

Recebido: 03.11.2019
Aprovado: 15.01.2021
<https://doi.org/10.1590/2317-6172202109>

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Epistemological and empirical challenges of Niklas Luhmann's systems theory: an interview with professors Álvaro Pires and Lukas Sosoe

DESAFIOS EPISTEMOLÓGICOS E EMPÍRICOS DA TEORIA DOS SISTEMAS DE NIKLAS LUHMANN:
ENTREVISTA COM OS PROFESSORES ÁLVARO PIRES E LUKAS SOSOE

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Interviewers:

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INTRODUCTION

Niklas Luhmann (1927-1998) built one of the most encompassing and abstract sociological theories of the 20th century. Bringing to sociology the radical constructivism developed by transdisciplinary scientists such as the mathematician George Spencer-Brown, the physicist Heinz von Foester, and the biologists Humberto Maturana and Francisco Varela, Luhmann renewed the bases of understanding society and its subsystems – including law, science, politics, economy and many others. Two decades after the death of this German sociologist, his views on world society, communication and functional differentiation have given rise to an immense body of literature that focuses on analyzing a variety of questions. But how to deal with the scale and abstraction of this theory and apply it to the understanding of localized legal phenomena, such as crime and punishment, or ethics and courts?

In this interview, this discussion was posed to two leading Luhmannian scholars who work specially in the Francophone academy. Álvaro Pires, Distinguished University Professor at the University of Ottawa (Canada), and Lukas Sosoe, Full Professor at the University of Luxembourg, were interviewed in São Paulo, on August 22, 2019. Professors Pires and Sosoe have parallel academic trajectories, having worked together in some projects and symposiums. Professor Pires conducted pioneer works on empirical and criminological research with systemic approaches. Professor Sosoe works with legal theory, ethics, contemporary political philosophy and European studies. He has worked on translations to the French of many books by Niklas Luhmann. In this interview, both scholars explore the limitations and potentials for addressing empirical and historical questions within systems theory and present their views on the epistemological innovations that radical constructivism brings for socio-legal studies.

INTERVIEW

MARCO LOSCHIAVO: Could you both tell us briefly about your academic trajectory and how did systems theory appear in your studies?

LUKAS SOSOE: I came to know Luhmann in Otfried Höffe's seminar at the International Institute for Social Science and Politics at the University of Fribourg in 1981. He presented a seminar in legal philosophy, on Habermas and Luhmann, about what appeared later in Luhmann's book *Ausdifferenzierung des Rechts* [*Differentiation of Law*].¹ Many ideas struck me at that time, and Otfried Höffe helped me to go to Bielefeld, but he wasn't very satisfied, because Luhmann is not a Kantian! But then Luhmann became to me an interesting author. He has for me two important meanings. The first is that I found in Luhmann a critique of modernity that is consequent, which is very strong, and the philosopher who is the target of his critique is Kant; that is why his work is Hegelian in spirit. If you read it carefully, as I read since I was translating Luhmann's *Soziale Systeme* [*Social Systems*],² he is a kind of neo-Hegelian, using Kant as a target to criticize modern philosophy. He says that we finished with that kind of modernity, and that sociology would need to replace philosophy, philosophy being the way modernity was thought; and now sociology is the new Enlightenment. That is why he published six books in the series entitled *Soziologische Aufklärung* [*Sociological Enlightenment*].³ So I became very interested in reading Luhmann, first of all being in Bielefeld: the first time we met he talked with me for more than three hours! No professor had ever taken three hours for me! I felt so honored. Since that time, although Luhmann is just an aspect of my work, I offer every semester a course on some topic in Luhmann's theory. I have just finished, last week, the third

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- 1 LUHMANN, Niklas. *Ausdifferenzierung des Rechts: Beiträge zur Rechtssoziologie und Rechtstheorie*. Frankfurt: Suhrkamp, 1981 [*La differenziazione del diritto: contributi alla sociologia e alla teoria del diritto*. Translated by Raffaele De Giorgi and Michele Silbernagl. Bologna: Il Mulino, 1990].
- 2 LUHMANN, Niklas. *Soziale Systeme: Grundriß einer allgemeinen Theorie*. Frankfurt: Suhrkamp, 1984 [*Social Systems*. Translated by John Bednarz, Jr. and Dirk Baecker. Stanford: Stanford University Press, 1995].
- 3 LUHMANN, Niklas. *Soziologische Aufklärung 1: Aufsätze zur Theorie sozialer Systeme*. Opladen: Westdeutscher Verlag, 1970; id., *Soziologische Aufklärung 2: Aufsätze zur Theorie der Gesellschaft*. Opladen: Westdeutscher Verlag, 1975; id., *Soziologische Aufklärung 3: Soziales System, Gesellschaft, Organisation*. Opladen: Westdeutscher Verlag, 1981; id., *Soziologische Aufklärung 4: Beiträge zur funktionalen Differenzierung der Gesellschaft*. Wiesbaden: Verlag für Sozialwissenschaften, 1987; id., *Soziologische Aufklärung 5: Konstruktivistische Perspektiven*. Wiesbaden: Verlag für Sozialwissenschaften, 1990; id., *Soziologische Aufklärung 6: Die Soziologie und der Mensch*. Wiesbaden: Verlag für Sozialwissenschaften, 1995. See also LUHMANN, Niklas. *Iluminismo sociológico*. Translated by Artur Mourão. In: SANTOS, José Manuel (org.). *O pensamento de Niklas Luhmann*. Corvilhã: Universidade da Beira Interior, 2005. p. 19-70.

translation of Luhmann's work, *Das Recht der Gesellschaft* [*Law as a Social System*].⁴ I expect that the Francophone public would be interested in his thought, because he is close to many French structuralists.

ÁLVARO PIRES: In my case Luhmann had two different 'appearances'. In the first one I was still in Brazil, when I read *Legitimation durch Verfahren* [*Legitimation through Procedure*] in a Portuguese translation.⁵ My degree was in Law, and in the third year of the Law course I started the Sociology course at the Catholic University of Rio de Janeiro (PUC Rio). I only attended the classes that interested me in the Sociology course, and I chose the professors. Then I left Brazil and went to Germany in 1973 – at that time it was recommended to leave Brazil and go somewhere [because of the military dictatorship]! In Germany I had a first contact with *Rechtssoziologie* [*A Sociological Theory of Law*],⁶ but my background in sociology was still weak. So I couldn't understand the full book. Then I came to Canada, where I finished my formation in social sciences, then I worked with classical sociology, Frankfurt school, Marxist theory. Since the time I was in Brazil I used to like everything that was critical... Then, the second contact I had with Luhmann was through empirical research. I started a very big project on the transformations of the Canadian Criminal Code, between 1891 and 1991. We first finished the documental analysis between 1891 and 1955. During that study I identified an empirical result that I couldn't explain with any sociological theory I knew: interactionism, Weber, Marx... I could not give a sense to these data. Foucault gave me very interesting insights, but not conceptual tools to work with. Then I remembered systems theory, but at that time there was a divide between functionalistic, positivistic theories and Marxist, critical theories. Even the distinction between positivism and functionalism was never clear for a lot of sociologists. They used to put all approaches together in a category or another. As for myself, from the beginning I learned not to be absolutely sure

