

*The Many-Headed Hydra: Networks as
Higher-Order Collective Actors*

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I. FAR-EASTERN SECRETS

Alarm about the Japanese invasion of Western markets has been exacerbated by the realization that the Japanese are using downright organizational monsters. Evidently the Japanese strategies operate not only through prices and quality, but at the same time through new types of 'organizational weapons'. Western observers, taken aback, record the use of hybrid organizations—'something between market and organization' (Thorelli 1986)—that cannot be fitted into the usual organizational patterns of Western practice and theory. The Japanese *keiretsu*, an aggressive group of vertically co-operating Japanese firms, behaves as a hybrid between organization and market. Here a core firm controls tightly linked supply and distribution networks without having any equity ownership in the supply and distribution firms (Imai and Itami 1984; Gerlach 1989). Such intermediary organizations operate in Japan not only in the production sphere, but particularly in the R & D sector, in the relations among banks and other firms, and even in the links between government and private firms (Dore 1987). The secret of Japanese success seems to depend in no small measure on this 'third arena of allocation', which is of enormously greater scale in Japan than in the West (Twaalhoven and Hattori 1982; Imai, *et al.* 1985; Kaneko and Imai 1987; Wolf 1990: 106.).

In the West there has been increasing interest in such hybrid organizations, both in organizational practice and in academic analysis (see the surveys in Jarillo 1988; Hollingsworth 1990; Lorenzoni 1990; W.W. Powell 1990). Some of these networks have a long tradition in 'organized capitalism', but some, such as 'just-in-time' supply networks (see Nagel 1989), have come about only as a direct response to the Japanese challenge. Today decentralized conglomerates, multi-divisional firms with autonomous 'profit centres', joint ventures in the R & D area, strategic

Translation from the German by Iain Fraser, Florence. I would like to thank Dirk Baecker, Hugh Collins, Michael Hutter, Renate Mayntz, Sol Picciotto, Fritz Scharpf, Philip Selznick, Sean Smith, and Oliver Williamson for their constructive critique.

alliances, franchising networks and other distribution systems, contractually organized supply systems, systems for cashless transactions through banks, major building projects on a subcontracting basis, organizational networks in the energy, water, transport, and telecommunications sectors are some prominent Western correlates of the Japanese 'interpenetration of market and organization'.

Renate Mayntz even goes so far as to identify networks as a key factor in societal modernization: 'Obligatory and "promotional" networks in the economy, political and infrastructural networks—these parallel developments suggest that the emergence of interorganizational networks is a concomitant of structural change in modern societies; it seems to be a basic characteristic of societal modernization' (Mayntz 1992: 21).

Though network research and transaction cost economics have since done yeoman service in investigating the specific features, causes, and consequences of such hybrid organizations, there are still major questions left open. What has been gained if networks are merely described metaphorically as 'complex arrays of relationships among firms' (Johanson and Mattson 1989) or as 'managed economic systems' (MacMillan and Farmer 1979)? Is it sufficient to locate them along a continuum between contract and organization (Williamson 1985: 83; W.W. Powell 1987)? And if we characterize them, by contrast, as being 'neither markets nor hierarchies' (W.W. Powell 1990; Williamson 1991a), what is their *differentia specifica*? Does one do justice to their organizational nature simply by stressing the relational character of contractual arrangements? Should one speak only of networks among corporate actors (Schneider 1988), or could one also speak of networks as corporate actors? And how is one to deal in both theory and practice with negative externalities that are characteristic of networks?

I will attempt to employ the theory of autopoiesis, as developed by Humberto Maturana and Francisco Varela (1980), Heinz von Förster (1985), and Niklas Luhmann (forthcoming), to find answers to these questions. This theory explains the appearance of new organizational forms as an emergence of self-referentially constituted units. I shall set up the following three theses for discussion:

(1) Networks constitute themselves as genuine emergent phenomena, not *between*, but *beyond* contract and organization. The self-organization of networks as higher-order autopoietic systems is accomplished through 're-entry' of the institutionalized distinction between market and organization into the area which that distinction defines. A 'double attribution' of action results from this as the *differentia specifica* of networks.

(2) Networks are not just relations between several autonomous corporate actors, but are themselves 'corporate actors' of a special nature. As

'polycorporate collectives', they are in fact personified webs of relationships with a special capacity for collective action which is constituted among the nodes of the nets.

(3) Networks, whose efficiency gains are based on an intelligent combination of market and hierarchy, also have a dark side. They create specific transactional risks. Their externalization brings them (illegitimate) cost advantages. Appropriate internalization seems possible through novel legal mechanisms of simultaneous multiple attribution of responsibility.

2. EMERGENCE THROUGH SELF-ORGANIZATION

In what sense is it possible in the case of communicative networks to speak of 'emergence through self-organization'? The term 'emergence' is commonly used to denote the appearance of something new in an evolutionary process, or to express the fact that the whole is more than the sum of its parts (Hastedt 1988: 175, and sources cited there). According to Popper and Eccles (1977: 22), emergence refers 'to the fact that in the course of evolution new things and events occur, with unexpected and indeed unpredictable properties'. The theory of self-organization breaks with this tradition of 'emergence from below'. The idea of emergence from below, which presupposes that new properties emerge from the interaction of given elements, is discredited simply by the fact that properties and interactions are not separable (Roth and Schwegler 1990: 39). But if this is so, then emergence becomes trivial: everything is emergent. Moreover, the idea of elements existing 'in themselves' is presumably untenable too. In the theory of self-organizing systems, the concept of an element makes sense only in relation to a system. It specifies the ultimate unit only for that system, which in no way excludes its being broken down in other system contexts (Luhmann forthcoming: ch. 5, sect. 1).

