**The foundational paradox of Gunter Teubner**

Andreas Philippopoulos-Mihalopoulos

At the heart of Gunter Teubner’s work, there is a foundational paradox. The work, as attested in this long-awaited collection of Teubner’s texts that span a few decades, is erudite, expansive, involved with the world, and of high theoretical merit. It is populated with references as varied as von Kleist, Derrida, Latour, Kafka, and of course Luhmann; but also global financial markets, Africa and HIV pharmaceuticals, private law and contract, politics, media, protest movements: a kaleidoscope of issues and references that attempt to capture the world, to describe and indeed to change it for the better. Yet at the same time, the work refuses to be captured by the world. It never allows itself to become a simple blueprint, an incontestable theoretical suggestion with pretences of universality, or even a text devoid of deliberate ambiguity, and closed to the contingent and the differently interpreted. The work hardly ever surrenders itself to the world. Rather, it superimposes a layer onto the world, an exegetic membrane that offers both distance and a reassurance that this is how things ‘really’ are: complex, multiple, closed, engaged in cumbersome internalisations and externalisations, fighting with absences, compulsions and addictions, extreme pressures and deft steerings, riddled with anxiety about identity, limits, otherness. Teubner’s world is an apparatus of capture, seductive and indeed optimistic; yet, it offers no space of rest, no finite certainty of how things should or even can possibly carry on.

It is often the case that, right when the reader thinks, ‘aha, this is what Teubner is getting at’, a reversal takes place that unsettles the previous balance, throwing one into yet another perspective, another way of understanding the world – in this way making sure that neither the world nor we as readers would ever freeze in any one, permanent position. This does not mean that we are faced with a form of relativist thinking. Quite the opposite: Teubner is a pragmatist through and through, and he understands well the need for realistic descriptions of society. But in the same vein, he understands too the uselessness of any universal position, the overarching necessity of not succumbing to ‘pure’ critique without the possibility of simultaneous action, and the supreme reign of paradoxes over conflicts (supreme also by necessity, hence the normative indictment, in Niklas Luhmann’s footsteps, of never, whatever happens, question the foundational paradox). The intense flirtation with the paradox, and especially with the observation of deparadoxification, that permeates Teubner’s oeuvre, finds full expression in the way the ideas are put forth in the texts included in this collection: in a performatively paradoxical way, the texts often arrive at what could be seen as abrupt conclusions, where matters are left unresolved, *in progress*, hanging there. All this, despite frequent bullet-pointed directions, suggestions for future solutions, practical recommendations: undoubtedly strong and sound normative directions, which, however, rely on such fine and complex manoeuvring that may never be followed to the letter. Rather than detracting, this adds to the conviction that Teubner’s work remains this rare combination of scholarship that is both solid and fleeting, both actionable and highly critical, both practical and evanescent.

Beyond and below all this, if one cares to look, one might come upon the crux of Teubner’s foundational paradox: on the one hand, the desire to be connected, involved in and engaged with the world; and on the other, an equally strong desire to take leave from the shackles of such connection, and to carry on building upward spires of theoretical inventiveness that keep on spreading layers of different perspectives on top of existing ones. The paradox, to put it in a slightly more author-focussed way, is the delicate co-existence between the craftsman and the visionary, the scholar dedicated to techne and solution-finding on the one hand, and the thinker who wants to immerse himself in the intricacies of a beautiful theory.

Because this paradox never gets resolved, the oscillation and perpetual re-entry between the two sides remain the source of creativity and originality. The two sides, let’s call them the empirical and the theoretical, keep on cross-fertilising each other by gently steering towards a more plausibly actionable or more theoretically solid direction. In most cases, as if it were an exemplary moment of Spinozan parallelism, the two sides end up in the same locus of hopeful despair: the world is deeply problematic, but fear not!, we have a good theory in hand that might and should make a difference. Teubner’s writing pulsates with socially-responsible and responsive admonitions, constantly in the toil of building bridges between theories, social systems, layers of constitutions, and aspects of international law. The fact that, often, these differences are shown by Teubner himself to be unbridgeable does not deter from the effort. It is in the act of engaging with other perspectives, of revealing their “reciprocal paranoia”, that one of Teubner’s greatest ambitions lies: to think, ultimately and unapologetically, as the goal of all efforts and in relation to every topic, of the one thing for which law is deemed not just necessary but unavoidable: to think of justice.

