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Helmuth Plessner as a Social Theorist

Role Playing in Legal Discourse

Bas Hengstmengel

Plessner’s social philosophy

Relatively independent of his anthropological groundwork in *Die Stufen des Organischen und der Mensch* (1928), Helmuth Plessner developed a philosophy of the public sphere in some of his other works. In his social and political works *Grenzen der Gemeinschaft* (1924), *Macht und menschliche Natur* (1931), *Diesseits der Utopie* (1966) and *Die Frage nach der Conditio humana* (1976), he presents a philosophy of public life as a sphere of social roles, prestige, ceremonial, tact, and diplomacy. Man is regarded as a role player who wears masks. Although Plessner does not develop a complete social, political or legal theory, his work contains important building blocks for other theories in these fields. In my view, social role playing is a key concept for enabling Plessner’s work to contribute something fruitful in these domains. Given this connection, this concept is the central theme of this chapter.

Interestingly, Plessner’s thoughts on man as a player of different social roles has the potential to mediate between his anthropological theory and his social (or sociological) theories. One of the fields of social theory in which role playing has a clarifying potential is that of legal discourse, more specifically the purpose and function and functioning of the legal process. Legal subjects in a process can be regarded as prototypical role players, as their action potential is strictly framed by process law, practices and customs. Plessner’s notion of social roles can offer a model for the legal subject as an abstract bearer of rights and duties. Unfortunately, social role theory is rarely discussed among legal scholars. In this chapter, I try to fill this void by presenting some elements of a Plessnerian theory into legal discourse. I relate Plessner’s thoughts on social roles and the public sphere to relevant thoughts of some other social theorists, especially to Niklas Luhmann’s sociology of law.

The chapter is structured as follows. Firstly, I discuss some key elements in Plessner’s social philosophy. Secondly, I briefly discuss some comparable elements in the thought of Sennett, Tonkiss, Arendt and Huizinga. Thirdly, I discuss Luhmann’s sociology of law, with an emphasis on the legal process.
Next, I try to integrate these perspectives into a more comprehensive approach. Finally, I make some concluding remarks by showing some threats in Plessner’s perspective to both the stability of the self and the stability and functioning of the legal system.

**Plessner’s social role theory**

Plessner elaborated the notion of the “indeterminacy” (*Unbestimmtheit*) of man, both as an ontological and social ambiguity. In *Die Stufen*, the ontological ambiguity is understood as “eccentric positionality.” In his social and political works however, the position of man is not so much characterized by the recognition of man’s individuality in the ontological *Mitwelt*, but by the indeterminacy and invulnerability of the inner man in relation to his social surroundings. The emphasis is not on the ambiguity of human nature, but on the ambiguity of the human soul. It is the “despair of his inwardness” (*Verzweiflung seiner Innerlichkeit*) that forces man to search for “roads to invulnerability” (*Wege zur Ungreifbarkeit*) (Plessner 2002, 92). Here, the concept of social roles is crucial for understanding these “roads.”

In order to function in public life, man needs the equipment of a mask that hides his interiority, but at the same time enables him to interact with his environment. Because of the ambiguity of the self and the doubt about his interiority, man needs “roads to invulnerability,” just like he needs ceremonies and prestige (Plessner 2002, 79ff; Richter 2005, 165). Man has to play roles, but can never be defined by any of them. In this sense, he is a “Doppelgänger”) (Plessner 1974b, 30). Man cannot do without continuing self-exegesis. He never is anything, but he constantly becomes something. He has to “lead” his life (Dallmayr 1981, 71, 73). He is neither an angel, nor an animal; he is the only one that appears as a Doppelgänger: He only becomes a self through the doubling as a role figure (Plessner 1974b, 33). Because of his roles, he has an intimate sphere (Dallmayr 1981, 73).

Whereas on the outer side man is the figure of his role, on the inner side he is a self (Plessner 1974a, 20). This self, however, cannot be conceived of as something separated from its social role, as it would thereby lose its humanity. In other words, there can be no inner man without an outer man. The outer man makes the inner man possible (Plessner 1974b, 30). On the inner side, man can never be one with his “self,” but can only be one with something, with someone, with “me.” On the outer side, he can only meet others through a role (Plessner 1974a, 20). The social role enables a person to stay socially untouched to a certain extent, and to have a zone of privacy,
intimacy and personal freedom. A role secures a certain respect for the individual and protects him from his public character (Plessner 1974b, 26). Therefore, he cannot escape his situation as a Doppelgänger.