In the theoretical context of self-organization, emergence takes on another meaning. Emergence appears when, in a given constellation, self-referential circles loop together in such a way as to form new elements which constitute a new system. The theory of self-organization thus gives a specific answer to the central question that has remained unanswered even in the recent ambitious emergence theories of Popper and Eccles (1977) and Bunge (1980); namely, how a process of gradual change makes the qualitative leap into autonomy (Hastedt 1988: 186). The answer is self-reference. Self-reference leads to the regrouping of given material in such a way as to allow both new elements and new systems to come about which are autonomous *vis-à-vis* the previously existing constellation. The evolution of self-referential relations is to be understood as a gradual process leading to the formation of new and at the same time

autonomous systems (on this gradualization, see Roth 1987: 400; Stichweh 1987: 152.; Teubner 1987a: 430.; Teubner 1993: ch. 3; conversely, Maturana and Varela 1980: 301; Luhmann 1985: 22).

I will analyse the emergence of communicative networks in the framework of the theory of autopoiesis, which separates different levels of emergence (organic, neuronal, mental, and social autopoiesis). I cannot discuss the background here in detail (see Luhmann, forthcoming: ch. 1, sect. II). The ultimate elements of networks are, correspondingly, not human actors, as is mostly assumed in theories of personal networks (Tichy 1981; Birley 1985: 113; Mueller 1986; Kaneko and Imai 1987), but communications. And what is involved in the emergence of networks is the autonomization of social processes not *vis-à-vis* human actors, but within the sphere of social phenomena themselves (Sapelli 1992: 89). Communication systems become autonomized from other communication systems. This means asserting that even within the same phenomenal sphere, the formation of higher-level self-reproducing systems is possible (cf. Roth 1987, on the one hand, and Teubner 1987a: 430, on the other). This requires distinguishing within a phenomenal sphere among autopoietic systems of different orders. Society as the ensemble of human communications is to be regarded as a first-order social system. Second-order social systems emerge when specialized communications within society become differentiated and linked up in systems with their own identities. If a further interlinking of specialized communications comes about within these systems, then third-order social systems form, and so forth. The phenomenon of emergence will be demonstrated in the case of networks at the level of the second- and third-order differentiation of autopoietic systems.

3. BEYOND CONTRACT AND ORGANIZATION

The currently dominant conception of networks and other hybrid arrangements (such as relational contracts and joint ventures) certainly looks rather different. Generally it is used to denote a decentrally regulated relation of co-operation among autonomous actors (Schneider 1988: 9; Kenis and Schneider 1991: 26). These loose forms of co-operation are no longer mere transient interactions; but at the same time, they do not yet display the dense co-operation of formal organizations. This concept of 'no longer, but at the same time not yet' was already dominant in the 'organization set' with which sociologists studied inter-organizational relationships (Evan 1966; Aldrich and Whetten 1981). In group sociology, concepts such as 'personal networks' were used to refer to forms of co-

operation that do not have the density, nor the bureaucratic drawbacks, of formal organization (Tichy 1981; Mueller 1986). Their influence can again be found in the idea of 'policy networks' used by political scientists to analyse, among other things, neo-corporatist forms of co-ordination (Hanf and Scharpf 1978; Trasher 1983: 375; Lehmbruch 1985: 285-303, Sharpe 1985: 361; Marin and Mayntz 1991b).

The ideas in economics are not much different. They start from the position that actors select institutional arrangements according to cost/benefit calculations. 'Act so that the maxims of your will can always at the same time serve to minimize transaction costs', runs the new categorical imperative. 'Minimize transaction costs!' decides whether actors conclude a contract or set up an organization (Williamson 1985). There are no fundamental differences between contract and organization, since organizations, too, should be seen as contractual arrangements through which the payment flows pass smoothly (Grossman and Hart 1986). According to the extreme neoclassical version, organizations do not differ 'in the slightest degree from ordinary market contracting between two people' (Alchian and Demsetz 1972: 777). According to the more moderate institutionalist version, they differ only in the governance structures, which are intended essentially to control opportunistic behaviour (Williamson 1985). Recently, this version has become even more moderate, stressing the difference between contractual 'autonomy' and organizational 'co-ordination' as a reaction to environmental disturbances. However, networks are still seen as intermediate between contract and organization. (Williamson 1991a: 277, 281). Hybrid arrangements are chosen at a point on this scale where, on the one hand, market controls are weak because of the asset specificity of the transaction, and on the other the transaction costs of fully integrated organization are too high (Williamson 1985: 83; Thorelli 1986; W.W. Powell 1987).

I do not object to the practice of comparing institutional arrangements from cost viewpoints—but I object strongly to an attempt to level the distinction between contract and organization! Here it is the constraints of economic thinking that prevail, interpreting every social arrangement as a hypothetical contract between rational actors. This explains the almost compulsive subsumption of formal organizations under the category of contract (organization as a nexus of contracts) and the concomitant claim that the organization 'has no power of fiat, no authority, no disciplinary action any different' from contracting (Alchian and Demsetz 1972: 777). The result is, as Herbert Simon claims, an irresponsible reductionism: 'The attempts of the new institutional economics to explain organizational behaviour solely in terms of agency, asymmetric information, transaction costs, opportunism, and other concepts drawn from neo-classical economics, ignore key organizational mechanisms like authority,

identification, and coordination, and hence are seriously incomplete' (H.A. Simon 1991: 43).

