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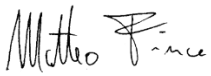

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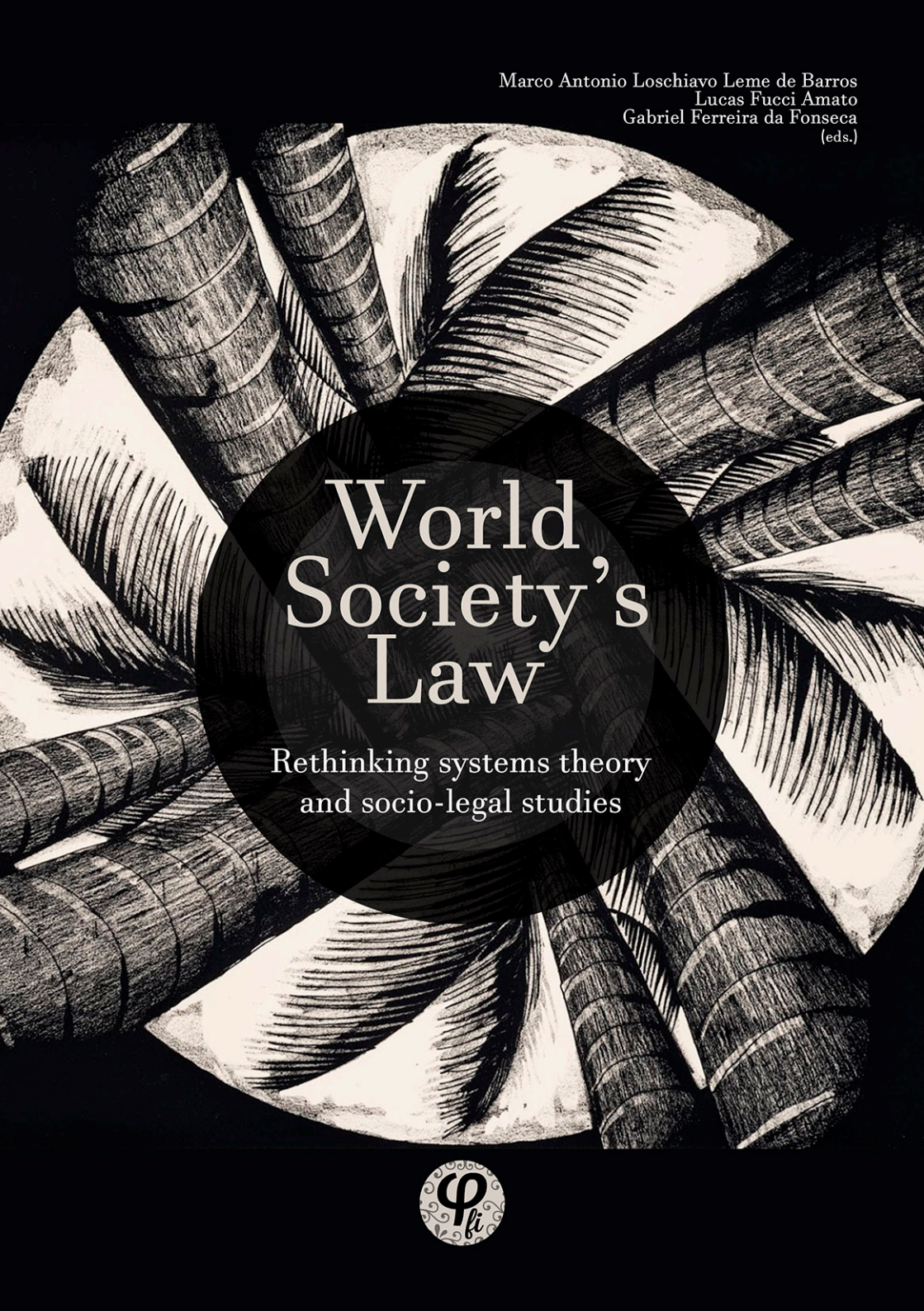

World Society's Law

Rethinking systems theory and socio-legal studies

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Contemporary society has expanded its worldwide dimensions, in waves of new protests, revivals of authoritarianism and pandemic threats, in a context of acceleration of digital communication. How to describe this emerging order beyond the picture of a single Western modernity? How would its law look like? How to approach the legal setups of regulation and public policy? This book presents a fresh perspective about systems theory that increases its analytical potential in order to face the challenges posed to socio-legal studies in this new decade.

The final result is a collective work of scholars and researchers – mostly outside Europe – committed with rethinking the limits of that theory. In light of this consideration, echoing the diversity of views, it's worth remembering Niklas Luhmann's visit to Recife, Brazil, during the 1980s, portrayed by Claudio Souto's memoirs about the friendly encounter:

"In Germany, the books and articles by Prof. Dr. Niklas Luhmann (1927-1998), from the Bielefeld University, stand out and there he is considered by many the most important contemporary sociologist. According to Luhmann, 'in every society there is law' and in fact he does not consider the coactive apparatus of the state as essential to the characterization of the juridical phenomenon. For him, the functional autonomy of social systems is a fundamental feature of modernity.

Luhmann was a person of marked sensitivity and consideration, without prejudice. As a child, he could not properly execute the official greeting in Germany at that time, extending his left arm instead of his right arm... When he was a guest in our house in the district of Derby, being lonely as a widower, he was enchanted by the historic site of Recife and wanted to buy a home there. He was advised not to do that, due to the risk involved.

In short, this is the man, that is the work."

Cláudio Souto

Full Professor Emeritus, Federal University of Pernambuco, Brazil

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Rethinking systems theory and socio-legal studies

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The practical usefulness of theory. Observing health, individualism and social systems: some working hypothesis

Matteo Finco
Sandra Regina Martini

1. Introduction

This contribution has two main goals: on the one hand, to observe the semantics of health and individualism and their relationship in the world-society, trying to identify some contexts where it is possible to empirically observe – through a coherent methodology – phenomena and processes. This means exploring the potential of the observation of health from the perspective of Social systems theory, in order to obtain an organic overview and also to see if, and how, it is possible to enrich the theory itself. On the other hand, some reflections will be made on the importance of theoretical work, trying to demonstrate that it is not a less important task than that of empirical research, but – on the contrary – that theory widens the possibilities of empirical research itself.

The reflection is divided in four parts. The first will take into account some distinctions that are quite popular within the public opinion and sometimes also within the scientific community; distinctions that tend to distinguish – sometimes indicating a hierarchy – between theory and practice (or empirical reality).

The second part is about the semantics of health and the one of individualism: while the former is very hard to delimitate, the latter

(which we refer to as *individual-subject-person apparatus*) legitimizes the claims of human beings in every sphere of social life, producing what Luhmann called "inflations of claims". Moreover, our hypothesis is that between these two semantics there is a specific relationship, demonstrating the essential role of health for the social inclusion in world society.

In the third part we analyse the potential contribution of Social systems theory to the observation of health: starting from what has already been done, we will illustrate some research hypotheses – theoretical and empirical – by testing, *en passant*, the plausibility of health/healthcare itself as an autonomous subsystem of society.

In the last part, we briefly take into consideration some signals of an unpopularity of theory, to the advantage of the possibility, provided by algorithms and digital technologies, to collect data easily and in abundance. In contrast, we try to emphasize the fundamental importance and the "practical usefulness" of the theory itself.

1.1. Distinctions: concrete/ abstract, theory-empirical/ praxis, social problems/ sociological problems

It is known that Social systems theory uses distinctions: system/environment, operation/observation, self-reference/hetero-reference, and so on. It is not just a methodological expedient, but a consequence of the constructivist approach: if reality depends on the observer, if the description depends on observation, so reality is a succession of forms, of "cuts" that determine the world, similarly to what a sculptor does, working from a stone. Then it is the difference between the two sides of the form that allows to discriminate, and therefore to know (Spencer-Brown 1969). Knowledge is possible because of distinctions[1].

1 More on this in the section 1.2.

It must not be forgotten that crossing the border is always possible, and that the possibility of going back to the difference allows us to continue to use it and to learn something about the same observing system (reflection). Therefore, the operation of distinction is always a path that foresees a potential return, and not a final decision. It is important to keep this in mind because sometimes we risk to get caught up in the distinctions, that is, in our own representations, precluding ourselves from the possibility of increasing the complexity of our representation of the world, thus determining a "delay" of the semantics on the description of the structure[2]: to say it simpler, we stop learning and we consider what we already know as a dogma. This is the negation of the fundamental presuppositions of scientific knowledge.

From this point of view it is useful to consider some distinctions commonly used inside and outside the scientific knowledge, in order to see to what extent they are well founded and therefore useful, at least when one claims to produce scientific knowledge. In fact, a question that is central in this book concerns the issue of demonstrating that empirical research is possible even from the perspective of Social systems theory. But if science can be defined as the rigorous and methodical application of doubt, perhaps it is also worth not only to question about the use of some fundamental distinctions, but also – in a more radical way – about the validity itself and the limits of the distinction between theory and empirical research. In other worlds, are we sure that this distinction is valid and useful?

