Aligning normativity with Luhmann for a critical study of industrial relations

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Introduction

Decent working conditions and well-functioning methods for regulating working conditions are generally perceived as inherent parts of the welfare state. In several developed welfare states systems of industrial relations play an important role in the creation and enforcement of working conditions. In the aftermath of the financial crisis the Nordic model of industrial relations has further been highlighted as a strongly contributing factor to the fact that the Nordic states suffered less and recovered faster from the problems caused by the crisis.[1] The success of the Nordic model of industrial relations in this aspect can be considered rooted in the two-fold function of this model in taking into account both the economic and social interests of the actors and society.[2] There is thus a link between the welfare state and systems of industrial relations making such systems an interesting object of study for any researcher interested in understanding the development of decent working conditions and a well-functioning welfare state. However, seeking to understand the capacity of a system of industrial relations to contribute to such developments is not an easy task. Instead, it requires a study that encompasses the understanding of both the overarching structure of the system and its inherent elements in order to be able to explain what the system is, what results it produces and why this is so. For such a study it is necessary for the researcher to apply a consistent and well developed theoretical framework for analysis as well as adopting a methodological design assuring validity and reliability for the results of the study.

Since systems of industrial relations at its core holds tensions between divers interests and power relations, it would not seem far-fetched to assume that critical theory is well-suited to provide an analysis of such a system.[3] On the other hand, Luhmann's systems theory has also proven a useful tool for understanding systems of industrial relations.[4] Whereas critical theory

1. See for example Deakin, S. (2014). Social Policy, Economic Governance and EMU: Alternatives to Austerity. *The Economic and Financial Crisis and Collective Labour Law in Europe*. N. Bruun, K. Lörcher and I. Schömann. Oxford, UK, Hart Publishing Ltd**:** 83-106.
2. For a useful contribution on the Nordic model of industrial relations see Edström, Ö. (2016). The Nordic Industrial Relations Model: Surviving the Impact from European Law? *Globalisation, Fragmentation, Labour and Employment Law*. L. Carlsson, Ö. Edström and B. Nyström. Uppsala, iUSTUS**:** 95-112.
3. For a good example see Lillie, N. (2006). "Globalisation and Class Analysis: Prospects for Labour Movement Influence in Global Governance." *Industriella Beziehungen* **13**(3): 223-237.
4. See for example Rogowski, R. (2000). "Industrial Relations as a Social System." *Industrielle Beziehungen* **7**(1): 97-126, Hartzén, A.-C. (2017). *The European Social Dialogue in Perespetive: Its future potential as an autopoietic system and lessons from the global maritime system of industrial relations*. PhD monograph, Lund University.

has been criticised for being too normative and idealistic, focusing rather on how society ought to be than on what it actually is, Luhmann's systems theory has been criticised for merely providing a description of what is and as such providing a deterministic analysis of society.[5] From this simplistic view of the critique of the two theoretical strands it seems that what is missing in both is the ambition to achieve an analysis that allows us to identify the link between what is (the focus of systems theory) and what ought to be (the focus of critical theory). In other words, how can we seek answers as to what needs to be changed in order to move from the status quo to the ideal society? My suggestion is that this could be achieved by identifying a methodology that can align the ambitions of the two theoretical strands in order to identify ways forward for society.[6] Therefore, this contribution is intended to explicate a methodological model that allows us to conduct an analysis of empirical material using Luhmann's systems theory in a manner that opens up for providing normative conclusions in line with the tradition of critical theory. I will start by briefly accounting for some starting points in terms of how I consider the ambitions of critical theory and Luhmann's systems theory for the sake of this discussion. I will then move on to

discussing how the concept of values provide a common ground between critical theory and systems theory. After that I will describe the methodological model and briefly discuss how it contributes to aligning an analysis based on Luhmann's systems theory with the aspirations of critical theory. Finally, I will provide a few concluding remarks.