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4 LUHMANN, Niklas. *Das Recht der Gesellschaft*. Frankfurt: Suhrkamp, 1993 [*Law as a social system*. Translated by Klaus A. Ziegert. Oxford: Oxford University Press, 2004; *El derecho de la sociedad*. Translated by Javier Torres Nafarrate. México: Herder, 2005; *O direito da sociedade*. Translated by Saulo Krieger and Alexandre Agnolon. São Paulo: Martins Fontes, 2016; *Le droit de la société*. Translated by Lukas K. Sosoe. Québec: Presses de l'Université Laval, 2019].

5 LUHMANN, Niklas. *Legitimation durch Verfahren*. Frankfurt: Suhrkamp, 1969 [*Legitimação pelo procedimento*. Translated by Maria da Conceição Côrte-Real. Brasília: Editora da Universidade de Brasília, 1980; *Procedimenti giuridici e legittimazione sociale*. Translated by Alberto Febbrajo. Milano: Giuffrè, 1995; *Légitimation par la procédure*. Québec: Presses de l'Université Laval, 2001].

6 LUHMANN, Niklas. *Rechtssoziologie*. Frankfurt: Suhrkamp, 1972 [*A Sociological Theory of Law*. Translated by Elizabeth King-Utz and Martin Albrow. 2. ed. New York: Routledge, 2014; *Sociologia do direito*. Translated by Gustavo Bayer. Rio de Janeiro: Tempo Brasileiro, vol. 1, 1983; vol. 2, 1985].

about that! So I turned to systems theory, starting with Edgard Morin and Yves Barel. Barel linked systems theory to critical theory, because he was a Marxist. He wrote an article in *Revue Esprit*⁷ trying to convince the French that systems theory was not technocratic at all, and that it had a very critical epistemology inside it. At that time I remembered and thought: why not Luhmann?! Because Luhmann cites Morin and Barel, but the reverse wasn't clear. Then I lost my capacity to write for some time, because I couldn't write in the way I was writing until then (also influenced by Bourdieu, Giddens, and other critical thinkers), and I still wasn't able to write in a systemic way, connecting theory to data. I found data, but the problem was to clearly show the connection within a coherent theory! So, the first time I made contact with Luhmann's theory I was alone, and I read the critique of people like Habermas, then I said: I don't know if I have read the same author! I said: Álvaro, you are crazy! You are the only one who is not seeing what others are seeing!

MARCO LOSCHIAVO: That's very interesting, because Lukas highlighted the philosophical aspect of Luhmann's work and Álvaro showed the sociological implications and the importance of Luhmann as an empirically-based theory.

ÁLVARO PIRES: I read Habermas before, and found very interesting insights there. But when I approached Habermas side by side with Luhmann, I saw that Luhmann was far more empirical than Habermas, who has a more philosophical approach. And in Luhmann I made contact with empirical material all the time.

LUKAS SOSOE: The idea that Luhmann does not have an empirical basis is a kind of myth, but Luhmann himself contributed to it. However, in *Die Gesellschaft der Gesellschaft* [*Theory of Society*]⁸ he pointed out many ideas that can be worked out empirically. For instance, when discussing the notion of world society he points out five or seven topics that can be empirically studied. He didn't develop these points empirically himself, but he gave these hints for his readers.

ÁLVARO PIRES: But I cannot see a book like *Liebe als Passion* [*Love as Passion*]⁹ as any other kind than an empirical work! Because it is a study of romance, novel, and many empirical

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7 BAREL, Yves. L'idée de système dans les sciences sociales. *Esprit*, v. 1, n. 1, p. 69-82, 1977.

8 LUHMANN, Niklas. *Die Gesellschaft der Gesellschaft*. Frankfurt: Suhrkamp, 1997 [*La sociedad de la sociedad*. Translated by Javier Torres Nafarrate. México: Herder, 2007; *Theory of society*. Translated by Rhodes Barrett. Stanford: Stanford University Press, vol. 1, 2012; vol. 2, 2013].

9 LUHMANN, Niklas. *Liebe als Passion*. Frankfurt: Suhrkamp, 1982 [*Love as passion: the codification of intimacy*].

historians do studies on that. If you say that's not empirical, you should have a preconception about what counts as empirical, some kind of data, not others. But that's a problem: who is the observer?

LUKAS SOSOE: The questions of nobility, the description of romantic love are empirical problems. And sometimes Luhmann analyzes this material in three different cultural traditions, so it's an empirical work. Not with graphs, tables...

ÁLVARO PIRES: ...yes, he does not need to quote a parliamentary debate, but he arrives to conclusions based on historical, empirical data.

MARCO LOSCHIAVO: It seems that the main drive for an empirical perspective on Luhmann is to observe how he uses history, and he uses it all the time.

LUKAS SOSOE: This is a common point with Foucault, who also uses historical material. And for Luhmann this is very important, like in the four volumes of *Gesellschaftsstruktur und Semantik* [*Social Structure and Semantics*].¹⁰ These volumes contain rich historical material that Luhmann used to describe the origin of the modern State, or the relation between nobility and education, or even the evolution of social classes. However, he contributed to the spread of the myth that his theory doesn't contain any empirical research.

ÁLVARO PIRES: Luhmann was living in a moment when there was a strong devaluation of theory. During the 1960s and 1970s we had a renaissance of Marxism, but also a critique of all macro-sociological theories. We had critiques of these theories from the outside and from the inside. For instance: Marxism was meant to explain all kinds of oppressions, but 'the other', the oppressed have many faces, so it was not explaining women, people with mental insanities, prisoners etc. So, there aroused a criticism about these macro-views. Luhmann

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Translated by Jeremy Gaines and Doris L. Jones. Cambridge, MA: Harvard University Press, 1986; *Amour comme passion: de la codification de l'intimité*. Translated by Anne-Marie Lionnet. Paris: Aubier, 1990].