Let's start with the distinction (difference) between abstract and concrete.

2 There is a circular relationship between structure and semantics: on the one hand, it is the structure that makes semantics possible (changing the structure and its complexity, semantics has to change too, in order to continue describing the society with an high fidelity); on the other, structural changes can be captured – seen and described – only on a semantic level (in fact, the distinction between structure and semantics it is a semantics product too!): that is, only an observer is able to describe them through a conceptual tradition (frameworks, theories, etc.) (Paolo 2013: 29). Moreover, semantics "determine" the success of new themes and meanings. See also: Baraldi, Corsi, Esposito 2002. More in detail, about the relationship between social structure, complexity and semantics, see Luhmann 1980.

Recalling the Hegel's *Science of logic* (1812), we see that the etymology of *abstract* refers to the Latin *abstraho*, which means removing, tearing, drawing out: abstract is something that is separated, isolated and considered in itself, independently from other elements. So this is not something unreal, which exists only in the so-called world of ideas. The word *concrete* in turn derives from the Latin *concresco*, which means to grow together, to increase: it is therefore something "augmented", something that is evident. The Hegelian distinction between *abstract universal* and *concrete universal* indicates with the second the unity between the first and the *particular*: the concrete is something heightened, evident, which embodies, reveals, gives a form to the abstract character.

In this sense, any theory abstracts, meaning that considers things in the form of concepts, trying to define and grasp the identity of particular phenomena. Then theory cannot be simply reduced to an ideal representation, to a vague generalization, since it always maintains a direct relationship with what it seeks to describe. But what does theory exactly mean?

The word derives from the Greek *theōría*, where *thea* means "show" (from which derives the word "theatre" too) and *horan*, that means "to observe": the theory is therefore an observation of something that takes place outside the observer, and not an arbitrary invention. It is not just a matter of simple and personal reasoning. It is no coincidence that another term often used in place of theory is *speculation*: also here we see that the origin (the Latin *speculor*) means spying, exploring, observing. So theory and speculation mean observing, trying to grasp the essence, the characteristics, the invariable of a phenomenon, beyond the sensible experience, the appearance, the surface of things. Due to theory, it is possible to approach a different, enriched knowledge, a deeper awareness. Theory allows us to grasp – or perhaps it would be better to say to construct – the meaning. It is no coincidence that the very category of meaning assumes central importance in the Social systems theory: *meaning* means creation of forms, observation, description, indication,

delimitation. With meaning we indicate something that we call reality; but what remains on the background, latent, which is not actualized, the "other side of the form", does not disappear, but can be recovered in the future: it remains possible. Thus theory is the construction of meaning, of a semantics that describes the structures of reality. In this activity, theory itself becomes a structure, precisely because it links different elements together. Theory is therefore not a passive observation, but an active one, an exploration that allows to build a path, that makes connections, identifies cause-effect principles, correlations, etc. It is an attempt to put the world in order.

The theoretical object is essentially different from the empirical one: if the former represents a result, a constructed and elaborated datum, the result of a search path, the latter is no less important, but is situated on an another level, more direct and self-evident. The word *empirical* derives from the Greek *empeiría*, which means experience. And experience is a result that is often acquired without necessarily wanting it. We experience something. Experience is almost suffered. So we can see that there is no opposition between theoretical and empirical, but simply a difference.

The same applies to *practice* (*praxis*). We deal with concepts that belong to different orders. When Luhmann in *Einführung in die Systemtheorie*[3] recounts the genesis of the concept of *autopoiesis*, he explains that while the concept of *praxis* expresses an action that includes its purpose in itself, without the need for further justifications, the one of *poiesis* indicates an action, an operation that produces something external to it (Luhmann 2002a: 110-111). Practice is nothing but the regular, ordinary procedure of an action, while we could define theory as a *poiesis*, that is, as a production of a representation, of a knowledge not limited to mere experiencing.

The distinction between *praxis* and *poiesis*, as Luhmann explains in the last pages of *Organization and Decision*[4], is relatively new in the

3 English edition: (2012) *Introduction to Systems Theory* (Cambridge, Polity).

4 Original title: (2000) *Organisation und Entscheidung* (Opladen/Wiesbaden, Westdeutscher Verlag GmbH).

Western tradition: before, theory was simply conceived "as remote knowledge" (2018: 393) different from the everyday knowledge. In this sense we can conceive theory as the construction of the *cultivated semantics* (*gepflegte Semantik*) (Luhmann 1980) which is characteristic of scientific knowledge, based on the code true/false.

The distinction between theory and practice is instead a relatively new phenomenon, dating back to the Nineteenth century, when theory was conceived as the program for scientific work, and therefore as an internal construction of the scientific system, as a structure that indicates how to proceed. This does not mean that theory is more important than practice: these are different orders, there is not a hierarchy. The difference lies in the fact that theory plays a role on both sides: on its own and on that of practice. In the first case it treats practice as an object, like any other, "as the subject matter of theory under such headings as action or operation". So it is a matter for theorists, not for practitioners. Then, Luhmann says, theory should not accept the limitations imposed by practice, nor it should try at any cost to be understandable. In the second case, theory asks itself what effects it has on practice: in this way it becomes observer and observed at the same time, operating a so-called *re-entry* and sabotaging "the classical distinction between theory and practice (or between "subject" and "object")" with consequential problems about the "objectivity or intersubjective congruence" of operations. For this reason, the "question about the practical use of theory", could hardly "contribute to improving what a theory can be expected to provide". On the contrary

> theory contains its own amelioration program. Only in accordance with its own problem definitions can it be improved, possibly also by reformulating the problems it addresses on a different metaphorical basis, with the aid of different lead distinctions. (Luhmann 2018: 394)

Then we can say that there is a "loose coupling between cognition and action": it allows for greater elasticity and leaves the future open (besides being a fundamental condition for the system stability).

Accordingly, theory on the one hand does not determine practice, but on the other – and also for this – should not "reduce" itself, for example by impoverishing its own language in order to be understandable, or worrying about having its "practical usefulness".

This brings us to an important question: do we really need to establish whether – and how – Social systems theory can be used for empirical research?[5] If with the expression "empirical research" we simply mean the research working with data, numbers, statistics, classifications and measurements, than we could perhaps say that the distinctions and fundamental concepts used within a theory carry out the same function that empirical data perform in empirical research: in other words, as different languages have different syntactic and grammatical structures, different rules and vocabularies, so different types of scientific research work in a different way, with different tools. One aiming to provide general descriptions and another aiming to classify reality quantifying it, they could not be compared, nor they should be evaluated as better/worse *a priori*. They should only be considered for their potential.

Not even the distinction – internal to empirical research itself – between quantitative and qualitative methods, seems to help much, since – as Luhmann points out in *Die Gesellschaft der Gesellschaft*[6] (1997) – "it fails to settle how to transform *distance* from the object into *insights*" (Luhmann 2012: 14). Furthermore, if empirical research is able to describe trends (for example crime, migration or other, and so on), it is also true that by doing so it tends to explain the "How" and the "How much" more than the "Why". In other words, usually empirical research gives a good description of a phenomenon or a process, through numbers and quantities, tendencies, preferences, probabilities, and so on; but it is less focused on origins, causes and explanations. In general, we can say that it

5 This question is also central placed in the context of the international seminar "Rethinking Luhmann and the socio-legal research: an empirical agenda for the Social systems theory?" (Law Faculty, University of São Paulo, 2019), where a first draft of this article was presented. However, our intent is not to be provocative, but scientific: to investigate the difference and the separation between theoretical and empirical research.

6 English edition: (2012) *Theory of Society* (2 vols.) (Stanford, Stanford University Press).

does not help to conceive "the totality of social phenomena" (Luhmann 2012: 16).

There is another distinction – usually not adequately taken into consideration – that shows how theory is misunderstood, at least in social sciences: the one between social problems and sociological problems. It demonstrates that sometimes, even when theory is considered important and "useful in practice", its function (describe) is confused with others (resolve problems, giving advices, improve the world). In fact, social problems deal with social world, life in community, solidarity, with relationships between human beings, groups, that is, interaction, organizations and communication. Sociological problems, instead, are questions properly expressed within sociology, that is a specific branch of scientific knowledge. Consequently, usually social problems are not also sociological problems, and therefore sociology cannot "solve" them (Corsi 1993: 296).

In this sense, empirical research cannot help as well: even if data, numbers, charts, etc. are immediate and easily understandable, and seem able to faithfully represent concrete phenomena of everyday life, they only are scientific and/or media communications. For example, the number of AIDS patients in the world or the rate of vaccination coverage of a population are (communication) topics like any others; then, they don't say what to do, they don't "speak for themselves", even if they could have an impact on the political system – the one appointed to make decisions: they could make a problem visible, encouraging to reflect on it or to declare the intention to act. In the terminology of Social systems theory, empirical data "irritate" systems (like politics, or law), while from the point of view of scientific one they represent the starting point for further researches: in order to confirm the same results or to test it, to deeply investigate phenomena, to apply the same methodology to other problems, and so on. In this way, data contribute to "refresh" theory.