Critical theory and Luhmann's systems theory, some brief starting points

Worth noting for the following discussion is that the ambition is not to provide an analysis of similarities and differences between specific theoretical concepts and ideas of critical theory and Luhmann's systems theory.[7] Instead, I base the following discussion on the supposed contrast between the normative ambitions of critical theory and Luhmann's systems theory. There is thus not a specific critical theory in focus here. What is in focus is the ability of critical theory to call into question the basis of societal power structures in the modern capitalist society and how these structures are in conflict with the need of human nature and thus challenge the possibilities for individuals to become truly reflective and active participants in society in a meaningful manner.[8]

5. For an interesting contribution highlighting the debate between Habermas and Luhmann on these differences in a more philosophically elegant manner see Knodt, E. (1994). "Toward a Non-Foundationalist Epistemology: The Haberemas/Luhmann Controversy Revisited." *New German Critique* (61): 77-100. For a contribution focusing on the shared basic assumptions between critical theory and the Frankfurt school of systems theory see Fischer-Lescano, A. (2012). "Critical systems theory." *Philosophy and Social Criticism* **38**(1): 3-23.

6. Worth noting is that I don't go as far as to argue for fusing the two theoretical strands in the manner suggested by Kjaer, P. F. (2006). "Systems in Context: On the outcome of the Habermas/Luhmann-debate." *Ancilla Iuris* **2006**: 66-77.

7. There are a vast number of contributions focusing on systems theory as a critical theoretical framework, but this text is as stated not intended as a contribution to that debate. The focus here is instead on the methodological application of theory. For some interesting contributions focusing on the theoretical perspective see for example: Philippopoulos-Mihalopoulos, A. (2009). Niklas Luhmann: Law, Justice, Society. E-book, Taylor and Francis, Teubner, G. (2009). "Self-subversive Justice: Contingency or Transcendence Formula of Law?" *Modern Law Review* **72**(1): 1-23, Fischer-Lescano, A. (2012). "Critical systems theory." *Philosophy and Social Criticism* **38**(1): 3-23.

8. Thompson, M. J. (2016). *The Domestication of Critical Theory*. London, Rowman & Littlefield International, pp. 1 ff.

Such an ambition for theoretical analysis can be considered in contrast with Luhmann's ambition concerning his theory on autopoietic systems. Luhmann's theory is rather to be understood as aiming at providing multi-facetted means for understanding the complex modern society without placing those perceptions of society in an ideologic framework of what the needs of human nature are.[9] In this sense Luhmann's theory provides a non-normative framework for analysis. Since the further discussion is based on using Luhmann's theory as a theoretical framework for studying systems of industrial relations I find a brief account of this theory suitable.

Luhmann's theory is based on the premise that society can be understood as consisting of several self-referential, or autopoietic, systems, such as law, economy, politics and education. These systems consists of recursive communications and they distinguish themselves from their environment by applying a binary code, which for law is legal/illegal. Since systems are operationally closed only communications dealing with the positive side of its binary code are perceived as part of the system. The binary code remains the same throughout the autopoiesis of the system and makes up the border of the system. However, in order for the system to organise its communications it adopts programs to fill the binary code with contents and meaning. These programs can thus be understood as a variety of values that set up conditions and/or goals for the communication of the system. As such these programs are also changeable and the system will adopt its programming if this is necessary for the continuous autopoiesis of the system. This results in a cognitive openness of the system whereby the system becomes able to identify communications in its environment as

irritations which are relevant for the system to deal with in its own internal communications.[10]

To illustrate what this means for a system of industrial relations the European social dialogue (ESD) can be used as an example. The ESD can in this manner of perceiving society be considered an autopoietic function system based on the binary code of discussable/non-discussable between the EU collective actors. Documents produced within the ESD, such as joint opinions, recommendations or framework agreements can thus be considered as communications of the ESD. These communications are steered by programs within the ESD, programs which over the years have changed in order for the ESD to secure its future recursive communication. During the 1990s, when the cross-industry social partners negotiated agreements on part-time and fixed-term work, the ESD operated in line with a program formulated in terms of 'if there is a credible threat of legislation, then the decision will be made to conclude a binding agreement'. This program was, due to irritations from the EU legal and political systems, adapted later on to 'if there is a credible threat of legislation that will challenge economic interests, then the decision will be made to conclude a binding agreement'.[11] This is one example of how Luhmanns theory, in spite of being non-normative,

9. King, M. and C. Thornhill (2003). *Niklas Luhmann's Theory of Politics and Law*. Basingstoke, Hampshire, New York, Palgrave Macmillan, pp. 1 ff.