By contrast with such reductionist positions, it is here assumed that 'contract' and 'organization' each represent separate second-order autopoietic social systems, which differ from each other in principle, and not merely in the degree of intensity of their governance structures. 'Networks' too, then, are not merely an intermediate, but a stepped-up form of a special nature. Networks 'are neither fish nor fowl, nor some mongrel hybrid, but a distinctly different form' (W.W. Powell 1990: 299). But why does it make sense to see them as 'symbiotic contracts', as an institutional arrangement of a third type clearly differing from classical contract and classical organization (Schanze 1991)?

For formal organizations, I have shown elsewhere in detail how their self-reproductive autonomy comes about through processes of spontaneous self-organization (Teubner 1988a; 1988b). Accordingly, here only the result will be mentioned. Organizations emerge from diffuse interaction where communication processes in the interaction itself reflexively constitute the components of boundary ('membership'), element ('decision'), structure ('norm'), and identity ('collective'). If these components are linking together in a hypercycle, especially if 'membership' and 'norm' and if 'collective' and 'decision' are mutually constituting each other, then the formal organization has developed into a self-producing system. By comparison with simple interaction, formal organization is an emergent phenomenon, since formal organization constitutes self-referentially new types of system components, and links these up with each other in circular fashion.

Contracts are in turn not simple building blocks of organizations, as institutional economics suggests. Rather, they are built on a fundamentally different type of action, and the two cannot be reduced to one another: exchange is distinct from co-operation (Teubner 1979: 719; 1993: ch. 7, Sect. II, see also Luhmann 1988b: 101; forthcoming; ch. 9, Sect. VI). While organizations are formalized relations of co-operation, contracts are formalized relations of exchange. In contract, too, there is a process of gradual autonomization from a merely informal interaction to a highly formalized arrangement. In simple interactional exchange, there is as yet no duty of performance on the partners that can be said to exist 'in itself'. It is only with the first performance by one of them that the expectation of exchange on the other's part, on the basis of diffuse social norms, arises. The great achievement of modern formal contract lies in the fact that it has self-generated duties of performance that arise without prior performance by the other party. They arise on the basis of the conclusion of the contract, as an act that self-referentially constitutes itself in the interaction (on the sociology of the contract, see Köndgen 1981: 97; Schmid 1983).

Contract as a self-reproductive unit emerges via self-referential constitution of its components. Elements of contract are no longer mere diffuse communications of social exchange, but become reflexively defined as formalized 'contractual acts' (conclusion of the contract, breach of contract, change of contract, completion of contract). They emerge against the background of normative structures that have become autonomized from mere general social norms into self-generated 'contractual norms'. The identity of the social relationship is no longer determined by mere presence of the participants in the interaction, but is temporally extended through their definition as 'parties to the contract'. The process is no longer determined by the mere course of the interaction, but by the life history of the contractual relationship itself (for a systemic interpretation of contract, see Parsons and Smelser 1956: 104, 143; Teubner 1980: 44; Schmidt 1985, 1989; and for its autopoietic radicalization, see Deggau 1987; Teubner 1993: ch. 6).

Hypercyclical linkages can also be shown in contract. Of prime importance is the self-reproducing linkage of 'contractual act' and 'contractual norm', which constitutes a separate type of modern norm production alongside mere co-ordination of behaviour, legislation, judge-made law, and rule making in formal organization. In contrast to formal organizations, however, contracts do not have other forms of hypercyclical linkage. In contract there is no comparable autonomy of the social relation as such *vis-à-vis* persons, which is achieved in formal organizations through linking boundary and structure. By comparison with changing the members of an organization, changing contractual parties is very much harder, even in highly formalized contracts. And completely absent in contract is any collectivization, such as would be achieved in an organization through the cyclical linkage of identity and action.

Contract and organization are, then, second-order autopoietic systems based on different types of action—exchange and co-operation. Hence, it is no longer sufficient to locate networks between contract and organization, characterized by 'semi-strong' incentives, by an 'intermediate' degree of administrative apparatus, by 'semi-strong' adaptations, and by a 'semi-legalistic' contract law (Williamson 1991a: 281). Networks are higher-order autopoietic systems beyond contract and organization. Their intrinsic logic can be seen only once networks are viewed not as transitional forms in a grey area that throws doubt in principle on the clear distinction between contract and organization, but instead as enhanced forms of them that presuppose their clear distinction. Such enhanced forms can be organized only where the distinction between contract and organization that underlies them is solidly institutionalized, and can then be used to build up the system of the networks. Their principle is not

de-differentiation of market and hierarchy, but maintenance of their differentiation plus an internal reduplication.

4. NETWORKS AS HIGHER-ORDER AUTOPOIETIC SOCIAL SYSTEMS

Our approach finds its starting-point in a specific form of 'market failure' and 'organizational failure' (Imai and Itami 1984: 298) that refers to the precarious relation between variety and redundancy. 'Variety will be used to denote the multiplicity of the elements of a system, and redundancy for the extent to which once one knows one element one can guess others without being dependent on further information. These are two different but not strictly opposite measures of complexity'. (Luhmann 1987: 47-8, 1988a; taking up from Atlan 1979).