1.2. The practice of theory

What does a theory do? We could say that, on the one hand it could help to answer questions that have already been expressed, while on the other it could lead to new questions and problems. This because, by producing new connections and correlations, by tracing "rules", "norms" and constants, theories will trigger researchers to ask themselves if the results of their work could be applied to different contexts; to question the knowledge already acquired; more generally, to look at the world with different eyes. In fact, a theory is like glasses, hand lens, optical filters: it makes it possible not only to see, but also to observe what we see with a specific look, to focus on things, then to understand and interpret what we observe. Then, like a lens allows us to distinguish forms (lights, shadows, colours), so theory allows to distinguish phenomena and processes, and to connect and interpret them.

It can be said that a theory consists of a structure, a coherent set of propositions and ideas, which is part of the scientific system and which therefore has the function of producing knowledge. The more complex, rich and articulated this structure is, the greater will be its potential for description, as it will be able to grasp a wide variety of phenomena in their details, "for interpreting more heterogeneous facts with the same concepts" (Luhmann 2012: 17).

A proper theory – well structured, consistent, sufficiently complex – contains the conditions for its own evolution: starting from the specific problems that it elaborates, it recursively builds (increases) its own complexity. Obviously the metaphors and the steering distinctions of a theory can be renewed over time (Manfré 2012: 29). Therefore the evolution of theory does not depend on practice, action or something empirical – meaning something that is conceived as an experience external to reasoning, thinking – but only on itself. In fact theory does not depend on external conditions, because the "reality", the world, the "object" is a construction of theory. This is a traditional constructivist assumption:

reality is observer-dependent, it is a construction of the observer[7]. That is, systems deal with *distinctions*, not with reality, simply because cognition is a process, different for everyone, for every "observing system", based on operations of observation. This explains why Social systems theory is a theory made of differences, that "functions" based on distinctions, differences, oppositions (system/environment, operation/observation, and so on): something could be observed only by virtue of a difference, that is a distinction between identity and difference, that, at the same time distinguishes and also indicates only one side of the same distinction (a *form*, in the same sense of Spencer-Brown). The other side remains unmarked (*unmarked space*). Then this "basic difference" generates a reference to something else (other-reference): the observer (system) indicates something else, external to it. So, there is not a reality regardless of the observer. The "environment as we perceived is our invention" (von Foerster 1984: 42).

To sum up: a description is an original product made by operations (observations) that distinguish something (what is observed) from everything else (who remains unobserved) and register that. So knowledge (cognition) is the result of observations (operations that indicate through a distinction) made by a system (Luhmann 1988). Knowledge is an original experience of systems.

A consequence of this is that is much more important *how* a system observes than *what* it observes. Theories differ from each other not so much due to what they observe, but due to how they do it: this is their specificity.

Constructivism has important consequences from a methodological perspective too. If knowledge is only possible through cognition, that is, descriptions (operations of distinction and indication), then "reality" not

7 In reference to different authors (among them: H. von Foerster, H. Maturana, E. von Glasersfeld), we can call "Constructivism" as a theoretical approach based on the common assumption that knowledge does not correspond to an external reality, but is the construction of an observer. Differently from *radical constructivism*, Luhmann – borrowing concepts from scholars of the same radical constructivism and second-order cybernetics – proposed an *operative constructivism*, stating that reality does not correspond to the categories of knowledge, but that it could "capture" reality only in the form of distinctions. See especially Luhmann 1995b; 1988.

necessarily could be *directly* observed: it could not be immediately evident, for itself. It means that empirical observations are not self-evident, but they are constructions too, not possible without a theoretical framework.

Moreover,

> the function of methodology cannot be limited to ensuring that reality is correctly (and not incorrectly) described. It is more likely to be concerned with refined forms of intrasystemic information generation and processing. Methods can thus enable scientific research to surprise itself. This requires interruption of the direct continuum of reality and knowledge initially assumed by society. (Luhmann 2012: 13)

So, a theory – that is, a scientific, rigorous, methodical process of cognition – is powerful to the extent that it could surprise itself.

Theory is a scientific observation, that is a "real" and "concrete" experience – in turn observable itself – and therefore an empirical operation. This kind of observation has its own practice, namely the continuous and ordinary work of updating the theory itself: an activity carried out by researchers who dedicate themselves to it, and which has no other purpose than the production of knowledge. Therefore, in the practice of theory, the researcher's task is not to verify a supposed "point-to-point" correspondence of theory with the empirical reality: conversely, their goal is to build a solid, rigorous, coherent, consistent, powerful theory, with a great potential and able to evolve.

This kind of theory should be characterized by a quite high level of complexity: this is true even more for sociology, just because the modern functional differentiated world society is highly complex[8]. It means that despite how much sociological theory tries to be understandable, if it wants to be scientific, it should remain quite complex too, just because a simple representation could not accurately represent something complex. This also means that in the practice of theory, the "practical problem" of

8 "The *conceptualization* of a theory of society needs to enhance its potential for complexity, namely, for interpreting more heterogeneous facts with the same concepts and thus ensuring the comparability of widely differing facts." (Luhmann 2012: 17).

theorist is not to reduce too much the complexity, but to introduce the comprehension of complexity in the theory. In other words, theory could not (and should not) provide "practical knowledge", ready to be used. In order for theory to be able to interpret the world in a better – more deep and accurate – way, complexity should not be ignored, or bypassed; instead, it should stand as principle for the construction of theory (Luhmann 1983b: 310)[9].

Finally, from the perspective of Social systems theory, using practically the theory itself does not mean to have "concrete" goals, but to use its complex concepts to probe their potential, leading us to consider society in a rather different way from *mainstream* thought. It is no coincidence that Luhmann, in the section of *Die Gesellschaft der Gesellschaft* (*Theory of Society*) dedicated specifically to the world-society, indicates that "certain general points can at least be mentioned for future investigation" (Luhmann 2012: 96). While not formulating precise questions, nor defining "concrete problems" to be solved, these points lead us to question the overall vision of society and concepts that we usually take for granted. If theory represents therefore the program for the scientific work, it must not worry about being *tested*, and therefore legitimized, by everyday reality.

2. The health of the individual and the health of society

2.1. Individual and individualism

The term *individualism* usually means a rather negative tendency of modern society, a socio-cultural phenomenon, consisting on for the one hand, in the fact that individuals manifest a growing closure in themselves,

9 It is also possible to question about the "practical uses of theory" in the slightly different sense (Jonas 1984). Then we can say that theory is "something by itself" but, at the same time, it could be used "as a means toward an end" (75). If the use of theory is "essential or accidental", Jonas states, "depend on the kind of theory one considers, as also on the kind of use" (75-76): in this sense, the practical use of theory "involves external action, resulting in a change in the environment (or preventing a change)" (76). But it should not forgotten that "all action which is not strictly routine, and not purely intuitive, requires [...] deliberation" and "*judgment*" (77). It obviously applies to hard sciences and technology, but has consequences even for social sciences.

a selfishness, an indifference toward other people; and, on the other hand – and in consequence of the first –, in the general "weakening" of social bonds. In this sense, loneliness[10] can be conceived as the outcome of individualism, that is, the utmost importance of value such as self-determination and self-fulfillment of the individual person. Pursuing an ideal of liberation, modernity realized instead "a solitary anthropology" that condemns individuals to unhappiness and determines the end of the community (Ferraresi 2020).

However, sociological theory offers deeper insights.

Durkheim conceived individualism as "our only collective goal" (1998: 423), because it is "the glorification, not of the self, but of the individual in general" (1973 [1898]): 48). Then, it is the only system of beliefs which can ensure the moral unity of community (1973: 50). The idea of "human person"[11] is the core of the individualistic ethic, that is, "the rational expression" of the "religion of humanity" (1973: 51). So this idea is the only one that can hold together an increasingly differentiated society, and defend the rights of the individual "means defends at the same time the vital interests of society" (1973: 54)[12].

But it is with Parsons that we can see a decisive turn in the conception of individualism. It cannot be reduced to selfishness and self-reference, but is rather a strategy that guarantees stability to modern society, that is, a reaction to the structural changes that affect it (1949). It is therefore a particular type of social pressure – not its end (Bortolini 2005: 44) –

10 For a completely different but relevant approach to loneliness (and then individualism), see Dumm 2008.

11 "[T]he only idea which would be retained, unalterable and impersonal, above the changing torrent of individual opinions. And the feelings it awakens would be the only ones which could be found in almost every heart." (Durkheim 1973: 51-52).

