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SOCIETY'S CONSTITUTION AND CORPORATE LEGITIMACY

OR:

WHY IT MIGHT BE UNETHICAL FOR BUSINESS LEADERS TO THINK WITH THEIR HEART

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„Die Frage ist vielmehr, ob und unter welschen Umständen es sinnvoll oder gar geboten sein könnte, sich an der *Unterscheidung* von gut und schlecht bzw. gut und böse zu orientieren. […] Für die Ethik im üblichen Sinn ist das keine Frage, für sie versteht es sich von selbst, dass et gut ist, zwischen gut und schlecht zu unterscheiden." (Luhmann 2008c:198-199)

Abstract

Is the perspective of ethics sensitive to the social complexity of the changes within the legitimating notions which determine the role and responsibility of economy and business companies within contemporary society? On the scientific dimension, taking the human being as ultimate reference or endeavouring to provide organisations with human qualities may represent sociological under-complexity. On the practice dimension, catchwords such as 'managers must learn to think with their heart' may risk leaving corporate executives in the lurch, considering the immense and increasing social complexity constituting and surrounding organisations today.

Instead, from a sociological perspective the new legitimating ideals empirically expressed in the thematisation of ethics and concepts such as CSR and triple bottom line are reconstructed as *reflection,* the specific 2nd order observation mode of self-referential social systems such as economy and companies. This reconstruction sees the changing interrelation between organisation and society in relation to the societal structure and evolutionary processes. It is based mainly on Niklas Luhmann's theories which empty society of human beings as well as any teleology or content apart from the highly improbable ability to reproduce itself.

At the specific stage of full functional differentiation in the latter half of the 20th century, society adjusts itself by means of new legitimating notions and legitimising practices. Problems activating these changes are identified at five interrelated structural dimensions: 1) society's strain on its environment, leading to notions such as the triple bottom line – i.e. a balancing of economic, social and environmental considerations; 2) an increasing acknowledgement of the contingency of social institutions, leading to a pronounced conflict between decision-makers and those influenced by the decisions, and consequently to the call for responsibility, transparency and sustainability; 3) the growing independence of society's functional spheres (economics, politics, science, education etc.) which paradoxically increases their interdependence and consequently their reciprocal sensitivity, expressed for instance in partnerships and stakeholder models; 4) the overload of conventional politics and law, leading to political initiatives which aim at internalising society as horizon for the business community's sense of responsibility; 5) globalisation which activate previously passive conflicts between different societal forms, values and cultures.

If we fail to see the complex social and societal contexts within which the evolution of new legitimating notions and new legitimising practices are embedded, then concepts such as business ethics and CSR may at best represent good intentions, at worse may do more harm than good by overshadowing and dwarfing the social complexity.

1. INTRODUCTION

When the sociologist behind one of Germany's most important contributions to understanding the challenges facing contemporary society, Niklas Luhmann, in 1993 was asked to speak on the theme of business ethics, he commented that,

> Es ist mir nicht gelungen, herauszubekommen, worüber ich eigentlich reden soll. Die Sache hat einen Namen: Wirtschaftsethik. Und ein Geheimnis, nämlich ihre Regeln. Aber meine Vermutung ist, dass sie zu der Sorte von Erscheinungen gehört wie auch die Staatsräson oder die englische Küche, die in der Form eines Geheimnisses auftreten, weil sie geheim halten müssen, dass sie gar nicht existieren. (Luhmann 2008c:196)[1]

I admit to having related reservations, and shall suggest that the rhetoric and rationale of ethics is an inadequate reduction of complexity when the problems of economy's negligence and the interrelation between business and society are addressed. Applying the human being as ultimate reference, using catchwords such as "business leaders must learn to think with their heart" (Pruzan 1998) and endowing organisations with human qualities such as conscience (Rendtorff 2007) on the one hand represent a sociological under-complexity, on the other hand leave business leaders in the lurch. As also Luhmann suggests, then

> Die Frage bleibt, ob Ethik diejenige Theorieform ist, mit der man angemessen auf die Lage der Gesellschaft am Ende dieses Jahrhunderts [20th century, sh] reagieren kann. In den guten Absichten der Ethik-Fans könnten sich schlimme Folgen verbergen, nämlich eine Ablenkung von allen ernsthaften Versuchen, die moderne Gesellschaft und in ihr das Funktionssystem Wirtschaft zu begreifen. (Luhmann 2008c:203)[2]

Instead, from a sociological perspective the new legitimating ideals empirically expressed in the thematisation of ethics and concepts such as CSR and triple bottom line are reconstructed in relation to societal structures and evolutionary processes. I shall suggest that five interrelated structural problems have activated *reflection*, the specific 2nd order observation mode of self-referential social systems such as economy and companies, as a reaction to the strains of the reflexivity of solid modernity's full functional differentiation.

Empirically, the analyses are based on observations of the changing expectations to corporate legitimacy since the 1960es, with a main focus on Denmark (Holmström 2003; Holmström 2005b; Holmström 2007a; Holmström 2008a). However, since a key point is that ideals of organisational legitimacy interrelate with societal coordination, generic structures are identified in order for the findings to have global perspectives. Theoretically, the analyses draw mainly upon Niklas Luhmann's theories which empty society and organisations of human beings as well as any teleology or content apart from the highly improbable ability to reproduce itself.

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[1] "I have not succeeded in working out what I am really supposed to talk about. The matter has a name: business ethics. And a secret, namely its rules. My assumption is, however, that it belongs to the sort of phenomena as the state reason or the English kitchen, which appear in the form of a secret, while they have to keep it secret that they do not exist at all."

[2] "The question remains whether ethics is the form of theory with which you can react properly on the situation of society at the end of this century [20th century, sh]. The good intentions of the fans of ethics may conceal grim consequences, namely a diversion from all serious attempts to understand the modern society and, within it, the functional system of economy."

Following Luhmann, the fundamental premise is to give up the idea that social systems are living systems, and to see them instead as systems whose basic elements consist of subject-less communications, vanishing events in time that, in producing the networks that produce them, constitute emergent orders of temporalised complexity in continuously changing self-referential social systems. Communication is the social processes which constitute anything social – society, organisation, interactions – and the concept is not confined to linguistic processes. For instance, payment processes are seen as communication. Communication takes on its own life in closed, self-referential communication circuits – social systems – which continuously produce meaning. However, they are guided solely by their own horizon of meaning, not the intentions and hermeneutic capacities of a communicating subject. Although meaning is "the universal medium of all psychic and social, all consciously and communicatively operating systems" (Luhmann 1997a:51), then both types of systems are self-referentially closed and operate simultaneously without interfering with each other at the level of their respective autopoiesis, yet they are structurally coupled. No social system could exist without the environment of psychic systems, and correspondingly, as Knodt observes, "a consciousness deprived of society would be incapable of developing beyond the more rudimentary level of perception" (Knodt 1995:xxvii). The interrelation between thoughts and communications activates a complex co-evolution, however is not linear. The communicative resonance provoked by a psychic system is always self-referentially conditioned by the social system, and vice versa. Baecker comments that