10 LUHMANN, Niklas. *Gesellschaftsstruktur und Semantik 1: Studien zur Wissenssoziologie der modernen Gesellschaft*. Frankfurt: Suhrkamp, vol. 1, 1980; vol. 2, 1981; vol. 3, 1989; vol. 4, 1995 [*Struttura della società e semantica*. Translated by Maria Sinatra. Bari: Laterza, 1983; *Teoria dos sistemas na prática I: estrutura social e semântica*. Translated by Patrícia da Silva Santos. Edited by Leopoldo Waizbort. Petrópolis: Vozes, 2018; *Teoria dos sistemas na prática II: diferenciação funcional e modernidade*. Translated by Érica Gonçalves de Castro and Patrícia da Silva Santos. Edited by Leopoldo Waizbort. Petrópolis: Vozes, 2019; *Teoria dos sistemas na prática III: história, semântica e sociedade*. Translated by Érica Gonçalves de Castro. Edited by Leopoldo Waizbort. Petrópolis: Vozes, 2020].

forced the other way around, emphasizing theory, and saying that obtaining data may be an easier part in comparison to the task of formulating an encompassing theory. I understand this position more as a problem of self-presentation within a conjuncture, in that debate, than as a statement to evaluate his own work. Many empirical researches that were useful for me, either historical or non-historical, I came to know through Luhmann's writings. For instance, concerning expectations, he mentions a quantitative work from the Chicago School that was not very well-known.¹¹

GABRIEL FONSECA: How do you see the presence of Luhmann in your national and academic contexts, *i.e.* in Canada and Luxembourg, nowadays?

LUKAS SOSOE: French is one of the national languages we speak in Luxembourg. At the University of Luxembourg, we speak at least three languages: German, French and English. In the country, the most spoken languages are Luxemburgish, German, Portuguese and French. Some people know Luhmann. But Luxembourg's university is a new university, it is around fifteen years old, so it's difficult to measure the knowledge about Luhmann's work in this context. But I know many academics from Luxembourg who work with Luhmann outside the country. And the students at the level of the bachelor's degree know Luhmann, but through the critique made by Habermas. With Álvaro, I have organized for a few years seminars on Luhmann in Luxembourg. Of course, I cannot speak in the name of the country, it's not an academic country, the University is very young, there isn't a public debate as in Germany or France or other European countries. We just import sometimes debates from other countries.

ÁLVARO PIRES: ...and you also introduce debates in other countries!

LUKAS SOSOE: My students show an interest in Luhmann, as I use to make references to him. We also read *Legitimation durch Verfahren* [*Legitimation through Procedure*], which was the first Luhmann book that I translated into French. And through this translation I met Álvaro.

ÁLVARO PIRES: Yes, at the Faculty of Social Sciences [of the University of Ottawa] we have an interdisciplinary center, *Centre interdisciplinaire de recherche sur la citoyenneté et les minorités* [*Centre for Interdisciplinary Research on Citizenship and Minorities*], and I was a subdirector of this center. Then someone invited Lukas, and I came to meet him. So, I felt that I wasn't alone anymore! One professor asked Lukas: 'how can we understand that one individual has

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11 GALTUNG, Johan. Expectations and interaction processes. *Inquiry*, v. 2, n. 1-4, p. 213-234, 1959.

two systems, a psychic and an organic system?' And Lukas answered: 'when you go to your physician, does he ask about your psychology? So, it's more or less this way...' He has an ability to explain the distinctions central to systems theory, and since then we started our academic connection.

LUCAS AMATO: When was that?

ÁLVARO PIRES: More than twenty years ago... One of the functions of memory is to forget, and the other is to make a reconstruction of the present!

LUKAS SOSOE: It was around the publication of the French translation of *Legitimation durch Verfahren*, 1991 or 1992.

MARCO LOSCHIAVO: Professor Sosoe, you have translated many of Luhmann's works [*Systèmes sociaux, Le droit de la société, La légitimation par la procédure*].¹² How do you see his reception in the Francophone context?

LUKAS SOSOE: Some Canadians are beginning to be interested in Luhmann. The problem with France is that in French universities there are star professors. Then every student does the same thing. When Foucault was there, everyone was a Foucaultian! That happened with Sartre, with Bourdieu. And Luhmann's thought is too technical, it doesn't allow a literary virtuosity, and the French philosophical and sociological thought has a literary characteristic. Habermas was received there not because of his work, but because he was a Marxist at the beginning, and the French were communists or socialists. Now Habermas is too technical, speaking about democracy, so it's no longer like in the 1970s, when he was criticizing 'the system' as a leftist. Talking about 'systems theory' for people who are in a post-communist intellectual culture is very difficult, they reject it without knowing what is inside Luhmann. I have friends who don't have any curiosity to see what is in his books. And his first book to be sold in France was *Amour comme passion*! But it isn't a love story, it is a technical book. And it was very important for anthropologists and those interested in the history of ideas. In Germany there was the same distance to Luhmann, then a few people began to be interested in systems theory. A reason not to approach it was that people believed that Luhmann was a technocrat, because of the book with Habermas, entitled by Habermas *Theorie der Gesellschaft oder Sozialtechnologie* [*Theory of Society or Social Technology: What Does Systems*

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¹² See also SOSOE, Lukas K. (ed.). *Le droit: un système social. Law as a social system. Un commentaire coopératif de Niklas Luhmann*. Hildesheim: Georg Olms, 2015.

Research Do?].¹³ And Luhmann doesn't advocate any 'technological understanding' of society or any social engineering. But this idea was very negative for his reception.

ÁLVARO PIRES: It is common to make a critique based on the title. Even Bourdieu complained about that, concerning *La Reproduction* [*The Reproduction*],¹⁴ a book about the school. People criticized it from the title. The problem is that Bourdieu did the same thing with Luhmann!

LUKAS SOSOE: And both Luhmann and Habermas are social theorists, not social technocrats. That title was read as a personal opposition: *Theorie der Gesellschaft oder Sozialtechnologie* [*Theory of Society or Social Technology*], that is: Habermas or Luhmann.

LUCAS AMATO: And how is Luhmann's presence in Canada?

ÁLVARO PIRES: I first taught an open doctoral seminar on Luhmann. I announced it in the Faculty of Social Sciences, and then many professors came to my course. One full professor came to the course and brought three doctoral students and two master students to hear about Luhmann. I asked her [that full professor] why and she said that there had been courses about Bourdieu and others, but they had never heard about Luhmann.

LUKAS SOSOE: Since I was much more interested in legal and political philosophy, everything Luhmann wrote about law and politics interested me. And I translated *La légitimation par la procédure* because for someone with a Kantian background it was interesting to find a sociological, empirical perspective on legitimation, an explanation of how people come to accept social order or submit themselves to legal order. In Luhmann the term 'legitimation' is more Weberian than Kantian in this sense. But then I was interested in having a more complete idea about Luhmann's theory, that's why I translated *Systèmes sociaux*, because translation is a very good exercise in order to know a book. It took me more than three years. Having this general idea, I started the translation of *Le droit de la société*. And now I am working on *Grundrechte als Institution* [*Fundamental Rights as an Institution*],¹⁵ which

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13 LUHMANN, Niklas; HABERMAS, Jürgen. *Theorie der Gesellschaft oder Sozialtechnologie: Was leistet die Systemforschung?* Frankfurt: Suhrkamp, 1973 [*Teoria della società o tecnologia sociale: che cosa offre la ricerca del sistema sociale?* Translated by R. Di Corato. Milano: Etas Kompass, 1973].

