

## Translators' Introduction

The focal concern of this volume is the historical uniqueness of the West—of “modernity” in all its preconditions and ramifications. In this respect, if not in others, Niklas Luhmann shares the preoccupations of Max Weber. Although the essays that are collected below were composed over a period of fifteen years (from 1964 to 1979), they have a single and clearly defined purpose. Luhmann’s ultimate aim, in fact, is to develop a conceptual vocabulary that is refined, variegated, and supple enough to capture what he sees as the unprecedented structural characteristics of modern society. His books and articles are typically prefaced with a claim that many of the most influential ideas inherited from the great tradition of ancient and early modern political philosophy are far too coarse, rigid, and simplistic to help us grasp the hypercomplexity of our present social order. Thus, Luhmann argues that social theory must routinely begin with a “critique of abstraction,” with the dismantling of obsolete and procrustean theoretical frameworks. This exercise in razing the past, of course, must be followed by a more difficult (and thus more tentative and experimental) process of building up, by an attempt to replace the jettisoned frameworks with a more flexible and realistic set of categories and questions. What should be stressed at the outset is that the highly abstract, sometimes difficult and abstruse quality of Luhmann’s sociology results from his

ongoing endeavor to provide a highly general map with which empirical and historical research can approach the study of modern society.

One of the methodological rules to which Luhmann constantly recurs is this: we must always resist the temptation to blame modern society for deficiencies in our outmoded theories. Indeed, his entire approach is predicated on the belief that naïve moralism, afflicting both Marxist and conservative social thought, frequently stems from the anachronistic inadequacy of our descriptive schemata. All too often, he tells us, modern society is diagnosed as “in the throes of crisis” simply because its complex order and novel patterns of change do not pliantly conform to our antiquated concepts of integration and stability. A revamping or updating of the basic categories of social theory, of course, does not dictate a jubilant celebration of “all modernity.”<sup>1</sup> But it may help us approach our unsurveyably complex social order in a more cogent and exploratory (and less plaintive) fashion. This, in turn, should allow us to unearth solutions and alternatives for action that have hitherto been concealed by tradition-skewed misperceptions of modernity.

## The Idea of Social Differentiation

As the title of this volume suggests, the *idée maîtresse* governing Luhmann’s approach to the study of modern society is the concept of social differentiation or pluralization.<sup>2</sup> This too puts him squarely in line with those writers he jokingly refers to as the “founding fathers” of modern sociology, with Spencer, Simmel, Durkheim, and Weber as well as with Parsons. In this mainstream tradition, the easily pictured separation between household and workplace or between personal wealth and business funds has always served as a symbol and paradigm for larger-scale processes of modernization. Luhmann, in point of fact, deploys the concept of social differentiation in his own unique way. Most striking perhaps is his elaboration of the multiple interconnections between distinct varieties of differentiation: for example, between segmentation, stratification, and functional differentiation (the primacy of the latter signaling the emergence of modern society), or between the dif-

ferentiation of situations, of roles, and of systems. Such distinctions are introduced and discussed in some detail in the text below. What we want to stress here, by contrast, is Luhmann's overarching concern with the undeniably centrifugal tendency inherent in all modern societies.

Today, a gradual process of increasing differentiation has brought into being a type of society that is relatively stable even though it has no single center and no subsector that can claim unchallenged supremacy. According to Luhmann's analysis, one of the basic premises of what he provocatively calls "traditional European social thought"<sup>3</sup> is the notion that orderliness hinges upon centrality. This, he tells us, is why his own concept of an essentially *centerless society* regularly meets with such intransigent opposition. Analogously, Luhmann believes that it is frequently the optics inherited from classical thought, rather than a realistic appraisal of the situation, that induces critics to spot "crises" wherever they look.

(For example, it is sometimes suggested that compartmentalization has now become a formidable menace to social integration. As a backdrop against which the special contours of Luhmann's position can be brought out, consider the following oversimplified piece of sociological folklore. In premodern society, *community*, *power*, and *contract* were fused together in the client-patron relation. This fusion is even said to account for the purportedly stable and tightly integrated character of feudal society and for its much touted "sense of belonging." In the course of modernization, this stylized account concludes, these three patterns of social order were wrenched apart and allotted to discrete social sectors such as the family, politics, and the economy. As a result of this unprecedented centrifugal trend, or so we are told, "modern man" is jittery and modern society is falling apart at the seams.)

Luhmann, as could be expected, is highly skeptical about attempts to criticize bourgeois society on the basis of prebourgeois ideals such as "moral-emotional cohesion" and "communal solidarity." If we redefine the unity of society or social integration as "resistance to disintegration," it even becomes plausible to interpret compartmentalization as a palliative rather than as a threat. In one sense, at least, compartmentalization is a mechanism for enhancing social integration. By localizing conflicts, a highly "par-

celized" social order can prevent crises from spreading like brushfire from one social sector to another. In other words, or so Luhmann would have us believe, the "absence of a common life" is hardly a cause for unmitigated grief, since it may well ensure that society as a whole does not flare up like a box of matches.

The term "compartmentalization," of course, is somewhat misleading since it tends to conceal the high degree of interdependence between social sectors that Luhmann believes characteristic of modern society. But the point just made stands. When trying to understand how modern societies are and can be integrated, Luhmann is extremely cautious never to lapse back into obscure and overly concrete notions such as communal solidarity or a shared life. Instead, he regularly and unromantically defines the integration of highly differentiated societies as "the avoidance of a situation in which the operations of one subsystem produce unsolvable problems in another subsystem" (1977, p. 242).