> Das bedeutet nicht, dass man […] nicht mehr psychisch, sondern sozial zurechnet, sondern das bedeutet, dass man beides tun kann, in jedem Fall jedoch eine Entscheidung treffen muss. Das alleine reichert die analytischen Möglichkeiten enorm an und macht, da die Entscheidung in jeden Fall alles andere als selbstverständlich ist, mit der Ambivalenz als Grundtatbestand individuellen und sozialen Lebens bekannt.(2006) [3]

For Luhmann, the intransparency of consciousness from the viewpoint of the social is not an obstacle to be removed but the very condition that activates communication. Systems rationality is about establishing and stabilising structures of expectation in an otherwise infinite, immense world by reducing complexity and thus rendering probable communication: "Every social contact is understood as a system, up to and including society as the inclusion of all possible contacts" (Luhmann 1995:15). The limits of society are established by the limits of communication. Contemporary society is seen as a complex system of communication that has differentiated itself into a network of interconnected social subsystems through which the world is recognised. Society lacks any 'super-system' to ensure coordination, let alone direct it teleologically to a better future. We cannot identify a privileged perspective: As a 'recursive universe' society is characterised by disorder, non-linear complexity, and unpredictability.

As opposed to ethical approaches, this approach *first* can be characterised as anormative "Sozialtechnologie" – once (Habermas and Luhmann 1971) a condescending description, today increasingly acknowledged as a sensitive scientific approach required to understand contemporary social complexity, as Knodt observes, "because an acceptance without any nostalgia of the structural limitations of modernity – is a precondition, and possibly the only way, of finding creative solutions to its problems" (Knodt 1995:xxxvi). *Second,* the approach dissociates the analytical optics from anthropocentric understandings of society which see the individual as the ultimate reference. Instead, this approach sees only self-referential social systems constituted by communication – and nothing else. *Third,* social problems and dynamics are localised within the self-referential, self-organising circular communications driven neither by instrumen-

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[3] "This does not mean that you […] refer nothing to the psychical, but only to the social: but it means that you can do both, and in any case have to make a decision. That alone enriches the analytical potential enormously and, as the decision in any case is all but obvious, makes you aware of ambivalence as the basic state of affairs of individual and social life."

tal systems rationality nor oriented towards understanding – but driven by a circular rationality. Evolutionary dynamics are driven only by the compulsion of communicative processes to continue themselves. This apparently simple – but counter-intuitive – dynamics is the basic frame for empirical analyses based on Luhmann. A consequence of this theoretical approach is that problems will always be identified with the communicative processes, more precisely with the continuation of communicative processes which compulsively activates learning processes when they are endangered. Consequently, this approach identifies the evolution of corporate semantics and practices such as ethics and CSR as part of society's learning processes in the endeavours to clear the way for the continuation of the communication processes constituting society.

2. RECONSTRUCTING LEGITIMATING IDEALS AS REFLECTION

A basic challenge for the continuation of the communicative processes is the balance between the social systems' open- and closedness. As I shall demonstrate, with full modernity this balance grows a problem on 5 structural dimensions: *First,* the conflict between society and environment – the problem being society's increasing strains on human beings and nature, finding solutions such as the triple bottom line. *Second,* the increasing gap between organisations as society's predominant decisions-makers and those affected by the decisions, also known as the risk/danger dichotomy, promoting calls for social responsibility, transparency and sustainability measures. *Third,* the increasing independence with and consequent interdependence between society's differentiated functional systems – which activate solutions such as increasingly complex stakeholder models and polygenous partnerships. *Fourth,* the challenges to politics in coordinating an increasingly complex and diverse (world) society – which activate reflective law and political initiatives such as polygenous policy networks and CSR in order to encourage corporate self-constraints. *Fifth,* the conflicts between different forms of society as globalisation increase the sensitivity and interdependence between societal and cultural forms that were previously separated.

I shall return to these conflicts, however, to confront them, their premises and their potential requires insight into the social dynamics and the premise that the open- and closedness of social systems, including society, are not opposites, but mutual preconditions – in order for the analysis not to jump to easy conclusions and simplified solutions such as more openness, borderless sensitivity or de-differentiation.

With Luhmann, social systems are closed in order to be open, open in order to be closed. *First,* a social system can observe and realise only a segment of the world, depending of the complexity not of the world, but of the system. Observation refers neither to human beings nor to sight, but is social operations. For instance, economy does not have the tools required to see deforestation or human stress until it catches on to the criteria of payments, prices, profits. *Second,* when information is brought into the system's communicative processes, it is recoded and changes its meaning as a systems-internal construction of a systems-external world. The sufferings of millions of Africans afflicted by AIDS cannot be observed directly by society, since they are not social, but organic and psychic processes. However, communication can thematise pain, disease and poverty insofar as society has developed distinctions for observing such matters. Correspondingly, within society, social systems observe and reconstruct each other from each of their specific perspectives. For instance, the political system sees steering objects, news media reconstruct their environment as information, and economics sees markets.

If the open observation is not founded in a specific social filter, which is established exactly by means of the closed meaning boundary, then there is nothing to guide the observation; the system drowns in indeterminate complexity. It cannot separate itself from the environment. This goes for any social system – from society to organisations. If the organisation cannot determine any premises for its decisions proc-

esses – for instance whether being a business company or a humanitarian organisation, then they come to a halt. The organisation dissolves. So, the closed meaning boundaries have a fundamental function, and "When put under a pressure of selection, the system principally synchronizes itself with itself, however [it] can do this in forms that are more or less sensitive to the environment" (Luhmann 2000a:162). Consequently, in systems theory we can never talk of a linear causality and direct adjustment to the environment, only of a social system's adjustment to itself.

Hence, the conditionality of an observation and the difference between the 1st order observation characterised as *reflexivity* and the 2nd order observation of *reflection* become decisive to the analysis of contemporary ideals of organisational legitimisation (Holmström 1997; Holmström 1998; Holmström 2002; Holmström 2004; Holmström 2005b). This apparently small mechanism has crucial implications to the sensitivity and to the sense of responsibility of an organisation. *Reflexivity* implies a monocontextual, narcissistic perspective from within which the organisation applies distinctions blindly, and from where the organisation takes its own worldview for given, takes what it sees to be the one reality, the only truth – and consequently conflicts blindly with different worldviews. In *reflection*, the organisational system sees itself as if from outside and re-enters the distinction between system and environment within the system. "This higher layer of control is attained by social systems' orienting themselves to themselves – to themselves as different from their environments" (Luhmann 1995:455). Consequently, reflection is the production of self-understanding in relation to the environment. So, where the reflexive organisation is inattentive to the broader context and consequently to the unintended, however often far reaching side-effects involved in its decisions, reflection enables the organisation to understand itself in a larger interdependent societal context and to develop self-restrictions out of consideration for its environment in order to secure its own independence and self-referential development (autopoiesis) in the long term.