14 BOURDIEU, Pierre. *La Reproduction: éléments pour une théorie du système d'enseignement*. Paris: Les Éditions de Minuit, 1970.

15 LUHMANN, Niklas. *Grundrechte als Institution: ein Beitrag zur politischen Soziologie*. Berlin: Duncker & Humblot,

addresses the doctrine of human rights in a sociological perspective. My interests are still philosophical.

ÁLVARO PIRES: For me the points were both sociological and epistemological, particularly the theory of observation, which I discovered in Luhmann.

LUKAS SOSOE: I wrote a book on ethics, with a medical doctor.¹⁶ I hadn't read Luhmann's writings on ethics before that book, and after I finished the book, which is a critique of this revival of moral philosophy and ethics as a kind of social engineering, I read Luhmann's *Paradigm Lost* [Luhmann's speech on the occasion of the award of the Hegel Prize, 1988]¹⁷ and I was really in agreement with the way he treats ethics as a lost paradigm.

ÁLVARO PIRES: I find in Luhmann a critique of a general, encompassing ethics for all social systems, but also the idea that each social system has to create from within its own ethics, and this is very important. When I started to work with criminal law, in the moment of the determination of a sentence, I found the problem of self-deresponsibilization in the sentencing process. Society destroys the 'individual' before you. It is completely useless to say: 'be sympathetic to the other'. Luhmann is not against ethics, the problem is the way that law observes ethics, within a context. As in the discussions about lying in politics.¹⁸

LUKAS SOSOE: Luhmann is not against ethics; for him ethics is a reflective theory of morals; its function is to approve or disapprove people. Just like David Hume would say.

LUCAS AMATO: Moving to a wider perspective, Prof. Pires is a scholar with presence in at least two different contexts – Canada and Brazil; Prof. Sosoe has also a global academic trajectory, having studied and taught in Switzerland, Germany, Canada, United States etc. So, how both of you see the universality of Luhmann's description of the 'functionally differentiated world society'? Does it apply in the same way for all regions?

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1965 [*I diritti fondamentali come istituzione*. Translated by Stefano Magnolo. Bari: Dedalo, 2002; *Los derechos fundamentales como institución: aportación a la sociología política*. Translated by Javier Torres Nafarrate. México: Universidad Iberoamericana, 2010].

16 LAJEUNESSE, Yvette; SOSOE, Lukas K. *Bioéthique et culture démocratique*. Paris: L'Harmattan, 1997.

17 LUHMANN, Niklas. *Paradigm lost: on the ethical reflection of morality*. Translated by David Roberts. *Thesis Eleven*, v. 29, n. 1, p. 82-94, 1991.

18 LUHMANN, Niklas. *Politicians, honesty and the higher amorality of politics*. Translated by Josef Bleicher. *Theory, Culture & Society*, v. 11, p. 25-36, 1994.

ÁLVARO PIRES: Here we need to ask: who is the observer? And how is the observer observing the theory itself and the region where they are working? It would be a mistake to take Luhmann's theory as a grand narrative. It is more of a grand theory, to take a difference from Daniel Lee.¹⁹ He is not saying that he has a perfect explanation of everything everywhere. From one point of view, maybe you can find in every part of the world something that matches the theory, but not necessarily all phenomena you are facing. So we need to correct the expectation. If you are seeing something else, there emerges the problem of how to address it. The theory can explain other things. It would be a problem to make an absolute statement. In social sciences, as Weber said very well, theory is not like an artwork. If you have a picture before the invention of perspective, it is still beautiful today. But not in science! Theories are made to die some day, as a full theory, although aspects of the theory can still live. Today, when we go to Durkheim or to Marx... they are just splitting out a lot of concepts that are not there anymore, such as 'class struggle', 'socialism'. In my time, when I was reading Althusser or Poulantzas, these ideas were still there, although things were starting to move. So, it is a mistake to make a general judgement about a theory on the basis of things that this theory cannot explain. This is the normal expectation today in social science: if you have a sociologist that intends to explain everything everywhere, you don't need to read him!

LUKAS SOSOE: It's difficult to grasp what Luhmann really means by functional differentiation in a world society. We need to distinguish the methodological level from the empirical one. The methodological level is simple: he says that, if you want to describe world society, you have to proceed top-down. Because if you proceed bottom-up, the diversity of regional cultures cannot be embraced. A reflection cannot be made concerning so many cultural differences, so many peoples, so many countries. If we move top-down, we can see the generalities: yes, there is a world financial order, and there is a crisis in China, or Trump is producing a world crisis. How do you describe this, if you don't go top-down? We have a world educational and scientific system: Álvaro comes from Canada, I come from Luxembourg, but there is communication between us. We have to see how many types of communication we have today on a world level: economy, politics, education, art, sports etc. We have tribes in Africa or in the Amazon, and they belong to the world, they belong to the world society, because the boundaries of their communication belong to the world. This is an abstract concept, used to describe different levels and different systems. It is not only an empirical concept. We have a world communication system in almost every domain. This is what Luhmann means. The question is: is there some implicit appeal to join the functionally

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19 LEE, Daniel. The Society of Society: The grand finale of Niklas Luhmann. *Sociological Theory*, v. 18, n. 2, p. 320-330, 2000.

differentiated society, or is it only a descriptive concept? This is a very difficult question, and often you don't know where to situate Luhmann. But if you take some evolutionary concepts, you will say that many local cultures could be said not to belong to this world system because they are not enough [functionally] differentiated. Is there a prescriptive component in this diagnosis? This is the problem. Anyway, we have to distinguish the formal concept from the concrete realities, and the analysis of these realities can't be done only with the formal concept. The formal concept of a 'world society' helps to describe its limits, as world society contains everything.

ÁLVARO PIRES: Even if we start top-down, it would be a mistake to explain what is in the particular level by reference to the general level. This is a descriptive aspect. Each level of observation needs its own rules. We cannot make statements about one level pretending to describe it from another level. And this is the same for sociology or history. In this last discipline, Kracauer made this point very clear.²⁰ Luhmann has articles about micro and macro-sociology,²¹ because at that time there was functionalism, Marxism, and also Chicago School, ethnomethodology... And one problem was whether from the micro-level we can explain society, or from society we could explain the micro-level. Luhmann denies both positions. And Foucault advanced the same position in his debates with historians.²² Foucault wrote an article in that book, called *La poussière et le nuage* [*The Dust and the Cloud*]. Historians were claiming that the birth of the prison was not in the end of the 19th century, but it was in 1886, some day, somewhere. And Foucault said: you can explain either the clouds or the dust; when you see one, you cannot see the other. I have the same problem when working on my theory about modern penal rationality.

