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Violence from the Perspective of Social Immunology: A Contribution to Social Systems Theory

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Abstract

Our paper analyzes violence from the peculiar perspective of a “social immunology”, defined as the area of social systems theory concerned primarily, even though not exclusively, with those processes by which social systems as communication systems deal with tensions, termed ecological tensions, that involve the intersection between social systems and their human environment and that endanger the maintenance of social autopoiesis. Individuals’ violent behaviors are manifestations of such tensions. However empirically ubiquitous it may be, violence constitutes a crucial problem for social systems, due to risks detrimental to the human substrate of communicative processes. We theorize about conflicts, social movements and the legal system as the main components of an immune apparatus of social systems by focusing on individuals’ reactions to social costs and related social conflicts. Modern law, in particular, tends to promote individuals’ inclusion and to restrain their resorting to violence by relying on a system of rights, procedures, and judicial institutions conducive to attracting and regulating such conflicts. Legal immunization remains nonetheless exposed to several limitations, including abnormal forms that concur to the arbitrary use of violence.

Keywords: Communication; conflict; law; social immunology; social systems; violence.

1 Introduction

This paper focuses on violence as a problematic occurrence relative to the systemic reference of social systems as communicative systems. We do not provide an exhaustive characterization of violence. Rather, we refer to specific consequences associated with at least a significant subset of those behaviors generally identified as violent acts. This subset includes behaviors damaging human integrity, in a self-directed or interpersonal way, to such an extent that this temporarily or permanently interrupts or limits the stream of communication.

Violence emerges under countless forms in social systems (Baecker 1996). Mechanisms responsible for the diffusion and escalation of violence remain as potential occurrences depending on the complexities of psychic systems and their interactions (Collins 2008; see also Wieviorka 2009 [2005]; Braus/Kron 2020). It has also been abundantly demonstrated there are myriad ways in which order and violence are inextricably intertwined (Kalyas/Shapiro/Masoud 2008). However empirically ubiquitous all these behaviors may be, one cannot deny that violence, which implies risks of destruction in the human substrate of communicative processes, constitutes a crucial problem for social systems. From a system-theoretical perspective, this requires focusing on social processes that deal with such risks. Because of this contribution, such processes can be theorized to be components of the immune system of society. In this sense, in our contribution, violence will be observed from the peculiar perspective of a “social immunology”.

Our analysis is articulated as follows. In Section 2, we theorize about social immunology as the area of social systems theory primarily focused on those mechanisms that confront specific tensions, termed ecological tensions (ETs) – including individuals’ violent dispositions, among others – between social systems and the crucial segment of their environment constituted by psychic systems. In Section 3, we illustrate the main ETs correlated with individuals’ perception of social costs, viewed as examples of possible sources of violence. In the subsequent two sections, we examine the main immune processes (IPs) of social systems: conflicting communications and social

movements (Section 4), and legal institutions and procedures (Section 5), which gives us the opportunity to conceptualize the function of the legal system in terms of immune adjustment or regulation of normative expectations – a function viewed as one of the most important barriers against violence in the context of functional differentiation. Finally, in Section 6, we take into account a number of obstacles and limitations affecting legal immunization – failures, deficiencies, and dysfunctions on the one hand, and abnormal activations on the other – focusing on cases in which the law is unable to prevent, or results in amplifying, violent behaviors.

2 Social Systems, Violence, and Social Immunology: An Overview

We assume that *social systems are autopoietic (i.e., self-reproducing) entities*. This is the basis of our analysis concerning processes we identify as *function bearers* of a hypothetical immune apparatus of social systems. This, in turn, implies the assumption of the following principle: “When we give or take functional explanations of organic traits, organs, social institutions, or cultural practices, we presuppose that they are integral parts of a self-reproducing system. The function bearer, by contributing to the characteristic reproductive activity of its system by which it remains the same system over time, contributes to its own reproduction by the system” (McLaughlin 2001, 210). Our investigation of IPs of social systems specifically refers to *non-intentional function attributions* that serve to explain the existence of certain social mechanisms due to their recurrent capacity to contribute to the *intrinsic purposiveness* or internal teleology of social autopoiesis based on communication.¹

More precisely, social systems can be conceptualized as autopoietic entities whose distinctive operation is communication (Luhmann 1995 [1984]; 2012 [1997]; 2013a [2002]). In this sense, *social systems emerge as operatively closed networks of*

¹ This approach parallels and extends the idea of “natural purpose” and the corresponding epistemological implications identified and discussed by Kant in his critique of teleological judgment relative to organisms (see also Marcucci 2010).

communications, which are differentiated from the substrate constituted by those systemic units that form human beings: namely, biological organisms, nervous systems and psychic systems (i.e., consciousness). *Social systems and psychic systems originate from and reproduce two different kinds of operative closure*, which correspond to two different kinds of autopoiesis. Each event of psychic systems (i.e., cognitive process) and social systems (i.e., communication) results from their respective sequences of internal operations.² The differentiation of communicative processes from psychic systems (and from organisms and nervous systems) implies the conceptualization of human beings as part of the environment of social systems – more precisely, as the *human environment of communication*.

Their autonomy notwithstanding, *social systems and psychic systems are not causally isolated*, in that both units develop within the same medium of meaning and use the medium of language to affect each other (Luhmann 2000 [1995], Chapter 3; 2012 [1997], Chapter 2; 2013a [2002], Chapter 5; see also Baraldi/Corsi 2017, Chapter 4). Language operates as a specific empirical case of structural coupling and, as such, makes possible coordination and mutual influence (i.e., interpenetration) between communication systems and psychic units alongside (and despite) their respective operative closure (Luhmann, 2012 [1997], Chapters 1 and 2; 2013a [2002], Chapter 2). Here, *psychic systems constitute the most crucial ecological reference of social systems*, in that “social systems are coupled only with consciousness and nothing else [...]”. Communication can be completely independent from everything that happens in the words [...]. Only what is mediated by consciousness plays a role” (Luhmann 2013a [2002], 198). This is the reason why, when examining conditions of (and obstacles to) the maintenance of social autopoiesis, one should primarily examine the wide set of interchanges between social systems and psychic systems' perceptions and dispositions or orientations that concur to human behaviors, how these intersystemic contacts

² Within limits, the differentiation of social systems is comparable to the processes responsible for the emergence of consciousness (Edelman/Tononi 2000; see also Durkheim 1974 [1924]; Sawyer 2005).

unfold, and how they impact communication. This is precisely the main interest upon which our approach to a social immunology is based.³

Compared with previous discussions of hypothetical immune mechanisms of social systems from the perspective of social systems theory (see: Kron 2016; Andersen/Stenner 2019) – including to some extent Luhmann himself (especially: 1995 [1984], Chapter 9; 2004 [1993], Chapters 3 and 12) – our contribution aims to emphasize, as one of the main issues of a social immunology, mutual stimulations and perturbations between social systems and the human environment. Indeed, the focus on these interactions seems a fixed route for such a theory as social systems theory, which tends to pay considerable attention to the difference system/environment and to the system's selective mechanisms devoted to maintaining this difference once exposed to the environment's overwhelming and matchless complexity (see Luhmann [1995 [1984], Chapter 1 and especially 23 ff.).