	REFLEXIVITY SOLID MODERNITY/FULL FUNC.DIFF.	REFLECTION FLUID MODERNITY/FLEXIBLE FUNC.DIFF.
LEVEL OF OBSERVATION	Mono-contextual, narcissistic 1st order perspective from within.	Perspective rises to a 2nd order level; facilitates poly-contextual worldview.
NECESSARY >< CONTINGENT	Takes own worldview for given; social norms and institutions seen as necessary, natural, inevitable, self-evident	Own worldview as contingent, i.e. product of social choice, and could be different.
SENSITIVITY TO CONFLICT	Does not see conflicts, tries to silence them, or to dissolve by information	Sees the inevitability and the potential of conflicts; exposes their background and facilitates exchange of views
LOCATION OF SOCIAL RESPONSIBILITY	Responsibility based in society's well-established norms; no responsibility as decision taker; feels as a victim	Sees own decisions as based on choice; assumes responsibility as decision taker.
LAW/LEGITIMACY	Relates to law mainly for legitimacy	Reflective and discursive processes of legitimisation
CSR	An add-on	Part of core decision processes
CONFIDENCE/ TRUST	Relies on passive confidence	Active trust to be continuously generated
ETHICS/MORALS	Business morals	Business ethics

Table 1 Differences between reflexivity and reflection on categories relevant to corporate legitimisation.

This rise from 1st order narrow, unambiguous, monocontextual perspectives to 2nd order broad, open, polycontextual perspectives has huge implications for the relationship between organisation and environment. From interrelations being characterised by prejudice and locked positions, reflection opens up

attempts at mutual respect and consequently to practices such as stakeholder engagement and partnerships.

This does not mean that relations between reflective systems are free of conflicts. On the contrary, the basic condition of late modernity is conflict. Reflection implies a larger mutual toleration of the differences and the diversity, and consequently the possibility to transform conflicts into productive dynamics. Reflective learning processes are empirically expressed in a movement towards poly-contextual perspectives, towards mutual considerations – not to dissolve and integrate the differentiated societal rationalities, but to maintain their specialisation. Interdependence is acknowledged as a precondition of independence and autonomy, and vice versa.

2.1.   <u>Society's problems strike in organisations</u>

In order to understand the legitimating ideals reconstructed as reflection – business ethics, CSR, etc – I suggest that they must be seen in relation to societal evolution, and the co-evolution of society and organisation.

In Europe, since the 1600s a new form of primary societal differentiation gradually replaced stratification which differentiates society into hierarchical layers. In the *functionally differentiated society,* the communicative processes of diverse functional systems are conditioned by specific symbolic media and binary codes and each structures specific expectations (Luhmann 1997a). Luhmann describes a principle which he demonstrates in several analyses of some of the more prominent functional systems, e.g. politics (2000c), law (1993b), science (1990b), economics (1999), art (2002a), mass media (1996b), education (2002c) and religion (2002b)[4]. The function of economy is identified as reduction of scarcity, the medium as money, the binary code as '+/÷ pay, own', and the communicative processes as payments. In line with the theory's fundamental idea, profit is not an end but a means to the continuation of communicative processes. Functional systems produce each their specific realities which are incompatible and indifferent to each other, "but this indifference is used as a protective shield to build up the system's own complexity, which can be extremely sensitive to irritations from the environment as long as they can be internally perceived in the form of information" (Luhmann 1998: 35-36). The integrity of functional spheres is a basic ideal of modernity – so that for instance neither religion nor politics strain science, education, economy or news media. The important point is that legitimisation processes will work against de-differentiation – since that would ultimately lead to the dissolution of society.

By accelerating a pronounced growth of complexity, functional differentiation has facilitated industrialisation and today's knowledge society. This complexity also implies that what in previous societies just happened over the course of time now "demands explicit couplings in the form of decisions in order to secure a connection between past and future" (Luhmann 2003:53). So, as functional differentiation evolved, it required a supplementing principle of system formation: organisation. Organisations establish a social identity (i.e. stable expectations over time), which bridges the gap between past and future. It is by means of its organisations "(and only there!) that a society enables itself to act collectively and to make programmed decisions" (Baecker 2003:20). Functional systems cannot decide, and consequently, functional systems are referred to organisational systems.

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[4] The luhmannian theory focuses on process more than on structure and does not claim a once-and-for all differentiation of certain functional systems. Function does not – as for instance with Parsons (1951) – imply any legitimation but an analytical focus: a systems' function is seen as an offer of meaning which is achieved by its specific reduction of the complexity of the world.

In a luhmannian optic, organisations are constituted not by employees, factory buildings, products or services, but "'consist' of nothing but communication of decisions"(Luhmann 1997a:833). This means that just as society would deteriorate if the communicative processes slowed down – then organisations depend on strong and dynamic decision processes: "The maintenance and improvement of the competence of deciding (instead of rationality) become the actual criteria of effective organisations" (Luhmann 2000a:181). Again, the driving dynamics with Luhmann is the continuation of communication – not rationality, neither specific objectives (although this is what is thematised by organisations).

Even if all organisations refer to several functional systems (and almost all in some way to economy), they predominantly identify themselves by means of a primary reference to one of society's functional systems – a business company to economy, a research institution to science, a court of justice to law, and so forth. Each functional reference constitutes specific expectations: it facilitates decision-making processes and strengthens expectations when you know whether you deal with a hospital (health system as functional primacy), a business company (economic system), a humanitarian organisation (care system), a law court (law system), a newspaper (mass media system) or a political party (political system). The important point in the context of new legitimating notions is that although these notions favour an increasing number of functional references, then legitimisation processes will work against total polygenity of an organisation since that would lead to uncertain patterns of expectations – and ultimately to the dissolution of an organisation.

2.2. Reflection at two interrelated levels

During the 20th century, functional differentiation is fully developed in some Western societies, with firmly stabilised boundaries and high specialisation – and high ignorance towards society's environment as well as the functional systems in between. Old legitimating notions of growth and progress no longer support the continuation of the processes constituting society. They gradually change towards ideals of sensitivity, responsibility, self-constraint and sustainability. As a key to understanding the change of legitimating ideals, I shall introduce a small social mechanism with extensive implications: Reflection – as opposed to reflexivity, which was legitimate during the construction and stabilisation of the principle of functional differentiation. I suggest that with full functional differentiation reflection is provoked at two structural dimensions: At the functional and at the organisational dimension. This is a general trait for any functional and for most organisational systems, not only for the economic system and for business companies, defined as organisations with economy as the primary reference of their decision-making. As to the economic system, it is part of the fundamental societal structure, and society's self-continuing dynamics will endeavour to strengthen the functional differentiation constituting modern society since "a society can only imagine a change of its principle of stability and that is to say its form of differentiation […] as disaster" (Luhmann 1996a:104).