LUKAS SOSOE: I think Luhmann hadn't developed very much his notion of world society. The main source is a short article²³ ['Globalization or World Society: How to Conceive of

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20 KRACAUER, Siegfried. *History: The Last Things before the Last*. Princeton; New York: Oxford University Press; Markus Wiener Publishers, 1969.

21 LUHMANN, Niklas. The evolutionary differentiation between society and interaction. In: ALEXANDER, Jeffrey C.; GIESEN, Bernhard; MÜNCH, Richard; SMELSER, Neil J. (ed.). *The Micro-Macro Link*. Berkeley: University of California Press, 1987. p. 112-131; LUHMANN, Niklas. Communication about law in interaction systems. In: KNORR-CETINA, K.; CICOUREL, A. V. (ed.). *Advances in Social Theory and Methodology: Toward an Integration of Micro- and Macro-Sociologies*. London: Routledge, 2015 [1981]. p. 234-256.

22 FOUCAULT, Michel. *La poussière et le nuage*. In: PERROT, Michelle (ed.). *L'impossible prison. Recherches sur le système pénitentiaire au XIXe siècle*. Paris: Seuil, 1980. p. 29-39.

23 LUHMANN, Niklas. Globalization or world society: how to conceive of modern society? *International Review of Sociology*, v. 7, n. 1, p. 67-79, 1997.

Modern Society?' *International Review of Sociology: Revue Internationale de Sociologie*, v. 7, n. 1, 1997]. And if you read the *Theory of Society*, there are some points that you can test empirically, but Luhmann was at work in a programmatic way, for instance when he was just defining 'world society' as global communication.

ÁLVARO PIRES: There is an interview in Mexico²⁴ in which Luhmann said that he was thinking that theory of observation is maybe more important than systems theory, because if I look from the perspective of the theory of observation, the distinction between system and environment is just one of the distinctions you can employ. And Luhmann said that he was then working with distinctions that are not system-bounded, like the distinction between medium and form. We can see that he was taking distance from his own work. I have never seen any author present his own doubts in such a level. So, systems theory is not a gospel, you need to have others, with other distinctions, improving the theory itself.

LUCAS AMATO: Prof. Sosoe, you have been working with philosophy and ethics, mainly in a Kantian mindset. How do you see the normative bias of Luhmann's theory? Is this a kind of Hegelian vision about history, with the retrospective acknowledgement of the irresistible modern evolution towards functional differentiation – as Hegel saw the progress of the spirit – or is Luhmann really clean of all normative claims, as Habermas²⁵ [in *The Philosophical Discourse of Modernity*] once pointed out? Doesn't the very idea of the prevalence of functional differentiation seem to be a normative imperative or claim, so that when there is a lack of functional differentiation we can say there is corruption or dedifferentiation?

LUKAS SOSOE: In Luhmann's book *Zweckbegriff und Systemrationalität* [*The Concept of Purpose and System Rationality*],²⁶ he tries to explain means-and-ends rationality within systems. When we work with this rationality, there is a normative statement, even if it is not a 'moral' one. In the process of differentiation, we have a normative concept. When we say that there

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24 Revista de la Universidad de Guadalajara, 1992, mentioned in LUHMANN, Niklas. *Introducción a la teoría de sistemas*. Translated by Javier Torres Nafarrate. México: Anthropos, Universidad Iberoamericana, Iteso, 1996, p. 115.

25 HABERMAS, Jürgen. *Der Philosophische Diskurs der Moderne: Zwölf Vorlesungen*. Frankfurt: Suhrkamp, 1985 [*The Philosophical Discourse of Modernity: Twelve Lectures*. Translated by Frederick Lawrence. Cambridge, MA: The MIT Press, 1987].

26 LUHMANN, Niklas. *Zweckbegriff und Systemrationalität: über die Funktion von Zwecken in sozialen Systemen*. Frankfurt: Suhrkamp, 1968 [*Fin y racionalidad en los sistemas: sobre la función de los fines en los sistemas sociales*. Translated by Jaime Nicolás Muñoz. Madrid: Nacional, 1983].

is dedifferentiation, we are saying that there is a qualitative regression. So, it is important to draw a difference between functional normativity and moral normativity. Functional normativity may be implicitly used to say something about a particular region, in terms of development, in terms of what should be concerning a system's workings. If you say that somewhere the economic system is not well defined, and that there is a collusion between economy and the law, I am phrasing a functional judgement with its normativity, but not necessarily a moral judgement. Law should be law, and economy should be the economic system, they can develop structural couplings, but not a collusion or generalized conflict. And this is functional normativity. Does it have a moral significance?

ÁLVARO PIRES: In the methodology of sciences we have a lot of normativity that is not moral normativity.

LUKAS SOSOE: We have a pragmatic normativity.

ÁLVARO PIRES: I see that the old distinction between normative and descriptive should be dropped out completely today. Even the word 'evaluation' is a problem. We have evaluative research in science, which is a kind of descriptive research. If you are taking the temperature outside, are you making a description or an evaluation? We have some overlap between that. There was a good article by Ralf Dahrendorf about that.²⁷ In science the problem for me is normativity that doesn't comply with observation. When you refuse to learn with factual observation, then normativity becomes a kind of dogmatism. For science that is a problem.

LUKAS SOSOE: I don't think we can drop the difference between is and ought. Descriptivity and normativity exist, but there are many boundaries and many passages. In a description I can let a normative statement enter, and vice-versa.

ÁLVARO PIRES: I agree with that. We should not characterize science by non-normativity. Even natural science makes evaluations and statements about how to prevent this or that. The point is that research cannot be fixed, driven just by a political orientation, because this would be a problem for knowledge. But it would be an empirical mistake to put each side apart.

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²⁷ See DAHRENDORF, Ralf. *Gesellschaft und Freiheit: zur soziologischen Analyse der Gegenwart*. München: R. Piper, 1965.

MARCO LOSCHIAVO: Today this is a big problem: the society of experts and science's soft power. Sometimes it is difficult to distinguish normativity outside science and inside science, by some criteria of methodological consistency.

ÁLVARO PIRES: The question is who is observing normativity and which form they are giving to this concept. Who is saying that? Which sense are they giving to that? What is being excluded? What you are putting in?