Man as a “defective being” (Gehlen’s Mängelwesen), needs culture (“natural artificiality”) to live and a role to have an identity. In the classical notion of the theatrum mundi, every man has a fixed role to play in the order of being, that is to say, his identity is his role. With the birth of the modern “I,” the private identity is separated from the public one. The roots of this development can already be found in Augustine’s “inward turn” (Taylor 2003). In contemporary, functionally differentiated society, one man can play many roles that need not be connected at all. His private identity “hides” behind the roles that he plays. Moreover, the inner side is often regarded as the “authentical” real, while the outer side is viewed as “unreal” and artificial. According to Plessner, however, there is no inner man without an outer one.

In Plessner’s conception of social roles, the playing of roles is not so much an alienation of the self, but to the contrary, the roles make it possible for man to embody himself. Through role playing, he can learn about himself and others (Dallmayr 1981, 76). Public life, according to Plessner, can be regarded as a “basic form of human coexistence.” It is essential for human beings to have a zone in which they are strangers to themselves. This zone is the public sphere (Plessner 1974a, 10).

The concept of public sphere or public realm is complex and much discussed, e.g. by Arendt, Habermas and Sennett (see for example, Delanty 2007 and Lofland 2007). When talking about the public sphere, one can, for example, distinguish between the public-political, public-social and personal-social sphere (Van Gunsteren 1998, 138). Plessner loosely and sometimes ambiguously uses the term Öffentlichkeit (the public). It covers all the aforementioned categories. Öffentlichkeit is the opposite of man’s internal-psychological sphere; it is the opposite of the indeterminacy and invulnerability of the inner man in relation to his social surroundings. Therefore, man is as much a role player in family life as he is in, for example, his occupational life or in politics.

The public sphere, according to Plessner, is the open system of interaction between unbound people. It is loose enough to absorb the “fluctuations of life” in all its shades and let it pass through it. This open system of interaction particularizes into peculiar spheres in accordance with specific classes of values, such as the spheres of law, morality, education, the state, economics, and human interaction on the individual level.

According to Plessner, the public sphere is the sphere of Gesellschaft, i.e. the sphere of “the rules of the game” and the exteriority of the action (cf.
Max Weber’s *Verantwortungsethik*. This is contrasted with the sphere of *Gemeinschaft*, i.e. the sphere of seriousness, intention and conviction (cf. Max Weber’s *Gesinnungsethik*). Especially in *Grenzen der Gemeinschaft*, Plessner warns against a conception of society as a closely tied community. Even common values function to arrange human interaction. They are not the characteristics of a “real” community (Plessner 2002, 95).

The public sphere is a horizon of possible connections between a varying number and kind of people. It begins at the same boundary where love and kinship end. Just how there cannot be any identity or self without a role, there can be no closed community without there also being a public sphere (Plessner 2002, 55-56). The public sphere can be regarded as a “hygiene system of the soul.” It has the possibility to relax the “tense face of humanity” and to release it in a culture of impersonality (Plessner 2002, 133).

It is role playing that makes society possible at all, because if every self would throw off its mask, society would disintegrate into a war of everyone against everyone (Plessner 2002, 81). In return, it is also society that makes role playing possible. The role that an individual has to play in society can never be independent of other people and structures. A role makes demands, because it is part of the functional connection of the social whole (Plessner 1974a, 19-20). In addition, a role brings along expectations.

The public sphere cannot do without forms. Social conflict and impulses need to be articulated, canalized, and sometimes even suppressed. In the public sphere, the observance of forms has the same purpose as the observance of the rules of a game. In public life, people appear in functions and roles, thereby making the public life become like a game in front of people’s true nature (Plessner 2002, 83).