Often adjoined to the platitude that modern society is on the brink of disintegration and anomie are two ancillary claims: (1) that modernization has brought about a regrettable "fall of public man" or "shrinkage of the political sphere," and (2) that modern societies now all face a "legitimation crisis" caused by the erosion of mass loyalty or a decay of general consensus about highest-order moral norms. Luhmann is always gratified to burst these conceptual bubbles which he regards (at worst) as naïve expressions of nostalgia and (at best) as confessions of a misunderstanding of the course of social evolution. Here again, or so he argues, moral opprobrium may result simply from an unthinking application of obsolete descriptive categories. Without attempting to pull together all the diverse strands of Luhmann's complex argument, it is possible to summarize his conclusions quite succinctly:

(1) Differentiation, particularly the specifically modern divorce between state and society, has undermined the descriptive adequacy of the old *res publica* conception of society. Aristotle's *pars pro toto* argument, whereby the polity was identified with society at large, has now lost any plausibility it once had. Man can no longer be defined as an exclusively "political animal," because no one now has his "total status" located inside the political sphere of society. Similarly, the *legitimation* of political authority can no

longer be identified, as it was in the classical tradition, with the *foundation* of society as a whole. And just as polities can no longer be fobbed off as the “essence” of society, it cannot be plausibly interpreted as society’s “center” or “core.” This is no alarmbell or signal for panic, however, since (in the wake of pluralization) society no longer needs a single hub or center around which to organize itself. Of course, Luhmann never suggests (which would be quite absurd) that government is now less extensive and less powerful than it was in earlier social formations. All he wants to argue is that protests against the “depoliticalization” of various channels of social communication are both pointless and misdirected exercises. Furthermore, he also believes (as we shall see in a moment) that the classical idea that man should have his “total status” inside the political sphere can only have pathological and totalitarian consequences in modern society.<sup>4</sup>

(2) As should be obvious by now (and as will become more so in what follows), Luhmann is deeply indebted to the work of his teacher, Talcott Parsons. Nevertheless, he believes that Parsons always overestimated both the existence and the necessity of shared value commitments in modern society. Luhmann does *not* say, of course, that all need for moral consensus has now vanished. Various forms of consensus remain necessary on a local level and in day to day situations. Still, he chooses to stress the fact that basic consensus about highest-order goals and norms is no longer likely, and that (in any case) society has now become too complex for its unity to be guaranteed by common ethical beliefs. Thus, one of Luhmann’s main projects is to explore what could be called “alternatives to normative integration,” that is to say, ways in which modern society has maintained (and can continue to maintain) forms of order and orderly change *without* relying on society-wide consensus about communal purposes, not to speak of unanimity about “man’s highest good.”

One is reminded here of the claim, put forward in classical political economy, that the market mechanism makes it possible for people to have “successful interactions” even with individuals whom they consider crude, stupid, and morally repugnant. As we will see later, Luhmann’s marked interest both in abstract “entrance/exit rules” governing membership within formal organi-

zations and in the conditional “if . . . then . . . ” structure of the law can be traced back to his underlying concern with mechanisms that provide an alternative to normative integration.

For now, it should suffice to say that Luhmann believes modern society to have already gone an appreciable distance toward institutionalizing such alternatives. He constantly reminds us of the extent to which we manage to get along even without the communal bonds furnished by moral unanimity and a shared life: “today anyone with a normal learning capacity can pursue his own goals as a stranger among strangers, and this possibility has now become an irrepressible feature of everyday life” (1975a, p. 54).

In general, it seems accurate to say that one of Luhmann’s pivotal concerns is to redefine “the unity of society” in a highly abstract and loose-jointed way. This allows him to account for what he considers the remarkably high tolerance for both aberrant behavior and conflict within modern societies. (On this point, see selection 4.) Modern society is nothing like a *perfecta communitas* that confers complete self-realization on its lucky members. Rather, it is a highly abstract communicative network that does little more than define extremely vague and lax conditions for social compatibility. Luhmann’s desire to provide a new and “weaker” definition of social unity explains the emphasis on “binary schemas” that the reader will encounter throughout this volume. This is an intriguing but difficult facet of Luhmann’s thought, and we can provide no more than a glimpse of the direction in which he is trying to move. In contrast to Durkheim, who believed that the unity of society depended on moral consensus about “the good,” Luhmann believes social integration possible on the less demanding basis of a general acceptance of a disjunction between good and bad. Thus, members of one and the same society do not have to agree morally about “the good,” they merely must accept a much more abstract series of dichotomies or disjunctions, such as good/bad, right/wrong, legal/illegal and just/injust. Members of the same group will all recognize that specified classes of action will routinely be classified as either legal or illegal, and that their public performance will trigger specific and expected responses. Highly complex patterns of behavior and expectations can be coordinated on this basis. Such an approach, as we have suggested, allows Luhmann to define the unity

of society in a remarkably loose and abstract way, and thus to avoid making the implausible assumption that common membership in a society requires inward acceptance of “officially” proclaimed moral goods or collective goals.