LUKAS SOSOE: Going back to Hegel, yes, there are many Hegelian points in Luhmann, but there is not this last moment of history. Since everything is contingent, we cannot describe history as Hegel described it. Luhmann uses a Darwinian program – variation, selection, restabilization – and we never know where history will end. In Hegel this is already established, and there is also a movement of evolution. But in Luhmann we cannot know the end. We cannot predict if there will be a good or a catastrophic end. He is a Hegelian in describing the recursive movement of things, he took the Hegelian critique of Kant concerning the 'subject/object' difference. Hegel says that the object makes its own operation, it describes itself. Luhmann took the idea of self-description and considered science as a second-order observation.

ÁLVARO PIRES: Luhmann does not describe the future. We cannot see the end of history. And there is a divergence in what we understand as dialectics. Normally we understand dialectics as a movement of thesis, antithesis and synthesis, the *Aufhebung*, the sublation. And the *Aufhebung* is usually introduced as taking elements from the thesis and from the antithesis. But if you do mainly that, you are still in the same frame. You are inside the same 'paradigm', in the sense of Roland Barthes. Barthes defined paradigm as two opposing positions: I would say, such as realism and constructivism.²⁸ The paradigm is this opposition. If you try to make a synthesis, you are still inside that. Luhmann achieved a kind of collective work in the creation of a diverse epistemological frame (or "paradigm" in the sense of Barthes, but not Kuhn) for epistemology in social sciences. In the 1970s a French philosopher²⁹ drew attention to Gaston Bachelard, and there is clearly something in Bachelard that is not idealism neither positivism. Luhmann achieved a different kind of *Aufhebung*, that is

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²⁸ It was my colleague Dan Kaminski (UCL) that called my attention to this work when I was dealing with a possible transformation in the epistemology of science introduced by the theory of observation. See BARTHES, Roland. *Le Neutre. Notes de cours au Collège de France 1977-1978*. Paris: Seuil/IMEC, 2002.

²⁹ FICHANT, Michel. L'épistémologie en France. In: CHATELET, François (ed.). *La philosophie au XXe siècle*. Paris: Librairie Hachette, v. 8, p. 129-172, 1973.

not only a combination of thesis and antithesis. This is the question of a new *Aufklärung*, of *Soziologische Aufklärung* [Sociological Enlightenment], putting all previous positions aside. But I think that we can also find in Hegel some elements to think about this kind of *Aufhebung* that introduce a diverse analytical frame of reference.

GABRIEL FONSECA: How do you see the attempt to produce a kind of legal doctrine with systems theory, and the attempt to develop a kind of critical systems theory,³⁰ in the line of Gunther Teubner and Andreas Fischer-Lescano?

LUKAS SOSOE: The idea that came to my mind when I was reading my translation of *Le droit de la société* is that it is not a legal doctrine nor a sociology of law. It is perhaps what is missing in both. People say that Luhmann is trying to put together the legal question and the sociological question, but no! What he is doing is to find a place to observe what is missing in both kinds of works. In this sense, it is difficult to develop a legal theory from Luhmann in a stricter sense, but in a larger sense this is a legal theory, in the sense of a reflection on law and its application. This theory gives many elements for someone working in sociology of law and for others working in jurisprudence. Concerning these new developments of systems theory, I think that Teubner is going further than Luhmann did, as in Teubner's *Verfassungsfragmente* [Constitutional Fragments].³¹ It implies a kind of supremacy of the legal system, constitutionalizing everything.

ÁLVARO PIRES: In this book by Teubner, it is possible to find also a construction of a new theory of reflection. It is a systems theory, although not a pure Luhmannian theory.

LUKAS SOSOE: Luhmann is critical of every philosophical system, from the old Platonic and Aristotelian metaphysics to the Enlightenment and contemporary theories. My last conference in Luxembourg was about truth in Luhmann. There is a lot of explicit and implicit critiques in Luhmann that one needs to understand before saying that one wants to introduce or develop a 'critical systems theory'. If critique means simply 'trying to do otherwise', 'determine one's own way', I cannot find any work as critical as that of Luhmann.

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30 FISCHER-LESCANO, Andreas. Critical systems theory. *Philosophy and Social Criticism*, v. 38, n. 1, p. 3-23, 2012. See also AMATO, Lucas Fucci; BARROS, Marco Antonio Loschiavo Leme de (ed.). *Teoria crítica dos sistemas? Crítica, teoria social e direito*. Porto Alegre: Fi, 2018.

31 TEUBNER, Gunther. *Verfassungsfragmente: Gesellschaftlicher Konstitutionalismus in der Globalisierung*. Frankfurt: Suhrkamp, 2012 [Constitutional Fragments: Societal Constitutionalism and Globalization. Translated by Gareth Norbury. Oxford: Oxford University Press, 2012; *Fragmentos constitucionais: constitucionalismo social na globalização*. Translated by Flávio Beicker Barbosa de Oliveira and others. São Paulo: Saraiva, 2016].

ÁLVARO PIRES: There is a distinction between making war against something or being critical of it. In the first case you want to destroy something, but if you are critical of it you need it.

LUKAS SOSOE: Nietzsche said he was destroying Christendom, he was not criticizing it. Luhmann is not destroying anything, but if critique means to try to do things otherwise, he is very critical.

LUCAS AMATO: Bourdieu considered Luhmann's autopoiesis as the paramount of legal formalism.³² How do you see it? Is Luhmann just a revised version of Kelsen's *Pure Theory of Law*?

LUKAS SOSOE: If you take the concept of justice: for Kelsen there is no justice, it is just a dream of humanity. Luhmann has tried to prove that the legal system produces a kind of justice, a kind of control of the functioning of the system. If you take the *Grundnorm* [basic norm] in Kelsen and look for the equivalent in Luhmann, you will not find it. There isn't a *Grundnorm* in Luhmann, the system controls itself by recursive operations. There are many points of difference. Kelsen is very close to the idea of system in the second edition of the *Pure Theory of Law*, but it is not the same concept of 'system' that we have with Luhmann.

ÁLVARO PIRES: That is an old trick of observation, which reduces all differences to one point: everything was already said by Plato or Aristotle! The question again is what is observed, what is seen and what is not seen.

MARCO LOSCHIAVO: We often think about systems theory in the level of functional systems: law, politics, economy. But there is a prominence in our society of communication produced by organizations, like tribunals, universities, corporations, the State itself. For instance, we could observe tribunals from the point of view of the economic system, not just as the center of the legal system. Dirk Baecker³³ tells us about an organizational communication that is not just bounded by communication in the level of functional systems. Do you think there may be a promising way for empirical systemic research to look mainly to organizational systems, rather than focusing only on functional systems? This would be a change in the level of observation.

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³² BOURDIEU, Pierre. The Force of Law: Toward a Sociology of the Juridical Field. Translated by Richard Terdiman. *Hastings Law Journal*, v. 38, p. 805-853, 1987.