10. An accessible overview of the theory can be found in Borch, C. (2011). *Niklas Luhmann*. London and New York, Routledge. My work on applying the theory is to a large extent, albeit far from exclusively, based on Luhmann, N. (1995). *Social Systems*. Stanford, California, Stanford University Press, Luhmann, N. (2013a). *Theory of Society Volume 1*. Stanford, Stanford University Press, Luhmann, N. (2013b). *Theory of Society Volume 2*. Stanford, California, Stanford University Press.

11. For a more detailed discussion on this I revert the reader to the concluding chapter of Hartzén, A.-C. (2017). *The European Social Dialogue in Perespetive: Its future potential as an autopoietic system and lessons from the global maritime system of industrial relations*. PhD monograph, Lund University.

actually opens up for identifying societal values of a more normative character through the empirical analysis of system communications. Whereas critical theory would most likely have started from the normative questioning of the underlying values of society shaping the possibility of the ESD to produce results, Luhmann's non-normative theory will provide a description of the results allowing us to identify what societal values, or in other words normative values, are promoted through the programming of the ESD. Societal values are thus possible to work with from both these theoretical strands. I therefor find the concept of values a suitable starting point for discussing the possibility for aligning an analysis using Luhmann's theory as a framework in order to achieve the objective of providing conclusions in line with the ambition of critical theory.

The concept of values, a bridge between critical theory and systems theory

As stated above the concept of values is a key for aligning an analysis based on Luhmann's systems theory with the ambitions of critical theory. This is a concept for which Luhmann shows a two-sided view. Values are to a great extent a basic prerequisite in Luhmann's theory, since the binary code within each autopoietic system is based on a certain value with a positive side, making up part of the system, and a negative side, all that falls outside of the system;[12] thus, a highly positivistic manner of conceiving values. This is, however, not the only manner in which Luhmann considers values. Instead he acknowledges that the binary code carries a positivistic appreciation of values in the sense of true or false, excluding any values in the sense of good or bad. This means that the system's own classification of whether or not a question falls within the legal system is never considered in terms

of good or bad, nor on the basis of success or failure by the legal system; such values are not considered by the binary code. Luhmann then goes on to explain that the values excluded by the binary code of the system can re-enter the system through the programs of the system.[13] There is thus also room for a more normative understanding of values within Luhmann's theory. His work contains no rejection of normative values; rather, he acknowledges their existence as part of programs within the system, whereby communication can be aimed at the promotion of values, such as peace, justice or solidarity. However, Luhmann views these values as unsuitable for distinguishing whether or not the communication should be considered correct, since in fact, all such abstract values can be either positively or negatively perceived.[14] It is in this sense that values, according to Luhmann, do not serve to explain what society is, as his level of abstraction makes these values less important for describing society.

How then are values in the normative sense to be understood? As stated above, Luhmann referred to values such as peace and justice, which are relatively unquestioned values in Western democratic societies. Other such values are freedom, equality and welfare, as described by Francot-Timmermans.[15] Normative values are thus more related to culture than to norms,[16] even though they play an important part in the understanding of normativity. In

12. Luhmann, N. (2013b) *Theory of Society Volume 2*. Translated by: Barrett, R. Stanford, California: Stanford University Press, pp. 1 ff.

13. Luhmann, N. (2013a) *Theory of Society Volume 1*. Translated by: Barrett, R. Stanford: Stanford University Press, p. 227.

14. Luhmann, N. (1995) *Social Systems*. Translated by: Bednarz, J.J.w.B., Dirk. Stanford, California: Stanford University Press, pp. 317 ff.

15. Francot-Timmermans, L. M. A. (2008) *Normativity's Re-Entry – Niklas Luhmann's Social Systems Theory: Society and Law*. Nijmegen: WLP, p. 156.

16. Deflem, M. (2013) 'The Legal Theory of Jürgen Habermas: Between the Philosophy and the Sociology of Law', in Banakar, R. & Travers, M. (eds.) *Law and Social Theory*. Oxford and

this sense I think it is also important to highlight the fact that capitalism has been an important ideology in shaping Western societies. Therefore capitalist values such as economic growth, profit and competitiveness should not be overlooked when we seek to answer why society reacts or operates in a particular way. However, Luhmann's theory is unconcerned with such normative values; it merely aims to answer what society is. To answer questions about why society is what it is, it is therefore necessary to elaborate on the use of the normative understanding of the concept of values.[17] This means that in order to conduct an analysis using Luhmann's systems theory in alignment with the aspiration of critical theory we also need to separate the analysis of the empirical material; working on first what we find based on positivistic values and after that move on to identify the normative values that influence the communication of the identified system. There is thus a need for the researcher to analyse the empirical material in two steps.