While considering Luhmann’s belief that an acceptance of binary schemes often provides an alternative to normative integration, we should also mention his use of the ownership/nonownership schema of property law. One of the central characteristics of modern societies, Luhmann claims, is the vast increase in our capacity to exploit contingency, that is, our improved or heightened access to “other possible choices” as well as our new freedom to correct ourselves, to start all over again and revise. To inhabit the same property system as you, I do not have to accept the “eternal rightness” of your owning that big, beautiful house. The necessary (though not sufficient) condition for our belonging to a common ownership system is that I recognize the abstract code or set of regulations that (1) assigns this house to you right now and not to me, and (2) that also stipulates the conditions under which it *could* come to belong to me. What unifies us, in other words, is not a conformist belief in the status quo, but rather a common acceptance of “schematized contingency,” i.e., of procedural rules for changing the status quo. As we shall see later, one of the central tasks of Luhmann’s general approach is to formulate a theory of the unity and stability of modern society that is compatible with what we all experience every day as the changeability and contingency of present social arrangements.

## Depersonalization and the Abstractness of Modern Society

Luhmann’s first major book, *Funktionen und Folgen formaler Organisationen* or The Functions and Consequences of Formal Organizations (1964a), still ranks as one of his most eloquent and polished performances. Fortunately, the line of thought developed there is sketched out in selection 4, so we need not provide another capsule summary here. What it might be helpful to underline, instead, is the extent to which in his subsequent work Luhmann has lifted various insights from the theory of bureaucratic administra-

tion and applied them in modified form to the general theory of modern society.<sup>5</sup>

A paradox with which Luhmann frequently teases his readers is this: "The whole is less than the sum of its parts." This maxim is meant to remind us of the extent to which each of the highly specialized systems of modern society involves an abstraction from and indifference to multiple aspects of the lives of concrete individuals. In the theory of formal organizations, it has long been a commonplace to stress the way an organization is enabled to solve problems, adapt to unprecedented situations, and make widely accessible new possibilities for action and experience by abstracting from the other roles and quirky psychological motivations of participating members. We do not depend on the benevolence of our mailman to ensure that our mail is delivered, but on a set of abstract "membership rules" that link wage remuneration with a codified set of professional obligations. It is the preeminence in modern society of just such anonymous or depersonalized forms of social organization (based on codified "entrance/exit rules") that has finally demolished the present-day relevance of Aristotelian social theory:

In the traditional theory of political society, society itself was conceived as a "whole" made out of "parts." The fact that the parts were alive played an essential role in this theory. Indeed, it was set down that the living person, as an individual, was an incorporated part of political society. The latter was, in turn, said to be constructed or made up of concrete men—and not of actions, interactions, roles, symbolic meanings, choices and so forth. Participation in such a society simply meant being an encapsulated *part*. (1971a, p. 36)

In a highly differentiated society, by contrast, individuals cannot be located exclusively inside any single social system. This is the mirror image of the claim that institutions now routinely abstract from the total personality of participating members. In modern society, Luhmann goes on to say,

subsystems and organizations, including the political system, must be conceptualized as excluding men as concrete psycho-organic units. No man is completely contained inside them. It is characteristic of modern society, in fact, that there is only one type of "total system" within which adult individuals are now thoroughly enclosed: the insane asylum. And we may well hesitate to view this case as a model for the political system. (*ibid.*, p. 37)

It goes without saying that Luhmann does not interpret increasing depersonalization as “alienation” or “reification” in the simple-minded neo-Marxist sense. The anonymity of social relations may be frustrating in some respects, he admits, yet it also has numerous humanly valuable consequences. First of all, as we have already mentioned, an organization that is able to abstract from the personalities of its individual members is thereby put in a position to create new possibilities from which all individuals may profit. To this extent, freedom thrives on depersonalization. A second dimension to this issue can be brought out by contrasting *corvée* labor with monetary taxation. As Adam Smith already pointed out, monetary taxation is preferable precisely because it is more impersonal: it involves an abstraction on the part of tax-levying authorities from the precise process by which peasants arrive at their annual payment. Depersonalization can thus signal a breakdown of chains of personal dependency and surveillance. Once again, this associates anonymity with freedom.

As one might expect, Luhmann has no sympathy with the idea that our epoch has produced a drab and standardized “mass man.” This cliché, he argues, is bolstered by nothing more substantial than an optical illusion. The view that our society is intrinsically hostile to individuality is surely too simple. Indeed, Luhmann goes so far as to claim that “only modern society cultivates and supports the social relevance of individuals” (selection 10); and he is always careful to mention in this regard that marriage for love only became socially expected in the nineteenth century. The myth of the mass man, in any case, is said to stem from the fact that we now encounter an astonishing number of individuals on a day to day basis, without having time to explore all those lives in detail or in depth. The routinized indifference to personality that modern society foists upon us, in other words, has simply deluded popular sociologists into discovering a faceless crowd devoid of personalities. That this is something of a non sequitur goes without saying (1965, pp. 50–55).

One of the most personally burdensome characteristics of a sharply differentiated society, says Luhmann, is the absence of socially approved models for how to combine a plurality of roles into coherent life stories. The modern emphasis on individuality can thus be seen as a reaction to the increased importance of dis-

crete personalities as unsupervised agents of volition and choice (marrying for love and spending their money where, when, with whom, and for what they want). Individuality flourishes, it turns out, precisely in a society where formal organizations have managed to “institutionalize voluntariness” by spelling out membership rules governing entrance and exit. At any rate, another reason why critics of modern society can announce the “end of individuality” (despite all evidence to the contrary) is that we now all have much higher expectations of personal uniqueness than ever before—and heightened expectations are easier to disappoint.

