenin 1961). Instead, it just keeps things moving, always blocking, however, by boasting its own rationality, any look at, and awareness of, the second-order reality of observers watching observers to decide where to go when, and why (Keynes 1973; Luhmann 1998; Baecker 2008). Reason is even oblivious of power, which is why modern society is so uncertain about it, letting conservatives insist on its necessity without evidently being able to give reasons for that, and having progressives hoping for its eventual abolishment not knowing what they then would miss.

It was helpful for modernity's political fight, but misleading for its self-description to distinguish between the privileges' passions, on one hand, and the reason's interests, on the other (Hirschman 1977). Privileges have their interests as well, most obviously an interest in themselves, and reason knows its passions well, not seldom by heart. Both play with a rule of power, which excels in arbitrariness as in arbitration. There is no need not to look at the ways modern society has wielded its power, and may still be doing so.

VII.

Next society is already posing questions of its own. Dealing with computers, the Internet, intranets, and computer grids entails an overflow of control projects like political campaigns, capital markets, scientific projects, terrorist attacks, urban planning, and artistic intervention which use the computer at the same time as they try to outwit it by introducing chance and disorder. The *nomos*, the privileges, the reason of once are challenged by a connectivity of data so rich and fast that new ways to rule the world become necessary.

The old way of a reasonable handling of reasonable criticism, undisturbed by the occasional eruption of an irrationality that was contained by being called so, is now only known for its "anomalies" unexpected by theory, but well expected by any power practice knowing its whereabouts: Shareholders are not able to pick their directors nor to run with their investment if need be; directors are appointed by executives, not the other way around;

and executives comply with human resource development more easily than with financial control (Bowman/Useem 1995). Corruption is faster in teaming up and more reliable in self-commitment (because you have to fear report with the police) than any reasonable plan trying to make sure that you forego your resistance in exchange for rewards in terms of career, say, or a pay which enables you to send your children to the appropriate school.

What is going to bundle ruler, ruled, and observer alike into power plays that now provide for the arbitrariness needed with respect to the exploitation of richly structured, highly complicated opportunities churned out by computers showing you new ways to sever and combine, and for the arbitration needed to talk unwilling subjects and skeptical observers, let alone reluctant rulers into that exploitation? Yes, indeed, there are still power plays being necessary. Even the computer is not providing for that matter of fact rationality that some expected already from the knowledge produced by the printing press (a *mathesis universalis*) and from the social order invested into the functionally differentiated systems of modern society (a welfare society driven by the pursuit of happiness).

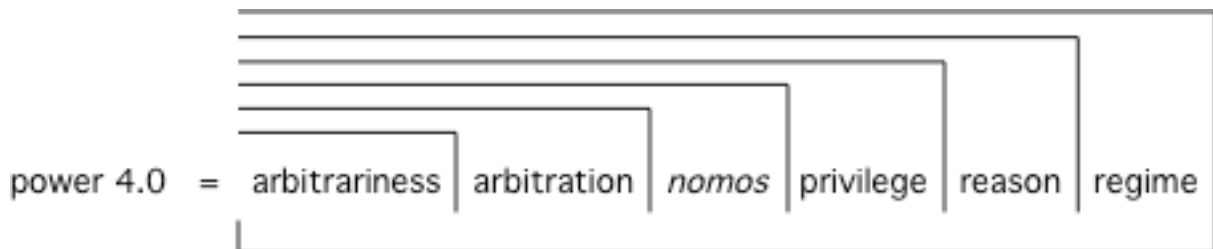
Instead, posses, to use the apt word coined by Michael Hardt and Antonio Negri (2000, p. 408), cross the social order of once and force it to reconfigure itself according to a more robust form of both tying and cutting possible links. That is why networks of late became so prominent (Kelly 1990; Castells 1996; Lehmann/Qvortrup/Walther 2007). But, again, what is going to contain both posses and networks within their domains? What are the strategies able to mobilize and channel identities and control (White 1992, 2002)?

Those strategies seem nowadays to be called regimes. Regimes are bundles of site-specific kinds of knowledge, people, procedures, and legitimacies, indeed much more a result of practice, convention, and routine problem solving than the outcome of some conscious and deliberate design of norms and constitutions. Harrison C. White calls a regime accordingly "a native statement combining styles around institutions" (White 1992: p. 226). Andreas Fischer-Lescano and Gunther Teuber add to this an articulated understanding of different regimes of a rule of law conflicting and overlapping within a heterarchical order of world society (Fischer-Lescano/Teubner 2004, 2006). Those native statements moving within an ecology of similar ones will be distinguished less by ideology and constitutional rule and much more by historical dates, dynastic names, or the name of a commission that with some success introduced a new set of rules. Thus, there is a world politics regime before 9/11, and one after 9/11, referring to the terrorist destruction of the two towers of the World Trade Center at September 11, 2001; there are the Jelzin regime and the Putin regime in Russia before and after the year 2000, when Putin became President of the Russian Federation; and there is a Sarbanes-Oxley-Act 2002 corporate governance regime in the US as there is a Dr.

Gerhard Cromme Kommission 2002 corporate governance regime in Germany. All of these regimes are native acts of complex rules which are known by the practices they support, the posses they were a response to, and the possible problems and weaknesses to be revealed by further posses they knowingly cannot really avoid.

Note that a regime is at the same time functionally over and under-specified. They are over-specified with respect to specific problems they are designed to solve or to at least contain, and they are under-specified with respect to the functional spheres of modern society they nevertheless still draw upon. This usually produces an odd mixture of concrete problems, on one hand, and several functional spheres like the political, the economic, the military, the scientific, including some carrier organizations and institutions, some story sets and mass media, on the other. This amounts to a systems theoretician's nightmare, a network theoretician's delight. Yet, this is exactly why we may wish to speak of a regime in the first place. They consist of locally chosen sets of networks, loosely coupled among each other and with the rest of society, yet fast and reliable in dealing with some problems they were designed to handle, and some more, they were not.

We propose the following code for power 4.0 of next society:



A regime is a rich description of present possibilities within both past experiences and future expectations. It tells you what it is that is new without forgetting by what it is triggered. It gives you a date for the new rules it consists in, and lets you expect right now a change yet unspecified. It is a very simple meta-rule that comes as a proxy for an understanding of its present state, its history, and its possible, even if indeterminate while path-dependent future. Of course, the problems it is chosen to solve bear an arbitrariness to them as do the solutions that are put forward, but the arbitrariness gets quickly dissolved as enough people become interested in the arbitration coming with it.

To push for a new regime is all a ruler actually can do. To go along with the present regime is all the ruled is called for. And to wait for the next regime is all which is needed to provide for the necessary space for a redistribution of possible rewards. Regimes are in accordance with both recursion and non-linearity. That is all cybernetics ever longed for in

making sure that feedbacks get their listening to, or better: listing, and that, therefore, observers including second-order observers get their sway.

To be sure, all other societies are still with us, so there is room for *nomos*, privilege, and reason as well. Yet, they all get repackaged and become counted with respect to different regimes of certain power plays wherever they had and have their say. The order of power 4.0 is decided upon elsewhere. It stems from threats to stick with regimes becoming too old to be compatible with other social projects, from a compliance that is ready to switch if the stickiness becomes a nuisance without its own reward, and from rewards of a knowledgeable move with any new regime.

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