On this structural dimension, I suggest that we understand the learning processes towards reflection as a means of strengthening the societal skeleton by making it flexible and by reinforcing boundaries at the same time, thus facilitating communicative processes. Applying the luhmannian optics, centuries of turbulence, protests and legitimacy crises seem to help society – including the business community – adjust and preserve itself rather than to threaten it:

> The system […] does not protect itself *against changes* but *with the help of changes* against rigidifying into repeated, but no longer environmentally adequate patterns of behavior. The immune system protects not structure but autopoiesis, the system's closed self-reproduction. (Luhmann 1995:372)

In the 2nd order perspective of reflection, social systems on the one hand retain and develop their independent complexity, and on the other hand they develop self-restrictions in regard of their interdependence. Medium and code are invariant, whereas evolutionary variations in functional systems are located in their *programmes:* "The economic system will never doubt that there is a distinction between payment and non-payment. Programmes, on the other hand, can be varied" (Luhmann 1997c:52-53). Accordingly, as reflective traits are integrated in the programmes of economy, formerly extra-economic considerations such as concerns for nature and human rights as well as respect for other functional systems appear today to be included in economy's programmes without the imperative of profit being afflicted.

Since functional systems have no address, the turbulent environment and the frequent legitimacy crises challenging society's functional differentiation in particular since the 1960es strike in organisations. Even if we may ultimately trace back problems to the functional differentiation of society, then society's conflicts surface in organisations. Organisations "equip society with ultra-stability and with sufficient local ability of absorbing irritation" (Luhmann 2000a:396). The adjustments of society mainly take place in organisations and provoke new coordinating structures such as ethical programmes and stakeholder engagement. Where legitimating notions no longer support the continuation of the communicative processes constituting society (including organisations), they gradually change. Legitimacy is understood as "a generalised preparedness to accept decisions within certain boundaries of tolerance; decisions which are still undecided as regards contents" (Luhmann 1993b:28). However, as I shall demonstrate, organisations are under double fire. Not only do their functional primates constitute a challenge; so does the character of their principle operations, decisions. And the fundamental premise for understanding this challenge is that an organisation exists only as long as it makes decisions – the specific communicative processes constituting organisations. This means that organisations are threatened when their capability of making decisions are threatened.

3.   5 STRUCTURAL CONTEXTS

Although they are interrelated and together advance new legitimating ideals and legitimising processes as expressed in the call for corporate social responsibility, ethics or sustainability, then the structural conflicts activating learning processes towards reflection can be identified on 5 different dimensions on the specific stage of full functional differentiation.

On all of these five dimensions, new legitimating notions and practices to some extent solve the structural problems of full functional differentiation – however, they are not miracle cures, and although often presented as simple and self-evident solutions they are embedded in complex contexts and often provoke new problems.

3.1.   <u>Society vs. Environment: The Triple Bottom Line</u>

As to the first structural dimension, the theoretical premise is that society has to reconstruct its environment into social processes according to society's functional filters – economy, politics, family, science, education etc. – in order to observe, interpret and communicate organic, chemical, biological, psychical, physiological processes as for instance 'obesity', 'life quality', 'climate changes' or 'animal welfare':

> It is not a matter of blatantly objective facts, for example, that oil-supplies are decreasing, that the temperature of rivers is increasing, that forests are being defoliated or that the skies and the seas are being polluted. All this may or may not be the case. But as physical, chemical or biological facts they create no social resonance as long as they are not the subject of communication. […] Society is an environmentally sensitive (open) but operatively closed system. Its sole mode of observation is communication. It is limited to communicating

meaningfully and regulating this communication through communication. […] The environment can make itself noticed only by means of communicative irritations or disturbances. (Luhmann 1989:28)

This implies a highly selective resonance to the well-being of nature and human beings. The economic filter will automatically activate questions such as: Does it pay? Does it improve our competitiveness? The economic rationale cannot see its strains on nature and human beings until economic criteria are influenced. And what is seen is then automatically reconstructed from economic premises. A corresponding (in)sensitivity goes for all social dynamics. Politics: Will we gain votes, power? Science: Does it generate new knowledge? News media: Is it new information?

Empirically, during the latter half of the 20th century, a critical mass of unintended side-effects of the blind reflexivity of society's functional filters strain society's environment, such as deforestation and oppression of human rights. The perspective of protest organises in social movements and catches on to mass media's selection criteria of sensation and conflict. Society's functional differentiation is gradually questioned. Decades of numerous legitimacy conflicts seem to activate a general reprogramming of functional systems into reflection which increases society's sensitivity to its environment. Taking the economic system as the example, formerly extra-economic matters are gaining resonance within the meaning boundaries of business, expressed e.g. in the concept of the triple bottom line of people, planet, profit.

The immediate problem on this structural dimension is the problem of too little resonance. Society's resonance is compulsively subject to the functional dynamics. Economy cannot see the relevance of considering people and planet until it increases profits. News media cannot see the problems of climate changes if they do not meet with criteria such as new information, conflict, highest, greatest, worst, violation of norms, near, person, sensation. As to science, research into pollution or stress is subject to academic criteria of truth, and of publication. As to politics, the resonance will follow the urge to gain power and to regulate. However, although this structurally determined resonance is a problem it also solves problems – for without this structural resonance, no forceful resonance:

> This reduction is the condition for noticing and processing environmental changes within the system as such. Coding is the condition that permits environmental events to appear as information in the system, i.e., to be interpreted in reference to something, and it causes this in a way that allows consequences to follow within the system. (Luhmann 1989:116)

Paradoxically, as also Luhmann warns – then the threat may rather be too much resonance. The insensitivity and selective resonance in relation to the non-social environment of the functionally differentiated society implies an extremely high sensitivity and high learning capacity in the individual programmes of the different functional systems. When society finally sees the consideration of human beings and nature as relevant – then it catches on according to the functional logics. The result is the risk of distortion and overreaction. Society's resonance to the strains on its environment tends to proceed unreflected, unproblematised, automatically when it has caught on to the functional logics. The market floods abundantly with CO_2-neutral products, and as the mass media burst with news on climate changes when met with prospects of catastrophe and drowning polar bears promoted by celebrities from rock and politics – then other problems as well as most part of the huge complexity involved in the issue tend to remain disregarded in the shadow. Climate changes attract most attention at World Economic Forum 2007, and it pays for the business community to brand itself as climate conscious and to enter partnerships as *Climate Savers* (World Wide Fund for Nature 2008) because it furthers competitiveness. As to politics, when a cause promises votes and electoral success it automatically catches on even though considerations which please public opinions does not necessarily represent the most reasonable and efficient relief to the

strains on society's environment. Furthermore, resonance is thrown around from one functional system to another, as I shall demonstrate in relation to theme 3 – the paradoxical interrelation between the independence and interdependence of functional systems. With a structural resonance and a tendency to black/which reductions of complex contexts, the risk prevails of distorting society's strains on its environment or of uncontrollable hyper-resonance to the effect that the strains are not relieved – and moreover, that society itself is strained by hyper-irritation. As Luhmann comments, then "such an oscillation of resonance [will] probably have destructive consequence within an evolutionarily highly improbable social system" (Luhmann 1989:120).