Luhmann provides another and closely related diagnosis of the “rancor against modernity” that it is appropriate to mention here. One of the psychological difficulties of living in modern society, he admits, is the disorienting abundance of choices that threaten to inundate the individual. The future has always contained more “real possibilities” than could ever be compressed into a single present. But in our contemporary “hot” social environment (producing a surfeit of daily life chances), we all become acutely aware of what Luhmann refers to as “selectivity,” that is, the necessity of tradeoffs or the discrepancy between the possible and the co-possible. Modernity is structurally ascetic, one might even say, since (in a possibility-glutted world) every “yes” entails a plethora of “noes.” Indeed, the more alternatives from which individuals may realistically choose, the more “noes” must accompany every “yes.” This is true, even though we are also in a position today to realize more possibilities than ever before. The point to be made here is quite simple: by revealing an overproduction of human life chances as a potential source of antimodernist frustration, Luhmann makes it seem quite nonsensical to christen this aspect of modernization with the name “dehumanization.”

## Differentiation and the Bourgeois Rights of Man

In 1965, just a year after his book on formal organization appeared, Luhmann published another major treatise, *Grundrechte als Institution: ein Beitrag zur politischen Soziologie* or Basic Rights as an Institution: a Contribution to Political Sociology. This book is

meant as a contribution to the theory of political legitimacy and social justice based on the premise that there exists a problem-solving relation between facts and values, between social structures and political principles. Luhmann's main focus is on the way the "bourgeois rights of man," rather than mirroring pre-given natural truths, helped solve a critical problem endemic to the institutional framework of modern European or "bourgeois" society. His main thesis, supported by elaborate historical and sociological analyses, is that legitimacy and justice (the two main pillars of rationality in modern politics) cannot be understood as fidelity to highest-order principles of mysterious origin, but only as the adequacy of political and legal institutions to the problems which arise in their social environment.

Now, according to Luhmann, one of the major obstacles to a coherent and historically oriented theory of constitutional rights is a vaporous but widespread conviction that rights somehow "inhere" in the human personality. But this mysterious "inherence," or so he argues, makes no more sense than does the equally obfuscatory notion of a "presocial individual." Indeed, according to Luhmann, the insight that the modern emphasis on individuality is a consequence of the highly differentiated character of our type of society provides an excellent starting point for a sociological reinterpretation of constitutional rights. Inalienable rights to freedom, dignity, equality, and property do not have as their object an inborn "quality" discoverable in discrete individuals. At least Luhmann thinks that it is needlessly uninformative to discuss them in this way. Much more interesting, he believes, is the claim that such rights are valued precisely for the contribution they make to the maintenance and protection of social differentiation. That is to say, the basic problem which constitutional rights help solve lies in the threat posed by the expansionist tendency of the modern political sphere, in the danger that political authorities will destroy the relative autonomy of multiple channels of social communication. According to Luhmann, in other words, the object of rights is not indestructible human nature, but rather a relatively fragile and pluralistic communicative order (1965, p. 187). Property rights, for example, like the right to choose one's own profession (and even the right to strike!) help prevent complete politicization of the

economy. The right to worship as well as freedom of opinion and freedom of conscience help sustain the independence of private belief from state bureaucratic control. Rights of information, free press, peaceable assembly, habeas corpus and due process, travel and emigration likewise defend against the subordination of all spheres of life to what began to be perceived in sixteenth- and seventeenth-century Europe as a potentially hypertrophic *res publica*.

The bourgeois doctrine of basic human equality, Luhmann goes on to argue, should also be reinterpreted in relation to the high degree of social differentiation characterizing modern or bourgeois society. Against the conservative cliché that equality is a matter of "leveling," Luhmann insists that the egalitarian ideal should be associated with the task of maintaining the irreducible plurality of social spheres (*ibid.*, pp. 162 ff.). Consider judicial impartiality, for example. Equality before the law means that we have built into our judicial system a series of filtering mechanisms which work to make such factors as political party, religious belief, and economic status *irrelevant* to a man's position as a legal person. (An analogous screening process helps prevent undue pressure—in the form, say, of gifts or threats—from being exerted on the judge.) There are "leakages" of course. Luhmann's point is only that, almost without noticing it, we define discriminatory injustice by pointing to such failures in the judicial filter and not by appealing to any human "essence" which is the same in all citizens. The principle of "one man one vote" has similar institutional connotations. It means that our voting booths (and the secret ballot is relevant here) are "desensitized" to every facet of man's life *except* his role as a voter (*ibid.*, pp. 156ff.).

What we take to be the universal "right" to education—because it involves state intervention in "private" affairs—seems like a more complex case. But, according to Luhmann, it too can be explained in relation to the defense of the plurality and relative autonomy of communicative realms. Universal government-endowed schooling aims at taking some of the responsibility for primary socialization out of the hands of the family. Indeed, Luhmann argues that it is a "functional imperative" of complex and rapidly changing societies to loosen precodified links between family background and the

capacity to take on specific political, economic, and cultural roles (selection 10). By promulgating “the career open to talents,” it is always worth recalling, Napoleon was able to appear the true heir and protector of the egalitarian revolution.