12 More generally, "We can think of moral individualism as having two components. Moral individualism is characterized by (1) a set of social beliefs and practices that constitute a pervasive shared understanding which supports the rights and dignity of the individual; and (2) a plurality of social spheres that permits diversity and individual autonomy, and furnishes beliefs and practices which morally associate individuals occupying a particular sphere. The first component, briefly mentioned and then rejected in *The Division of Labor* (1893), was developed in the Dreyfusard article, "Individualism and the Intellectuals," after having been initially proposed in *Suicide* ([1897] 1951) the preceding year. The second component was explored in *The Division of Labor* and later enhanced in *Suicide* and especially in Durkheim's lectures published as *Professional Ethics and Civic Morals* ([1950] 1992) – lectures written around the same time as the Dreyfusard article." (Cladis 2005: 391).

which, while guaranteeing individuals a greater freedom, remains compatible with the current differentiation and complexity. The basic shared values of individualism (human dignity, freedom and equality) institutionalized in procedural norms that leave everyone "to decide the 'what' in the sense of *how* to proceed to a goal" and then "constitute a general framework in which societal and individual diversity is not only allowed and defended, but even upheld and encouraged" (Bortolini 2016: 149-50).

Reconstructing the semantics of the concepts of individual, individuality and individualism (1989), Luhmann illustrates a process in which individuals gradually become capable of referring to their individuality when describing themselves (Luhmann 1995b: 267). This is a consequence of functional differentiation: there are no more binding relationships, marriages are not decided by families, nor jobs or professions are inherited as before, while the "community" where the individual lives does not provide anymore strong identifications, values and beliefs; indeed there is no more one and only "community" for the entire life. Now everyone has to determine him/herself in order to be included in the different subsystems of society. In a complex world, instead, the reciprocity can no longer be generally prescribed, but must be left to free choice: the subject of law fits therefore with the functional differentiation of society (Luhmann 1981).

Also Ulrich Beck and Elisabeth Beck-Gernsheim theorized in depth modern individualization. On the one hand, it indicates "the disintegration of previously existing social forms" and, on the other, that "new demands, controls and constraints are being imposed on individuals" through "the job market, the welfare state and institutions". Then people "are tied into a network of regulations, conditions, provisos" that must import into their biographies through their own actions (2001: 2). In this way the individual biography "becomes the 'elective biography', the 'reflexive biography', the 'do-it-yourself biography'" (3). But this not necessarily have a negative connotation. Instead, in the wake of a sociological tradition which starts

with Marx, Weber, Durkheim, Simmel and goes on with Parsons, Foucault, Elias, Luhmann, Habermas and Giddens, individualization is conceived as "a product of complex, contingent and thus high-level socialization". It is "a structural characteristic of highly differentiated societies" that "does not endanger their integration but actually makes it possible" (XXI).

Also for Bauman "to speak of individualization and of modernity is to speak of one and the same social condition" because modernity "replaces the heteronomic determination of social standing with compulsive and obligatory selfdetermination" (32). But he underlines some negative effects of modernization through the metaphor of "liquidity": now "bonds and partnerships tend to be viewed and treated as things meant to be consumed, not produced; they are subject to the same criteria of evaluation as all other objects of consumption" (163). If it could be hardly denied that people have to learn to manage the modern changes in spatial and temporal scale that could threat the strength of social bonds and the social imaginary (Augé 2013), it is also true that only with modernity there are "more opportunities both for impersonal and for more intensive personal relationships" because "more of the individual, unique attributes of each person, or ultimately all their characteristics, become significant". For this reason it should be avoided "to characterize modern society as an impersonal mass society and leave it at that" (Luhmann 1986: 12-13).

> So we can say that modern individualism describes a process of immunization [13] of individuals (the possibility to be separate and self-sufficient) with respect to others and to the State, and corresponds to the rise and the enhancement of subjective rights and to the expansion of the claims of individual freedom and autonomy at the expense of political and administrative action (Bortolini and Prandini 2001: 90).

Also we can relate the concept and semantics of *individual* with those of *subject* and *person*: what we could call the *individual-subject-person apparatus* indicates an *individual*, that is a unique being, independent,

13 On "immunization", see also Esposito 2011.

responsible for himself/herself, who builds his/her own identity; a *subject* of rights, which are claimed; a *person*, that is a reference for communication[14], that can access to the different systems. Then the *career* is the sequence of events that contribute – positively or negatively – to the construction of one's own identity in the functionally differentiated society. In this way the individual-subject-person can make *claims*, that is, express and demand desires, requests, rights, which serve to continuously reformulate his/her own identity, marking the difference between what his/her is and what is not (yet).

2.2. Individualism, inflation of claims and health

For Luhmann, "an individual psychic system exposes itself to the contingency of its environment in the form of expectation" (1995b: 267). Then, through *expectations* – "used in forming social structures" – individuals can orient themselves facing the contingency of their environment, assuming this contingency "as its own uncertainty within the process of autopoietic reproduction" (268). Expectations can be fulfilled or disappointed: in this way, the individual can understand the environment, orienting itself in a complex world and organizing the episodes of its existence, thus constructing its own experience (268-270).

When expectations are "condensed" into *claims*, the individual strengths "the self-commitment and vulnerability established and puts into play in the difference between fullfillment and disappointment" (269): that is, it makes claims – expectations whose satisfaction or disappointment involves corresponding *feelings* and subsequent adaptations – in the social context in order to be part of the different social subsystems, to be recognised. Modern society increasingly legitimates individually grounded claims and incites individuals to put forward even

14 Here we are following Luhmann, according to whom "Human beings, concrete individual persons, take part in all social systems. But they do not enter into any of these as determinate parts themselves nor into society itself. Society is not composed of human beings, it is composed of communications among human beings." (Luhmann 1991: 30).

their individuality as a claim just because no one can longer be included in *any* of the societal subsystems. So, the legitimisation of the fundamental claims to promote what makes one happy and the individuality itself, makes inclusion possible (269-270).

If we take back to the individual-subject-person apparatus, we can see how it legitimates claims: subjects could claim rights – because they are subject of rights –, individuals could claim the possibility to make original choices – due to the fact that everyone is a unique and autonomous human being –, and persons could claim access to the different functional systems (cares, drugs, education, etc.) – in order to participate to society.

The main point is that nowadays claims – which are essentially claims of inclusion – are increasingly producing what Luhmann calls precisely *inflation of claims* (*Anspruchsinflation*; Luhmann 2015), that is, a feature of *Welfare State*. This is evident and clear in law system, in quantitative (more rights, for a larger number of people: everyone, if possible) and qualitative (improved standards and guarantees) terms[15]. Moreover, with an increase of the claims, there is also a proportional increase of dissatisfactions (Luhmann 1995a: 243).

What does it all have to do with health?

Our hypothesis is that there is a precise relationship between the semantics of health and that of individualism. If we do not think about health in correlation with the form of modern individualism, and therefore with functional differentiation, we underestimate the fundamental role of health with respect to the problem of inclusion. We will address this – from the perspective of health considered as a specific social subsystem – in the third section. But we can already observe that the inflation of claims about health is based on the fact that if individuals are legitimatized to have a personal and unique life (career, private life, and so on), to be

15 On law system, see Luhmann 1993. About its temporal dimension and the consequent challenges, see Febbrajo 2016.

constructed through his/her own choices[16], then health is one of the spheres where they structure their own identity. So, they make claims also in this context: individuals/subjects/persons in modern society are encouraged to have expectations and make claims about health and healthcare system[17] (we talk here about *health claims*), on a normative, cognitive and also affective[18] level, and to direct them to different functional systems (law, politics, medicine, but also economy[19]).

Then, law systems has to face requests for rights be effective: this happens through litigation and the so-called *judicialization of health*[20]. Are claimed, for examples, the access to treatments and medications and to latest technologies.

Both politics and law have to challenge the request for new rights (waiting for the politics to approve news laws, sometimes judiciary could guarantee them): not only the general right to health conceived as an essential human and fundamental right, but also more specific rights, such as "patient rights", a strongly right to human dignity in every stage of cares, and rights related to self-determination, such as to receive, choose or refuse (even the right to die) treatments according to one's own feelings, individual ethic and religion. Then we can see the rise of new tools, such as Living Wills and Advance Directives.

A lot of claims are made directly to the medical system: deeper examinations, more effective drugs and treatments, execution of cares with proper methods and on proper times, more frequent diagnoses and with a high level of attention and availability by healthcare staff, campaigns and policies for prevention, vaccination and prophylaxis, and so on.

16 About individuality and inflation of claims – and the consequent paradoxes with them, see also Corsi 2015a.

17 Here "system" is not used in the sense of Social systems theory, but in a broader and more general sense, meaning the national healthcare systems and all organizations, institutions and professionals involved in activities related to health and well-being.

18 Affective expectations, that is, expectations that legitimize the personal expression of the participants, is a concept introduced by Baraldi (1999; 2015).

19 For example, through the stipulation of health insurances and in general through the use of private health care.

20 On this, with a specific attention to Brazil, see Corsi and Martini 2018a; 2018b.

Moreover, claims concern not only the medicine in the strict sense, but also the wider sector that includes all activities and interventions aimed to improve life from a biological, physical and psychological perspective (a growing number of services and consultancy, many of them external the scientific sphere: from psychological therapies to prescription of dietary regimens, from technical interventions on the body to physical activity, etc.).

However, the inflation of health claims has some problematic effects, both theoretical and empirical.