Analysing material in two steps

As stated above a coherent and stringent analysis of the empirical material for a study requires that the researcher assures that the analysis is carried out in accordance with the prerequisites set by the theoretical framework. Since Luhmann's theory marks a distinction between observation and interpretation,[18] such a distinction is also necessary when analysing the empirical material. This necessitates a two-step process in analysing the material and sources.

The first step relates to the observation of what can be found in the empirical material, thus a non-normative analysis using a non-normative theory to examine the positivistic values found in the material. This first step analysis will thus provide answers as to what results the system of industrial relations produce, what issues the communication produced by the system concerns and as such contribute to the understanding of what the system is.

The second step of the analysis consists of an interpretation of the empirical material seeking to understand the meaning of the communication produced by the system of industrial relations. This second step analysis thus require that the researcher takes into account not only what is explicitly expressed in words, but also what is left out or what is said between the lines for example through the structure of the communication and the order in which differing normative values are expressed. The ambition of this second step of analysis is in other words to identify the normative values that shape the programming of the systems, in order to answer questions of why the system of industrial relations produce certain results and as such why the system is what it is. This analysis is thus also based on Luhmann's theory by considering the values that re-enter the systems through the programming of the systems. In this manner the second-layer analysis provides room for a certain degree of normativity and as such it allows for answering a research question holding normative assumptions or ambitions.[19]

In order to illustrate what this means in practice when conducting research I will use an example from my previous work concerning the ESD. The empirical material that I used for

Portland, Oregon: Hart Publishing, pp. 75–90 at p. 85.

17. Francot-Timmermans, L. M. A. (2008) *Normativity's Re-Entry – Niklas Luhmann's Social Systems Theory: Society and Law*. Nijmegen: WLP, pp. 155 ff.

18. See for example King, M. and C. Thornhill (2003). *Niklas Luhmann's Theory of Politics and Law*. Basingstoke, Hampshire, New York, Palgrave Macmillan, pp. 18 ff.

19. For a more detailed discussion of this in relation to a study of the European Social Dialogue see chapter 2 in Hartzén, A.-C. (2017). *The European Social Dialogue in Perespetive: Its future potential as an autopoietic system and lessons from the global maritime system of industrial relations*. PhD monograph, Lund University.

that study encompassed a vast amount of documents and texts produced within the ESD, at both cross-industry and sectoral level, as well as previous research concerning the ESD. In the first-step analysis I found that the results produced within the ESD revealed that the communication of that system concerned a broad set of issues that not always fell within the scope of Article 153 TFEU. One such example is the agreement on health and safety in the hairdressing sector, where the original agreement included self-employed workers, who are excluded from the competence of the EU.[20] This brought me the conclusion that the binary code of the ESD cannot be understood in a sense that integrates Article 153 TFEU,[21] instead it needs to be understood as more open in the form of discussable/non-discussable between collective actors.[22]

Moving on to the second-step analysis focusing on the values that frame the programming of the system, the example of the negotiations concerning temporary agency work, which in the end broke down, serves as a useful illustration.[23] The start of these negotiations was highly dependent on the expressed and clear communication of the EU policy-shaping systems that a legislative proposal would be put forward regardless of whether the social partners would conclude an agreement or not. The management side were reluctant to start negotiations and would rather keep the issue of temporary agency work unregulated, but in the face of a credible threat of legislation the possibility to take part and shape the potential legislation pushed them to the negotiating table. During the negotiations things turned after an advice given by the Commission Legal Service. The advice made it clear that if negotiations would fail and an agreement could not be reached then the potential legislative intervention would not pose a threat to the economic interests of EU employers organisations and their members. This advice contributed to a change in the programming of the ESD. The requirement of a legislative proposal for concluding an agreement was no longer enough for ESD communication to generate a binding agreement. Instead the programming became framed in a manner that only if there is a credible threat of legislative intervention that will challenge economic interests will negotiations generate a binding agreement.[24]

By taking into account a broad set of written documents, including both texts produced by the ESD, the diverse actors contributing to the communication within this system and previous research concerning this system, this two-step analysis will thus provide an understanding of the studied system both in an overarching manner and in depth as concerns the inner essence of the system. This, thus allows for an analysis of the empirical material in a manner encompassing the aspirations of critical theory. As such this methodology can be con-

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20. See further Bandasz, K. (2014). "A framework agreement in the hairdressing sector: the European social dialogue at crossroads." *Transfer* **20**(4): 505-520.