**Justice**

Justice is not only an overarching theme in Teubner’s work, and this collection in particular, but indeed the grand formula in the core of Teubner’s scriptural pathos which, in its turn, is often dissimulated as cool detachment. In a caustic remark that still holds true, Teubner positions himself: “legal sociology has no idea of justice.” And it is not just legal sociology that is found lacking. The actual idea and practice of justice in law is inadequate: “Does the law, in the way it tests the equality or inequality of cases, do justice to contemporary polycontextural society? Does it do justice to the natural environment? Does it do justice to individual minds and bodies?” And he carries on: “the search for a just society cannot follow one ideal path. From the beginning, it is split into multiple and different avenues.” This is the only way to address the needs of a polycontextural society, namely the social multiplicity of contexts that takes form in the emergence of highly fragmented intermediary social structures: context and textures, social systems and humans, abstractions and matter, bodies and antibodies, system and environment. A plurality of mutually exclusive perspectives that suggest something more than just ‘a perspective’: these are neither subjective, nor relativist pieces of the social pie. They are not ways of seeing but ways in which reality is textured, formed ontologically in perennial fragmentation and mutual exclusion. These textures are ushered in, angularly and exigently, in the form of justice.

Justice is the re-entry of the environment, of *what-is-not*, into the system, into *what-is*. Justice is the re-entry of the non-legal into the legal system, a wind (breeze or gale) that plants in the heart of the system a detonating memento mori: a reminder of one’s limits and limitations. But also a reminder of the system’s very own *end*, its *telos* as ultimate mission.

Teubner is all too aware of the need for limits and limitations (if not of ultimate teleologies, despite frequent nods to theology and what is hidden behind it): “there are positive aspects to the disciplining constraints. They put the law under enormous pressure to innovate.” Limits are in place (or ought to be) for another important reason: it is only within those limits, of the system, of the context and of its texture, that justice can be materialised. It is only the law that can deliver the justice that is expected of it (and which the law expects of itself). But it is only by law’s self-transcending, becoming-other, like some sort of Deleuzian flurry in a mad effort of self-preservation, that the law delivers justice. By ingesting its environment, what-is-not, the law becomes it. Co-extensive with a vast, polycontextural environment, the law begins its fiery crusade for justice (or its conception of it), and in the process, it forgets its limits: “The darkest side of juridical justice, however, is its relentless drive towards universalisation.” But this tendency seems to be inevitable and not confined to law only. It is an ontological trait of systems. But it is our responsibility to deal with it. How to do this, is a big question for Teubner. As in several cases, so in this one, he takes recourse to a parallel reading of Derrida’s deconstruction and Luhmann’s social systems. In Teubner’s reading, “Derrida drives the law into an obscure world where Luhmann would anticipate only paralysis and horror.” Teubner, true to his paradox, remains in magisterial buoyancy, floating in between, facing the horror but gently, opening his and our ears to “the disquieting awareness of transcendence”.

**Paradox**

Teubner diagnoses a modern fascination with paradoxes. Paradoxes have often replaced conflicts, and not always to good effect: “conflicts require criteria, venues, procedures in order for a decision to be possible. Paradoxes cannot be overcome that way. There is no *via regis* towards a ‘solution’ for them, at most a *via indirecta*. It is not the decision of the conflict that they call into question, but the very conflict itself.” Paradoxes might be thought of as the diplomatic route that supplants the conflict: the sides of the paradox that bleed into each other without ever bleeding to death. Does this fascination, however, still hold true? Have we not moved well into an era of immediate, gratifying deparadoxification? Fake news, complex finance, the spectral threat of a nuclear war: what is the relevance of an arcane theory of paradoxes in an era where action (even if misplaced), and resistance to such action, are so prominent?

Teubner’s answer is resolutely affirmative. Paradoxes remain the core of legal, political, financial and other system operations. It is just that, now, everyone externalises their paradoxes. What used to be a ping-pong match between law and politics, has now spread across social systems. Take protest movements for example, that react to the way law has changed its externalisation of paradoxes – no longer state law but a transnational form of public order that turns to contract, organisations and standardisation in order to alleviate itself from the paradoxical burden: “this explains why within protest movements, there is a growing potential for a repoliticisation, a re-regionalisation and a re-individualisation of processes of lawmaking that are no longer concentrated in the political system, but can be found in various different social subsectors.” Once again, this becomes a question of limits, or more precisely lack of limits. The law has become so omnipresent that has colonised the world in the form of excessive juridification, in its turn a form of universalised irrelevance. Teubner laments the loss of positive law criteria, and the consequent paucity of law’s meaningful bearing to the world: “Modern Law only has its constricted, inadequate (for the purposes of describing the world), context-free, ultimately meaningless legal/illegal binary code – this ‘cant’ of modern legality – at its disposal.” This does not mean that the well-known Luhmannian binary code of the legal system is obsolete. But Teubner throws another layer on top of it, a meta-code to which all social systems currently conform, and which emerges from the *constitutional structures* across society.