Not only civil liberties, says Luhmann, but also social justice can be understood in relation to the defense of pluralism. Indeed, to understand Luhmann’s conception of social justice and the practical impulsion behind it, we only need mention that politics is not the only sector of modern society with monopolistic tendencies. The inherently expansionist character of the capitalist economy has made it too a constant menace to the autonomy of other social spheres. Rather than locating the crime of capitalism in the atomistic splintering of diffuse and emotionally reassuring feudal solidarity (cf. Polanyi, 1944), Luhmann sees one crucial problem of capitalism in the threat of a “tyrannical” violation of social pluralism. Unemployment compensation, so Luhmann argues, has the exemplary value of social justice precisely because it contributes to the maintenance of a differentiation between economic and family life (Luhmann 1965., p. 131). It is meant to prohibit every fluctuation in the economy from having an automatically devastating effect on a man’s life outside the workplace. Likewise, laws against bribery and corruption aim at restricting the “tyranny of money” to a sharply delimited sphere. Finally, even a national health plan might be justified by appealing to pluralist ideals: the allocation of medical help to the ill should not be strictly dependent on their economic status or ability to pay.

The disclosure of this parallel between civil liberties and social justice, we believe, is one of the most interesting features of Luhmann’s analysis. Neither economic justice nor political rights aims at building society on the “foundation” of rational maxims or shaping institutions into a “perfect match” for human nature. Rather, the value and rationality of both lie in their contribution to the solution of a social problem, the problem of maintaining a differentiated and pluralistic communicative order in the face of monopolistic threats posed by politics and the economy. Indeed, Luhmann argues that the value we attribute to civil liberties and social justice remains largely unintelligible without reference to this institutional problem. Moreover, by keeping the problem of

pluralism in mind we can steer clear of large absurdities in both social theory and social policy. For instance, Luhmann helps us see precisely why it would be absurd to ward off a threat of economic de-differentiation by repoliticizing all avenues of social interchange.

## Luhmann's General Theoretical Scheme

At the beginning of many of the essays contained in this volume Luhmann sketches a general theory of society which he chooses to entitle "systems theory." It is our conviction that the function of this theory of "society as such" should be perceived in the light of those distinctive features which Luhmann ascribes to *modern* society and which we have tried to summarize above. Just as in the work of Durkheim and Weber, the fundamental categories in Luhmann's own general theory of society serve to pick out factors whose dominance or relative absence plays a crucial role in shaping modern society. Some of the key variables in his general scheme are "system," "environment," "reduction of complexity," and "contingency." It may be helpful at this point to back off slightly and explain precisely how a theory couched in such highly general terms serves to illuminate our present social order.

First of all, Luhmann's category of "social system" covers organized patterns of social behavior ranging from whole societies to particular sets of institutions within a society (e.g., "the political system"), to particular institutions themselves, to particular patterns of behavior within an institution (e.g., roles). Because Luhmann is chiefly interested in what social systems do—they reduce complexity—he insists that they must always be viewed in relation to their "environments." Any social system confronts an environment fraught with a multitude of actual and possible events and circumstances. Equally immense is the range of possible ways of dealing with such an environment. If the social system is to survive, it must have a way of putting this complexity into a manageable form: it must determine what aspects of the environment it will consider relevant for its operations, and it must establish specific means for coping with those aspects. Such strategies Luhmann calls reduc-

tions of complexity. Up to this point, Luhmann's theory does not differ substantially from the influential ideas of the conservative German social theorist Arnold Gehlen. But whereas Gehlen saw the role of social institutions solely in stemming an otherwise overwhelming flood of possibilities, Luhmann is concerned to stress how "reductions of complexity" also increase the possibilities available to us. Certain things become possible only if other things have become actual, and thus only if other specific possibilities have been denied. (The new possibilities opened up by the universalism of the Roman legal system, for example, depended on Rome's breaking with the communal traditions of Mediterranean city-states.) Moreover, in contrast to Gehlen, Durkheim, and others, Luhmann insists that "social rules" do not simply blot out the superabundance of human possibilities. Equally important is the way abstract rules can increase our orderly or prepatterned access to other possibilities. The law telling us how to make a will, for example, is a case of "schematized contingency": it does not tyrannically suppress alternatives, but rather makes alternatives systematically accessible to individuals and groups for the first time.

As we have said, a crucial characteristic of modern society for Luhmann is the greatly increased number of possibilities that social systems now disclose in this way. For instance, only by minimizing the relevance of the familial, political, and economic status of persons can the legal system implement a conception of formal, legal equality (based on abstract rules) that accords everyone individual rights. In Luhmann's preferred jargon, the general trend toward social differentiation provides the context in which reductions of complexity in modern society actually tend increasingly to create complexity as well.