In what follows, we primarily examine specific occurrences at the intersections between social systems and their human environment – more precisely, psychic systems' perceptions and dispositions – that propagate throughout the human environment and that reverberate, with disruptive impacts, on social autopoiesis. Given these dynamics, we conceptualize these occurrences as *ecological tensions* (ETs). At least two types of occurrences may be subsumed under this definition. The first type is derived from *individuals' dispositions that concur to effect exclusion or segregation* from communicative settings (including self-exclusion and self-segregation). The second type of ET is correlated with *individuals' decisions to embrace violent behaviors* that, in a

³ Following Luhmann (1995 [1984], Chapter 9), we speak of “social immunology” (*soziale Immunologie*) instead of “socio-immunology”. As with other interdisciplinary field of biological immunology – such as neuro-immunology (Pradeu 2019), which investigates the interactions between the nervous and immune systems (clearly at the biological level) – the subfield of socio-immunology would properly correspond to the interactions between the immune system (once again at the biological level) and certain material conditions dependent on human social behaviors. In this sense, in our view (unlike Shattunck 2021) *the expression “social immunology” should more appropriately refer to the investigation of immune processes at the specific level of social systems, conceptualized as communication systems.*

self-directed or interpersonal way, harm human beings. Indeed, both types of occurrences, beyond certain thresholds, represent problematic circumstances that may endanger the reproduction of social systems as such, insofar as at least certain effects of both exclusion and violence entail a temporary or permanent “uprooting” of individuals from communicative settings by, respectively, isolating and damaging the human substrate of social autopoiesis.

Certainly, violence in particular may also transmit, stimulate and amplify communicative messages. As an example, we refer to the signaling qualities of violent actions and symbolic contents associated with language and other signs employed in terrorist communiqués during suicide terrorism campaigns (Hoffman / McCormick 2004; Gambetta 2005). Both the self-sacrificial behaviors of fighters involved in suicide missions and messages such as bombers’ last wills are often combined and exploited by armed organizations because of their expected ability to convey certain psychological effects that are instrumental to a number of strategic objectives. In this sense, the fighters’ highly symbolic behaviors and their identities assembled in videos and other documents might be conceptualized as communicative forms aimed to provoke emotions and to signal political and religious meanings. One may mention, for instance, the representations of attackers and their identity as orchestrated by al-Qaeda and its affiliates, which have been involved in a significant number of suicide bombings in the most recent wave of contemporary terrorism, especially in the context of the Sunni insurgency in Iraq since 2003 against Anglo-American forces and their Shiite allies (Author[s] 2010).⁴

⁴ Here, three main communicative levels of terrorist propaganda underlying the representation of suicide bombers may be identified. First, on the level of the symbolic medium of power, armed organizations aim at coercing and deterring their enemy by staging a complex set of communicative forms that signal their militants’ determination and resolve. Second, on the level of the symbolic medium of influence, bombers’ behavior and martyrdom videos are manipulated to gain support from a presumed constituency, especially by referring to attackers’ reputations and ultimate sacrifices for a superior cause. Finally, based on a combined use of the symbolic media of values and influence, propaganda behind suicide attacks and

However, the occurrence of this and other types of violent behaviors gives rise to the risk of disrupting communicative processes that results from the probable physical destruction of the human environment. This condition involves a broad spectrum of possibilities, including events leading to injuries affecting humans and their capacity to take part in communicative contexts – an impact that becomes clearly fateful in cases provoking the death of individuals (i.e., homicide and suicide) and their irreversible removal from communication. This is the reason why social systems theory should identify and theorize about hypothetical immune processes that also deal with risks correlated with violent behaviors by preventing their negative consequences for the reproduction of social autopoiesis.

In light of the epistemological debate relative to the definition of biological immunity, we should nonetheless specify a general limitation of our approach. This has to do with a number of difficulties of accounting for the evolution of immunological processes and attributing a function to the immune system (i.e., at the biological level). Such difficulties are driving scholars to adopt “a revised epistemology of immunology” based on the notion of an “extended immunity”, in that “the immune system not only defends the organism against different potential threats but also constructs, repairs, cleans up the organism, and maintain tissue homeostasis, among other activities” (Pradeu 2019, 10-11). As for a hypothetical social immunology, this problem would also suggest refusing to simply equate IPs of social systems with mechanisms that only aim to deal with potential threats.⁵

bombers’ last wills is clearly directed at attracting new fighters by appealing to values rooted in their socialization and to the prestige of martyrs (Author[s] 2018).

⁵ Our reference to biological immunity notwithstanding, our analysis of the IPs of social systems refutes (in line with Kron 2016) both old organicistic analogies and a purely metaphorical use of the notion of immune system (the latter exemplified, in our view, by Esposito 2017 [2002]). Rather, we intend to follow three interdependent directions of investigation, consistent with the epistemological approach underlying Luhmann’s (1995 [1984], 1-11) general theory of autopoietic systems. First, we suggest abstracting from the immune mechanisms at the biological level in order to conceptualize (at the level of the general systems theory) *prima facie* general immune problems and solutions. Second, we argue for adopting a comparative analysis of biological, nervous, psychic, and social systems in order to re-specify the nature of such problems and solutions and identify hypothetical functional alternatives (to biological processes)

However, at this stage, we leave unresolved the question relative to the real perimeter of functions and structures to be attributed to a hypothetical immune apparatus of social systems, beyond defensive functions and corresponding mechanisms (such as the IPs analyzed in Sections 4 and 5).⁶ Therefore, in this paper, we only advance a tentative definition of *social immunology as the area of social systems theory that is concerned first and foremost, even though not exclusively, with those processes by which social systems confront ETs (as defined above) to guarantee the maintenance of social autopoiesis* (see also Author[s] 2020).

3. Some Sources of Violence from the Perspective of Social Immunology

Our conception of ETs refers to specific obstacles to social systems, as they determine highly problematic configurations in system-environment relationships. However, deviance per se does not impair the operative closure of social systems (i.e., autopoiesis). The former does not logically imply occurrences conducive to ETs. From Durkheim's theory of social facts, we know that crime and deviant behaviors in general

that, under the constraints of their respective operative networks, serve to guarantee the maintenance of their corresponding autopoiesis, once confronted with tensions derived from system-environment interactions. Finally, based on such a comparison – which should help identify additional risks incurred in organicistic analogies, because of their incompatibility with the irreducible differences between those systemic references – we should probably be able to more accurately theorize about general immune principles and to orient additional investigations of their applications to different realms, including social systems. In this paper, we are only able to advance some hypotheses about the immune functions of conflicts, social movements, and the legal system, whereas nothing is said about nervous and psychic systems; interestingly, as for the latter, Luhmann (1995 [1984], 274) points to the immunizing role of emotions.

⁶ Nonetheless, inspired by the above-mentioned debate in the philosophy of immunology, with caution one might speculate on *additional functions hypothetically related to a society's more comprehensive immune system*, also in terms of mechanisms aimed at promoting the individuals' cooperative involvement in social activities: for example, social processes of normative socialization, psychological support and assistance, and status rewards and other incentives, among others.

are not necessarily “pathological” states for social systems (Durkheim, 2013 [1895], Chapter 3). For this reason, not all observed negative sanctions should be equated to IPs of social systems that serve to immunize against ETs (as defined above). Immune defensive responses to ETs may consist of negative sanctions, such as disapproval, stigmatization, or threats of or resort to coercive methods (which are particularly emphasized by Esposito 2017 (2002)]. Such possibilities exist and should not be overlooked. However, IPs relative to ETs include more than such responses.⁷

A more comprehensive approach may be derived from the fact that *ETs may also be described in terms of symptoms of structural inadequacy of social systems*, when confronted with psychic systems’ perceptions and reactions. Social systems must manage ETs to guarantee their continuance, which requires compensating for this inadequacy by resorting to a variety of immune mechanisms that are not exclusively reducible to negative sanctions and repressive interventions (an approach shared also by Kron 2016). In what follows, *we primarily examine IPs aimed to protect social autopoiesis exposed to ETs by focusing on anticipative, integrative, and regulative communicative mechanisms*, such as conflicting communications, social movements, and legal procedures. This also explains why, in the case of violent behaviors, in this paper we make virtually no reference to sanctioning mechanisms consisting of reactions of disapproval and coercive enforcement of norms as parts of a more comprehensive immune system that protect society from potential threats, such as ETs.