21. A binary code integrating the earlier corresponding article was suggested by Welz, C. (2008). *The European Social Dialogue under Articles 138 and 139 of the EC Treaty – Actors, Processes, Outcomes*. The Hagues, Kluwer Law International, p. 541.

22. A more elaborated analysis can be found in Hartzén, A.-C. (2017). *The European Social Dialogue in Perespetive: Its future potential as an autopoietic system and lessons from the global maritime system of industrial relations*. PhD monograph, Lund University, pp. 320 ff.

23. The example given here is simplified in order to provide an illustrative example within a reasonable space for this article. The full discussion and analysis is found in chapter 8 in ibid.

24. For a detailed study of the case of temporary agency work within the ESD see Ahlberg, K., B. Bercusson, N. Bruun, H. Kountouros, C. Vigneau and L. Zappalà, Eds. (2008). *Transnational Labour Regulation – A Case Study of Temporary Agency Work*. Brussels, P.I.E. Peter Lang S.A.

sidered a means for accommodating a "critical turn-around of autopoetic systems theory"[25] in empirical analysis. In order to illustrate how this two-step analysis is carried out in relation to the empirical material and the theoretical framework I have developed a methodological model which will be discussed in the next section.

A methodological model for holistic analysis of systems of collective bargaining

To illustrate how I think the concept of values can be understood in a normative or positivistic manner, and what implications this has for research, I will use the example of industrial relations as a regulatory system. If values were interpreted in the positivistic manner, such a project would, at the empirical level, generate a research question focusing on the results produced by the system of industrial relations. This corresponds to the first-step analysis as described before and the answers that this first-step analysis provides help us formulate two questions that need to be answered in order to understand a system of industrial relations fully. The first question is: 'What results does this system produce?' When the answers to this first question are viewed through the theoretical framework we will also be able to describe how the system can be understood as an autopoietic system and thus answer the questions of 'What is this system of industrial relations?'

If the concept of values instead would be understood in a more normative manner, then the empirical research would focus on finding answers to why the system produces certain results. At the theoretical level there are thus also differences, in that the positivistic understanding of values would generate an analysis

seeking to lie out or utilise a descriptive theoretical argument that focuses on explaining what is. The normative understanding of values, on the other hand, would generate a theoretical argument focusing on why something is what it is through a normative theoretical analysis. This thus relates to the second-step analysis as described above and through this step in the analysis we will be able to provide answers that essentially will relate to the question of 'Why does this system produce these results?' and thus move on with the theoretical analysis that will provide answers to the questions of 'Why is this system of industrial relations what it is?' In the model below I try to explain these different forms of research questions that spring from the different understandings of the concept of values.
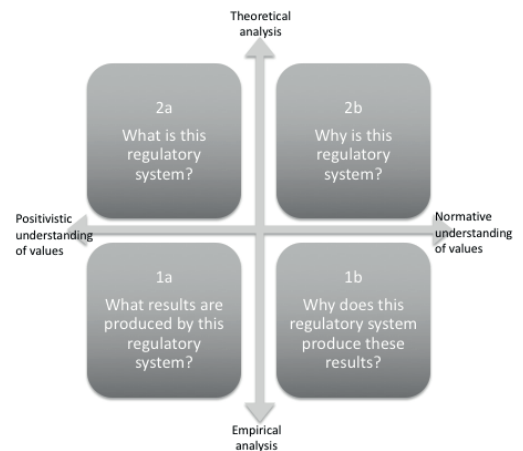

Figure 1. How the understanding of values can affect research questions.[26]

25. Terminology quoted from Fischer-Lescano, A. (2012). "Critical systems theory." *Philosophy and Social Criticism* **38**(1): 3-23, p. 3, whom, however, is referring to the theoretical conceptualization rather than empirical studies.

26. Originally published in Hartzén, A.-C. (2017). *The European Social Dialogue in Perespetive: Its future potential as an autopoietic system and lessons from the global maritime system of industrial relations.* PhD monograph, Lund University, p. 54. Here adjusted with the term normative values instead of hermeneutic values. The regulatory system intended in the model is a system of industrial relations, but I don't exclude the possibility of applying this model also for other forms of regulatory systems.