Every strategy for reducing complexity falls short of inevitability. The availability of alternative or "functionally equivalent" ways of dealing with a complex environment is one thing Luhmann means by contingency—a second fundamental category of his general theoretical scheme. However, it is characteristic of premodern societies to deny, to some extent, the contingency of particular social formations. Indeed, the insistence upon certain social practices as necessary and divinely sanctioned forms one of their fundamental ways of reducing complexity. In this regard, Luhmann introduces

a distinction between *normative* and *cognitive* approaches to reality: whereas a cognitive approach alters disappointed expectations in order to adapt to reality, a normative approach insists (counterfactually) upon the validity of a disappointed expectation and morally condemns the unwelcome event or circumstance. Now, in contrast to the normative intensity of earlier societies, modern society for Luhmann displays a more cognitive realization of the contingency and thus revisability of given social practices. How, then, does such a society resist being inundated by complexity? Luhmann's answer, which we have already touched upon, is that social systems now develop procedures for carrying out change. Indeed, the very identity of a modern social system tends to consist in such procedures, rather than in particular elements it holds immune from change. For example, the modern legal system does not draw its identity from a bedrock of unchanging natural law, but from a set of abstract rules for making and overturning legal decisions. Likewise, modern politics has shifted the burden of legitimacy away from incorrigible ascriptions (by dynastic lineage) and toward an "institutionalization of precariousness" whereby a regime is thought legitimate because it might be ousted in the next election. According to Luhmann, the opposition frequently erected, by both left and right, between the status quo and "change" simply reflects an inability to grasp the central importance of contingency, mutability, and revisability in modern society.

As social systems make more explicit the contingency of their ways of reducing their environment's complexity and devise procedures for regulating their dealings with the environment, they become, in Luhmann's terms, *self-reflexive*. A self-reflexive process he defines as one that is applied to itself as well as to other things. Thus, today, legal decisions are made regulating legislation and the implementation of laws. Similarly, we can learn to learn, money can be bought and sold, the exercise of political power can be subjected to political power through elections and lobbying, science can be studied, and the subject matter of art frequently becomes art itself. In order to understand the structure of self-reflexive social systems, Luhmann has borrowed freely from various philosophical accounts of self-consciousness, chiefly those elaborated by German idealism and phenomenology. In two of the essays con-

tained in this volume—"The Self-Thematization of Society" (selection 14) and "World Time and System History" (selection 13)—we may watch him probing the extent to which these theories of self-consciousness (and its link with the experience of time) can be generalized to apply to social systems. Here, too, it is Luhmann's concern with a distinctive feature of modern society which underlies his attempt to determine the role of self-reflexivity in all social formations.

## The Habermas-Luhmann Controversy

Probably the most influential book in social theory to appear in Germany during the past ten years is the volume that Luhmann and Habermas published together in 1971, *Theorie der Gesellschaft oder Sozialtechnologie: Was leistet die Systemforschung?* or Theory of Society or Social Technology: What is Achieved by Systems Research? This book consists of a number of essays in which Luhmann and Habermas discuss what shape a theory of society should take and what kinds of problems it must recognize and resolve. They also go on to develop rather detailed criticisms of each other's positions. The impact of this book may be measured by the fact that Suhrkamp Verlag has subsequently brought out four supplementary volumes in which other philosophers and sociologists have carried on the controversy. So broad is the range of issues upon which Luhmann and Habermas diverge or disagree that there is no chance of summarizing the contents of the book in this introduction. One constellation of problems, however, does illuminate effectively the fundamental difference between their conceptions of sociology. It concerns the role that normative considerations should play in the analysis of social reality.

An exemplary expression of their disagreement on this matter can be seen in the way Luhmann responds to Habermas's rehabilitation of the traditional distinction between technical and practical reason. Habermas's position is by now rather familiar to Anglo-American readers. In contrast to a "technical" interest in determining causal relationships among things, he emphasizes a "practical" concern with human beings whereby they are conceived not

simply as governed by causal laws, but more importantly as communicative subjects. Treating someone as a subject, according to Habermas, turns on the supposition that he has reasons for his behavior, reasons that he would be willing to justify, and that were he to be shown that these reasons are faulty he would modify his behavior accordingly. Thus, to view anyone (even oneself) as a subject is to suppose that he would be willing to submit his behavior to what Habermas calls an “ideal speech-situation” or “discourse” (*Diskurs*) where its justification would be at issue. Finally, Habermas seems to claim that this ideal context of justification does not become a social reality solely because of interference from relations of domination (*Herrschaft*) that systematically distort human communication.

Arguably, a number of the objections that Luhmann launches against this theory of practical reason fall wide of their mark. For example, while he is right that I can interact with others whose behavior I find unjustified (Luhmann and Habermas 1971, p. 320), it is not clear how I could treat them as subjects without supposing that *they* find their own behavior justified. Be this as it may, many of Luhmann’s main criticisms do indeed find their targets. Habermas’s theory of practical reason may perhaps do justice to what it is to recognize someone as a subject, but, as Luhmann correctly points out (*ibid.*, p. 326f.), Habermas cannot also utilize it as an account of what subjectivity consists in. Having reasons for one’s behavior depends on making interconnected choices among a range of possible actions and possible motives. Thus, subjectivity itself must be located at the more fundamental level of our participating in a universe of already constituted meanings which schematize alternative possibilities into some manageable form whereby choice becomes feasible. For such a theory of subjectivity Luhmann typically appeals, throughout his writings, to the work of Edmund Husserl. Furthermore, while Habermas too stresses the importance that the category of “meaning” possesses in the social sciences, Luhmann puts his finger on precisely where this importance lies. Far from being the source of all meaning, the activity of the subject depends upon a system of meanings given in advance (*ibid.*, pp. 28ff.). Thus, for Luhmann, a theory of subjectivity must take into account the subject’s dependence upon a background of strategies

for simplifying and schematizing the range of accessible possibilities. Only against such a background does the phenomenon with which Habermas is concerned become possible—namely, the choice of certain actions for particular reasons. Again following Husserl, Luhmann uses the notion of “technical reason” in a broad sense to cover the use of such simplifying schemas, and not merely the effort to determine causal relationships (*ibid.*, pp. 247, 314, 358). Contrary, then, to the impression that Habermas and even this book’s title (apparently chosen by Habermas himself) aim to create, Luhmann is not a “technocratic thinker” in the sense that Habermas assigns to “technical reason.” Luhmann does not think that sociology should treat human beings solely as objects governed by causal laws. But he does believe that sociology needs to take into account the nature of subjectivity, and that subjectivity depends on “technical” reason in *his* sense. Furthermore, even in his own sense of the term, Luhmann is not a solely “technocratic” thinker, inasmuch as he wants general social theory to focus on the “technical” reduction of complexity itself, instead of merely participating in it (*ibid.*, p. 297).