ETs as previously defined may be correlated with a wide set of social conditions and events involving contacts between social systems and psychic states or dispositions. Within certain limits, these complex kinds of occurrences parallel the comparable vastness of agents encountered by organisms. In this paper, we examine only a subset of

⁷ In this respect, we mention again the debate around biological immunity. Here, an additional issue refers to interactions between organisms and potential environmental threats. It is worth to note that “many genetically foreign entities are not eliminated by the immune system and are instead actively tolerated via regulatory immune responses”; likewise, “recent work on immunological tolerance and intimate dialog between host and microbes across the living world invalidates the claim that the immune system eliminates foreign (non-self) entities” (Pradeu 2019, 18-19).

sources or social conditions that may trigger ETs – namely, the subset constituted by conditions involving the individuals' perceptions of, and reactions to, *social costs* (SCs) and related social conflicts (in this sense, we are unable to provide an exhaustive account of conditions behind ETs and corresponding immune responses).

By “*perceptions of SCs*”, we refer to any observation by individuals of disadvantages – in terms of some restraints, deprivations, negative impacts, or risks affecting their material, physical or personal sphere *latu sensu* (or the sphere of some collectivity that shares their preferences, beliefs, interests, identity, etc.) – that they may experience in a variety of social activities, combined with some causal attribution of such disadvantages to some other individual or collective actors, including actors not directly involved in the ordinary interactional settings of the same individuals. As far as modern and contemporary society is concerned, there are countless empirical combinations of advantages/disadvantages correlated with a variety of social positions: for example, in intimate relationships between partners and among family members; or in organizational and interactional settings involving patients and doctors and healthcare institutions; among several categories of actors playing their roles in economic processes (e.g., between employees and employers, consumers and producers, associations and companies) or in the educational system (e.g., between students and educational institutions); and in several kinds of relationships between political, economic, and religious actors, associations, and state institutions.

Among the wide-ranging occurrences correlated with individuals' perceptions of SCs (which includes compliant and non-violent deviant behaviors, among others), two possible sets of reactions concur to ETs as previously defined. First, *individuals might opt for renouncing (whenever possible) their involvement in relational contexts* associated with their (demotivating) experiences of SCs (ET-1). We refer to dispositions that result in the individuals' isolation – comparable, within limits, to the classical notion of “retreatism” (Merton 1968) – and are also conducive, under certain circumstances, to the individuals' marginalization and exclusion, dysregulated behaviors (e.g., substance use disorder), depressive states (Ehrenberg 1998), and several forms of self-threatening behaviors and suicide (Barbagli 2015). Second, *the individuals'*

decisions to resort to violent behaviors (ET-2) may emerge as a further trajectory that radically collides with the regular interactional and organizational processes driven by existing social structures. Here, the countless, empirically observable forms of violent dispositions may directly aim to target social positions perceived as the main source of SCs. However, violence may also be directed at substitute individual or collective actors, according to the well-known scapegoating mechanism (Coser 1956). In addition, a fatal connection between a tendency to retreatism and a simultaneous aggressive orientation may also occur, as documented by the specific cases of homicide-suicide we observe, for example, in workplace and school shootings (Joiner 2013, Lankford 2013).

In the next section, we argue that conflicting communications, protest in the form of social movements, and legal procedures contribute to immunizing social systems, insofar as they function as social processes that defuse both demotivation and violent orientations dependent on the ego's perceptions of SCs. However, this is only a partial prevention of "existential" threats to social systems. Indeed, one should also take into account possible additional ETs that derive from the alter's position targeted by the ego's claims, protests, litigations, etc. Here, a frequent scenario consists of the alter holding a dominant position (when compared with the ego's position) in terms of resources that make it possible to exert social power in its different forms (i.e., political, economic, and ideological power).⁸

In this case, two additional forms of ETs are rooted in the alter's possible decision to mobilize power, depending on the available resources. On the one hand, *the alter's exercise of power may aim to exclude other individuals from, or limit their access to,*

⁸ According to the following acceptance: "Social power relations exist wherever some human subjects (individual or collective) are able to lay routine, enforceable boundaries upon the activities of other human subjects (individual or collective), insofar as that ability rests on the former subjects' control over resources allowing them, if they so choose, to deprive the latter subjects of salient human values. The chief among such values are bodily integrity; freedom from restraint, danger or pain; reliable access to nourishment; shelter or other primarily material goods; the enjoyment of a degree of assurance of one's worth and significance" (Poggi 2001, 14).

some social realms (ET-3), such as political, economic or educational activities, with segregation and marginalization as a possible negative impact on the ego's involvement in ordinary communication. A variable combination of these processes, on the one hand, and the mechanism of retreatism previously discussed, on the other, is also probably responsible for the massive exclusion of individuals that continues to affect contemporary society, particular in developing countries, with "large portions of the population excluded from participating in functional systems" – in terms of a lack of employment, education, health assistance – and whose existence emerges "only as bodies that aim to overcome daily adversities, ensure food, and defend against violence" (Luhmann 2005, 276-277 [our translation]).

On the other hand, a further type of ET (ET-4) includes *all possible uses of power by the alter aimed at damaging the ego's physical and psychic integrity* to such an extent that the consequent impairments (with homicide as the obvious extreme and irreversible outcome) will endanger the ego's capacity to take part in communicative processes. Violence represents, also from the alter's position, a potential manifestation of this kind of ET. Moreover, both the threat of violence and its exercise, sometimes combined with the alter's control of financial, material and technical resources, may reinforce not only barriers to access to a variety of social processes, but also conditions in which individuals are exposed to a number of additional harmful consequences. Here, countless empirical cases can be mentioned, from the well-known Marx's illustration of violent practices associated with the so-called primitive accumulation of capital up to the landowners' use of violence we observe, for example, in Brazil (Alston/Libecap/Mueller 1999).

To summarize, structures underlying social autopoiesis are always exposed, at a causal level, to contingent and precarious processes of interpenetration between social and psychic operations. Under certain circumstances, individuals' dispositions can concur to ETs. The ego's perceptions of SCs may trigger perturbations to social systems in the forms of retreatism or violent reactions. Once confronted by the ego's challenge, the alter's possible exercise of power, aimed at stabilizing and enforcing the existent social structures, may give rise to positive feedbacks in the dynamics concerning the

generation and accumulation of ETs. Indeed, the alter's resort to power may not only cause additional forms of exclusion to ego's detrimental and with harmful effects on human environment. It may also amplify the risks of additional and violent reactions by the ego, with spiraling destructive impacts on the maintenance of communication.