A first problem is that it seems very hard or even impossible to limit these claims, which in turn encourage the development of more and more expectations. Claims cannot be limited because inclusion is not predetermined and limited: everybody is involved in different processes in the different subsystem, in a different way, according to him/her own individuality (feeling, values, interests, and so on). Then, once a claim is legitimated, it represents a premise for another one, more "advanced", in a mechanism that could be described as a spiral.

Another problem is that claims are made mostly by individuals – much more than by collectives – both as *patients* and as *consumers*[21]. This affects not only the private healthcare sector (where it is obvious that a patient is always a consumer, because by paying he/she can choose the best option), but also the public one, that has long been implemented the same logic of entrepreneurship and management of the private sector[22].

A theoretical and practical question is due to the status of human right to health. If health is a human right, that is, an essential, inalienable, universal right, then one might wonder to what extent the claims relating to them must be limited. Must a human right be guaranteed to the highest feasible level? Should human rights guarantee the basic conditions for leading a dignified life, or should they protect and enhance to the maximum extent the essential domains of existence? If human rights

21 See on this: Cayón de las Cuevas 2017.

22 See, among many: Castorina 2011; Rose 1999; Rabinow and Rose 2006.

recognize and legitimize the subject's free will, if they represent "the social conditions to enable an individual to develop their personality and identity as they wish" (Marshall 2014: 241), this means that more than human rights, they are *rights of human beings*, that is, of the individual-subject-person – individual rights to freedom, autonomy and self-determination. Therefore the right to health, formulated as a human right by article 12 of the International Covenant on Economic, Social and Cultural Rights (1966) – "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health" – practically has no limits. The real value that lays the foundations for the right to health conceived as a human right, is not the intrinsic one related to "the sense of physical well-being enjoyed by the healthy", but the instrumental one related to the fact that health "greatly increases one's prospects of having a rewarding life" (Raz, 2010: 65). This means that the conditions that ensure the opportunity to have a satisfactory life must be guaranteed, without predetermined limits.

There is, also, maybe the hardest question, which serves as a foundation for all the others already seen: when we talk about health, it is never clear what we are referring to. The World Health Organization (WHO) itself defines health as "state of complete physical, mental and social well-being and not merely the absence of disease or infirmity" (WHO 1946). It is clear that the very idea of health – which in turn is increasingly less distinguishable from that of well-being –, can also be very different for everyone, due to education, personal history, economic possibilities, and so on. This is precisely a theoretical problem because it is difficult to define health and to frame it within a theory, and it is also an empirical problem precisely because health-related communications include an impressive variety of topics and contents.

Then health claims are constantly growing because, on the one hand, of the tendency to individualize, and, on the other, of the socio-structural changes of modern society: we have already seen the possibility to demand subjective rights – due to evolution of law – but there are also the

increasing possibilities of care emerging due to scientific and technological achievements.

Then claims related to health represent a challenge for society, primarily for law and politics, called to enforce and make effective rights and to include new cases into norms and public policies.

From our theoretical perspective, the inflation of claims and the individual-subject person apparatus, on the one hand make possible the analyses of the complex semantics of health, while on the other – and despite being theoretical constructs – they seem suitable to plan empirical research: the two ideas taken together represent the condition to make further distinctions within the category of claims – for example between rights, interests, public goods; individual and collective claims, etc. – and also to examine, classify and prove them more carefully.

3. Hypothesis of theoretical-empirical research on health

3.1. Health and Social systems theory

Before presenting some research hypotheses – including some empirical aspects – that the authors of this contribution are already working on, it is useful to quickly examine how Social systems theory conceives health.

With the distinction health/illness, Social systems theory identifies the code of the *medical system* ("*Medizinsystem*", or the analogous expression "*System der Krankenbehandlung*" – medical treatment system: Luhmann 1990a). The function of this system is to intervene on bodies and minds suffering from diseases and illnesses (in the strict sense) or – more generically – from "deviations" – that is, anything in the body that is not considered as *normal* (Corsi 2015b: 12).

We can identify it as a social (sub)system because everything related to health and care (medical-scientific knowledge, personnel training,

organizational-administrative apparatus, language used, doctor-patient interaction, etc.) is built *within* and by communication (14).

This is true also for the code *illness/sickness*, along with the status *sick/healthy*[23] and the corresponding semantics (concepts, terminologies, procedures). But the semantics related to health must be constantly reconsidered, for many reasons.

First of all, because modern medicine is "young" and in constant evolution: it is a system that started to differentiate itself only in XI and XII century, becoming autonomous only in the XVIII century (Corsi 2019). Also, many medical terms are too general and need to be specified: we could think of very similar concepts like *disease*, *illness*, *sickness* (Zuppiroli 2005). Moreover, the progress of technical and scientific knowledge allows to discover, recognise and determine new problems: this happens for example when are identified the origins of previously unidentified diseases (like viruses or bacteria); when new phenomena emerge due to social changes (for example, eating disorders, depression, etc.) and need to be observed scientifically; more generally, modern science and knowledge are intrinsically intended to formulate new problems, because new discoveries increase ignorance about what has been discovered and encouraging further research: every scientific result is the condition and the starting point for further scientific research (Cevolini 2019)[24]. Furthermore, we could observe a general tendency towards *pathologization* and *medicalization*, that is, the process by which originally non-medical problems start to be defined and treated as such, usually in terms of illness or disorders (Conrad 2007)[25]. In fact, there is nothing that has not been associated or will not be sooner or later, to some

23 We can also think about other levels of codification: genetically good/not good, curable/incurable (Luhmann 1990a), what is observable or understandable and what is not (or not yet) (Simon 1994).

24 The difference between what is already known and what is still unknown structures the reproduction of scientific knowledge: then, knowing and ignorance increase simultaneously: Cevolini 2019.

25 We could think, among others, about psychological problems like learning disabilities. However, it should be noted that in recent decades we can also find examples of the so-called *demedicalization*, as for homosexuality and masturbation: Biancheri *et al* 2016. We will say more about medicalization in the next sections.

disease, or at least to some risk (Corsi 2015b: 31)[26]. As result, what is relevant for the medical system is widened in an unpredictable way: the whole life (Luhmann 2015: 46) – both temporally and in the material sense – and every individual's behaviour become relevant. Moreover, as a consequence, this could encourage the individuals to a continuous monitoring of one's own conditions, because of the suspicion that something could be wrong[27].

Then the medical system is always on the alert, because it does not intervene only in cases of evident illness, disease and so on. In fact, doctors must treat full blown pathologies as much as potential ones, but also take care of prevention and increase of the more general "well-being" of patients[28]. That's why a number of professional or semi-professional figures and practices are emerging: here health interventions in the strict sense are intertwined with other types of therapies (more or less scientifically founded: for example homeopathy, osteopathy, etc.), actions, practices and lifestyles adopted by the subjects (sport and physical activity in general; diets and food choices, etc.).

The medical system has, at least, two peculiarities that distinguishing it from other systems:

a) it depends on the "negative" value of the code: illness is undesirable compared to health; but health – as we have seen already – is impossible to define. Then, it can not help to orient the action (Luhmann 2015: 42). Only physician can do it[29], establishing where to draw the line which demarcates health from illness (Corsi 2019). So illness has the "value of connectivity", meaning that it allows to start interventions, while health is the value of reflection (identify the moment when

26 So, we could say that *health doesn't exists*: even when a doctor considers a patient healthy, he/she is just saying that there are still no reasons to treat him/her. Even if it could seem a paradox, the birth of modern medicine produced a society of sick people: Corsi 2019.

27 On this, see for example Maturo *et al* 2016.

28 On this, see Martini 2014; 2015.

29 And they identify patients through *symptoms*, that is, "observable events, processes, or states that are interpreted as signs for other, *un*observable events, processes, or states located in a second, nontrasparent phenomenal domain" (Simon 1999: 181). Then here we can see not only the basic code health/illness, but also the use of others *forms* like "observable/unobservable and comprehensible/incomprehensible (or yet not comprehensible), has underlined all disease models" (Ibidem).

interventions could stop)[30]. Then *therapy* is "an operational mode designed to promote the transition from a state designated as *sick* or *nonhealthy* to a state termed *healthy* or *nonsick*" (Simon 1999: 180). Moreover, the definition of the goal of therapy as an *unmarked state* (i.e. non-disease due the absence of symptoms, problems or pains), is more useful than the aspiration to health predetermined normatively, that is very hard or even impossible to define and then realize (Simon 1994: 232).

b) Like the educational system (Luhmann 2015: 61), its function does not refere to society (the overall system), but to its *environment*, that is, to human beings as bodies and consciences.

This second aspect makes this system particularly important for the problem of inclusion, as we anticipated. Why? Because society – like any other system – could only exist if its environment is available[31]: without consciences and bodies, the preconditions for the reproduction of communication are missing. Therefore the function of the medical system is to steer individuals – that is, their bodies and minds – towards a state of wellbeing, in order to form physical, organic and psychical basis suitable for communication. In other words, the medical system allows them to be *persons*. Only if human beings are healthy and able to participate to communication (that is, if they are *persons*) social systems (society, organizations, interactions) can exist. Without persons there is no utterance, information, understanding[32].