Purely market-based contractual relations display relatively high variety with relatively low redundancy. On the one hand, they are extremely flexible, changeable, and innovative; on the other, they develop little long-term orientation, forcefulness, coherence, and accumulated experience. While the invention of formal organization was able to solve such problems of insufficient redundancy, this was done only at the expense of variety. Rigidity, bureaucracy, problems of motivation, lack of innovation, and high information costs are notorious problems, not only of government organizations, but also and specifically of private firms. The redundancy failures that plague large organizations are 'inability to respond quickly to competitive changes in international markets; resistance to process innovations . . . and systematic resistance to the introduction of new products' (W.W. Powell 1990: 319).

The sense of having missed opportunities, then, is the most important stimulus to a new experiment with institutional arrangements. It is not the calculated action of rational actors, but the uncoordinated interplay of evolutionary mechanisms—variation by trial and error; selection by competition and power; retention by institutionalization—which evaluates this experiment and its success. It is at this point that networks emerge. They bring about the re-entry of an institutionalized distinction into that which it distinguishes (Spencer Brown 1969). Networks, as third-order autopoietic systems, result from a re-entry of the distinction between market and hierarchy into market, on the one hand, and hierarchy, on the other. In the words of the Japanese masters Imai and Itami: 'Market principles penetrate into the firm's resource allocation and organization principles creep into the market allocation. Interpenetration occurs to remedy the failure of pure principles either in the market or in the organization' (Imai and Itami 1984: 285).

Contract and organization are based on the institutionalized distinction

between market and hierarchy. Organizations are defined by their boundary to the market; contractual arrangements are defined by their contrast with formal organizations. Problems in the mix between variety and redundancy mean that contracts seek to make up for their shortage of redundancy by incorporating organizational elements into themselves. Similarly, formal organizations experiment with the introduction of market elements. In this experimental interplay of de-differentiations and fluid transitions, networks in a narrower sense are an interesting special case (W.W. Powell 1990; Mayntz 1992: 24). They steadfastly hold to the arrangement chosen, but at the same time, and on the basis of this arrangement, firmly institutionalize the counter-principle. Within the arrangement defined by the institutionalized distinction between contract and organization, the distinction between contract and organization is institutionalized once more. Contracts incorporate organizational elements into themselves, and organizations are permeated by market elements. Networks are thus in a position to distinguish institutionally between the language of organization and the language of contract. The result is the 'dual constitution' of contract and organization in one institutional arrangement.

	DIFFERENCE	RE-ENTRY
MARKET	contract	market network (e.g., supply systems, franchising, bank transactions)
HIERARCHY	organization	organization network (e.g., conglomerates, joint ventures)

It is this dual constitution that comprises the emergent phenomenon. The decisive step towards the self-organization of networks is the production of a new self-description of their elementary acts and then to link these up operationally. A 'network operation' as a new elementary act emerges from the twofold social attribution of actions: every communicative event in the network is attributed both to one of the autonomous parties to the contract and simultaneously to the organization as a whole. My consumption of a juicy hamburger is accompanied by this sort of magical double act: the transaction of the franchisee on the motorway and that of MacDonaldis themselves. And the local manager in a multinational firm speaks with a double tongue: on behalf of the national subsidiary and at the same time on behalf of the headquarters in the far-off USA.

'Network operations' are thus emergent phenomena, by comparison with mere 'contractual acts' on the one hand and mere 'organizational decisions' on the other, in so far as they refer to contract and organization at one fell swoop. They can be reduced neither to market transactions nor to organizational decisions. If the dual attribution of action

enters into the self-description of the social arrangement and is also used operationally there, then the network has constituted itself as an autonomous system of action via the constitution of new elementary acts.

The dual constitution which we found in its elementary acts is repeated in the network structure. Every network operation must simultaneously meet the structural requirements of both the contract between the individual actors and of the network organization as a whole. The resulting dual structure governing individual operations constitutes the specific feature of the 'network system'. By contrast with contract and organization, networks are higher-order autopoietic systems, to the extent that they set up emergent elementary acts ('network operations') through dual attribution, and link these up in circular fashion into an operational system.

This makes simultaneous enhancement of the contractual and the organizational dimension possible. We are used to treating the interplay between contractual and organizational components as a zero-sum game, in which one side always wins at the expense of the other. In moving from short-term spot-market transactions, via relational contracts and loosely organized partnerships, to integrated large organizations, we regularly observe that organizational elements gain weight precisely to the extent that contractual elements lose it. Networks cannot be accommodated along this scale, since in them contractual and organizational components gain importance simultaneously. As the example of franchising shows, in networks both the collective nature (system character, marketing co-operation, unity of image, competitive unity) and the individual character (local autonomy and profit orientation of the selling points) can be simultaneously heightened to the extreme (see Martinek 1987: 121).

The result of this enhancement of contrary principles is a remarkable self-regulation of the network, based on the twofold orientation of action. In economic terms, all transactions are oriented simultaneously towards the network's profit and the profit of the individual actor (profit sharing). This double orientation works as a constraint, since all transactions must pass the double test. At the same time it works as an incentive, since network advantages are bound up with individual advantages. Through cleverly devised incentives and penalties, individual contractual clauses seek to ensure that the double orientation actually affects the actors' motives (Dnes 1988; 1991: 135). The economic nub of franchising, by comparison with, say, distributive networks in an integrated firm, even with internal incentive programmes, lies in the franchisee's 'residual claim' (for a particularly clear, empirically based study, see Norton 1988). Due to savings on monitoring costs, the residual claim is regularly higher than comparable incentives in distribution networks of integrated firms (see Rubin 1978; Brickley and Dark 1987: 411; Dnes 1991: 134). Economists analyse this twofold orientation in terms of 'principal-agent

incentives' and 'information incentives' (Norton 1988: 202; see also Klein and Saft 1985; Mathewson and Winter 1985).