³³ BAECKER, Dirk. The Form of the Firm. *Organization*, v. 13, n. 1, p. 109-142, 2006.

ÁLVARO PIRES: There are three levels of observation: the macro-level (society and at least some complex functional systems), the interactions micro-level, and an intermediary level of organizations. I am against reducing one level to another. The point is to see how organizations can put together communications from different levels and even functional systems. For instance, the Vatican can put together political and religious communication. If you take the police commissioner, it was an attempt to introduce legal communication in that political organization. So, the peculiarity of organizations is this policontextuality of communications, and this makes open causalities possible; cognitive openness can come through that.

LUKAS SOSOE: There are six volumes of Luhmann's first articles on organizations,³⁴ very empirically documented, as he was working for the German public administration. In the first volume, he says that perhaps it is most important not to concentrate on organizations, but to develop an observation of the functional systems. So, these are two different kinds of systems. And the question about organizations is: in what measure do they work rationally? For instance, organizations are said to save time and to simplify decision-making, but Luhmann comes to the opposite conclusion, that they take a lot of time and are not as rational as people believe.

ÁLVARO PIRES: There is an implicit critique in Luhmann, which is: you cannot take complexity and reduce it to one element, the element is always a system, is an organized complexity. Knowledge is always facing complexity. There is a book by Edgard Morin, *Introduction à la pensée complexe* [Introduction to Complex Thought],³⁵ where we can find similar statements.

GABRIEL FONSECA: Is Luhmann a constructivist or a nihilist?

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³⁴ LUHMANN, Niklas. *Schriften zur Organisation 1: Die Wirklichkeit der Organisation*. Wiesbaden: Springer, 2018; id., *Schriften zur Organisation 2: Theorie organisierter Sozialsysteme*. Wiesbaden: Springer, 2019; id., *Schriften zur Organisation 3: Gesellschaftliche Differenzierung*. Wiesbaden: Springer, 2019; id., *Schriften zur Organisation 4: Reform und Beratung*. Wiesbaden: Springer, 2020; id., *Schriften zur Organisation 5: Rezensionen, Lexikonartikel, Varia*. Wiesbaden: Springer, 2020; id., *Schriften zur Organisation 6: Annotationen und Verzeichnisse*. Wiesbaden: Springer, 2020. See also LUHMANN, Niklas. *Organisation und Entscheidung*. Opladen: Westdeutscher, 1978 [Organización y decisión. *Autopoiesis, acción y entendimiento comunicativo*. Translated by Darío Rodríguez Mansilla. Barcelona: Anthropos, 2005; *Organization and Decision*. Edited by Dirk Baecker. Translated by Rhodes Barrett. Cambridge: Cambridge University Press, 2018].

³⁵ MORIN, Edgard. *Introduction à la pensée complexe*. Paris: Seuil, 1990 [Introdução ao pensamento complexo. Translated by Eliane Lisboa. 3. ed. Porto Alegre: Sulina, 2007].

LUKAS SOSOE: What is constructivism? In a philosophical definition, we say that we cannot access reality, but we can construct it. In this sense, Kant was the first constructivist. We cannot know the thing in itself, we can just know the phenomena, which are constructions of our mind. If we read Luhmann in this sense, he is a constructivist, he is describing something that is a self-description from some observation point. But as soon as you oppose constructivism to realism, we need to ask: what is reality in a post-metaphysical thought? Is it the result of an analysis, is it just an instrumental tool to construct something? Luhmann is a constructivist in this general sense. We can say that reality is constructing itself, but the observer can only choose some point of view to observe some portion of reality. And what is nihilism? In some sense Luhmann embraces it, not in his epistemology in general, but if you take his legal theory. No one knows the ultimate justification. Derrida followed this path in *Force de loi* [*Force of Law*],³⁶ he says that at the bottom of law we have only violence that we cannot justify. And Luhmann observes that the western legal thought rests on paradoxes that cannot be ultimately justified. So he is a nihilist in this sense. But he also says that the problem of law is not to justify itself ultimately, because we also have human rights violations that can scandalize.³⁷ Here we move from reasoned justification to emotivist justification.

ÁLVARO PIRES: I think that we should drop the distinction ‘realism *versus* constructivism’ as a way to characterize epistemology in Luhmann. Every time we reintroduce this duality, we become prisoners of it. Luhmann started to work when this opposition was there. Now we can go beyond that. We may say that Luhmann adopts an ‘operative epistemology’, to put it that way, linked to a theory of observation. In this new frame, we found a new question: how does everyone observe (including, of course, the scientific observer)? Luhmann is an observer of modern society. He is not saying that reality does not exist. He can only show how he arrived to that, and in this sense he makes statements about reality. For some time it was useful to talk about constructivism, but today it is not useful anymore. Even in sociology this is a bad notion. For example, if you try to characterize Harold Garfinkel’s sociological perspective as constructivist (as opposed to realist), you are in danger of making a serious mistake according to Anne Rawls.³⁸

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³⁶ DERRIDA, Jacques. *Force de loi: le “fondement mystique de l’autorité”*. Paris: Galilée, 1994 [Force of law: the “mystical foundation of authority”. In: CORNELL, Drucilla; ROSENFELD, Michel; GRAY, David (ed.). *Deconstruction and the Possibility of Justice*. London: Routledge, 1992. p. 3-67; *Força de lei: o fundamento místico da autoridade*. Translated by Leyla Perrone-Moisés. 2. ed. São Paulo: WMF Martins Fontes, 2010].

³⁷ LUHMANN, Niklas. Are there still indispensable norms in our society? Translated by Todd Cesaratto. *Soziale Systeme*, v. 14, n. 1, p. 18-37, 2008.

³⁸ RAWLS, Anne. Introduction. In: GARFINKEL, Harold. *Ethnomethodology’s Program: Working Out Durkheim’s Aphorism*. Oxford: Rowman & Littlefield Publishers, 2002. p. 1-64.

LUCAS AMATO: We can find empirical bases in Luhmann for the study of historical evolution, analyzing the functional answers that systems give during a long duration, including the evolution of ideas.³⁹ However, can we conduct fieldwork with a Luhmannian background?⁴⁰ Or can we use it to describe a specific judicial sentence? And how do we make this differentiation between social and psychic systems when studying crime, for example?

ÁLVARO PIRES: In the sociology of deviance, Edwin Sutherland⁴¹ constructed a general theory of criminal behavior that, in my view, is completely compatible with Luhmann, although from another generation. For Sutherland, the only way we can explain criminal behavior is having diversity in communication and in the learning of the psychological system. Everyone makes a selection of what to keep and what not to keep from social norms. There are differential communication and differential learning in psychological systems. On one side this excludes explanations that are only 'factual', and on the other it opens space for research about particular procedures of learning in particular criminal activities.⁴²

LUKAS SOSOE: Luhmann's writings on education⁴³ have a deep empirical basis. Concerning empirical research in general, *Theory of Society* explicitly invites people to conduct research about many points. In the volumes *Gesellschaftsstruktur und Semantik* [*Social Structure and Semantics*], there are empirical questions and researches, such as about how the nobility, the princes of Europe, came to send their children to public schools. This is a sociological empirical investigation.