Now we are in a position to see why Luhmann is so skeptical about Habermas’s insistent normative concern with the ideal “discourse” as a means for criticizing existent social institutions. Simplifying and schematizing strategies are at work, not only within subjectivity, but also—as Luhmann brilliantly shows in a section entitled “Discussion as a System”—in the development of every discussion. An exploration of every possible approach to a given issue, the unlimited (simultaneous!) participation of everyone possibly concerned would outstrip the time available, overwhelm our capacities for handling information, and destroy our attention and patience. An ideally complete justification of any social practice (or of anything at all, for that matter) is impossible. Consequently, Luhmann argues that to apply the concept of “domination” to every discussion short of an ideal discourse amounts to letting one’s normative concerns override the need for a descriptive analysis of the different kinds of limited communication possible (*ibid.*, pp. 355, 399f.). He suggests to Habermas (*ibid.*, p. 401) that, instead of trying to think *herrschaftsfrei* (without domination), he begin to think *herrschaftbegrieffsfrei* (without the concept of domination).

Luhmann often expresses this sort of criticism in the form of a general contrast between "normative" and "cognitive" approaches to reality: while a cognitive approach is willing to modify its expectations in the face of experience, a normative approach consists in an unwillingness to learn and in an adherence to the counterfactual validity of disappointed expectations. Luhmann's waggish definition of norms as "expectations that refuse to learn" (1970a, p. 256) may be rather unfortunate, however, since it hardly does justice to the complex role of norms in moral experience. Contrary to what Luhmann appears to suggest (1978, p. 53), moral experience transcends *his* sense of "normativity" not merely in the domain of supererogatory acts, but more fundamentally, in the kind of moral deliberation that anyone must undertake who reflects on his moral obligations. Moreover, this definition obscures Luhmann's valid objection to Habermas's approach. His important claim is that normative concerns should not blind us to the actual differences among the existing phenomena, and not that such concerns necessarily express no more than a dim lack of imagination and have no place in social theory. Indeed, readers of the essays collected in the present volume will not fail to perceive Luhmann's own commitment to the desirability of certain social practices over others. This commitment, of course, is tempered by his belief that all solutions to social problems entail further unsolved problems of their own.

## The Sociology of Law

One of the most important areas of Luhmann's sociological thought has always been the law, and especially the crucial role that law plays in modern society. In addition to *Grundrechte als Institution* and numerous articles in the sociology of law (two of which have been translated below), he has published two books, *Rechtssoziologie* or The Sociology of Law (1972a) and *Rechtssystem und Rechtsdogmatik* or The Legal System and Legal Dogmatics (1974a). Unsurprisingly, the development and character of legal positivism has remained one of the abiding themes of these writings. But Luhmann's work in this area has proven quite fruitful precisely because he has succeeded in locating the growth of pos-

itive law within the broader context of modern society. Law becomes increasingly positive, according to Luhmann, to the extent that the legal system—like other sectors of modern society—undergoes the process of functional differentiation. By viewing the positivization of law in this perspective, he is able to connect it with other important characteristics of the modern legal system.

Luhmann locates the social function of law at a quite general level. The body of law existing at any time consists in those collectively binding decisions whose aim is to establish some congruence among the expectations of different individuals in society. More simply, the function of law is to ensure that we may all be able to live with one another despite the inevitability of conflict. But in modern society the fulfillment of this function assumes a particular form. Because individuals now display a greater willingness to modify their own expectations and to adapt to the way others modify their expectations, the legal regulation of social life must guarantee that the law be open to constant revision. In a society whose identity is inseparable from change, in other words, the very validity of law will depend on the extent to which it can be changed. And that means law will have to become positive.

Luhmann defines positive law as law whose validity rests solely upon the legislative and judicial decisions that make it law. It does not, like premodern law, claim to draw its validity from immutable, highest-order, and extralegal norms. The growth of positive law allows us to distinguish between legal and moral concerns, so that we may speak of immoral laws which remain nonetheless law. But, more importantly, Luhmann argues that the positivization of law induces a greater revisability in the body of the law and thus enables the legal system to adapt more readily to a rapidly changing society. To the extent that the validity of law derives from decisions, different decisions alone are required to change the law. In short, the positivity of law is closely associated with the greater tolerance for contingency characteristic of modern society. Consequently, the legal system guides its operations not by an unchanging corpus of natural law but rather by formal procedures for making and altering legal decisions. Indeed, these second-order rules themselves are open to revision, although obviously not all at once.