This expansion on constitutional theory is Teubner’s most recent development, but once again, it unfolds in surprising ways. While taking inspiration from traditional state constitutional theory, he moves on to what I would describe as an ontology of constitutional structures and a diagnostics of the present on the basis of such constitutions, that are both present in every social system, and shared in by all of them in the form of meta-code. This is Teubner’s global constitutionalism, another iteration of the foundational paradox: Teubner seems to have a certain amount of confidence in these global institutions, provided however that the sociological preconditions are in place in order for more normative perspectives in law and politics to emerge. The lack of social substratum, in the sense of the demos of the traditional state-focussed constitutional theory, is not an issue for Teubner. We have moved irreversibly away from the era of human-centred politics.

**Hybrid**

So far, only a few instances can be discerned in which Teubner has moved beyond Niklas Luhmann’s theoretical credos. This does not mean that he has not developed Luhmann’s theory in new directions, or read the theory in ways that departed from what one would consider a strict reading of Luhmann. With the concept of hybrids, however, Teubner leaves Luhmann well behind, and specifically one of Luhmann’s most basic operations, that of structural couplings between social systems. Hybridisation in Teubner’s work begins with issues of private-public emergences, moves on to global constitutionalism, and returns to issues of the contract as hybrid. Hybridisation is often the one side of the form, the other being fragmentation. Although hybridisation relies on differentiation (one of Luhmann’s main conceptual tools, usually accompanied by the great normative anathema of ‘do not differentiate!’), it aims at the same time explicitly to bridge the differences of differentiation while resisting full dissolution of the two sides: “It is only the combination of both sides of the difference that brings out the special nature of the hybrid: neither mediation nor synthesis, but extremely ambivalent (or polyvalent) unity.” A hybrid, therefore, is beyond structural coupling, and relying on ambivalence hat comes from the unknowability of otherness, than the more reassuring understanding of structural coupling as, precisely, coupling of known structures.

Once again, Teubner is bringing in a third position, the floating possibility of having one’s cake and eating it. Instead of cake being the centrepiece, however, Teubner suggests the blind spot. Blind spots are the loci of focus when three (social systems, aspects of contract, theories – the method applies diagonally to all of them) come together in a unity of, not so much difference as ambivalence. Blind spots become visible in the process, while naturally new blind spots emerge. This process, however, generates an absence within (in this case, the contract as hybrid) which allows a most lyrical Teubner to emerge: “At the centre of the contractual phenomenon, there is thus a void, the central absence in the modern contract. Altogether, the contract ‘as such’ remains a mere configuration with no operative substrate of its own, an invisible dance of mutual adaptation, a secret coordination of consent, a grandiose relation consisting in the structural coupling of a multiplicity of meaning-processing systems.” This choreography of multiple structural couplings spirals up in the emergent quality of a hybrid, and with it, a new awareness: that in the core of this choreography, there is a void, a central absence, which remains untameable. Teubner dips his toe into chaos, while keeping his other foot on systemic order. But unlike Luhmann, he dithers longer. And what he brings along is often even more chilling than Luhmann’s cool and orderly outlook.

**Posthuman**

Teubner carries on with conviction Luhmann’s (albeit never explicit) posthuman thinking. Humans are no longer central to the way society operates and decisions are taken. Social systems are the great progenies of humans, having already taken over the planet while humans still worry about robots. But in some ways, social systems are becoming the new humans, merging their operations with human traits – this is the nature of polytheism, where gods are no longer immune to human affects, and, unable to hide behind the imperturbable unity of difference of monotheism, they end up becoming even more humans than humans. In Teubner’s polycontextural society, social systems are affected by addictions, delusions of universal grandeur, extreme territoriality, greed. This is not anthropomorphisation: it is finally a realisation that systems are both less and more intelligent that we have thought. Systems fall in a habit of compulsion, just like any body, human or nonhuman, that thinks of the outer layer of its skin as the end of the universe. Systems are Leibnizian monads, no doors or windows, blind units of isolation fed on illusions on how there is nothing outside. So everything is for the taking.