Depending on several factors and contingencies, at some stage of this confrontation, actors holding dominant positions may also become targets of radical challenges, resulting in both new distributions of power (and sometimes a revolutionary reversal in them) and new arrangements of social structures, with parallel changes in the distribution of advantages/disadvantages. Under certain circumstances, status loss experienced by individuals who had played dominant roles may be responsible for an additional form of retreatism, including its possible combination with aggressive behaviors. Examples are those cases of familicides and homicides followed by suicide in domestic settings in which male killers are confronted with a loss of control over their intimate relationships and their family because of the imminent or effective separation demanded by their partners (Websdale 2010; Author[s] 2017).

4 Social Immunization against Violence (I): Conflict and Protest

As seen, ETs generally reveal some structural inadequacy of social systems when confronted with psychic systems' perceptions and reactions. Such tensions have a disruptive impact on the social autopoiesis, in that their occurrence critically interferes with the normal stream of communication. According to this framework, one of the main tasks of social immunology is to identify and analyze the IPs that, within communicative operations, deal with ETs between social systems and their human environment by compensating for the former's structural limitations. IPs examined in this paper are identified first and foremost as functional mechanisms of anticipating and neutralizing ETs correlated with individuals' reactions to SCs.

First, an effective treatment for ETs presupposes a communicative elaboration of individuals' perceptions of SCs. SCs must be properly signaled within social systems as problems. Simultaneously, effective treatment requires that these perceptions be converted into the specific realm of social systems (i.e., communication). These requirements are fulfilled by *conflicting communications*, which derive from contradictions within the communicative flow itself:

Contradictions serve to reproduce the system by reproducing necessary instabilities that can, but need not, set the mechanisms of the immune system in operation [...] They [contradictions] serve as alarm signals, which circulate within the system and can be activated under specific conditions [...] They serve as an immune system within the system. This requires great mobility, a constant readiness for action, the ability to be activated occasionally, and universal utility [...] One can imagine that an immune system consists of the system's "un-s" [*Unheiten* des Systems], symbols of rejection that are at one's disposal (relatively) freely but whose use can be conditioned: the world of "no's" in relation to the world of "yesses" [...] The system does not immunize itself *against the no* but *with the help of the no*; it 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 the autopoiesis, the system's closed self-reproduction. Or to put this in terms of an older distinction, it protects through negation against annihilation (Luhmann 1995 [1984], 371-372).

Although we intend to underline the importance of this view relative to the role played by contradictions and conflicts in IPs of social systems, it is probably disputable that all kinds of contradiction and conflict that occur in communications can be examined as immune responses to ETs as defined in this paper. Just as there exists a wide set of sources responsible for ETs encountered by social systems – including the subset constituted by conditions involving individuals' reactions to SCs we are focusing on – likewise, not all cases of contradictions in communications can be qualified as "alarm signals" directed to this specific subset of conditions.

Conflicting communications may serve to generate interruptions in the form of a systemic shock or alert referred to perceptions by psychic systems. Conflicts regarding SCs enable corresponding perceptions to become themes at the level of communicative operations. Here, this interruption is triggered by communicative events that contrast with explicit or implicit expectations underlying a variety of behaviors and social

activities identified as responsible for SCs. The production of these anti-structural events by means of conflicting communications engenders an operative configuration that potentially contributes to the immunization of social systems. We distinguish two main IPs. First, we hypothesize that conflicting communications perform the *function of detecting and warning of perceptions of SCs* which might result in ETs (IP-1). Second, conflicts also have *the function of attracting and channeling the same perceptions into the operative level of communication* (IP-2). The simultaneous action of these IPs makes possible the involvement of individuals in communicative settings and immunizes social systems from ETs, which consist of a radical deviation from communicative elaboration – whether underreacting, in the case of retreatism (ET-1) or overreacting, in the case of violent behavior (ET-2). As previously specified, we do not deny the importance of a number of additional “defensive” IPs that should be at work to overcome risks of violent behaviors, such as reactions made up of social disapproval and other negative sanctions, including legal sanctions enforced by state institutions.⁹

Protest is a particular kind of conflicting communication and reproduce specific social systems, namely *social movements*, which may also contribute to the immunization of society (Luhmann, 1995 [1984], Chapter 9; 1996; 2012 [1997], Chapter 4). They are made up of sequences of communications focusing on various types of SCs as themes of the protest, such as the lack of recognition of or discrimination concerning countless individual rights. Generally, these communicative forms are combined with a variety of values and interactional rituals that serve to motivate the individuals’ activism and their participation in collective mobilization. Previous research has abundantly documented the existence of specific communicative mechanisms that emerge in collective action (Benford/Snow 2000). They include constructions of meaning that are conceptualized as “diagnostic framing”, which refer to militants’ search for origins of SCs. Another type

⁹ At the same time (see footnote No. 6), any exhaustive account of social immunization should also take into account those processes that promote the individuals’ cooperation. It goes also beyond the limits of this article to provide an accurate analysis of other hypothetical immune mechanisms (e.g., psychotherapy, mutual aid groups, and other functional alternatives or equivalents) aimed at preventing the individuals’ “retreatism” that results, for example, in depressive states and self-threatening behaviors.

of collective representation acts as “prognostic framing” and addresses the SCs by identifying remedies and the general means or tactics for achieving these objectives. Finally, social movements resort to motivational frames, which function as “vocabularies of motive” that prevent the free-rider problem and provide incentives to mobilize. Overall, social movements constitute crucial defining agencies that shape individuals’ attempts to interpret their disadvantages and to find solutions.

Our hypothesis is that all these features of social movements have a high potential to trigger those previously examined IPs, insofar as *protest provides effective signals of perceptions of SCs (IP-1) while enabling their communicative treatment (IP-2)*. In this sense, social movements are potentially capable of immunizing against the ETs that result from reactions to SCs. They are generators of conflicts and facilitate the involvement of individuals (negatively stirred by their perception of SCs) in collective and organized communications, overcoming other critical reactions, such as the possible decision by individuals to give up their participation in social activities (ET-1) and to opt for physical violence (ET-2). However, the potentiality at the basis of conflict and protest cannot completely prevent additional ETs consisting of deviations from communicative elaborations of SCs.

In this sense, our approach excludes any mechanistic approach to social immunization. Indeed, one should always take into consideration possible interferences – deriving from countless perturbations in the relationships between social systems and their human environment – which can precipitate conflicting communications, resulting in either individuals’ isolation or their decision to rely on violent actions. For example, following Black (2011, Chapter 1), it is worthwhile to mention at least three situational circumstances responsible for violent outcomes. These circumstances consist of radical and rapid movements of social time – the latter being conceptualized as the fluctuation of the following dimensions of social space: an increase or decrease of intimacy (relation time), inequality (vertical time), or diversity (cultural time).

Therefore, we hypothesize that a more exhaustive and sophisticated immunization of social systems requires another set of immune devices in addition to the role played by

conflicting communications in general, and social movement in particular. We refer to the interactional and decisional contexts aimed at regulating normative expectations and related conflicts. In this respect, the law as a differentiated subsystem of modern and contemporary society provides crucial contributions.

5 Social Immunization against Violence (II): Legal Procedures

The legal system comprises appropriate semantics and procedures that help to communicatively detect and elaborate SCs perceived by individuals (IP-1 and IP-2).

From an evolutionary point of view, the history of modern law is a long series of interventions and reforms that identify numerous SCs, including several kinds of discrimination and inequality, and different types of physical and psychological threats to humans. The possibility of this recognition immunizes against ETs, in that it increases the probability of motivating people to take part in communicative and conflicting processes by directly resorting to judicial institutions, legal proceedings and legislative processes. In this sense, legal immunization would also equate to neutralizing residual risks (caused by several psychic dispositions and interactional factors) that individuals may abandon their involvement in conflict communications and social movements and may opt instead for isolation (ET-1) or aggressive behaviors (ET-2).