Inherent revisability forms only one of the distinctive features

of positive law. In addition to not being grounded upon an unalterable body of natural law, an equally important characteristic of positive law for Luhmann is the relative independence of its source of validity from other areas of social life. Positive law is valid in virtue of *legal* decisions. Although a political institution like the legislature may make laws, it must do so in accordance with procedures that are themselves stipulated by law in the form (for example) of a “constitution.” Law is not, therefore, simply the expression of “the untrammelled will” of the sovereign. Thus, Luhmann connects the emergence of legal positivism not only with the greater sense of contingency in modern society, but also with the trend toward functional differentiation which grants a relative autonomy to different social sectors. Luhmann is aware, of course, that sociological investigation can trace the content of the law beyond the confines of the legal system itself. His thesis, however, is that the source of the law’s validity lies within the legal system, in the legal norms regulating legislative and judicial decision-making. Moreover, the concern that the law be open to change corresponds to the form taken by this legal regulation of what constitutes valid law, or by what Luhmann would call the self-reflexivity of the legal system. The legal norms determining the validity of a legal decision also prescribe the legal means for altering that decision. Indeed, the modern legal system derives its legitimacy precisely from the procedures it offers for changing the law—procedures that (in turn) may be changed themselves, though only in an orderly and procedurally correct manner. One important result, therefore, of Luhmann’s work in sociology of law is to have shown how the positivization of law depends upon the legal system’s becoming both self-reflexive and tolerant of contingency.

Viewing the legal system in the context of the functional differentiation of modern society not only helps Luhmann to develop important insights into the positivity of modern law, but enables him as well to connect this positivity with another salient characteristic of modern law—our conception of legal justice. In modern Western societies judicial decision-making is typically guided by what Luhmann terms “conditional programs.” Such programs specify that *if* a certain situation occurs, *then* a particular legal decision

is to be made (judicial discretion may of course play a role). Such an approach serves to differentiate the legal system from the rest of society in two distinct ways. First, only specific kinds of information about a situation are considered relevant for the case under consideration. Secondly, the foreseeable consequences of a judicial decision do not constitute a factor in the deliberation leading to the decision. For instance, the judge does not have to take into account how the verdict may affect any of the defendant's other social roles—for example, how it may damage his marriage or inconvenience his business partners. Of relevance is only whether the given situation is of the sort specified in the conditional program. In effect, both this general indifference to the consequences of particular decisions as well as a systematic tendency to disregard the general social status of the individuals involved in the case serve to make those individuals "equal before the law."

Legal justice, which we discussed above, depends upon the increased autonomy of the legal system and, more precisely, on the preeminence of conditional programs. Luhmann contrasts conditional programs with goal programs whereby legal decisions (whether legislative or judicial) are made for the sake of attaining certain desired consequences. Goal programs must obviously be far more dependent upon the environment of the legal system. Now, Luhmann does not deny that to some extent earlier societies utilized "if . . . then . . ." models of judicial decision-making. Moreover, he recognizes that legislation—as opposed to judicial decision-making—does often make laws with the aim of bringing about particular desired consequences. But he does intend to contrast modern Western societies, in which social integration is achieved in large part by a relatively autonomous legal system, with today's more ideologically fervent polities, which aim to *integrate their societies* chiefly through the implementation of goals such as "equal distribution" or "economic growth." In such intensely purposive (or ideological) societies, goal programs govern judicial decision-making as well. Luhmann explores this theme at length in the essay "Positive Law and Ideology" (selection 5).

Earlier, in connection with the debate between Luhmann and Habermas, we mentioned not only Luhmann's (rather misleading)

distinction between cognitive and normative approaches to reality but also his tendency to mute and camouflage his own normative commitments. Another example of this tendency is to be found in his treatment of conditional programs. The conditional form of judicial decision-making precludes a normative evaluation of any such decision in terms of its particular consequences. Yet Luhmann recognizes explicitly in his *Rechtssoziologie* (1972, p. 231) that the "if . . . then . . ." rule itself, in accordance with which any such particular decision is made, may be justified in terms of the benefits it produces. Presumably, such considerations would play a prominent role in the legislative decision to make such a law. A similar rule-utilitarianism appears to underlie Luhmann's evident approval of the very use of conditional programs in judicial decision-making. In *Rechtssystem und Rechtsdogmatik*, he argues that their indifference to consequences (in particular decisions) sustains the modern conception of legal justice and, more generally, makes the legal system "adequate" to modern society. Its "adequacy," in turn, consists for Luhmann in its ability to perform the function of integrating individual expectations without collapsing the functional differentiation of modern society. And while no reader of Luhmann's work can fail to notice his ironic detachment and skepticism, neither is it possible to overlook his basic commitment to the overall advantages of functional differentiation.

## Coda

Over the last several years, Luhmann has authored and co-authored a series of major books on a stunningly wide range of subjects. These include a study of the social function of religion (1977), a sociology of morals (1978), an analysis of the educational system (1979), and most recently a historical inquiry into the development of a novel bourgeois conception of man in seventeenth- and eighteenth-century Europe (1980a). Most impressive of all, Luhmann's writings consistently open up new and provocative perspectives on the subjects of their concern. Because of this, and because of the truly universal scope of his published work, Niklas Luhmann seems

richly to deserve his growing reputation as the most original German sociologist since Max Weber.

NOTE: Articles, 1, 4, 6, 8, 10, 11, 12, and 14 were translated by Stephen Holmes. Articles, 2, 3, 5, 7, 9, and 13 were translated by Charles Larmore.



*The Differentiation of Society*

