Three encounters with Niklas Luhmann

Gunther Teubner

(In: Ralf Rogowski (Hrsg.) Anthem Companion to Niklas Luhmann. Anthem Press, London 2020).

I.

In 1968, when I worked as a court clerk and was writing my dissertation, I suffered from acute symptoms of *horror vacui.* My somewhat naïve hopes in the rationality of legal arguments, but also in the potential of the social sciences to enlighten them, had been disillusioned. I had worked my way through the relevant literature on law and the social sciences, but, of course, without finding a solution to my problem. I doubted the scientific quality of legal scholarship, equated legal doctrine with absurd conceptual acrobatics, and found in legal sociology nothing but irrelevant fact gathering or artificial theory exercises. In those days the critique of law as an instrument of brute power was en vogue and I agreed wholeheartedly. My own experience in the courts contradicted what I had learned in the law school about the inner persuasiveness of law when it came to solve social conflicts. I could realize that in the day to day practice, legal arguments would neither determine judicial decisions, nor produce plausible reasons for the parties concerned, nor resolve social conflicts satisfactorily. And as a doctoral student I had to learn that legal arguments are neither participating in an interdisciplinary debate nor realizing social values, not to speak of producing discursive rationality.

Suddenly a new tone! Norms in sociological perspective – a short but brilliant article by a certain still unknown Niklas Luhmann which radicalized the usual critique of law in a cool and distant language. He showed that legal methods of attribution are untenable in scientific terms. So far so not astonishing. But what impressed me was that starting with this critique of law Luhmann developed sociological arguments for legal autonomy which he later on transformed into a whole theory of law's autopoietic self-production. When social or moral conflicts seem to be unresolvable, the law finds an additional perspective which makes these conflicts resolvable and thus endurable in social life. The argument contradicted the *Zeitgeist* of these days. Law is not supposed to mirror social communities' shared understanding of conflicts. Just the opposite, to alienate drastically social conflicts is law's well-founded stubbornness.

Suddenly the absurd legal doctrine made sense. It translates otherwise non-resolvable conflicts into a highly artificial web of legal topoi, concepts, norms,

principles, constructs so that they are almost no longer recognizable as social or moral conflicts, but appear as genuinely juridical problems which can be argued and decided via legal fictions and without a counterpart in social reality. In those days when it was en vogue to mock legal arguments, this was a new serious tone. At the same time this kind of analysis seemed to formulate a categorical imperative for the critique of law: Criticize only according to that maxim whereby you can, at the same time, discover alternative possibilities of construction.

II.

Years later, when I met Niklas Luhmann in person, I was taken aback by his cool distance which I felt always to be behind his friendly smile. In personal encounters I experienced this distance intensely. I observed his almost physical aversion against what he called the “stickiness of people’s gazes”, how he was greeting colleagues only in order to turn away from them as fast as possible, and how he refused his disciples to create a Luhmann school (but could not avoid its self-organization). I found out about his distance from any fraternization, his dislike of chummy communication. Should one find here the biographical motive for the often described, often criticized, piercing cold of his theory?

Today I see things differently. It is the painful, even traumatic experience of the inaccessibility of the other’s inner life which created, almost in a Demosthenes-effect, the greatest insight of Luhmann’s theory – the duplication of meaning production, the clear-cut separation of social and psychic life. Starting point was the insight that inner experiences are in principle not communicable, even more, that inner meaning will be destroyed by its verbalization and communication. He liked to cite the German romantic poet Novalis: “Much is too tender to be thought of, even more to be spoken”. From the insurmountable distance between human beings followed Luhmann’s construction of psychic monads, the autopoietic closure of inner experience and the famous double contingency which is the mutual inaccessibility of their minds when people encounter each other.