3.2.   Organisation: Decision-maker vs. victim

On the second dimension, the focus is on the systemic principle of organisation, and on the asymmetrical relation between decision-maker and those affected by a decision. With full functional differentiation, basic norms over the centuries have grown naturalised, anthropologised and integrated as tacit assumptions and a priori constructs in the self-description of modernity. During the late 1900s, protests against the rigid authorities that dominate society are increasingly activated and gradually provoke communication on communication and a 2nd order perspective which sees social filters as results of contingent choices. The general acknowledgement of contingency causes insecurity and uncertainty, and consequently increases worry and fear. However, as Luhmann (Luhmann 1993a) suggests as a criticism of Beck's *Risk Society* (Beck 1992), we cannot explain fear in the dangers we 'really' face (the fact dimension) – but partly in the temporal dimension in regard to the principally unknown future, and partly in the social dimension in regard to who makes the decision which endangers others. Luhmann changes the distinction of risk as opposed to security applied in most observations on 'the risk society' to risk as opposed to danger, and with this distinction the problem with which the topic of risk confronts society is seen differently: risk cannot be transformed into security, but is a question of attribution. From the dangerous position of potential victims the legitimacy of organisations' risky decisions are continuously questioned. Everything from global warming to AIDS and obesity is attributed to decisions. And, as Luhmann observes, "Refusing to assume risks or demanding their rejection have become dangerous behavior" (Luhmann 1993a:x).

The increasing acknowledgement of contingency has several implications to society's predominant decision-makers, organisations. *First,* the premises of decisions are no longer given but have to be generated along with the decision processes. The identity and legitimacy of an organisation are continuously regenerated, and formerly tacit values are explicated. *Second,* when decisions are seen not as based in natural norms and common consensus but as products of contingent choice they are made socially responsible for their consequences. Where a company was previously automatically responsible by following society's well-established norms, then today it must explicitly assume responsibility for the consequences of its decisions in the broader perspective – mantra: social responsibility. It must be able to account for its decision processes – cue: transparency. The demand for sustainability makes the company responsible for the future. *Third,* the whole social order is based on structures of expectations. In the normative society of yesterday, control and socialisation guaranteed stability. Confidence prevailed and alternatives were unconsidered. With the recognition of contingency, norms and values grow unstable (cf. also Jalava 2003). In unfamiliar, unpredictable and uncertain situations we need trust, which makes it possible to interact on uncertain premises, without firm knowledge, knowing that it is possible to predict future events only with a certain amount of probability. So, relations between organisation and environment are no longer mediated by passive confidence, but by active trust. Moreover, organisations have to be constantly prepared for random 'trust checks' by the mass media. *Fourth,* when universality is replaced by diversity and univocality by ambiguity – then it grows increasingly evident that what different observers

consider to be the same thing generates different information for each of these positions. *Fifth,* when the environment is no longer given, but is acknowledged as contingent – then it has to be continuously re-constructed by the organisation. A new environmental sensitivity is brought into focus for instance in the form of stakeholder models which grow increasingly dynamic and fluid.

However, also to solutions to the problems involved in the increasing acknowledgement of the contingency of decision premises, new problems can be identified according to the social dynamics and societal structures.

As to corporate responsibility, who determines the degree and character? In engaging with stakeholders defined exactly as those influenced by the decision of a company (or those influencing the company, thus placing the company in the victim's position), then fear, worry, feelings and a tendency to prejudice will prevail instead of reason (understood as insight into the complexity of the context) and will tend to paralyse decision-making and impede innovation. Moreover, company (decision-maker) and environment (potential victim) will consistently adopt different perspectives as to the risk involved in decision-making. In continuation of this, then neither information nor transparency will solve the inherent conflict. More likely: the more transparency, the more disagreement (Luhmann 1993a; Holmström 2005a).

In the case of *sustainability*, then, as Willke & Willke (2007) emphasizes,

> Since it is impossible, with the presently available instruments and models, to predict and realise a specific future state of affairs, sustainability in its encompassing meaning is an empty concept, prone to be misused as a placebo moral formula to demonstrate good intentions and ethical highfalutin.

First and foremost, the tendency to an oversimplification of the positions of decision-maker vs. victim may pose severe problems to society, since the victim tends to be automatically seen as morally right. However, who is the victim when? As Fuchs (2007) notes, with a hint to the moralising discourse on nuclear power or GMO,

> Auch die Entscheidung gegen Kernkraftwerke oder gegen die Gentechnologie sei riskant und werfe für irgendjemanden (im Grenzfall für uns alle) entschiedene Gefahren aus.[5]

A moralising discourse tends to catch on to mass media and to public opinion, and to create a general climate of hyper-irritation, fear and worry which generates distrust and hampers social interaction.

3.3. Independence vs. Interdependence: Polygenous Sensitivity

The third interrelated frame for explaining the evolutionary changes of the interrelation between organisation and environment is the increasing conflict between the independence and interdependence of functional systems as functional differentiation stabilises. The higher the independence of functional systems, the higher is their interdependence. The level of knowledge, competency and specialisation in today's full differentiation requires cooperation across multiple and diverse positions. On the one hand, the development of new medicine involves science, which depends on the educational system for qualified scientists and the health system for clinical tests, which depends on economics, which depends on law for intellectual property rights, which depends on the political system, and so forth. On the other hand, tight shutters are needed between, for instance, the rationales of economics and of science for the

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[5] "Even decisions against nuclear power plants or against genome technology may prove risky and may pose severe dangers to some (in borderline cases to us all)."

individual dynamics to function adequately. Verdicts of illegitimacy lurk in case of suspicion of economically biased scientific research results. So, on the one hand, the different spheres are increasingly interdependent with each other in a complex, polycontextual interplay. On the other hand, they are dependent on each other to function independently in each their way, with their individual function, knowledge, competencies and dynamics intact. Consequently, full differentiation on the one hand increases the mutual negligence of functional systems. However, on the other hand it increases the sensitivity and motivation to develop self-restrictions and coordinating mechanisms in recognition of the interdependence. The increasing interdependence does *not* imply reduced independence. Rather, the opposite is the case:

> Such dependencies are often interpreted as constraints on the autonomy if not as symptoms as the reversal of differentiations. Actually the contrary is the case. Functional differentiation promotes interdependence and an integration of the entire system because every function system has to assume that other functions have to be fulfilled elsewhere (Luhmann 1989:42)

Empirically, since the late 1980es and the 1990es we have observed how the sensitivity provoked by this structural conflict also provokes sensitivity to society's irritating perspectives – such as protest, moral, and fear (Luhmann 1989; Luhmann 1993a; Luhmann 1996a; Luhmann 2008d) – as activated by the two structural conflicts analysed above, i.e. between society and environment, and between decision-maker and victim. When irritations are provoked in one functional system, then formerly irrelevant protests and turbulence grow relevant to other functional systems due to the growing interdependence of the functional systems. Gradually, decades of numerous legitimacy conflicts seem to activate a general reprogramming of functional systems into reflection. Although the structural problems originate from the functional dimension, it emerges in organisations. Consequently, reflection on this dimension implies that organisations intensify their sensitivity to diverse perspectives, and the primary functional rationale of an organisation is no longer undisputed trump in the decision-making processes. In the case of business companies, the economic rationale conventionally determining business operations is increasingly being filtered through other rationales such as science, education, family, care, politics, health and mass media. Furthermore, the monocontextual reconstruction of the environment as markets of consumption, employment and investment explodes in polycontextual ambiguity.