**The play of forms**

The importance of keeping a healthy distance between an inner and outer life is also stressed by Richard Sennett in his work *The Fall of Public Man* (1974). Sennett suggests that an anonymous, impersonal public sphere is a necessity for human (social) life. Only by keeping a certain distance, life in the public domain becomes possible. Sennett very strictly separates the public domain from the private domain. The public domain here is “the world of strangers,” and specifically refers to urban people who do not know one another in person. Sennett rejects the “intimate society” in which an ideal of authenticity dominates, because according to him, “every self is in some measure a cabinet of horrors” (Sennett 1992, 5; Taylor 1991, 25ff; 43ff.).
Therefore, “the absorption in intimate affairs is the mark of an uncivilized society” (Sennett 1992, 340). Sennett emphasizes the importance of civility, which he describes as “the activity which protects people from each other and yet allows them to enjoy each other’s company.” In other words, “[c]ivility is treating others as though they were strangers and forging a social bond upon that social distance” (ibid., 264). Civility is a formality, respecting a distance in order to prevent the public sphere from becoming unlivable. Through keeping people at a distance, living together becomes possible. Sennett points to the classical tradition of the world as *theatrum mundi*, the playing of social roles and the expectations associated with them. He also points at the wearing of “masks” that hide the individual’s feelings and emotions. He states: “Wearing a mask is the essence of civility” (ibid., 264). Sennett stresses the importance of suppression of emotional inner life more so than Plessner does. Plessner’s emphasis lies on man’s “indeterminacy,” although he does not ignore the necessity to suppress emotional inner life.

The wearing of a mask and the playing of a role could, to a certain extent, be regarded as an indifference towards the “real” person. Fran Tonkiss, a sociologist at the London School of Economics, seems to go further than Sennett and Plessner in appreciating the function of distance in this context. In her studies on multicultural city life, she develops an “ethics of indifference.” She stresses that indifference is not necessarily bad. Living side-by-side is better than living face-to-face (Tonkiss 2003). She calls for a re-valuation of urban indifference as a moral minimum, for “indifference as a politics of tolerance, by default, as it were” (ibid., 301). That does not exclude affinity groups. Tonkiss states that “an everyday politics of difference in the city at times works through an ethics of indifference” and “that there are positive claims for what can appear as a negative relation” (ibid., 309). This is an interesting approach, although I think the ethics of indifference needs clarification and specification concerning the handling of inevitable social conflict. Tonkiss would also have to clarify how indifference is shaped, i.e. is it just indifference to the difference of the other, or is the other as such ignored? In either case, Sennett’s and Plessner’s respect for social distance and social roles is aimed at forging a social bond and framing a structure of expectations, both protecting the self and the other.

The themes of masks, role playing and forms reappear in Hannah Arendt’s conception of the public domain. However, she adds the notion of law into the discussion. Longing to escape the meaninglessness of life, man has to leave the private domain and enter the public domain, in which continued recognition can be gained. An artificial common space is necessary for man to speak and act in public. When individuals come together, there has to be
a certain distance between them at first. In this sense, the public domain is an in-between-space. It both separates and connects individuals. “The public realm, as the common world, gathers us together and yet prevents our falling over each other, so to speak” (Arendt 1998, 52). The law has the important function to structure communication through rules and procedures. An important aspect of this is the equality of individuals. Here the artificial nature of the public domain comes clear, because people aren’t equal by nature. It is the law that makes them artificially equal (isonomy) (Arendt 1990, 30-31). The law also brings continuity throughout generations. Laws “guarantee the pre-existence of a common world, the reality of some continuity which transcends the individual life span of each generation, absorbs all new origins and is nourished by them” (Arendt 1968, 465).

When entering the public domain, individuals need to put on a mask, as they simply cannot enter this artificial sphere without it. For example, when entering a legal process, individuals cannot do without the mask of a legal person (legal subject). In this regard, Arendt discusses the Latin term persona: “In its original meaning, it signified the mask ancient actors used to wear in play. [...] The mask as such obviously had two functions: it had to hide, or rather replace, the actor’s own face and countenance, but in a way that would make it possible for the voice to sound through. At any rate, it was in this twofold understanding of a mask through which a voice sounds that the word persona became a metaphor and was carried from the language of the theatre into legal terminology. The distinction between a private individual in Rome and a Roman citizen was that the latter had a persona, a legal personality, as we would say; it was though the law had affixed to him the part he was expected to play on the public scene, with the provision, however, that his own voice would be able to sound through. The point was that ‘it was not the natural Ego which enters a court of law. It is a right-and-duty-bearing person, created by the law, which appears before the law” (Arendt 1990, 106-107).