We also hypothesize that legal system may contribute to the involvement in regulated conflicts of those holding dominant positions, as an alternative to a direct use of power that could bypass legal restraints. The latter option is always possible, yet we know that actors generally tend to identify legal institutions based on the modern state as the most rational way to defend one's expectations and corresponding advantages, certainly in the context of modern economy:

The tempo of modern business communication requires a promptly and predictably functioning legal system, i.e., one which is guaranteed by the strongest coercive power [...]. The universal predominance of the market consociation requires on the one hand a legal system the functioning of which is *calculable* in accordance with rational rules. On the other hand, the constant expansion of the market, which we shall

get to know as an inherent tendency of the market consociation, has favored the monopolization and regulation of all “legitimate” coercive power by *one* universalist coercive institution [i.e., the state] through the disintegration of all particularist status-determined and other coercive structures which have been resting mainly on economic monopoly (Weber 1978 [1922], 337).¹⁰

Here, resorting to law could also be motivated, under certain circumstances, by the strategic calculation according to which holders of dominant positions may count on their capacity to exert pressure on and condition legal decisions, for example through their economic power. However, once confronted with the universalistic, rational, and formal law codified in the context of the democratic and constitutional state (Parsons 1967, 490-520; 1969, 34-57; 1977; Habermas 1996 [1992]), this strategy inevitably exposes such holders to a self-binding effect mediated by procedures, rights, and principles underlying legal procedures, with *the outcome of restraining to a significant extent the impact of social power – an outcome that includes limits to effects of exclusion (IP-3) and to the arbitrary use of violence (IP-4)*.¹¹

In addition, the cognitive openness of the modern legal system provided for by specific procedures (Luhmann 1985 [1972], Chapters 3 and 4; 1981, Chapters 1 and 4) makes possible the typical learning processes in which a positive law changes itself, including possible transformations – also dependent on an ever-evolving system of rights –

¹⁰ In Section 4, we will focus on the “exploitation” of the state of emergency as probably one of the most important “abnormal” contexts in which political actors aim to evade and circumvent constitutional restraints and to subjugate legal immunization to their political objectives. Interestingly, even in the extreme case of the National Socialist regime (which we also examine in Section 6 as an example of this abnormal context), a minimal maintenance of a rational, calculable, and stable legal system constituted a prerequisite at least for the functioning of the economic system and to some extent entailed a binding effect on social power (Fraenkel 2017 [1941], Part I, Chapter 2).

¹¹ Certainly, to make probable this outcome, a number of other conditions are usually fulfilled: among others, a basic normative socialization conducive to at least some minimal subjective belief in the validity of the legal order, generally combined with some external mechanisms that guarantee the same validity, including the availability of an institutional apparatus able to enforce legal decisions by some forms of coercion (see Weber 1978 [1922], Chapter 1).

relative to the distribution of advantages/disadvantages and of resources at the basis of social power.¹²

An additional contribution of law refers to the fact that both conflicting communications and social movements may run into certain limitations while attempting to deal with SCs and consequent ETs. As seen, conflicts and protest are able to communicatively signal the perception of SCs in all of their forms. However, their IPs might be insufficient to achieve an appropriate solution to individuals' reactions. Processing such reactions into conflicts and protest and involving individuals in communication (IP-1 and IP-2) might give rise to a further problematic configuration, which might be conceptualized as a possible side effect of immune responses: *the stabilization of conflicts in the form of lasting disputes*, resulting in an over-consumption of resources (in terms of time, money, etc.), in particular to the detriment of the functional subsystems' performance (e.g., trading or medical treatments):

Contrary to what is often assumed [...] opposition is often an integrative factor of the first order and is problematic precisely because of this. [...]. The destructive power of conflict does not lie in itself, still less in the damage to reputation, potential for action, affluence, or life that it inflicts on participants; it lies in a relationship with the system in which the conflict found an occasion and outlet – perhaps in a relationship with the neighbor, in a marriage of family, in a political party, at work, in international relations, and so forth. To this extent the metaphor of the parasitical existence of conflict is accurate; but the parasitism is typically not designed for symbiosis but tends to draw the host system into conflict to the extent that all

¹² An ever-possible alternative strategy, aimed at enforcing one's power by bypassing legal constraints, might consist of organizing, or relying on "services" provided by, clandestine and illegal apparatuses, exemplified by criminal groups such as the Sicilian mafia, N'Drangheta, and Camorra. For actors that externally resort to such groups, this strategy nonetheless entails both costs of cooperation with the latter and risks of status loss, indictment, and detention. Whereas organizing such clandestine apparatuses to pursue the same strategy requires considerable capabilities and resources in terms of independent enforcement agencies with their own military equipment, economic revenues mainly derived from illegal traffics and money laundering, and the maintenance of parallel social networks that guarantee recruitment and allegiances also by means of a specific form of ideological power, based on its own mechanisms of codes of conduct, status rewards, and rituals (Catino 2020).

attention and all resources are claimed for the conflict (Luhmann 1995 [1984], 390; see also Luhmann 2004 [1993], Chapter 12).¹³

Conflict management and settlement performed by law contributes to a specific process of immune regulation, in which *the establishment of limits to disputes (in terms of final decisions)* make it possible to neutralize and terminate single strings of conflicts. This mechanism tends to immunize the system of society against the risk that conflicts may overload subsystems by a protracted and wasteful use of resources, which may also reinforce the conflicts themselves.

On the one hand, the legal system provides “catalysts” in terms of rights, principles, and specific institutions, such as judicial bodies, which favor the individuals’ involvement in regulated (however conflicting) communications, thereby making it possible to immunize society against more radical perturbations of social autopoiesis due to the risks of the individuals’ exclusion or their dispositions to embrace violent behaviors. Even when conflicts diffusely radiate in social relations (or assume organized forms in the case of social movements), the legal system can potentially attract the conflicts themselves, thanks to its institutional arrangements and facilitate their transmission to appropriate procedures. On the other hand, we theorize about the legal system’s capacity to neutralize the disruptive forms that conflicts can assume, insofar as their possible configuration in terms of persistent disputes remains responsible for interference in the ordinary social activities of functional subsystems. For all of these reasons, the legal system is a crucial component of a society’s immunization processes:

Essentially, law also creates security for expectations concerning behavior that cannot be taken to be self-evident. But this function of generalizing expectations in the face of risky expectations about behavior seems to be bound up with the immune system of society. [...]. One can see the nexus of law and immune system more clearly if one considers that law is formed *in anticipation of possible conflict*. [...]. Law does

¹³ Hypothetically, conflicts might also be compared to certain inflammatory responses and other related chemical mechanisms that assist the immune system, as observed in biological immunity (see, among others: Sompayrac 2012; Parham 2015). Likewise, one might compare the above-mentioned and possible disruptive configuration of conflicts to a dysregulated or chronic modality of such responses (see also Section 6).

not serve to avoid conflicts; compared with the repression of conflict in societies which operate to the level of interaction among people present, it leads to immensely greater opportunity for conflict. It merely seeks to avoid the violent resolution of conflict and to make suitable forms of communication available for every conflict. [...]. Law serves to continue communication by other means. It is socially adequate not only when it tackles emerging conflict but especially when it creates conflicts and can provide adequate complexity of its own to handle them (Luhmann 1995 [1984], 373-375; see also Luhmann 2004 [1993], Chapters 3 and 12).