So medicine and the broader sphere related to the care of bodies – together with another system, the one of education[33] – make *persons* possible. This is why individuals are encouraged to express *health claims*: they are useful to society. Moreover, claims are important because the difference between their satisfaction and their delusion permits the self-

30 Even if "it can be argued that for a long time health care, or medicine, did not actually use positive health as a reflection value, but limited itself to the management of illness." (Pelikan 2007: 88). More about this in the section 3.3.

31 System and environment can exist only together, because they are two sides of the same form.

32 Communication is the outcome of a process made by these three elements or phases: utterance, information and understanding: see Luhmann 2012.

33 For an introduction on this, see Baraldi and Corsi 2017. Among Luhmann works, see in English: Luhmann and Schorr 2000; Luhmann 2002b; 2004.

identification of individuals: personal identity is the result of experience, that is, the history of the delusions and satisfactions. According to previous experiences, everyone adjusts his/her own future expectations and claims, and also reduces the complexity of the world in order to transform indeterminacy and contingency in individual destiny (Luhmann 2015: 58)[34].

3.2. Observing health through Social systems theory

Considering what has just been said, it should be clear that it is possible to put in relation individualism and health and, based on Social systems theory, to develop a research whose main question could be formulated as follows: how do modern individuals build their own identity, self-determining themselves, through health choices and behaviours, and which role does the safeguard of health play in this process? Obviously this question presupposes many other problems, but we should start by analysing the semantics of individualism and the semantics of health.

Even if our perspective is theoretical and we do not have the urgency of carrying out empirical research, this kind of work is not limited to a "free reflection" nor to purely philosophical questions. First of all because analysing semantics necessarily means working with data, even if they are not numbers or statistics (a possibility that nevertheless is not precluded). When observing semantics, data (that is, the empirical side of the work) means the selection and the analysis of topics of communication; topics that must be identified in texts and more generally in everything we could mean as "discourse" and "text": norms and laws; essays, scientific and non-scientific articles; novels, poetries; movies, theatre plays, television shows; news, editorials and reportages; online texts, conversations, posts,

34 Nowadays public opinion considers obvious the inflations of claim, and the individual could choose whether to declare absurd his/her own claims or the society itself (Corsi, 2015a: 199). Moreover, personal individuality is so important that it has a value in itself, just to exist: this also means that a truly health could be recognized only in the full adherence to the psychic uniqueness of the person (Piazzi, 1989: 37 and 39).

video and podcast; and so on. More generally everything that can be conceived as *narrative* (from the Latin *narrare*, very similar to *gnarus*, that means "aware", and therefore knowledge) and related to *communication*. It might seem obvious, but *texts* are an empirical reality, they are concrete products with concrete contents. We could just think about *Liebe als Passion* (Luhmann 1982)[35]: in order to write this book, it is obvious that Luhmann should have read a lot of French novels.

Then, in order to develop an analysis of the relationship between the semantics of individualism and the semantics of health, it would be necessary to work with data and texts that consist mainly in sociological researches and legal norms. *The Health of Society. Right to Health as a Human Right? Subjectivity and inflation of health claims between Mercosur and European Union*[36] is the title of a research with the goal of observing how the right to health is formulated in these contexts, comparing themes, definitions and contents mentioned. The goal is to understand if and to what extent the right to health is conceived as a human right (therefore universal), the role that the semantics of individualism plays in this regard, and whether health can be conceived not only as a value (that is, a basic principle), but also and above all as a necessity for the society to have a suitable human environment for its reproduction.

In this sense it is evident that Social systems theory does not simply represent the theoretical context of research, but also inspires the hypothesis presented. A hypothesis that – obviously – could be formulated from other perspectives, but with substantial differences (for example: from a critical theoretical perspective[37], concepts like function and

35 English edition: (1986) *Love as Passion: The Codification of Intimacy* (Cambridge, Harvard University Press).

36 This is the postdoctoral project of one of the author of this articles (M. Finco). The original title is *A Satúde da Sociedade. O Direito à Saúde como Direito Humano? Subjetividade e inflação de pretensões no setor de saúde entre Mercosul and União Europeia.*

37 Following M.J. Thompson, Critical theory "is a distinctive form of theory in that it posits a more comprehensive means to grasp social reality and diagnose social pathologies. [...] It is a form of social criticism that contains within it the seeds of judgment, evaluation, and practical, transformative activity." (Thompson 2017: 1).

differentiation would be replaced by those of domination or biopolitics[38]). Consequently the interpretations would be very different.

In the research mentioned above, the bibliographical work consists in the analysis of: a) legal texts (constitutions, laws, regulations, international treaties); 2) courts decisions; 3) the organization of health care systems and the principles that inspire them. The content is classified and evaluated also in a historical perspective. In a sense it is an "empirical" work: it is not a pure mental and solitary process, because the study of socio-cultural-juridical reality means to observe, identify and connect elements between them (data, norms, processes, events, etc.), and this kind of work is not less "real" or abstract than the empirical work, for example the observation of the experiences of subjects in an interview or in a survey. Moreover, as much the theoretical work as the empirical one could be influenced and steered by the personal beliefs, sensitivities, experiences, preconceptions of the observer. Also, the theoretical one – even when characterized by a lot of abstraction – if it is just a bit original, could lead to imagine not only new problems, but also new kinds of data to be collected.

Within this general project, gradually the attention is focused on some specific cases, facts and aspects: for example, the Italian Law (n. 219) on "informed consent" and "advanced treatment decisions" (Martini and Finco 2018; Finco 2019), which allows Italian citizens to decide in advance – through a written document or a video – whether or not to receive certain medical treatments in a future when – due to illness or incapacity – they would not have the possibility to express their will. This law allows doctors and families members to know how to behave when the recovery of the patients is no possible anymore. In this case, the legislation was analysed, and were reconstructed the legislative path, the public debate and the demands of civil society. This is mainly a bibliographic work, but legislation, discourses and semantics are, *de facto*, real data. Also, theory

38 For an example of an analyses of health care system by the perspective of critical theory, see Princeton 2015.

allows to examine how social actors conceived and used some concepts – above all the one of self-determination and the difference between law and interest –, without leaving room for rhetoric, but questioning their manifest and latent function, and which role health has in the process of subjectification.

This work will continue with the study of similar laws and legal and conceptual tools, like informed consent, treatment decisions, and so on, taking into consideration other geographical, political and juridical contexts.

Another work in progress[39] concerns a conflict between different fundamental rights: on the one hand health, and on the other freedom of thought and freedom of information. Here the comparison is about the recent reintroduction in Italy of some mandatory vaccines, after a drop in herd immunity. Even here, without a concrete analysis of the norms and the public debate, the work would have been limited to general considerations, concerning, at most, the jurisprudence. Instead, through Social systems theory it is possible to analyse the relationship between different systems and also individuals claims in the light of functional differentiation.

Similarly, another research (Finco 2018) concerns the right to health and the inclusion of migrants in Italy: here it is essential to analyse norms and policies related to immigration over the last thirty years, but also – in order not to make just simple legal considerations – the protests and the requests by civil society: once again, this means analysing the semantics.

Another project consists in a series of works – some of them already published (Barros and Finco 2019a; 2019b; Finco and Barros 2019) – about the role of *fake-news* and their consequences on health, public sphere and legal system. Conceiving health as a right and as common good, research tries to identify concrete possible alternatives to court decisions, in order to avoid the so-called *judicialization of health*, very common (not only) in

39 Not yet published.

Brazil. The proposals presented are not based on pure "speculation", but on the observation and evaluation of solutions already available, such as *fact-checking* and regulatory law.

The judicialization of health and, more specifically, how economic criteria and "ideological" value influence the decisions of courts, are the focus of a series of articles which observe their consequences for the Brazilian health system and public health in general. In this case the analysis of data was essential, in order to identify and quantify the public expenditure for drugs and treatments, and to answer the question regarding the existence of an economic limit to the intervention of the courts in public health (Lima and Finco 2019).

This quick overview just aims to demonstrate that it is possible to imagine an empirical research that uses Social systems theory as theoretical background. It is not by chance that among Brazilian law scholars this is a current topic – as this book and the seminar at its origin demonstrate[40].

For example, it should be possible to observe the already mentioned phenomena of medicalization. Its semantics and structure should be investigated from different perspectives: scientific, technical-organizational (interaction between doctors and patients), public opinion (expectations and claims), juridical, and so on (Farías 2019: 52).

If we look at the medical system in general, as Claudio Baraldi writes (2015: 81), there are at least "four interesting areas" which Social systems theory could investigate in order to analyse the medical system and, more generally, health:

– considering *medicine as a communications system*, involving health professionals and patients, but also their families;

40 On the theoretical side, there are many works that use Systems theory to observe the Brazilian socio-legal context. Just among the jurists – but also among the magistrates (Schwartz and Ribeiro 2017) – of this country the German sociologist has found a wide and influent reception in some ways surprising. Among the most original works, see: Neves 1994; 2013; Campilongo 2011a; 2011b; 2012; Villas-Bôas Filho 2009; Villas-Bôas Filho and Leite Gonçalves, 2013. It is also worth to mention new generations of scholars (see, for example: Fucci Amato and Barros 2018; Dutra and Bachur (ed) 2013). On the empirical side, between the already published works, see: Fonseca and Barros 2018.