Correspondingly, in a network one must start from the co-existence of collective and individual goals (Sapelli 1992: 98). This is in clear contradiction to the idea widespread among lawyers that the participants have either contrary interests—an exchange contract—or else common interests—an association (e.g. Larenz 1987: sect. 60 I). In networks, individual actions are simultaneously and cumulatively oriented both to the common goal and to the individual goals of the members, though no normative primacy of one orientation or the other can be assumed. Networks pursue collective goals 'through collaboration without abrogating the separate identity and personality of the cooperating partners' (W.W. Powell 1990: 315). Here lies the decisive distinction from relational contracting, on the one hand, which gives primacy to the pursuit of individual as against joint goals, and to loose forms of co-operation, on the other, where common goals are given primacy. Polycentrism and multi-polarity are, then, characteristics of the unified network (Lorenzoni 1990).

The advantages of double attribution become especially relevant when the problem arises of how to adapt to outside disturbances. If one does not take double attribution into account, hybrids seem to be very weak in their adaptability. The reason is that 'hybrid adaptations cannot be made unilaterally (as with market governance) or by fiat (as with hierarchy) but require mutual consent' (Williamson 1991a: 291). The opposite result is to be expected, however, if one takes double attribution into account. Double attribution gives hybrids a synergistic advantage in adaption to disturbances, which makes them superior to both contract and organization. The reason is that the proportion of the blend of market and organization is not fixed. It can vary according to strategic viewpoints. In the case of outside disturbances, network management can choose—and can change this choice over time—whether the hybrid should react as a whole or whether the nodes should react autonomously. In contrast to both contract and organization, which dispose of one stabilizing mechanism, this pattern characterizes the network as a multi-stable system (Pausenberger 1975: 2243). In networks, market and hierarchy can be used alternatively as well as complementarily (Kirchner 1985: 226). A 'navigational rule' which is not available either to contract or to organization becomes a principle built into the hybrid organizational form. To change organizational form, as a chameleon changes its colour, is an adaptive mechanism of the hybrid. Choosing the colour that fits the environment is one of the main tasks of network management.

5. ORGANIZATION NETWORKS AND MARKET NETWORKS

Two types of networks can be distinguished, according to which side of the basic distinction, market or organization, is primary. 'Organization networks' emerge where formal organizations repeat within themselves, inside their own boundaries, the internal differentiation of the economy into a formally organized sphere and a spontaneous sphere. Decentralized corporate groups of the multi-divisional form are the most significant innovation in this sphere, the latest form of which is developing into 'network groups' (Sapelli 1990).

As stated above, they respond to shortfalls of redundancy in large organizations by seeking to increase the extent of variety within the organization through three strategies (for more details, see Teubner 1993: ch. 7). (1) Direct hierarchical control is replaced by indirect contextual control of autonomous sub-units by the centre (general group policy, management personnel policy, indirect profit control; see Hedlund 1981; Scheffler 1987: 469; van den Bulcke 1986: 222). (2) Long hierarchical chains are replaced by markets within the organization: the relationship between the group centre and a group company simulates a sort of capital market, alongside which there emerge within the group labour markets, manager markets, resource markets, and product markets. (3) A functional differentiation of the overall organization, leading to inadequate maximization of functional units, is abandoned in favour of segmental differentiation in which the autonomous profit centres have a twofold orientation: their own profit and the profit of the overall organization (Dioguardi 1986; Lorenzoni 1990; Wolf 1990: 114).

'Market networks', by contrast, emerge in the contractually organized sphere (on the interpretation of franchising as a network, see Teubner 1991). They react to shortages of high variety in market-controlled contracts, and seek to increase redundancy by building in elements of organization. The emergence of franchise systems, for instance, can thus be explained by the fact that purely contractual arrangements do not meet the requirements of sales organization (central advertising, supraregional unity of image, decentralized sales, strong local variations) (see Rubin 1978: 223; Mathewson and Winter 1985: 503; Dnes 1991: 134). They provide insufficient incentives to the franchisor to build up and control a unified sales system, and have inadequate control mechanisms against opportunistic behaviour by the franchisees. Additionally, there exist informational asymmetries in respect of local conditions, which cannot be removed by purely contractual mechanisms. These market failures suggest the enhancement of internal incentives and controls and reduction of information asymmetries, by building organizational elements into the contract.

Market networks repeat within their boundaries the differentiation of market and hierarchy. They not only sporadically insert organizational elements into the contract, but systematically build up the contractual nexus itself as a formal organization. Only rarely can such networks be organized spontaneously and without co-ordination. Regularly there is a 'hub firm', a 'focal firm', an *impresa guida*, that plays the leading role in setting it up and in ongoing co-ordination. This specialization in strategy and co-ordination by one of the firms involved may, but need not, be based on a presumed market-power gap (e.g., between market levels: industry-commerce or industry-suppliers). However, network centres which have their basis in an equal division of labour are equally widespread (Jarillo 1988; Lorenzoni 1990).