Certainly, legal procedures and institutions are only an empirical case of several functional alternatives of conflict settlement (Black 1998, Chapters 5 and 6). Nonetheless, in the case of modern law, its distinctive legitimacy based on the democratic and constitutional state make the legal system a highly relevant form of third-party decision-making in conflict management. Importantly, *the modern law's immune potential* also derives from its capacity to codify (however selectively) an ever-evolving variety of individuals' claims (that can potentially cause ETs) over dealing and compensating for SCs (e.g., injuries caused by defective products or medical malpractice).¹⁴ The legal system remains open to the elaboration of an increasing number of expectations and legal criteria in terms, for example, of new rights, unprecedented types of loss, or innovative forms of liability. This structural openness or variability reinforces the law's capacity to anticipate, attract to legal procedures, and confront social conflicts and sources and manifestations of disputes we observe in contemporary society.

Here, the influence of politics over the legal system is a fundamental source of variability. Functional subsystems should not be viewed as entities causally isolated from each other. Certain connections, previously referred to as structural couplings, may be identified. The constitution exemplifies the structural coupling between the legal system and political system (Luhmann 1990; 2004 [1993], Chapter 10; see also Thornhill 2010). Each structural coupling is responsible for the exchange of resources and reciprocal influences between the subsystems involved. The influence of politics

¹⁴ This capacity might be to some extent described in terms of Edelman's (1993, Chapter 8) conception of the immune system as a recognition system.

over the legal system derives, to a certain degree, from the power of the former to change normative expectations in accordance with the dynamics and decision-making of political parties and other political actors, including social movements. The consequent *positivization of law* (Luhmann 1985 [1972], Chapters 3 and 4; 1981, Chapters 1 and 4) enables the legal system to thematize countless forms of SCs thanks to innovative legal interventions that aim to internalize and channel social conflicts that emerge, for example, in the contexts of economic and medical activities.¹⁵

Importantly, *the law itself may become a generator of further conflicts*, triggered by several factors, from the increasing legal recognition of pretensions that multiplies both the factual and social circumstances to which they can be applied and the expectations of additional recognitions, up to the claiming of more or less indeterminate natural rights.¹⁶ Certainly, the law's cognitive openness that makes possible such a capacity for variation and transformation of social structures constitutes a considerable challenge for the legal system (see Luhmann 2004 [1993], Chapter 12). Nonetheless, this feature of modern law provides the legal system and the system of society itself with an indispensable level of structural complexity that also serves to improve their ability to deal with the increasing (and matchless) complexity of the human environment.¹⁷

To summarize, we see how, in the evolution of social immunization, modern law based on the democratic and constitutional state forms a fundamental evolutionary achievement, consisting of procedures, a system of rights, and institutional settings conducive to a potential for attraction and, at same time, regulation of social conflicts within specific communicative processes that boost a communicative rationality in terms of legal reasoning (in the sense of Habermas 1996 [1992]). All of these elements

¹⁵ It goes beyond the limits of the general and tentative framework proposed in this paper to provide an exhaustive and more accurate analysis of additional sources of structural variability; among these sources, one should also take into account the impact of the transnational and social constitutionalism, as theorized in particular by Teubner (2012).

¹⁶ Here, following Freund (1983, 336), one might speak of “*droit polémogène*”.

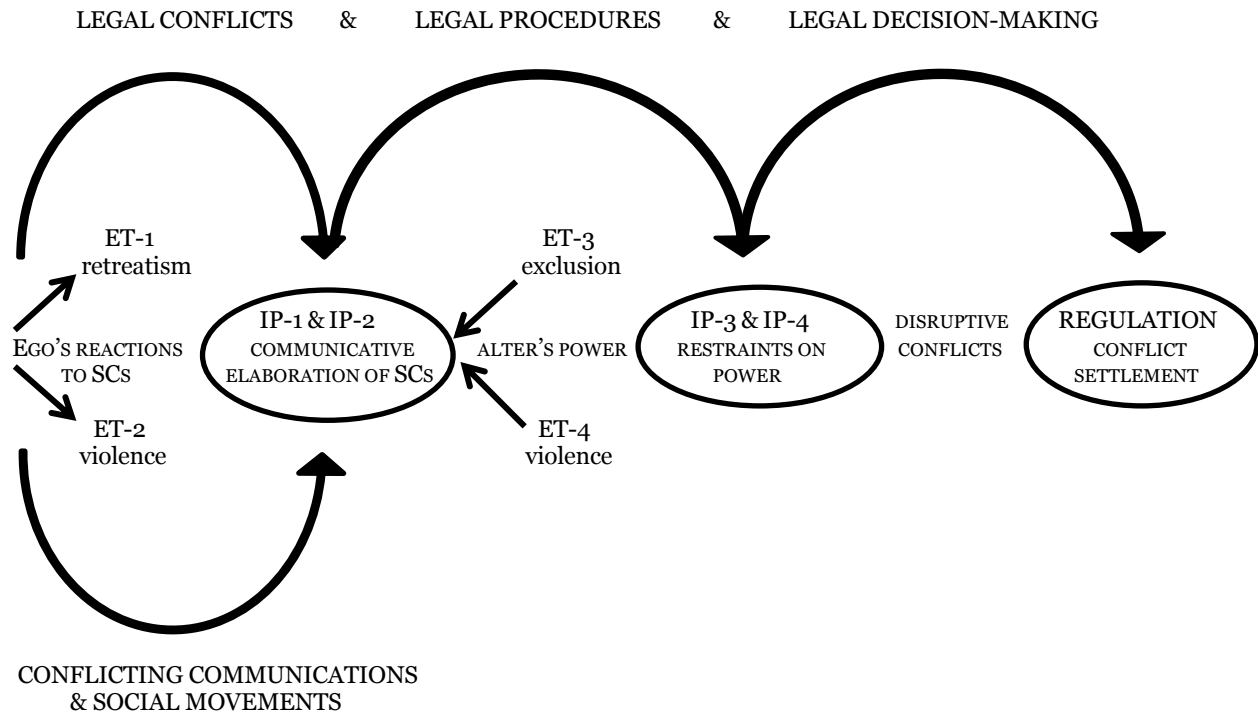
¹⁷ In this sense, any immune system, including of course a society's immune system, “compensates for the lack of ‘requisite variety’ [in William Ross Asby's parlance]” (Luhmann 2004 [1993], 476).

tend to promote the individuals' inclusion and help restrain their orientation to violence.¹⁸ The modern and contemporary differentiated legal system contributes to an ever-evolving arrangement of social structures in which the entire process of selection and stabilization of normative expectations tends to be made congruent with the requisite to anticipate and neutralize (i.e., immunize against) ETs and their destructive outcomes (because of their impact on social autopoiesis) by relying on legal procedures' capacity to detect perception of SCs and set appropriate settings in operation to be able to manage related conflicts. This would suggest conceptualizing the function of the legal system in terms of an *immune adjustment or regulation of normative expectations*.¹⁹ The following scheme summarizes the structure of the main IPs of the system of society, including the legal system's contribution.