The first question that probably comes to the reader's mind when seeing this model is the use of the word why in the parts of the model relating to the analysis drawing from the normative understanding of the concept of values. In my opinion, this is not at odds with hermeneutic research, from a socio-legal point of view, due to the close connection between the normative understanding of values and the concept of normativity. Instead, the societal or normative values are an essential part in understanding how society and its function systems are affected by normativity and why a specific system reacts to system internal developments or irritations from its environment in certain manners.[27]

Normative values therefor serve to explain why certain results are produced through the interconnectedness between regulations and society.[28] The model thus allows for highlighting the normative values framing the systemic structures. As such the model opens for allowing this hermeneutic study to become a means for discussing the role of normative values in the production of results by systems of industrial relations in society. In this sense the model thus fills a function of highlighting the link between epistemological processes and the importance of normative values in socialisation processes in a similar manner as to how Thompson discusses the importance of capitalist values, which in my view fall within the category of normative values, as part of systemic structures.[29] The systemic structures linking law and society are thus of interest.

The model shows how empirical studies can highlight empirical findings in the shape of both more fact based or positivistic values and at the same time reveal less measurable or subjective values in the normative sense. Such a combination of studies can through the application of a theoretical analysis generate a more holistic understanding of the studied phenomena, which to some extent can be understood as an ambition to create a theoretical applied narrative for a specific object of study. This does not imply that research making use of this methodological model shall be considered foundationalist, because there is nothing within the model stating that other narratives based on other theoretical frameworks should not be considered relevant.[30] Rather the idea is that the model allows for research characterised by a focus on concepts and descriptions that serve to explain and provide understanding of the object of study through a specific theoretical framework.

The ambition of aligning an analysis based on Luhmann's systems theory with the aspirations of critical theory through the use of the methodological model can be understood in the sense of seeking to create an understanding of both the smaller parts of the object of study as well as the overarching systemic structures within which the studied phenomena exist. This understanding is to a vast extent created by highlighting normative values that frame these systemic structures and in that sense there is

27. For further discussion see Banakar, R. (2015). *Normativity in Legal Sociology – Methodological reflections on Law and Regulation in Late Modernity*. Heidelberg, Springer. On law having the function of stabilizing normative expectations in society see Francot-Timmermans, L. M. A. (2008). *Normativity's Re-Entry – Niklas Luhmann's Social Systems Theory: Society and Law*. Nijmegen, WLP.

28. For a further discussion on the issue of normativity, the concept of values and how this can be understood in a socio-legal and normative study using a non-normative theory for analysis see Hartzén, A.-C. (2017). *The European Social Dialogue in Perespetive: Its future potential as an autopoietic system and lessons from the global maritime system of industrial relations*. PhD monograph, Lund University.

29. Thompson, M. J. (2016). *The Domestication of Critical Theory*. London, Rowman & Littlefield International, pp. 22 ff.

30. This can be compared to the discussion concerning grand narratives in Sayer, A. (2000). *Realism and Social Science*. London, Sage Publications Ltd, pp. 68 ff.

a close link with how Thompson argues that critical theory ought to be made use of in order not to lose its potential to form a credible critique of society. He explains well how hermeneutic studies can be used in order to generate an understanding of the importance of capitalist values as part of framing societal structures.[31] In this sense the methodological model allows for studies that encompass a similar idea of societal critique in spite of not necessarily resulting in an analysis that generates new theories as to how society ought to work. This methodological application of Luhmann's theory can thus be considered in line with the aspiration adherent in the tradition of critical theory.[32]

The methodological model will allow for an analysis where capitalist values can be highlighted as part of the normative values that the model identifies through the empirical analysis of systemic structures. In such an analysis it will thus be possible to discuss the impact of capitalist values for the systemic structures of the studied regulatory system. A further understanding as to what results the regulatory system is capable of achieving under the influence of these capitalist values can as such be considered part of the research results that this model can form the basis for. Even though Luhmann's theoretical framework that forms the basis for the methodological model above is non-normative and can be considered distinct from critical theory, the resulting analysis can be understood as an application of this non-normative theory in alignment with the tradition of critical theory in the sense that Thompson advocates for.[33]