The result of this re-entry of organization into contract is:

Strategic Networks. In these, a hub firm has a special relationship with the other members of the network. Such relationships have most of the characteristics of a hierarchical relationship: relatively unstructured tasks, a long-term point of view, and relatively unspecified contracts. They have all the characteristics of investments, since there is always a certain asset specificity to the know-how of, say, dealing with a given supplier instead of a new one. And yet, the contracting parties remain independent organizations, with few or no points of contact along many of their dimensions (Jarillo 1988).

Contractual networks. These take advantage of the interaction between mechanisms that enhance variety and those that enhance redundancy. It is not a question of a precarious compromise, a balance between the two principles, but one of enhancement. This is presumably where the secret of their success lies, though it can be conceived by economists, in their rich *Weltanschauung*, only as a transaction cost advantage.

By contrast with the usual definitions of networks as loose forms of co-operation, as decentralized co-ordination of autonomous actors, or as transitional forms between contract and organization, we have now arrived at a narrower and at the same time more exact concept of a network. The term should be used if and only if an institutional arrangement is constituted simultaneously as a formal organization and as a contractual relation among autonomous actors. The empirical test for a network is a positive answer to the following two questions: (1) Can twofold attribution of actions to the organization and to the contractual parties actually be shown? (2) Is action subject to the twofold normative requirements of the total organization and the contractual relationship? To assess this, the easiest methods to use are survey techniques measuring attitudes and individual knowledge about the attribution of actions and about the effectiveness of organizational norms and of contractual norms.

A more rigid test would be directly to observe the attribution procedure in cases of both failure and success, and thus to deduce structures of attribution and expectation from actual acts.

It need not be disputed that alongside these very closely defined networks there are other empirical phenomena of loose forms of co-operation that do not meet these strict conditions (W.W. Powell 1990: 305; Mayntz 1992: 24). The point is not the terminology (network, symbiotic contract). The decisive factor is the characterization of a specific empirical phenomenon through the simultaneous twofold attribution of actions to contract and organization. And one should clearly separate the two phenomena: it is one thing to orient action toward an environment which is non-competitive, co-operative, and based on trust; some people call such a non-competitive market a network. It is another thing to formalize an interactive relation which combines contractual and organizational elements. I would prefer to limit the term 'network' to denote this kind of hybrid arrangement.

6. NETWORKS AS CORPORATE ACTORS?

But are networks collective actors? Are decentralized groups of companies capable as such of social responsibility? Can franchise systems develop a corporate identity? Should bundles of mere contracts themselves appear as collective units? Are 'decentralized and informalized organizations . . . emergent collective actors *sui generis*' (Geser 1990: 405; Ladeur 1992: 209)? Do we need a new conceptual tool kit for the collective nature of networks 'when the relations are so long-term and recurrent that it is difficult to speak of the parties as separate entities' and when 'the entangling of obligation and reputation reaches a point that the actions of the parties are interdependent, but there is no common ownership or legal framework' (W.W. Powell 1990: 301)? All these are questions as to the capacity of networks for collective action. They are directed primarily at empirical social research, and of course at the same time at social theory. At any rate, this is not only a problem of legal construction.

The political and moral explosiveness of the collective character of networks should not be underestimated. In no way can it be reduced to cultivating the image of corporate identity. A few years ago the news was splashed across the papers that the Daimler-Benz group was again being confronted with its Nazi past. In the war years, concentration camp inmates had been detailed to the group, and were now demanding financial compensation and political and moral satisfaction. 'Without recognizing any legal obligation', the Daimler-Benz group finally, after painful public debate, paid a symbolic sum. Is this a *de facto* social recog-

dition of 'collective guilt' by a big conglomerate? Or is it rather the case that after the death of those managers who had been involved, the group no longer had any responsibility? Is it possible to deny political and moral responsibility of the network for the behaviour of its sub-units? And can private institutions deny any responsibility for such political matters and displace it to state institutions? (see for the Siemens case *Die Zeit*, No. 36, 31 Jan. 1990, and for the Volkswagen case Siegfried 1987). These, of course, are all normative questions of moral and political evaluation, but at the same time questions addressed to sociology, about the social reality of networks and their capacity for collective action.

But in the contemporary social sciences, the idea of a suprapersonal collective with a supposed capacity for action on its own is extremely controversial. It is flatly denied by economists. Their methodological individualism leads them into such contradictory statements as the following:

The private corporation or firm is simply one form of legal fiction which serves as a nexus for contracting relationships . . . it makes little or no sense to try to distinguish those matters which are 'inside' the firm (or any other organization) from those matters that are 'outside' it. There is in a very real sense only a multitude of complex relationships (i.e. contracts) between the legal fiction (the firm) and the owners of labour, material and capital inputs and the consumers of output . . . the 'behaviour' of the firm is like the behaviour of a market, i.e. the outcome of a complex equilibrium process. We seldom fall into the trap of characterizing the wheat or stock market as an individual, but we often make this error by thinking about organizations as if they were persons with motivations and intentions. (Jensen and Meckling 1976: 311; similarly Williamson 1985: *passim*; Easterbrook and Fischel 1989: 1426).

Such statements are contradictory since, on the one hand, they strictly deny the social reality of a collective capable of action ('trap', 'error', 'fiction'), but, on the other hand, find themselves forced to assume the reality of this sort of fiction as a contractual party ('nexus'). Furthermore, why should one elide the distinction of market and organization as far as their capacity for social action is concerned? It is only for organizations that capacity of action is claimed. And their critique of the distinction between 'inside' and 'outside' only makes inconsistencies in the theory of the firm stronger ('outside': firm as rational actor on the market; 'inside': firm as contractual nexus among individuals; unsolved problem: how does a nexus become a rational actor?).