¹⁸ Hypothetically, Roman law is probably the most important empirical evidence of pre-adaptive advance of a (however incomplete) legal immunization; since its primordial forms, Roman law comprised specific procedures, subject to legal experts, whose "objective was to replace the physical confrontation among opposing parties with a ritual, and hence depotentialized and symbolic, setting" (Schiafone 2005, 88 [our translation]).

¹⁹ Here, one might still speak of an integrative function of law, yet this should require specifying that such a hypothetical function is fulfilled not against conflicts, but with the help of conflicts – by relying (within certain limits) on the latter's own integrative properties previously mentioned – precisely because, as seen, the legal system emerges not only as a regulator of conflicts, but also as generator/attractor of conflicts. In addition, this integrative contribution of law might hypothetically and partly be comparable to the function of cohesion attributed to the immune system in the context of biological immunity, namely its capacity for "turning a set of heterogeneous constituents into an integrated individual [i.e., organism]" (Pradeu 2019, 24).

MAIN IMMUNE PROCESSES OF SOCIETY



6 Problems of Legal Immunization: Failures, Deficiencies, Dysfunctions, and Abnormal Realizations Responsible for Violence

We hypothesized that the legal system plays a significant role in the IPs of social systems. Nonetheless, legal immunization may be exposed to obstacles or run into certain limitations that we analytically distinguish in terms of failures, deficiencies, dysfunctions, and “abnormal” realizations, among other possible occurrences (in this sense, we do not pretend to exhaust the universe of possible limitations affecting the law’s contribution to a society’s immune system). We conceive of such distinctions as Weberian ideal types. Therefore, our mention of the following empirical cases only aims

to select, among their complexity, certain aspects comparable to the main properties of such types, without any intent to assimilate or reduce the vastness of elements that characterize every single case exclusively to one or another ideal type. One should also consider the fact that the evolution of societies is exposed to possible transitions in the course of which such obstacles and limitations may variably emerge to some degree at different stages of this evolution and in different combinations.

First, *failures* refer to all cases in which immune mechanisms are revealed to be powerless to neutralize ETs in general, and violent actions in particular. Any immune system might encounter potential agents able to bypass its responses. For several reasons, a nation may confront more or less diffuse political or religious movements inspired by particularly radical ideologies. For example, armed and terrorist organizations such as al-Qaeda, the Islamic State, their affiliates and a number of allied jihadist groups – particularly sectarian fringes in Iraq, Pakistan and Nigeria (Khosrokhavar 2009; Author[s] 2011) – represent a crucial challenge, insofar as they remain estranged from institutionalized arrangements and reject involvement in the existing state's procedures, which make a losing battle of any efforts at political compromise and any shared legitimization of a legal order, its bodies, proceedings and decisions. Here, the fusion of the attacker and the martyr embodied by the figure of the suicide bomber signals both the most radical barrier to any basic form of intersubjectivity for mutual recognition and the major challenge to political power and its completeness (Popitz 2017 [1992]; see also Gambetta 2005). Under certain circumstances – exemplified by the al-Qaeda' suicide campaign in Iraq in the context of the Sunni-Shiite conflict since 2003 (Hafez 2007; Author[s] 2010) – confronting these extremist organizations may drive incumbents to opt for highly repressive measures conducive to a spiral and chronicization of violence, such as reciprocal exterminations and civil wars, which prove the manifest failure of a society's immune system (see also Kalyvas 2006).

Second, we identify *deficiencies* of social immunization in terms of a lack or an insufficient development or a significant weakening of legal procedures and judicial institutions to such an extent that the legal system is not properly differentiated or is

reduced to nothing more than a façade, thereby offering no or little chance to motivate and promote the individuals' inclusion and their involvement in legal proceedings and the lawmaking process. Generally, this condition is correlated with virtually nonexistent restraints and institutional arrangements that would make possible a legal control of the use of physical force by political actors and that would serve to prevent further risks of destructive impacts on human beings – and, consequently, on the autopoiesis of social systems – such as those derived from indiscriminate executions, torture and other physical abuses, which characterize the unconstrained resort to coercive methods and the pervasiveness of terror that one may observe, for example, in the case of the Baathist regime under Saddam Hussein (Mariya 1998) and in several cases of Latin American state-directed political violence (Menjivar/Rodriguez 2005).

Third, legal immunization may engender specific *dysfunctional interventions* that we analytically distinguished from previous types of limitations as unbalanced arrangements of the legal system's operations, in contexts in which the above-mentioned legal achievements are institutionalized and generally enforced in the typical configuration of the democratic and constitutional state. Here, a crucial source of dysfunctions may derive from the legal system's attempts to internalize the orientation to consequences as a decisional criterion in confronting needs for protection from effective or possible risks and threats.

A first example has to do with emergency provisions in the area of counterterrorism (Stern/Wiener, 2006). We know that since 2001 some Western legal systems have introduced an increasing number of measures that commonly intend to deal with a diffuse fear of terrorist attacks (Author[s] 2012). In some cases, these measures have revealed a common characteristic: a collision between the “logic of consequences” underlying individual states' aim to defend their sovereignty and protect their citizens, on the one hand, and the “logic of appropriateness” based on legal constraints at domestic and international levels, on the other (Birdsall 2010). States have designed new legislation and provisions that have conferred special powers on law enforcement agencies and military authorities and have centered on purpose-oriented decisions: a specific style of decision-making oriented toward the future and primarily focused on

the ability to guarantee security and prevent new terrorist attacks. In extreme circumstances (e.g., the Guantanamo detention), legislation, executive orders, and rulings authorizing the suspension of civil liberties as counterterrorism measures (Abrams 2006; Cole 2003; Parker 2005) have resulted in an unbalanced legal immunization in which protection against actual or probable threats have entailed dysfunctional outcomes relative to the maintenance of constitutional and legal restraints.

The principle of strict liability in tort law is another example of dysfunctional interventions. Here, the legal system internalizes the criterion of the orientation to consequences in response to a wide set of risks, for example, in the field of economy and medicine. Strict liability deals specifically with social activities that lawfully cause damage, without the possibility of banning them (Hackney Jr., 1995; Ogorek 1975). Dangerous consequences may emerge despite all behaviors behind the same activities conform to statutes and regulations. Under these circumstances, the legal instrument of fault can offer no help, because it specifically refers to a negligent failure to act reasonably or according to law or duty (Trimarchi 1961).

Our hypothesis is that, in this case, legal internalization of risks depends on the increasing complexity of the human environment's perception of SCs and may be explained as a modality of restructuring the legal system aimed at improving its contribution to the IPs of society (see also Author[s]2005). Here, the fundamental task of the legal system is to open its own communication to conflicting communications referring to impacts detrimental to individuals' physical and psychological integrity. Legislation concerning, for example, product liability or environmental protection helps to channel specific inputs from the political system into legal procedures, resulting in additional semantics of loss and damages that reinforce individuals' reliance on legal settings as a way to defend their demands.

Importantly, such an internalization causes friction with the legal system's stabilization of normative expectations (Luhmann 1993 [1991], Chapter 3). Indeed, we witness the exertion of highly problematic pressure to effect rapid structural variability within the

law itself in reaction to individuals' perception of insecurity and demand for protections. This also engenders problematic side effects on other subsystems. As exemplified by its application by American courts particularly between the 1960s and 1980s, strict liability promised new opportunities for damages against the risks of contemporary technologies and, in doing so, stimulated an increase in litigation. Conflicts became "chronicized" and revealed their risk of a dysregulated configuration of litigations by directly or indirectly absorbing great amounts of resources, as documented by the insurance crisis and other disruptive consequences that overwhelmed the USA's product and service markets and medical professions (Priest 1990; 1991). Under these evolutionary circumstances, the possibility of an integrative role played by law in modern and contemporary society remains contingent on a precarious equilibrium between the legal system's function in stabilizing norms and its contribution to the immunization of society against tensions correlated with an increasing demand for a radical complexity of the law itself to deal with individuals' perception of new threats and needs.