– the *function of medicine* conceived *as a functional differentiated social system*;
– the *structure* of this system, with its expectations, its codification and the roles assumed within it;
– the *semantics of medicine.*

In each of these areas it could be possible to combine theory with different empirical methods and techniques – qualitative or quantitative. Unlike other approaches – for example we could think to ethnomethodology – empirical techniques and methods are not indispensable for the construction of Social systems theory. This depends on the nature itself and on the goals of that theory. However, this does not mean that empirical research should be excluded or ignored.

An excellent example in this sense, from which to draw inspiration, is the already cited work by Baraldi himself: he combines Social systems theory with the empirical qualitative method of Conversation analysis (CA), in order to analyse – in a specific case – the communication between healthcare professionals and patients (Baraldi 2015). This research therefore fits into the first of the fields indicated by the author, that of medicine as a communications system. It should be noted that it is possible to analyse communication as the difference between utterance and information (in the proper sense described by Luhmann), but also the interactions between participants – conceived as persons – and the organizations (such as hospitals)[41]. Conversation analysis studies the connection between actions within the interactions, the understanding of the action among the participants, with specific attention to the organization of meetings, the language used, the configuration of the communication turns, the sequence of actions. In this case, Baraldi focuses on doctor's questions and patient's answers in order to analyse the so-called "person-centered therapy" and the subsequent expectations, that is, the reciprocal expectations that participants develop in the interaction. The author focuses in particular on affective expectations, that could

41 See section 1.1.

replace claims if and when the interaction between doctor and patient legitimate the patients' personal expressions, with the result of promoting the participation of patients in the interaction itself[42].

Then the author focuses on the relationship between interactions, functional systems and organizations, which make the interactions possible, guaranteeing its structural conditions. The empirical results are finally interpreted in the light of theory: among the conclusions, it is stated that doctors can encourage the participation of patients, that the initiatives of the latter have different effects on diagnosis and treatments, and that a person-centered therapy is not necessarily useful for the function of medicine.

This work is a very good and clear example of how to combine theory with empirical research: a robust theoretical framework provides very powerful concepts, even if they could be highly abstract. But if considered in the light of empirical results – in its turn founded on a rigorous methodology – they can contribute to the understanding of concrete phenomena and processes, also providing original interpretations.

Therefore the doctor/patient relationship, the health organizations and in general health-related communication could – and should – investigate through empirical research, from the perspective of Social system theory. It is possible to do the same with the analysis of function, structure and semantics of health: among others, concepts as functional differentiation, expectations, inflation of claims, the distinction between persons and bodies, help looking in an unusual and fruitful way to data obtained from interviews, survey, statistics, etc.

Another example of empirical research on health based on Social system theory is the "form analysis" by Gibson and Boiko (2012).

The authors work on the communications (verbal exchanges: interview data) about a specific health problem (dentine sensitivity). They analyse utterance of patients and abstract from them "forms", that is,

42 Baraldi 2015: 110.

generalisable categories. They are not generic themes, but real semantic tools, used everyday. This oppositions are distinction which "composed the basis of first- and second-order forms of communication about dentine sensitivity" (60). So they try to see how patients use these distinctions (for example: sharp/short, tolerate/accept, habit/lifestile, help/cure, and so on) in order to describe their condition both as health and illness. In other words, they try to identify the unity of the distinctions used by participants and which paradox they establish (56)[43].

Finally, there is another element that should be kept in mind before planning an empirical research on health: we must not forget that health is a topic that could be related to every functional system: medicine, science, law, economy, politics, media, religion, sport, and so on. So we should decide, from time to time, where the observer is located, and then we should use theory and empirical methods without claiming that they are mutually exclusive.

3.3. Back to theory: the possibility of a health subsystem?

As Luhmann writes, everyone is potentially sick, because everyone has to die (Luhmann 1990a: 190): even when a doctor considers a patient healthy, in reality he is only saying that there are still no reasons to treat him/her. We can see this, in general, in the tendency to develop a continuous attention for our body and behaviours. Just to make two concrete examples: the so-called *diseases* of *civilization* (or *lifestyle diseases*) and all the highly different phenomena that could go under the name of "medicalization"[44] – despite this term is too much broad and

43 "Form analysis helped to shape the concise picture – sharp and short pain in teeth that individuals habitually try to minimise by retreating to self-deprivation and endurance or by the proactive use of sensitive toothpaste. Form analysis elegantly locks the logic of the interviewees into their own and very reflexive forms. It also demonstrates how complex forms could be paradoxical in their two sides: they played like a coin; each side was possible only if the other existed." (Gibson and Boiko 2012: 67).

44 "Sociologists have developed the concept of medicalization to explain the way in which the apparently scientific knowledge of medicine is applied to a range of behaviours that are not self-evidently biological, or even medical, but over which medicine has control" (White 2002: 42). In this sense; "We live in a medicalized society, one in which we explain problems in medical terms. For example, responding to social encounters with heavy drinking is explained as alcoholism. Inappropriate behaviour in the classroom is labelled hyperactive disorder, or, if it involves learning

vague[45]. Then we can say that nowadays the whole life, with its conducts and choices, is relevant for the medical system.

Beyond the possibility to observe specific areas related to health through Social system theory (Kleve 2006), according to a hypothesis formulated for some time, nowadays health would constitute a differentiated functional system. We should then talk about *health system* and not about *medical system*[46]. Moreover, in this case we should clarify if we mean a sort of "evolution" of medical system (a "medical system expanded") or a *different* (sub)system. These possibilities – despite the fact that it seems difficult to argue that health is a programmatic parameter, and not an empty formula in the service of medicine – deserve consideration, due to the fact that – even if Luhmann talked about "medical system" or "medical treatment system" – he seemed not to exclude the possibility of differentiation of more subsystem than he described. All things considered, the differentiation of a social system is an empirical fact[47].

There are some works that, based on Luhmann and its few articles about medicine and health (Luhmann 1990a; 1990b; 2015) discuss this topic: dealing with the structure, the function, the semantics of health and its communication, it is argued that there are sufficient reasons to talk about a health system[48].

For Bauch, for example, the system of treating illnesses is becoming the "health system", no longer related to illness alone: traditional medical system evolved in "a sort of large-scale prevention for possible long-term pathological states" (Bauch 2000: 400). For this reason he proposes the

difficulties, dyslexia. Suicide is explained in medical psychiatric terms, as is gambling. Often people's gender preferences, especially if they are homosexual ones, are explained as the outcome of medical abnormalities." (49).

45 Zamorano Farías (2019) provide an unusual observation of this theme.

46 See for example Martini 2015.

47 "every subsystem reconstructs the comprehensive system to which it belongs and which it contributes to forming through its *own* (subsystem-specific) *difference between system and environment*. Through system differentiation, the system multiplies itself, so to speak, within itself through ever-new distinctions between systems and environments in the system. The differentiation process can set in spontaneously; it is a result of evolution, which can use opportunities to launch structural changes." (Luhmann 2012 vol 2: 3).

48 See for example Michelini 2015; Knudsen and Vogd 2015.

code *health promoting/health impairing* and the differentiation of health system into more specific sciences, like health care and nursing sciences.

Pelikan goes further, proposing a quite detailed analysis of health as a system which is focused not only to avoid illness, but, for the most part, to promote and produce health.

In fact, if traditionally medicine "limited itself to the management of illness", in late modernity it is trying to influence more and more "positive *physical* health" (Pelikan 2007: 88-89). Moreover, due to the fact that "only death and life are logically proper opposites, but positive health and illness do coexist besides each other over a broad spectrum"[49], then "medicine and cure of disease are no longer identical, but are becoming differentiated" (89).

So today there are different strategies aimed to improve and maintain health: "reactive *treatment* of actual illness or impairment", "prophylactic *prevention* of future illness and impairment", "proactive *protection* of positive health" and "*development* of positive health" (80-1)[50].

Pelikan disagrees with Luhmann about the absence of a specific medium and symbiotic mechanism (that link the medium to the human body) for clinical medicine, arguing that this medium consist of "the science-based system of medical terminology for differential diagnostics [...] and for the related system of therapies", while "pharmacy, surgery, radiology (and laboratory medicine)" constitute symbiotic mechanism (89-90).

For this reasons, in modern society he identifies a specific societal function for public health, defining it as "prevention of physical (mental and social) ill health and protection of physical (mental and social) positive

49 "positive health can exist without illness, but illness always needs a minimum of positive health to host it, so to speak. So, logically, it would be more correct to speak of illness "of" or "within" health, than of illness "and" health. [...] Therefore, it does not make much sense to treat (positive) health and illness as opposites, as some do. Only death and life form an either-or-relationship" (Pelikan 2007: 78).