Some scholars criticise this polygenous sensitivity as endangering society's functional differentiation. E.g. Beckert comments:

> In funktional differenzierten Gesellschaften trennen sich Wertsphären (Weber) voneinander. Gerade in diesem Organisationsprinzip liegt die enorme Leistungsfähigkeit moderner Gesellschaften begründet. Das Konzept der sozialen Verantwortung von Unternehmen unterminiert aber genau dieses Prinzip, indem von Unternehmen erwartet wird, nicht allein Kriterien wirtschaftlicher Effizienz in ihren Entscheidungen anzulegen, sondern auch nach nichtökonomischen Gesichtspunkten zu handeln. (Beckert 2006:9)[6]

Based on my analyses of the evolution of the interrelation between society and organisation since the 1960es, as already indicated (2.2) I see the context in a different light. I suggest that we understand the learning processes towards reflection, which implies a polycontextual sensitivity, as a means of strengthening the societal skeleton by making it flexible and reinforcing boundaries at the same time, thus facilitating communicative processes. The mutual considerations by the functional systems are a way of strengthening the functional boundaries. New legitimating notions such as CSR, ethical programmes and

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[6] "In functionally differentiated societies value spheres differentiate (Weber). The enormous capability of modern societies lies exactly within this principle of organisation. The concept of corporate social responsibility, however, undermine exactly this prnciple, because it is expected from companies not only to adopt criteria of economic efficiency in their decisions, but to act also from non-economic perspectives."

triple bottom line reporting have strengthened functional differentiation – after a brief period of wavering, as for instance demonstrated by a moralising discourse culminating within the Danish business community in 1997, following a series of legitimacy crises. The discourse fed from a distinction between profit and ethics as exemplified by the following comment on a survey on the Danish business community: "The survey indicates a landslide in businesses' approach to ethical values. Formerly, the common perception was that the companies questioned should concentrate on doing business – i.e. earn as much money as possible" (Mandag-Morgen 1997). However, this challenge to economy's boundaries was quickly replaced by a reprogramming of the economic rationale and a strengthening of economy's boundaries. The Dow Jones Sustainability Index in 2000 was one among many empirical evidences. It concluded that "sustainable companies – defined as companies which in their strategies integrate economic aspects with environmental, ethical and social – give a larger yield on their shares than conventionally driven companies". Economy's former distinction between economic success and environmental, ethical and social considerations has been transformed into new distinctions which determine the legitimating ideals regulating the relations between the economic system and its environment. Correspondingly, Krohn (1999) shows how the irritating perspectives of ethics and morals are absorbed and pacified by the functional systems.

This does not mean that the increase in mutual functional sensitivity does not present any problems in the social perspective since the risk of weakening the structures of expectations lurk. To an organisation, to reflect decisions in several functional rationales multiplies, complicates and slows down decision processes. Moreover, it might grow uncertain for the environment what to expect from the organisation: Are we dealing with a humanitarian organisation, a political party of a business company? Uncertainty may reduce the general level of trust in society.

Furthermore, the growing interdependence between functional systems activates a process where the resonance on problems of other structural dimensions – the strains of society's environment and the fear of decision-making – is thrown around between the independent functional system, finding a distorted, disproportional and uncoordinated hyper-resonance.

> It is […] highly probable that the turbulences of one function system are transferred to others even if, and because, each proceeds according to its own specific code. For example, the economy is at the mercy of scientific discoveries and technological innovations as soon as these find economic use. The same is true *mutatis mutandis* for the relation of politics and law, for science and medicine and for numerous other cases. There is no superordinate authority that would provide for measure and proportionality here. Through resonance small changes in one system can trigger great changes in another.(Luhmann 1989:117)

3.4.   Law vs. Legitimacy: Polycontextreferential Self-Constraint

The fourth interrelated feature is that with full differentiation new political forms emerge which constitute new challenges to organisational legitimisation. The political system is under increasing pressure from the structural problems dealt with above, in coordinating the resonance resulting from environmental strains, in being the major decision-maker of society and consequently main source of risk, and in balancing the functional systems' independence and interdependence. Analyses show how the intervening law of the welfare state gradually grows overburdened and inadequate for flexibly containing the accelerating speed and complexity of social processes. Part of this picture is national legislation's impotence in the wake of globalisation. Based on Luhmann's theories, these emerging forms of regulation are concep-

tualised as *context regulation* (Willke 1994), *supervision state* (Willke 1997; Andersen 2004), *polycontexturality* (Sand 2004), and *polycontextualism* (Holmström 2007a; Holmström 2008a)[7].

In polycontextualism, conventional law and authorities are substituted by increasing communicative complexity. For an organisation to navigate legitimately it must be reflectively sensitive to several rationales and take an active part in society. Key features of polycontextualism are that *first*, the political system relieves the pressure on own risky decision-making and increasingly sends on the responsibility, in particular to the economic system, by means of political initiatives aiming at internalising the societal horizon within the business community. Corporations should take co-responsibility for society, should impose a sensitive self-control in areas where legal regulation does not set sufficient frames, and should do so in 'multi-stakeholder dialogues' (EU-Commission 2001). Still more organisations involve in policy networks and partnerships with other private organisations, public institutions and a multitude of NGOs to solve societal issues by producing tools for organisations' reflective self-restriction – ranging from child labour to global warming. *Secondly,* political initiatives not only endeavour to intervene from *outside* by conventional law – but increasingly influence organisations' *internal* reflections on their own role and responsibility by *reflexive law[8]* (Teubner 2005; Buhmann 2007), acknowledging that

> any system can steer itself only, with the modification that other systems can regulate it not against, but exactly through its self-regulation. Politics can only create conditions that influence the programme of another system and in this way the self-steering. (Luhmann 1997c:53)

In this context we may understand e.g. corporate governance guidelines, political incentives to environmental and social considerations and reporting, and encouragement to voluntary compliance with ethical standards. *Thirdly*, political regulation relies on the regulating force of polycontextual interplays between the public perspective, news media, various NGOs and an increasing number of stakeholders. Correspondingly, sanctions take new, polycontextual forms such as mass mediated legitimacy crises and failing support from stakeholders. *Fourth,* when politics and responsibility are decentralised, the traditional legitimating reference of the political system, public opinion, increasingly grows relevant to organisations outside the political system. We see a pronounced increase of public relations structures.

However, on this dimension too, there may be drawbacks – or at least grey zones which deserve analyses from an understanding of the structures and dynamics of contemporary society. Political initiatives and legitimating notions such as CSR force companies to pseudo-political decisions and a societal responsibility without the possibility of securing adequate democratic legitimacy within the structures of contemporary society. Some scholars (e.g. Henderson 2001; Michael 2003) see CSR as a battle over the right to decide on societal goals and their financing. Where companies decide on societal policies instead of de-

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[7] Contexturality and contextuality are to some extent opposites. A contexture refers to an area which have selfreferentially stabilised itself – in case each functional system is a contexture. Consequently, the functionally differentiated society represents a polycontexturality. Contextuality means discourses, networks, etc. Polycontextualism then is a network of polycontextures.