Sociological theories are often no better, particularly since Max Weber's authoritative verdict (1978: 13) denying collectives the capacity for action. The most advanced concepts still identify collective actors with resource pooling (Coleman 1974, 1982, 1990; Vanberg 1982: 8ff., 37). However, this refers only one-sidedly to the static structural aspects, and leaves out the dynamic aspects of collective action.

The theory of social autopoiesis, by contrast, allows a conceptual grasp of the collective actor that can escape the traps of fiction theories and the mystifications of theories of real associative personality (Teubner 1988a: 133ff.; Knyphausen 1988: 120; Hutter 1989: 32; Ladeur 1989; 1992: 186.; Vardaro 1990; Luhmann forthcoming: ch. 5, sect. VI). Put briefly, collective actors are neither fictions of the law nor the 'mind-body unity' of real associative personality nor autonomized bundles of resources. Even the concept of system—indeed, even that of formal organization—does not give us accounts of collective capacity for action. Instead, corporate actors have their social reality in the communicative self-description of an organization as a cyclical linkage of identity and action. The nub of the collective lies in the fact that the organization produces a self-description ('corporate identity'), and that social processes attribute individual actions to this semantic construct. As Scharpf (1989: 13) puts it, collective actors are a 'useful fiction controlling the rules of attribution', not only of the law and the state, but of social practice itself, which produces the capacity for self-commitment, for collective action, and for actor identity (cf. Geser 1990: 402).

Now we come to the real question: Are networks 'collective actors' in this sense? At first sight, no. For in their decentralized mode of operation they are diametrically opposed to the image of a hierarchical organization that acts through its centre (central management). Sales networks, for instance, do not act through the distribution centre; instead, the capacity for action is distributed decentrally over the individual outlets as autonomous actors. And were one to interpret groups of companies as unitary enterprises in which the mother company acts for the daughter companies, one would, in view of the characteristics of group organization—contextual control, market internalization, decentralized dynamics—be acting counterproductively.

Does this mean, then, that networks have no collective capacity for action? That is hard to swallow. Does Daimler-Benz as a large corporate group have no 'corporate identity'? Is MacDonalds not an 'image unit'? And how! MacDonalds is simultaneously a 'marketing community' and a 'competitive unit' (or whatever the economic euphemisms for franchising systems are). At any rate, empirical research on franchising led to the conclusion: 'Franchising is more like an integrated business than a set of independent firms' (Dnes 1991: 141). Ought one, then, not to ascribe to networks at least a sort of underdeveloped collectivity? This could do justice to the decentralized autonomy of the sub-units, and still let the hierarchical centre, the group leader company or the hub firm of network organizations, represent the whole.

But the constructions of social practice are far more radical than is dreamt of in our philosophy. The self-organization of networks in the

real world has long burst the seams of our anthropomorphic notions of 'corporate actor', of the 'associative person' acting with the help of 'organs'. Anthropomorphic thinking in terms of collective 'persons' has always forced us to conceive collectivities as unitary centres of action, which will serve as a focal point for the attribution of acts, rights, and responsibilities. Since the Christological analogy of the 'King's Two Bodies' made social systems, in particular the state, but also firms and associations, capable of action themselves (Kantorowicz 1957), we have become used to associating collective capacity for action with their 'personification'. Our social practices have to date regarded particular social formations as 'persons', and have equipped them, on the model of the human person, with their own centre of the will, interests, capacity for action, and even 'general human rights' (for a critique of this, see Dan-Cohen 1986; Röhl 1990: 266).

Networks break definitively with such all-too-human personifications. They bring out a new form of collective action that abstracts from the parallels with the human individual. No longer does the associative person endowed with a unitary centre of will seem the appropriate metaphor. The new metaphor is the many-headed hydra. It is no longer personification, but polycentric autonomization; no longer unitary attribution, but simultaneous multiple attribution, that can do justice to the collective logic of networks. The collective capacity for action is maintained, but fragmented into decentralized sub-units, among them the centre as *primus inter pares*. Networks act collectively, not through a single action centre, as is typical for the classical corporation, but through a multiplicity of nodes. The network itself is a collective actor whose actions are accomplished not in one node, but in all nodes, without the nodes themselves thereby losing their capacity as collective actors.

7. NEGATIVE EXTERNALITIES

What, then, does the metaphor of the many-headed hydra mean for the social responsibility of networks? Are there negative external effects that are specific to networks? And should they be internalized by equally network-specific mechanisms of responsibility? The sociological and economic literature celebrating the efficiency gains of network organization is remarkably silent on this question (cf. MacMillan and Farmer 1979: 277; Kaneko and Imai 1987; Jarillo 1988; Lorenzoni 1990; W.W. Powell 1990). They limit themselves to highlighting their sophisticated combination of contractual and organizational elements. But apart from only a few legal scholars (Nagel 1989; Collins 1990a, 1990b; Hadfield 1990; Joerges 1991b; Macaulay 1991), nobody talks about internal power

relations, exploitation of the internal members, opportunistic behaviour of the core firm itself, collectivization of action without concomitant collective responsibilities, shifts of risk to third parties, artificial contractual restrictions of responsibility, and synergies of risks for other people. Is this somewhat dirty work to be left to the lawyers who here seem to receive surprisingly little help from law and economics and the sociology of organizations?