50 In bold in the original text. Pelikan also proposes two different codes: "presence vs. absence of *physical* illness (disease) for ill *physical* health" and "suboptimal vs. optimal *physical* positive health" (89).

health of specific populations by developing less pathogenic environments (and stimulating less pathogenic behaviours)" (92)[51]

The binary code of the public health system would be then "presence vs. absence of pathogenic (risk) factors in environments (including infrastructures and behaviours of populations)" (92). According to the author, the system developed specific semantics and programmes. The big difference between clinical medicine and modern public health system is that while clinical medicine "is oriented to treat actual, manifest and severe ill health of single individuals", public health "is oriented at avoiding future, possible ill health of abstract populations" (93).

With the development of late modernity, clinical medicine is then more and more focused on improving positive physical health and quality of life for individuals, developing and expanding its domain (95-96). Finally, Pelikan illustrates a further differentiation of the healthcare system: he identifies, on the one hand, "three different and separate, but institutionally partly overlapping systems" for ill health (medical care – for physical ill health; psychotherapy – mental ill health – and social work – for social ill health"; and on the other hand, three function systems "for developing positive physical health (sports and fitness training), positive mental health (meditation and wellness training) and social positive health (different forms of legal, economic and social consultancy and coaching)" (96-8).

Beyond this specific understanding, the idea of an "health system" could seem credible due to the fact that today, when we talk about health, it is quite obvious that we do not only mean the absence of diseases or illnesses, or the need to be treated: it is no longer true that the medical system acts only when we get sick.

Above this, the general hypothesis of an autonomous "health system" could be sustained on the idea that exist programmes – that is, conditions

51 "This function is not fulfilled by the emergence of a distinct and specific function system of its own, but taken over mainly by politics, relying upon and using solutions, achievements, performances of science, law, and – to a lesser degree – education and the mass media" (92).

that specify the use of the code so that operations can happen –, not strictly related to the treatment of diseases and illnesses, but more generally related to the safeguard and to the continuous and generalized improvement of bodies and minds.

The inflation of claims could support this hypothesis: we should consider not only the claims, but also the deriving expectations – cognitive, normative and affective – which are increasingly hard to control. These claims, as we saw, are addressed not only to physician, nurses, hospitals and clinics, but to every kind of discipline, activity, therapy – and the related professional and not-professional figures – that prospect some improvement for the body and the mind[52].

If medicine is only able to observe diseases (the negative side of the code), this also means that it is a system that treats diseases and not a system that produces health (Luhmann 1990: 190), in particular with respect to time: patients cannot wait, and care always takes place in the present. But we could question: is this already true? Or nowadays the massive presence of prevention, control and monitoring of life conditions (at the same time more and more *smart*, more extensive and less invasive), the high number of prescriptions to adopt healthy lifestyles, and also the rise of critics, theories, policies that unify health (of human beings) and ecology (of the planet) (for example, we could think to food: it should be safe and nourishing, but also produced in a sustainable way) – all these processes push us to seriously take into consideration the idea of a broader health system?

Another element to keep in mind is that Luhmann himself realized the complexity of the medical system talking about the further codes and distinctions (genetically perfect/worrying; treatable/untreatable), leaving room for new reflections that have to consider health beyond the singular and specific perspectives (only medical or scientific, ethical or political) but

52 Also – as Zamorano Farías notes – nowadays the inflation of claims, faced with the dangers generated by changes in lifestyles (diet, drugs, smoking, etc.) stimulate the creation of new communicative formulas of "trust" not only in the medical system, but also in the economic and political system (i.e.: public policies for prevention) and in the legal one (new norms, rights and protection of patients) (2019: 58).

with a complex and overall view. In this way we could verify that the area and the scope of medicine has expanded (Martini and Zalazar 2017).

To sum up, the idea of an evolution of the medical system in a broader health system would therefore be justified by the expansion and the increasing complexity of the system itself: these processes would therefore generate a progression of the system to an upper level. Functional differentiation means systems autonomization, and this legitimates claims: systems should improve their function. It generates unlimited expectations for improvement, despite the fact that they are highly unlikely or operationally impossible (Zamorano Farías 2019: 59).

Moreover, and probably more important, while the medical system treat diseases – that have to be identified by doctors, and not through the patients/consumers claims (Zamorano Farías 2019: 59) – the "health system" try to "produce health", not only by intervening to improve the general condition of bodies and mind, but also by encouraging proper behaviours, providing increasing possibilities for control and prevention, extending rights, and even more.

If it is true that research at the current stage cannot provide a definitive answer to the question, it is also true that the tendencies we have exposed – inflation of claims, medicalization, judicialization of health, etc. – encourage to consider, at least, the possibility that the medical system itself may further differentiate itself internally.

4. The future of theory

Now that we have seen the close relationship between theoretical and empirical research, we can go back to the question concerning the practical usefulness of theory.

Nowadays we may notice a certain unpopularity of theory, which is underestimated due to the growing possibilities provided by algorithms, digital technologies and devices, and by the World Wide Web in general. This means that it is extremely easy to collect a large amount of data and share them on a large scale. Data are immediate: they express quantities,

trends, something very concrete, that does not need to be elaborated in order to be understood – at least superficially. On the contrary, theories express abstract concepts, complex ideas, hypothesis and theses, through specific languages. Then the question: why should we work theoretically, when it is so easy to access databases, that are offering data through numbers and graphics, in such a direct, clear and concrete way?

According to some, in the era of *Big Data*, theoretical models are superfluous. For example the former editor-in-chief of *Wired* magazine wrote an article with an eloquent title: *The End of Theory* (Anderson 2008). Taking Google's philosophy as an example – that is, the "better" page is the one with more incoming links, not the more reliable, or complete, and so on – he claims that what statistics provide, "that's good enough. No semantic or causal analysis is required". That is: it is useless to ask ourselves: "why people do what they do? The point is they do it, and [today] we can track and measure it with unprecedented fidelity. With enough data, the numbers speak for themselves." (Anderson 2008).

Despite admitting that data "without a model is just noise", he underlines that, when faced with massive data, the classical approach to science – hypothesize, model, test – "is becoming obsolete". Then it is possible to say that "Correlation is enough" and that, instead of looking for models, we "can analyze the data without hypotheses about what they might show" because

> The new availability of huge amounts of data, along with the statistical tools to crunch these numbers, offers a whole new way of understanding the world. Correlation supersedes causation, and science can advance even without coherent models, unified theories, or really any mechanistic explanation at all. (Anderson 2008)

The problem behind this kind of interpretation (about the role of theory) is precisely its renounce to interpretation (of the world): it renounces to meaning, that is, to elaborate the experience establishing connections between phenomena, processes, behaviors, and so on.

Conversely, we would propose another vision of theory. As the philosopher Byung-Chul Han writes, if it is true that *Big Data* produce "more information", it is also true that the mere "accumulation of information" is not the same as "truth": data, without an interpretation, without a broader perspective, without a direction, do not produce "meaning" (Han 2015: 8). So we have on one hand the impressive growth of data and information, and on the other theory, which with its models, its distinction between what belongs to it and what does not, "represents an essential decision that causes the world to appear wholly different – in a wholly different light" (Han 2017b: 49).

Data allow counting, are *additive*, are not *narrative*: let's think about the *timelines* of our profiles on *social networks*: they are not a narration, they don't tell a story. On the contrary, a timeline "simply enumerates and adds up events or information" (Han 2017b: 67). It does not allow to develop a *thought* that refers to what is incalculable, that cannot be reduced and represented by numbers: something that theory does, as it reduces entropy and "clarifies the world before it elucidates it" (Han 2017a: 50). Then the ideology of "dataism", that is "data fetishism", would mean a renounce to meaning (Han 2017b: 70-71).

Theory is therefore a "highly selective *narration*, it cuts a clearing of differentiation through untrodden terrain" (Han 2017a: 49). Theory is the art of distinction. It is no coincidence that Luhmann speaks about sociology as a "*history of distinctions*" (Luhmann 1983a: 988): therefore only developing a structured and strong theoretical framework, through a rich semantics able to describe the complex social structures (Luhmann 1996: 130), it is possible to properly conceive (observe and represent) the high complexity of modernity.

It is interesting how two different observers like Han and Luhmann – the first one developing a kind of critical philosophy and the second trying to build the preconditions for a truly scientific sociology, without the pretension to change reality, but only to observe it – seem the reach

very similar conclusions about what theory is and must do: to observe, distinguishing, differentiating and describing the world.

If as Bourdieu and Wacquant recalled, "Theory without empiricism is empty, but empirical research without theory is blind" (1992: 162), we could say that the kind of theory we have described in this work is not empty, because is not a solitary, arbitrary and self-referential soliloquy of the researcher, who picks some elements from the "external reality" and re-elaborates them in order to build an interpretation of the world. Instead, we have described a process which consists of formulating problems in a rigorous manner, producing, in this way, knowing.

Finally, this seems exactly the practical usefulness of theory: theory helps to formulate problems, and precisely this – as Luhmann writes – represents the condition for scientific progress, since problems represent the core of identity of a science, through which it is able to change its own theories (1983b: 307).

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