Teubner’s diagnosis of systems’ “underlying self-destructive growth compulsions” initially seems to be a step beyond autopoietic self-preservation: “The theory of autopoietic systems has already broken with the axiom of classical structuralist-functionalist theory, that is, with the imperative of self-preservation. Connectivity (*Anschlussfähigkeit*) of recursive operations is the new imperative – autopoiesis proceeds or not, as the case may be.” But is this really the case? Rightly, Teubner is not convinced: “the disquieting question remains of whether autopoiesis is not secretly dependent on the logic of growth.” He goes on to note instances of excessive growth, “pathological forms, addiction phenomena” in nearly every system: “politicisation, economisation, juridification, medialisation or medicalisation of the world.” The world is at the mercy of amoeba-like amorphous formations that blindly self-reproduce, indiscriminately extending their boundaries, like gases released in space taking up all available room.

The solution, once again, might come immanently, from within the very amoebas. Teubner’s ambition is to point out the constitutional self-limitation of social systems and its fine relation with external steering (itself very limited). We are, once again, on familiar ground: only the addict can save themselves; only from within law can justice emerge; only from within the system can the limits of the system materialise. In a way, this is the ultimate posthuman gesture: in a planet fully colonised by humans to the point of alteration of the planetary geological footprint, and where humans can no longer be thought of as rational, enlightened human beings, but a chain of continuous mediations, there is nothing outside that can save humans from their compulsions. Whatever limitation can be set, can only come from within.

**Ontology**

Teubner, at least in the ambits of this collection, does not worry about whether his work is epistemological or ontological. Orthodox Luhmann readers will take the former for granted but Teubner (well, just as Luhmann) allows us to think differently. While he never stops talking about perspectives, theoretical vantage points and blind spots, all of which point to a solid epistemological tradition, he hardly talks about observation in the same way that Luhmann does. It would seem that Luhmann’s favourite level of conflict resolution, that of second-order observation, is of a much lesser importance to Teubner. What we have here instead, is a thinking process that could be profitably compared to speculative realism, resolutely posthuman, material and emplaced, but also comfortable with abstraction. Teubner’s geographical credentials, starting with his use of global Bukowina and moving on to global constitutionalism, have a distinct localisable quality that was never there in Luhmann’s work. His use of polycontexturality opens up planes of textures that are a short step away from explicit materiality. Finally, his understanding of corporeality in the context of HIV medication in Africa walks on the steps that Luhmann famously took in the Brazilian favelas.

All the above attest to the fact that the world Teubner has formed is not just a perspective. It is an ontological happenstance – happenstance because nothing could not have been otherwise. But the point is that this is how it *is*. It is of course a perspective and often a vision – Teubner’s own – but this only superficially hides the fact that the world about which Teubner writes is material through and through, and what we are offered is an ontological shot at this materiality. Perhaps the most clearly ontological gesture is where he situates existence, and how closely connected is to an ontological *becoming* towards justice: “The decisive thing is the ‘moment’: the simultaneity of consciousness and communication, the cry that expresses pain: hence the closeness of justice to spontaneous indignation, unrest and protest, and its remoteness from philosophical, political and legal discourses.”

Just as many scholars in the Anglophone academia, I too discovered Luhmann via Teubner’s work. Just as many readers, I too had this floating feeling when I first read Teubner’s work, acknowledging both the depths of the text and my own shallowness in attempting to understand it. I have always followed Teubner’s work, deciding at the same time to carve my own irreverent Luhmann niche. Teubner and I have different spires to climb, different vistas to behold. But I am indebted to him for opening the way towards a different reading of Luhmann, irreverent yet loyal, inventive yet always re-entering. But let us make this clear: what you have in your hands is not just another reading of Luhmann. It is a different, bolder world, at the same time more grounded to empirical reality and yet more melancholy, with a greater confidence in institutions yet with an indefatigable insistence on guarantees, whether these are respect for human rights or public registers preventing publication bias. Teubner’s work impresses upon us the possibility of a better place, a better world, for which we can work and towards which he generously offers directions and methodological suggestions. Just as this world is not something transcendental, outside the world we inhabit, in the same way the work for it can only take place immanently, from within. Yet, whatever direction this world takes, it can only be truly better if justice remains as its corollary. And in this way, Teubner leaves a window ajar.