[8] There seems to be some semantic confusion as to the concepts of reflexive (related to reflexivity) and reflective (related to reflection). Teubner's term is reflexive law. I would argue, however, that his description relates not to reflexivity, but to reflection. Similarly, Beck notes: "Let us call the autonomous, undesired and unseen, transition from industrial to risk society *reflexivity* (to differentiate it from and contrast it with *reflection*). The 'reflexive modernization' means self-confrontation with the effects of risk society that cannot be dealt with and assimilated in the system of industrial society – as measured by the latter's institutionalized standards. The fact that this very constellation may later, in a second stage, in turn become the object of (public, political and scientific) reflection must not obscure the unreflected, quasi-autonomous mechanism of the transition." Beck, U., A. Giddens, et al., Eds. (1994b). <u>Reflexive Modernization</u>. Cambridge, Polity Press. :6

mocratically elected and monitored politicians doing so, then CSR implies a democratic deficit. When for instance Danish healthcare company Novo Nordisk decides to spend parts of their profits on humanitarian support via the World Diabetes Foundation to improve diagnosis, treatment etcetera in 3rd world countries – this might in a structural perspective be seen as 'private taxation' in the form of increased product prices.

Moreover, CSR is seen as self-regulation with reference to partnerships, policy networks or "multi-stakeholder dialogues". However, given the premise that any organisation can see the environment only from its own worldview, then stakeholders will be reconstructed from the company's criteria of relevance: Will this lead to economic distortion of society's meaning formation? And as to partnerships and policy networks: How avoid private politisation? Accordingly, Offe und Preuß (2005:9) identify 'corporate governance' as 'government without opposition'.

Part of the politisation of business companies is sensitivity to public opinion. How avoid an over-investment of resources with 'PR-sensitive' sectors which know how to promote their cause in mass media and public communication processes? The larger the complexity, the larger is the compulsion to make a selection – and public opinion reduces the immense and accelerating complexity involved in public communication processes with simplified, black-and-white causal attributions (Luhmann 1995a; Holmström forthcoming). Steering a company by reference to public opinion may mean steering by over-simplified, populist criteria.

3.5. Globalisation: activation of previously passive legitimacy conflicts

The 5th structural dimension relates to the conflicts between legitimating notions and legitimisation processes in different forms of society as globalisation increases the interdependence and sensitivity between societal and cultural forms that were previously separated.

The analyses presented above are empirically founded in North-Western Europe, and since a principal conclusion is that organisational legitimacy and forms of legitimisation are closely interrelated to a given society's specific coordination processes, then it follows that the premises of organisational legitimisation differ in various regions of the world – although we also see traits of global policy-making and global opinion. Ideals of reflection and polycontextual coordination of the polycontexturality constituted by functional differentiation as analysed above work only in a specific type of society – characterised by the ideas of modernity and the structures of full functional differentiation, by a well-educated and active population, by freedom of expression and of free mass media not strained either by economics, politics, religion or other functional rationales. Based on Luhmann's societal categories, we basically differ between two types of conflicts, i.e. 1) between two fundamentally diverging societal forms, with function and stratification respectively as their primary differentiation, and 2) between contemporary variations of the functionally differentiated society.

Although expanding strongly during the centuries throughout large parts of the world, functional differentiation continues to face societies with *stratification* instead of function as their primary structure of society. In these kinds of societies, hierarchical relationships are basic and group belonging is the predominant way of giving meaning to individual identities (Luhmann 1997a:678-706). There are variations of the balance between stratificatory and functional differentiation. However, to illustrate my point, namely that different types of societal constitution breed fundamentally different legitimating corporate settings, I intensify the differences by applying analytical archetypes of full functional differentiation and stratification. Based on Luhmann's analyses of the differences between a functionally differentiated society and a

stratified society, decisive differences of organisational legitimacy and legitimising practice can be identi-fied. *First,* a functionally differentiated society values individual performances and expressions of personal diversity, whereas in a stratified society individual identity and social identity overlap, and consequently dissolve the boundary between a private and a public sphere. *Second,* in functional differentiation, mod-ernist ideas of a public sphere with equal access for a diversity of individual expressions prevail. In strati-fication, the public sphere is regulated from above (or from a centre) with the function of maintaining a common collectivist identity. *Third,* the dynamics of a functionally differentiated society rests with a plu-ralist coding of societal values. Social responsibility and legitimacy are debated from differing positions, without an ultimate reason or privileged position. The coordination of society takes place in continuous legitimating and legitimising processes in polycontextual, pluralist interplays without any centre or top. In a stratified society, societal coordination is hierarchical, most often with religion as the fundamentally legitimating reference of society. Notions of legitimacy are dictated rather than debated. *Fourth,* in func-tional differentiation, intermixture of functional rationales is illegitimate, such as for instance 1) of politics and mass media: it is illegitimate if the political system dictates the boundaries of expression to mass me-dia; 2) of religion and politics: it is illegitimate if any religion dictates the government and law of a nation; and 3) of economy and politics or law: bribery of politicians or public servants is illegitimate. In contrast, the stratified society implies no distinct boundaries between religion, politics, economy, mass media, fam-ily etc. Even economics, politics, law and market mechanisms are subject to religion and stratified group affiliation. *Fifth,* the modernist values of functional differentiation breed a culture of contingency as op-posed to necessity, inevitability. Social norms and institutions tend to be acknowledged as contingent, i.e. as choices which could have been taken differently, and consequently as potential subjects to intentional change through reflection and discussion. In contrast, in a primarily stratified society social relations are based on perceptions of necessity, orthodoxy and belief in authorities; norms are assumed as inevitable and necessary to maintain society, as unquestionably accepted self-evidences, "and if someone harbours doubts, that person can scarcely be included in communication. Anyone who attempted to do so would be reproached with 'error'" (Luhmann 1995:468). Freedom of expression without boundaries of necessity is illegitimate. Accordingly, the ultimate conflict is localised between late modern societies and stratifica-torily dominated societies, where functional differentiation plays a secondary role, as experienced by Scandinavian dairy co-operative Arla Foods in 2006. Because of a Danish newspaper's cartoons of Mus-lim prophet Mohammed, publicised as 'a test of freedom of expression' (Rose 2005), first, the company was boycotted in Arab countries dominated by stratified structures. Later, after having tried to legitimise itself in Arab countries by publicly expressing respect of local values, Arla Foods was threatened boycott back home in Scandinavia for betraying modernist values (Holmström, Falkheimer et al. 2007).