In both market networks and organization networks there undoubtedly are phenomena, well known in the case of formal organizations, which have to be termed 'illegitimate transaction cost savings' or more brutally, 'organized irresponsibility' (in general on this, see Coleman 1982: 79; Röhl 1987, 1990; Beck 1988: 96; Perrow 1988: 267). Indeed, by comparison with other formal organizations, hybrid arrangements are distinguished by particular network-specific externalities. Collins (1990a: 737) calls this the 'capital boundary problem' in 'complex economic organizations': 'Because the firm determines its own size, it also chooses the limits of its legal responsibilities, which in turn provides an open invitation for the evasion of mandatory legal duties.' The practice of corporate groups of creating autonomous profit centres, in order to secure, alongside (legitimate) efficiency advantages, at the same time (illegitimate) risk displacement and liability limitation, supplies ample illustrative material here (e.g., Hommelhoff 1990: 761). But this phenomenon occurs also in supply and distribution networks, such as the contractual networks in transport, banking, and telecommunications; socially desirable transaction cost advantages from the intelligent mixing of contract and organization go hand in hand with socially questionable shifts of risk to third parties and artificial contractual restrictions of responsibility (here, for the case of franchising, see Teubner 1991; for other contractual networks, see Collins 1990a).

These negative external effects are network-specific for two reasons. First, they arise out of the segmentation, through division of labour and isolation, as far as responsibility goes, of co-ordinated chains of action. 'Where the work is organized through numerous separate legal entities rather than a single firm, the limits of legal responsibility set by reference to the boundaries of capital units establish the conditions for potential injustice' (Collins 1990a: 736). Second, they are attributable to the above-mentioned capacity of networks to change the organization's colour chameleon fashion—contract, organization, network, contract, organization—according to what the environment and the profit require (Pausenberger 1975: 2243; Kirchner 1985: 226). Networks have the 'power to manipulate capital boundaries in order to reduce or eliminate potential legal liabilities' (Collins 1990a: 738).

If this is to be opposed by legal policy, then in principle two control

mechanisms are required. One involves a high flexibility of mechanisms of legal responsibility, which cannot be nailed down to the chosen arrangement, but respond just as opportunistically as the chameleon-like shifting network itself. The other requires the simultaneous multiple attribution of corporate responsibility. Responsibility should not be confined to the nodes of the network; it must simultaneously go to its centre and to the co-ordination system of the network itself.

What was said above about the orientation of objectives and about allocation of responsibility applies equally to the political responsibility and legal liability of such hybrid arrangements. Simultaneous multiple attribution of responsibility to the collective, the centre, and the individual unit distinguishes the network from organization, on the one hand, and contract, on the other. Even if present-day law is still far from treating corporate groups, still less contractual systems, as legal subjects, in socio-economic practice tightly organized distribution systems and corporate groups (even if decentrally co-ordinated) are 'observed' as a paradoxical *unitas multiplex*, as a unit of action and at the same time as a multiplicity of actions (cf. Martinek 1987: 121). Practice makes possible without further ado what today still looks like a contradiction in law: assigning responsibility for one and the same act simultaneously to the network, the centre, and the individual unit.

And this threefold responsibility which appears in social practice should also provide the model for a network-adequate political and legal responsibility. Such a political-legal concept of multiple responsibility would treat hybrid forms as third-order ones, beyond contract and organization, which need specific network-adequate regulation. If their specificity lies in the unity of an organization with decentralized action units, then the following would be the guiding principles.

External liability of networks. External liability of the network itself and not only of the individual units should be provided by the law. Such a piercing of the contractual veil should result, however, not in the unified collective liability of company law, but in a decentralized, multiple, and selectively combined liability of the network and the concretely involved nodes. As against liability of fully collectivized formal organization, this would result in a relative re-individualization of collective liability in networks. Moreover, if networks realize increased synergy risks for other people, this would have to be compensated by increased liability of the net. Due to the increased risks, in these cases the level of protection to outside creditors would need to exceed the level of protection in both contract and organization (for some details, see Teubner 1991).

Minority protection for members in the network. Internal minority protection in networks should be provided by the law, and not only the rudi-

mentary protection of weaker parties in contract law. However, the guiding model should not be the dependence of labour law, but the semi-autonomy of decentralized action centres. Not the classical sanctions of labour law, but new protective rules are needed, that safeguard their autonomy, status, and reciprocity (for some details, see Collins 1990b: 376; Hadfield 1990: 978; Joerges 1991b: 33, 66; Sciarra 1991: 251; 258).

Collective interest representation in networks. Collective interest representation should be provided by the law which would go beyond the minimal participation requirements of contract law. However, it would be inappropriate to follow the unified collective representation of corporation and co-determination law in rigid institutions. Rather, countervailing power centres need to be created by law that do not lay down a rigid catalogue of competencies, but utilize flexible quasi-contractual arrangements for legitimation and control (see Teubner 1993: ch. 7).

Such indirect regulation via rules for external liability and for an internal constitution will 'hit' the self-regulating nerve of the network if it is capable of 'irritating' the multiple orientation of network action (on the model of indirect regulation of autonomous systems, see Luhmann 1988b: 345; on the questions of network regulation in corporate groups, see Teubner 1990a: 266). New liability rules that simultaneously influence the cost/benefit calculations of the network, of the centre, and of the nodes can give outside regulation some chance of irritating the network's behaviour. The decentralized character of the network suggests that we go beyond the dichotomy of collective and individual, and establish the threefold responsibility of collective, centre, and individual unit.

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