The main key to this argument is how the methodological model places importance on

values understood in the normative understanding of the concept and how such values influence structures. Whether capitalist values necessarily should be the societal normative values highlighted in a study based on the model can of course be discussed, but in relation to a study focusing on industrial relations there are strong arguments for doing so. Systems of industrial relations are to some extent shaping structures for regulating the system of production by seeking to find a balance between the interests of employers and the interests of employees. As such systems of industrial relations become part of shaping the systemic structures in everyday society as well as framing conditions for individuals participation in society and everyday life. Since part of the interests that the system of industrial relations seeks to balance are highly characterized by capitalist norms, the system of industrial relations thus become part of exactly those societal structures that critical theory pinpoints as problematic.[34] In this sense the system of industrial relations also become part of the societal structures that continue to uphold capitalist values as a hegemony in society, further enhancing the constitutive power of capitalism.[35]

It is important to stress that I do not consider the situation and understanding of values as either positivistic or normative. Instead a research project can display traces of both to various degrees, as well as being a combination of theoretical and empirical analysis. What the figure is trying to explain is rather that in various parts of a research project, differing understandings of the concept of values may be used, and this will generate answers to different questions relating to the research topic. By using Luhmann's theory to explain what a

31. Thompson, M. J. (2016). *The Domestication of Critical Theory*. London, Rowman & Littlefield International, pp. 22 ff.
32. Dant, T. (2003). *Critical Social Theory*. London, Sage Publications, pp. 136 ff.
33. Thompson, M. J. (2016). *The Domestication of Critical Theory*. London, Rowman & Littlefield International, pp. 50 ff.

34. Dant, T. (2003). *Critical Social Theory*. London, Sage Publications, pp. 82 ff.
35. Thompson, M. J. (2016). *The Domestication of Critical Theory*. London, Rowman & Littlefield International, pp. 32 ff.

system is and how it functions it ought to be possible also to answer the question of why this is so, through examining what values shape the programming of the system.[36] Although Luhmann does not consider such values observable, since in his opinion they exist only in people's consciousness,[37] I believe that those values can be identified by carefully examining communication from the system. The reason for this is that Luhmann himself clearly expressed that consciousness and communication are structurally coupled in a manner that presupposes language.[38] It is thus possible to identify normative values, by examining the language used in communications. Through the inclusion of all four parts of the methodological model in a study, it is possible to provide an analysis that encompasses a holistic perspective of the field of study. In this sense Luhmann's non-normative theory provides non-normative answers as to what society is, which in turn can be made use of in order to make suggestions on how to better make use of what we find society is.[39] The next section will sum up and provide some concluding remarks.

Concluding remarks

A study of a system of industrial relations in accordance with the discussed methodological model will provide the opportunity to understand both the overarching framework for the studied system as well as the inherent communicative structures of the system. In such a manner it will thus be possible to contribute with an in depth understanding of the regulatory capacity of the system. In addition, a study like this will also provide insights as to the structural coupling with other function systems, such as the economic, legal and political systems.[40] By highlighting the normative values in society in relation to the structural couplings between the system of industrial relations and other function systems it is possible to achieve an understanding of how the regulatory capacity of the system of industrial relations is affected through changes of societal normative values. This accommodates the ambition of an empirical study using Luhmann's theory as analytical framework in order to question the societal values that frame and shape the communication of the system of industrial relations. In other words the aspiration of applying Luhmann's theory in line with the ambitions of critical theory can be achieved when the empirical analysis is carried out in accordance with this methodological model. The model would further provide ground for comparative studies of systems of industrial relations in order to better understand the different outputs in different national systems also in connection to the EU level. My hope is that this can provide inspiration for future studies of systems of industrial relations for both students and researchers.

36. The idea that values frame the programming of social systems is also endorsed by Luhmann; see Luhmann, N. (1995). *Social Systems*. Stanford, California, Stanford University Press, pp. 317 ff.

37. Luhmann, N. (2013b). *Theory of Society Volume 2*. Stanford, California, Stanford University Press, pp. 172 ff.

38. Luhmann, N. (1997). "Globalization or World Society: How to conceive of modern society?" *International Review of Sociology* **7**(1): 67-79, p. 73.

39. Paterson, J. (2006). Reflecting on Reflexive Law. *Luhmann on Law and Politics: Critical Appraisals and Applications*. M. King and C. Thornhill. London, Hart Publishing**:** 13-36, pp. 30 ff.

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