In contrast, societies characterised by functional differentiation share the same basic values of individual choice, the attribution of responsibility within the framework of political democracy, free economic mar-kets, modernist education, and positive rights (Baraldi 2006). Nevertheless, in variations of the function-ally differentiated society corporate legitimacy – although apparently very similar with semantics and practices of CSR and business ethics – differs more than meets the immediate eye. First, we see different stages of functional differentiation, and second, we see different forms of political regulation. In particu-lar, we can compare the degree of *monocentred* versus *decentred* regulation; *exterior other-regulation* vs. *self-regulation; internal* vs. *external complexity* with decisive implications to the legitimating notions mediating the interrelations between organisation and society. Inherent conflicts surface for instance in differing no-tions of the stakeholder concept in the liberal economy of US and the negotiated economy of Denmark with a tradition for involving a plurality of perspectives in the policy-making processes. And in particular, post-communist countries of Eastern Europe show different transitional stages from a politically mono-centred dominance towards a society constituted by independent functional spheres (Holmström 2003b). Economy is gradually developing on autonomous premises with private propriety rights and without

political planning (Lawniczak 2001; Lawniczak 2005). News media are gradually freeing themselves from their function as mediators of political propaganda. Correspondingly, companies are slowly learning to take on independent responsibility and to install measures of self-restriction after having been strictly politically controlled. However, transitive societies have not yet stabilised the specific societal constitution which is a precondition of the notions of organisational legitimacy analysed above as reflection.

So, when adding the dimension of globalisation, the complexity increases decisively, since globalisation is a process creating interdependence and consequently sensitivity among societies and cultures that were previously separated. The intensified relations *activate previously passive conflicts* between different societal forms, values and cultures. And although we see attempts of global ideals, they will be interpreted differently. We cannot identify common global ideals – but have to relate legitimating notions to the societal constitution. I shall suggest, however, that we will see the principle of reflection evolving as the ideal also at the meta-level, meaning that an organisation with an identity basically rooted in a specific culture and in specific ideals of legitimacy is aware of this as a result of a contingent societal and cultural context – and at the same time is able to take into consideration different cultural and societal contexts within which the organisation operates. However, not only will some legitimacy conflicts be unavoidable when a company addresses fundamentally different cultural and societal horizons; also, any company will have to apply blind spots in its observation of the world, based on the company's specific cultural and societal roots.

4.   WHY IT MIGHT PROVE UNETHICAL TO THINK WITH THE HEART

Above, I have unfolded the social complexity involved in the legitimating notions evolved during the later decades on 5 structural dimensions. They all originate from the specific societal stage of full functional differentiation, and each in their way contributes to evolving new legitimating notions as to the interrelation between society and organisation. *First,* society's strains on its environment – human beings, nature – increasingly activate questions as to the fundamental constitution of modern society as functionally differentiated. This questioning leads to, *second,* the increasing acknowledgement of contingency as the fundamental premise of decision-making, and consequently to demands of responsibility, transparency and sustainability. *Third,* the increasing interdependence and thus sensitivity between the highly specialised social filters of full functional differentiation intensifies the effects of the two first dimensions. *Fourth,* resonance is further boosted by the political system's endeavours of polycontextual regulation in order to solve the problems of society's strains on its environment, the increasing sense of risk prevailing in society, and the polycontexturality of the increasingly differentiated society. *Fifth,* with globalisation problems are multiplied as they are thrown around between different forms of society with their different values and different legitimating notions as to the role of economics and the interrelation between business and society.

On all five structural dimensions the social mechanism of reflection is provoked and embedded in the evolution of legitimating notions during the latter half of the 20th century, as a reaction to the reflexivity of full functional differentiation, however on 5 different dimensions. In response to the blind side-effects of reflexivity expressed as society's strains on its environment, reflection implies an attempt for society to re-enter the difference between society and environment within society – expressed for instance in the triple bottom line of people, planet, profit. As to the inherent conflict between decision-maker and victim, reflection uncovers the contingent nature of social processes and opens up to acknowledging the responsibility involved in decision-taking. As to the increasing functional interdependence activated by increasing functional independence, reflection implies a respect of the functional socio-diversity. As to polycontextual political regulation, the reflective perspective seems a precondition for organisations to navigate in a polycontextually coordinated (world) society. As to globalisation, the principle of meta-

reflection implies an understanding of the contingency of own societal and cultural context – and consequently considerations of different cultural and societal contexts.

So, the new legitimating ideals empirically expressed as ethics, corporate social responsibility, triple bottom line etc., and theoretically reconstructed as reflection, are provoked by a range of very different structural problems which – and this is a main conclusion – should be confronted with utmost analytical stringency. We have to distinguish between the different problems if we wish to understand and confront the problems. As to practice, thinking with the heart, using gut feelings or good intentions in general will not suffice to prevent decisions from being made based on under-complexity or distorted complexity, or simply from trying to solve new problems with old ideas.

In the immediate analysis, reflection may seem a panacea. However, a prominent quality of Luhmann's theories is the unrelenting and unsentimental sensitivity to new problems resulting from solutions to previous problems. The backcloth of a reflective society is the acknowledgement of contingency and a hyper-irritated state of society which apparently cannot be suspended by more knowledge, or more information. Where organisations are forced, on the one hand, to make decisions, these decisions can, on the other hand, refer to no ultimate reason. These traits lead to public attention being continuously alerted; the position of fear being stimulated over and over, and prejudices and worries about the future prevailing. Consensus is not possible: partly because society is differentiated in irreconcilable perspectives; and partly because, since future consequences cannot be known in advance, there can be no unambiguously right solutions. Reflection copes with contingency, however also increases the perception of flux, and may lead to hyper-irritation, feelings of powerlessness and indifference, paralysation of decision processes or distorted resonance, such as for instance extensive resources spent on social reporting and media alertness.

Moreover, reflection is a risky and resource demanding form of communication. Risky, because it may raise doubt within an organisation about its own boundaries and *raison d'être*. Resource demanding, because reflection doubles the communicative processes and makes decision processes far more ambiguous than reflexivity: "One becomes involved in drawing never ending distinctions between distinctions, which always transport the other side along with everything that is thought and said" (Luhmann 1993a:229). Empirically, we have observed how, as reflective processes diffuse, they are relieved into *best practice* routines which are adaptable to basic existing structures in the form of for instance certification, verification, sustainability accounts and business guidelines for social responsibility. Society canalises its polycontextual self-regulation from unstable, hyper-irritable conditions into more secure patterns of expectation. It returns 2nd order observations to the level of 1st order observations, and "it is by no means the old naïvety of direct common belief in the world but of finding a solution to inextricable entanglements in communication" (ibid. p. 229). However, after this adjustment of modernity we may expect a gradual return to reflexivity, although with new perceptions of legitimacy stabilised – upon which new evolutions can take their start. By gradually structuring new expectations, centuries of legitimacy crises seem to have helped the established society – including the business community – adjust and preserve itself rather than to threaten it. New legitimating notions such as CSR, ethical programmes and triple bottom line reporting have apparently strengthened functional differentiation. This does not mean that learning processes and evolution necessarily lead to something better – but that society manages more complexity. On all five structural dimensions analysed, new legitimating notions and practices to some extent solve society's structural problems – however, although they are often presented as simple and self-evident solutions they are embedded in complex contexts and often provoke new problems.

Conclusively, I shall suggest that the largest risk facing responsible business behaviour is a reduction of complex social dynamics to good intentions. They tend to overshadow and dwarf the social complexity within which the problems are embedded. Instead, responsible practice requires insight into the complexity of social structures and self-referential dynamics of social processes, and responsible science requires serious attempts to identify the complexity by avoiding resorts into ideology, politics or morals in its own optics on the social complexity.

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