Finally, the legal system may be exposed to social conditions that concur to *abnormal realizations* of the legal immunization.²⁰ We refer to hybrid circumstances in which the legal system maintains its regulative role (however limited) at least in the realms of specific social activities, while its procedures and organs become instrumental to processes of both discrimination/segregation and unrestrained use of power on behalf of some groups, after their successful attempts to evade fundamental legal restrictions. To exemplify such realizations, we mention the political occurrences that enable certain political actors to exploit measures based on the state of emergency and twist the normative and institutional order to such an extent that even ordinary courts' rulings are subjugated to overwhelming political, economic, and ideological objectives – sometimes also driven by sectarian criteria for the individuals' inclusion/exclusion – thereby resulting in a systematic circumvention of crucial legal restraints and an

²⁰ We derive the expression "abnormal realization" from Pradeu (2019, 41). Interestingly, we found some margin (however limited) of comparability between our description of the subjection of legal system to violent groups and their destructive behaviors, on the one hand, and the characterization of cancer as a process of de-cohesion of a multicellular organism triggered by tumors and mediated by the immune system, on the other.

uncontrolled and arbitrary resort to power and violence, while allowing the application of a “rule of law” by judicial bodies to only specific areas.

The historical case of the Nazi dictatorship might illustrate such occurrences and consequent impacts on a legal system and its functioning. The National-Socialist coup d'état that resulted from the application of the Emergency Decree of 28 February 1933, made it possible to establish a new regime distinctively characterized by a duality in terms of the coexistence of, and tensions between (because of their conflicting imperatives), a “prerogative state” (*Massnahmenstaat*) and a “normative state” (*Normenstaat*). Here, “by the Prerogative State we mean that governmental system which exercises unlimited arbitrariness and violence unchecked by any legal guarantees, and by the Normative State an administrative body endowed with elaborate powers for safeguarding the legal order as expressed in statutes, decisions of the courts, and activities of the administrative agencies” (Fraenkel 2017 [1941], xxiii).

On the one hand, as documented by Fraenkel, judicial institutions contributed to the consolidation of the regime's prerogative side, insofar as in their decisions, including high-level courts' rulings, they opted to abdicate their function of judicial review, particularly once confronted with provisions concerning the power of the Gestapo (Fraenkel 2017 [1941], Part I, Chapter 1). On the other hand, particularly in respect to economic life, the courts adopted a different approach and maintained the supremacy of legal authority as long as political reservations dependent on the prerogative state refrained from intervention, especially in the areas of freedom of enterprise, the sanctity of contracts, private property, the right of the entrepreneur to control labor, the regulation of unfair competition, patent regulation, and trade-mark rights, among others (Fraenkel 2017 [1941], Part I, Chapters 2 and 3).²¹ However, a crucial asymmetry

²¹ Importantly, according to Fraenkel (2017 [1941], 73-74), to document the remnant of a “rule of law”, one should focus on “an investigation of the cases in which there has been no intervention by the political police. Has the supremacy of rational law been abolished by the National-Socialist *coup d'état*? It would not be legitimate to speak of a Normative State if, in cases of conflict, the courts ignored the existing law in favor of general principles of National-Socialist origin. The Normative State would not exist if, even in cases where the political police do not intervene, the legal authority had to contend with this second

remained between the prerogative and normative state because of the subservient position of the latter, thereby concurring to the subsequent (after 1938) violent drift of the regime towards a catastrophic political and social outcome.

Within limits, certain aspects of this empirical case might also be described according to our ideal type of abnormal realizations.²² Indeed, we observe weakening and highly selective legal interventions, in that the legal system's autonomy and functioning, as far as at least the segment constituted by a specific nation is concerned, are reduced exclusively to the regulation of specific social spheres and in favor of certain social categories as part of a more comprehensive process of the judicial institutions' subjection to specific economic and political objectives and interests. Consequently, a paradoxical (however explicable) syndrome emerges in which a society's immune system blatantly operates in the service of particular subcollectivities and their arbitrary use of social power and violence, which, in the long run, engender a highly destructive impact on human beings and the decomposition of the entire social order.

reservation. Of course, we realize that in addition to the already existing 'external' political reservations attempts have been made in Germany to establish 'internal' reservations which would not be subject to the will of the political authorities. So far, these efforts have been ineffective except where Jews are concerned."

²² In this sense, our notion of abnormal realization is also to some extent comparable to the concept of authoritarian legalism or dual states, that Meierhenrich (2018, 249), based on the work of Fraenkel, defines as "hybrid authoritarian regimes marked by the concurrent existence of a normative state that governs in accordance with legal norms and institutions, and a prerogative state that governs wantonly. Their constitutive halves are independent yet interrelated; as defining attributes they are necessary and sufficient. They stand for, and combine, two conflicting strategies of authoritarian rule: decisionism and legalism. Dual states are authoritarian in that they reign over a playing field violently skewed in favor of incumbents; they are legalist in that their authoritarianism is open to legal reasoning and legal disputing; and they are decisionist in that the sovereign will of their authoritarian ruler(s) is limitless and supreme". This concept, according to the author, is usable also to illustrate the configuration, among others, of the South Africa' apartheid regime and the post-communist Russia.

The following table summarizes our typology of obstacles and limitations affecting legal immunization.

OBSTACLES TO AND LIMITATIONS OF LEGAL IMMUNIZATION

IDEAL TYPES OF OBSTACLES TO AND LIMITATIONS OF LEGAL IMMUNIZATION	MAIN PROPERTIES
FAILURES	Presence of actors radically estranged from institutionalized arrangements and hostile to any involvement in the existing state's procedures.
DEFICIENCIES	Lack or insufficient development or significant weakening of judicial institutions, legal procedures and legal control of power.
DYSFUNCTIONAL INTERVENTIONS	Unbalanced arrangement of legal provisions, due to the internalization of criteria that weaken certain legal restraints or that concur to the "chronicization" of conflicts.
ABNORMAL REALIZATIONS	Circumstances under which legal institutions, including judicial bodies, despite maintaining a partial autonomy, become instrumental to violent groups after their successful attempts to evade crucial legal restraints.

7 Concluding Remarks

Our paper analyzed violence from the peculiar perspective of a "social immunology", defined as the area of social systems theory concerned primarily, even though not exclusively, with those processes by which social systems as communication systems deal with tensions, termed ecological tensions, that involve the intersection between social systems and their human environment and that endanger the maintenance of social autopoiesis. Individuals' violent behaviors are manifestations of such tensions.

However empirically ubiquitous it may be, violence constitutes a crucial problem for social systems, due to risks detrimental to the human substrate of communicative processes. We have theorized about conflicts, social movements and the legal system as the main components of an immune apparatus of social systems by focusing on individuals' reactions to social costs and related social conflicts. Modern law, in particular, tends to promote the individuals' inclusion and to restrain their resorting to violence by relying on a system of rights, procedures, and judicial institutions conducive to attracting and regulating such conflicts. Legal immunization remains nonetheless exposed to several limitations, including abnormal realizations that concur to the arbitrary use of violence.

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