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³⁹ LUHMANN, Niklas. *Ideenevolution: Beiträge zur Wissenssoziologie*. Frankfurt: Suhrkamp, 2008.

⁴⁰ See CAMPILONGO, Celso Fernandes; AMATO, Lucas Fucci; BARROS, Marco Antonio Loschiavo Leme de (ed.). *Luhmann and socio-legal research: an empirical agenda for social systems theory*. London: Routledge, 2021; BARROS, Marco Antonio Loschiavo Leme de; AMATO, Lucas Fucci; FONSECA, Gabriel Ferreira da (ed.). *World Society's Law: systemic socio-legal studies*. Porto Alegre: Fi, 2020.

⁴¹ SUTHERLAND, Edwin Hardin. *On Analyzing Crime*. Chicago: University of Chicago Press, 1973; SUTHERLAND, Edwin H.; CRESSEY, Donald R.; LUCKENBILL, David F. *Principles of Criminology*. 11. ed. Lanham: General Hall, 1992.

⁴² PIRES, Álvaro; DEBUYST, Christian; DIGNEFFE, Françoise. Elementos para una reconstrucción de la teoría del delito de Edwin Sutherland. *Delito y Sociedad*, v. 37, p. 9-40, 2014.

⁴³ LUHMANN, Niklas. SCHORR, Karl-Eberhard. *Reflexionsprobleme im Erziehungssystem*. Stuttgart: Klett-Cotta, 1979 [*Problems of Reflection in the System of Education*. Translated by Rebecca A. Neuwirth. Berghahn: Waxmann, 2000]; LUHMANN, Niklas. *Schriften zur Pädagogik*. Frankfurt: Suhrkamp, 2004; id., *Teoría de la sociedad y pedagogía*. Translated by Carlos Fortea. Barcelona: Paidós, 1996. See also BARALDI, Claudio; CORSI, Giancarlo. *Niklas Luhmann: Education as a Social System*. Cham: Springer, 2017.

ÁLVARO PIRES: And we can also analyze political, parliamentary debate with the approach of systems theory. What is sometimes difficult for people in analyzing case law, for instance, is to make statements about the 'message' without making reference or attribution to the psychic systems of the 'users'. That is a methodological problem. You have to make clear that intention is a black box for you, you don't have enough information to make statements about this. The data that you obtain in an interview will be different from the one coming from just reading case law. But you need to take these methodological precautions. You can analyze the discourse focusing on how communication is understood by further communication (including actions). Gotthard Günther dealt with this problem about how to introduce the observer in the observation. It is the same problem: we cannot find the true Luhmann, the true Marx, we can make statements referring to their texts, but not reintroduce this debate. It is more interesting to use the authors selecting in their work what gives insight to you. Once I talked with Foucault, who told me: your critical observations on *Surveiller et punir* [*Discipline and Punishment*]⁴⁴ are correct, so you need to do what I did with Nietzsche. Do you think I took all of what Nietzsche said? No, not at all. I dropped out a lot of things and kept others. You can go in another direction, do not create a new religion.

GABRIEL FONSECA: Could you both tell us about your other theoretical and research interests, apart from systems theory?

LUKAS SOSOE: I teach ethics and robotics. My interest is not to teach robots how to behave, but the difference between human actions and robots'. How could robots eventually affect our social lives? They are being used in hospitals, for instance. And in political philosophy, I am studying political romanticism versus Hegel and communitarianism. There were critiques of modern liberal society on the basis of Christian medieval elements in Novalis and Schlegel. And I am also interested in questions or discourses of cultural identity, in the sense of the European Community, with discussions that began at the end of the Roman Empire. For instance, in the 17th century, there were discussions between Leibniz and the Abbé de Saint-Pierre. There are so many texts about the idea of a European political community before the Union, so there is a history of the ideas we still have to learn. And my philosophical interest in systems theory deals with the relation between Luhmann and Kant; the idea of a transcendental philosophy is present in Luhmann's work in some way, he always referred to it as an old European idea. In many ways, Luhmann uses sociological tools to solve problems raised by the German idealism. In his writings on religion, he refers to Fichte, Schelling and others, but he works with other tools. There are interconnections between the classical German

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⁴⁴ FOUCAULT, Michel. *Surveiller et punir*. Paris: Gallimard, 1975.

thought and Luhmann's systems theory. My interest is to study how Luhmann systematically transformed these ideas.

ÁLVARO PIRES: I work on a theory of modern criminal rationality. It has a Luhmannian influence, and then people ask: 'why not Bourdieu? It would be more critical'. Then I answer: 'why not Luhmann?' The notion of 'field' in Bourdieu is close to Luhmann's notion of 'system', but the field is static, and the system is not. I started this theory [of modern criminal rationality] with empirical research, without Luhmann. But then Luhmann gave me an upgrade in the conceptual presentation and analysis. I am now very interested in using the theory of observation, but systems theory is also relevant to use in some distinctions. Even when I conduct and use interviews to collect material. And I also work on other questions and authors, now revisiting Edwin Sutherland through systems theory, and I also work with epistemology and methodology. Now I am finalizing a research on radical punishment: the death penalty with torture, death penalty alone, and perpetual imprisonment. I am conducting empirical interviews, following the path pointed out by Italo Mereu in *La morte come pena*.⁴⁵

ACKNOWLEDGMENTS

The interviewers would like to thank São Paulo State Research Foundation (Fapesp) and the Coordination for the Improvement of Higher Education Personnel (Capes) for funding the coming of Professors Pires and Sosoe for an international seminar cycle at the University of São Paulo Law School. They also acknowledge the support by Professor Celso Campilongo, vice-dean of the University of São Paulo Law School and coordinator of that seminar cycle.

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⁴⁵ MEREU, Italo. *La morte come pena. Saggio sulla violenza legale*. Roma: Donzelli, 2000 [*A morte como pena: ensaio sobre a violência legal*. Translated by Cristina Sarteschi. São Paulo: Martins Fontes, 2005].

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HOW TO QUOTE THIS INTERVIEW:

PIRES, Álvaro *et al.* Epistemological and empirical challenges of Niklas Luhmann's systems theory: an interview with professors Álvaro Pires and Lukas Sosoe. *Revista Direito GV*, v. 17, n. 1, jan./abr. 2021, e2109. <https://doi.org/10.1590/2317-6172202109>

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