The artificial persona enters the public stage, hiding our natural being, and presenting us as equals (Waldron 2000, 209). Through the mask, the play-character of the legal process can be recognized.

Plessner regularly refers to the book Homo ludens (1938) of the Dutch historian Johan Huizinga (Richter 2005, 178ff.). In a fascinating chapter about play and law, Huizinga writes: “Contest means play. [...] The playful and the contending, lifted on the plane of that sacred seriousness which every society demands for its justice, are still discernable to-day in all forms of judicial life” (Huizinga 2003, 76). Three play-forms are recognized in the legal process, namely the game of chance, the contest, and the verbal battle.
Huizinga gives some lively examples, ranging from the drumming-contest among Inuits to the potlatch. Whereas according to Plessner, man needs culture to live, Huizinga claims that man is also a *homo ludens* who produces culture by playing. Plessner suggests that society as such lives “in the spirit of the game.” It is in playing that man reaches his highest freedom, because he then can gain a distance from himself. Too much directness would deaden the human soul (Plessner 2002, 91, 94).

Different terms are used by Plessner, Sennett, Arendt and Huizinga to denote the same phenomena. Whether it is called role, form, mask or play, it is artificiality and formality that bring a healthy distance into human interaction. The legal process is a prototypical example of artificiality and formality. Legal subjects are individuals who are acting with a *persona*, wearing a mask and playing a highly structured role.

**Legal discourse**

As I mentioned before, Plessner’s thoughts on man as a role player has the interesting potential to mediate between his anthropological theory and social (sociological) theories. His philosophy can, for example, give an anthropological basis for the theory of adjudication as developed by Niklas Luhmann in his book *Legitimation durch Verfahren* (1969). I will introduce the gist of Luhmann’s theory.

Luhmann’s sociology of law is based on systems theory. An important element in his approach is the way it deals with the complexity of the world. Reality encompasses a chaotic amount of potential actions. In other words, there is a huge contingency. According to Luhmann, modern society is so complex that each of us can only control and understand a small part of it. In order to function in this immense complexity, a reduction of complexity must take place. This is precisely the function of systems. Fundamental to the systems theory of Luhmann is the distinction between system and environment (*Umwelt*). Each system structures a part of the world. It offers a limited number of action alternatives and makes the behavior of others predictable. Social systems are meaning systems of social action and create normative expectations. Particular social activities are associated with a particular system and are marked off from the systems environment. We can connect this to Plessner’s notion of role playing and interpret a role as a part of the normative expectations in a certain system.

Luhmann regarded law as an autonomous subsystem of society. Society understood as a system, has a functional differentiation into various sub-
systems. These subsystems (law, politics, economics, etc.) have a certain amount of autonomy, i.e. they have their own rules and roles. Focusing on the typical civil law process, Luhmann distinguishes between three dimensions of autonomy within the legal process. First, there is temporal independence; the legal system determines its own pace and terms. Then there is judiciary discretion: the judge is not a robot that applies rules, but has some autonomy. This makes the outcome of a process uncertain. Third, there is also social autonomy: there is a difference between being legally right (the “legal truth”) and being factually right. The legal process is separated from social life at large.

According to Luhmann, a role is a set of behaviours expected of a person in a certain position (such as judge or plaintiff). Parties themselves give a more specific interpretation of their role, also known as the process strategy. Because of their specific role (such as that of a plaintiff), the parties in the process do not participate with their whole person, or their whole self. When they lose the case, it is not the whole person that is affected, but only the person as a plaintiff, under a given article of the law, in this specific case. The decision is a “single binding decision” in a particular case (Luhmann 1983, 41). This makes the loss more bearable.

The legal process also includes a specific communication and setting (terminology, forms of address, clothing, physical setting, etc.). This creates detachment from the rest of society. The courtroom does not encompass all aspects of reality. A person who enters the courtroom must therefore choose a certain role and operate in accordance to it. The party that does not want to observe this distance will lose the case. Without autonomy and distance, the decision of the judge will be harder to accept in society.