What impressed me most was Luhmann’s insistence that any attempt to overcome this closure, any effort to arrive at intimacy, will always end in the solitude of psychic life. But what made his analyses so fruitful is the insight that the energies of overcoming this closure will have effects in a totally different direction. Luhmann’s reaction to the closure of inner worlds was different from the usual escape routes: no sentimental stylization of communitarian yearnings, no straightjacket of intersubjectivity, no mystical transcendence of alterity, no substitution of the subject by *différance*. However, at the same time no farewell to the individuals’ inner experience,

no contempt for the philosophy of consciousness, no prohibition of private language, no reduction of meaning to sheer sociality.

Instead, Luhmann undertook a radical deconstruction of former concepts of intersubjectivity, but he did it with sufficient subtlety so that the new theory could arrive at a world of meaning beyond individual experience: the autonomous world of communication. What is hidden in the duplication of meaning, in the emergence of autonomous communication, in the crystalline structures of social systems, is the compensation for the painful loss of meeting of minds.

III.

My third encounter with Luhmann's work had to do with its *ambience*, its atmospheric content. Here I have always been struck by its elective affinity to the contrapunctual compositions in the old masters' music. In its formal rigor which expresses at the same time a high affective intensity, Luhmann's theory composes contemporary society as one single theme in multiple variations, making use of distinctions in various social contexts, searching for isomorphies as well as for fundamental differences. I experience Luhmann's masterpiece Social Systems in a close kinship to Johann Sebastian Bach's Art of the Fugue or the Musical Offering. Luhmann wrote his series of books on different social systems in a fashion analogous to Bach's fugues and canons, each using some variation of a single principal subject, and generally ordered to increase in complexity. Luhmann's monumental theory seems to me as a great project of *ars musica – ars mathematica,* a systematic passage through the rich possibilities of rigorous techniques of contrapunctual composition, which combines high formality with strong emotions. Theory as Passion – the title of a collection of essays dedicated to Luhmann is pertinent.

In the perspective of such an austerely constructed theory, its object, society itself, appears as the result of a contrapunctual composition, namely as the self-application of a chain of differences in numerous variations. Social differentiation is the single theme which is reflexively applied to itself with increasing complexity. The polyphony of communications in various social systems is similar to the autonomy of voices in a musical piece, which are at the same time disciplined by the constraints of canonical composition – yet with the decisive difference that the confidence in *harmonia mund*i is today superseded by the frightening experience of infinite contingency.

It is said that Bach's music – in its formal rigor, its remarkable expressivity, and in its sober seriousness – has been possible only after the experiences of the Thirty Years War (1618-1648). I think that Luhmann's theory – in its formal rigor, its remarkable expressivity, and its sober seriousness – has been possible only after the Thirty Years War of the 20th century (1914-1945). This might sound implausible in the light of Luhmann's affective ascetism, his irony

toward moral enterpreneurs, his distance toward nice and helpful social theories and his refusal to participate in the normative turn of sociology.

But there are hidden passages in his work: “The experience of national socialism had widely expanded the imagination of what is possible. Horrible crimes had been permitted in politics, even had been committed by politics, and had not been impeded by the law. … One had to raise the question whether these acts had been permitted by the law and, more radically, whether they had been proscribed by the law.” However, Luhmann did not search to revitalize natural law, nor to remoralize the law, rather to activate resistance within society against political totalization. This meant to re-interpret constitutional rights and to understand them not only as legal rules, rather as a social institution, which has the potential to strengthen the civilizing effects of social differentiation

In my view Luhmann thought that particularly after the historical experience, German society had been successfully immunized against political totalitarianism so that he directed his attention to ecological endangerments, to new sorts of fundamentalism and to tendencies of social exclusion in the emerging world society. Sociological enlightenment – again in the sense of Luhmann’s categorical imperative – means not only to analyze in depth the dark past, but also to become aware of new social exclusion problems and ecological dangers.

And one can find numerous allusions and enigmatic wordings in Luhmann’s Theory of Society dealing with structural problems and endangerments of world society. They will have to be deciphered in a contrapunctual composition analysis, similar to the inventive puzzles in the Musical Offering which the old Bach had pointed to in a handwritten invitation: *Quaerendo invenietis.*