Because of the different roles, each party is forced to study the situation of the other party, creating a certain distance from their situation and position. This factor also contributes to making the outcome more readily acceptable. By choosing an interpretation of their specific role, parties choose to play the game, thereby getting “trapped” in their role. When they lose, one can say that it has been their own choice to follow a certain process strategy.

The legal process can be seen as a trap (like a fishing pot), in which the conflicting parties are forced to reformulate their social conflict in legal terms. Everything that exists outside of the system of law, such as conflicts, interests, complexity, subjectivity, and notions of truth and justice, has to be translated into rights, rules, procedures and evidence that are accepted and acknowledged within the legal system. This is a reduction of complexity, since only those aspects of a conflict that are legally relevant are allowed to be included in the process. After the parties have been forced to focus on
the legally relevant aspects of the conflict and have given their views, the judge is obliged to make a verdict. In this process, a legal truth is developed. A judge’s verdict requires yet another form of complexity reduction.

Integrating perspectives

Luhmann’s theory of adjudication can be regarded as somewhat cynical and technical. At its core, the legal process has nothing to do with truth or justice, but only with the production of binding decisions. This is certainly a different discourse than the one of Plessner, who writes about law as a sphere associated with a specific class of values, as aforementioned. Justice is certainly one of these values (Plessner 2002, 95). There are, however, interesting elements in Luhmann’s theory that can very well be connected to Plessner’s anthropology.

According to Luhmann, the parties in adjudication are forced to study the situation of the other party because of the different roles they play and the strategies they follow. Likewise, in Plessner’s social thought it is through role playing that man can learn about himself and others (Dallmayr 1981, 76). Social relations are characterized by a “reciprocity of perspectives.” Man challenges and questions existing social arrangements and his relationship with others (Dallmayr 1981, 75). This can lead to a social conflict that can eventually be reformulated as a conflict in legal terms. This is a way to canalize the conflict, throwing a distance between the parties through which they can be reconnected. In the words of Chantal Mouffe, the battle between antagonists (“enemies”) should become a battle between agonists (“adversaries”). Thus, antagonism has to be transformed into agonism (Mouffe 2000, 103).

Here, Plessner’s notion of diplomacy can be introduced. Diplomacy is the art of solving conflicts in such a way that the dignity of the other party remains unaffected. The other party should be left with the impression that he is free to act or “surrender” on the basis of a voluntary decision, or should ascribe a victory of the other party to objective forces (Plessner 2002, 99). Tact is related to diplomacy and respecting the other person. It is also the art of not getting too close to the other and not being too open to the other. Indirectness is a uniquely human ability, while directness can also be found in other animals (Plessner 2002, 106-107). Just like civility, diplomacy and tact constitute a buffer against social conflict. However, conflict cannot always be avoided.

Our society has built the structure of the legal process that allow us to translate social conflicts into legal conflicts and then find an appropriate
solution for legal conflicts. This legal solution need not be a real solution to the social conflict. It is only an artificial solution to live with the conflict by forcing the conflict into an irreversible and final legal solution. Essential in Luhmann's theory of adjudication is that parties can more easily accept the loss of a case because they are playing a role without being identical with this role. They are therefore able to identify with the other party's position and arguments (Rollenübernahme). The forms of the process contribute to that. There is, however, another element of interest. Through his role, man is also like a mirror to other men. Through identifying with the other party's position and arguments, man can learn not only about the other party, but also about himself from the perspective of the other party (Dallmayr 1981, 76).

Social roles construct a social identity, but also a self that is being protected by the role that one plays. Inevitable social conflicts have the potential to disarrange the proper functioning of roles by hiding the self behind the roles. A shield against social conflicts is formed by civility, diplomacy and tact. Law can also be regarded as a medium to structure societal life and to formulate binding expectations, thereby avoiding conflict. However, the legal system is also a safety net. When social conflicts arise, they can be reformulated into legal terms, thereby reducing the complexity of the potentially comprehensive conflict. The function of the legal process is to bring individuals together by separating them at first. The “rules of the game” provide equal chances to each party. By forcing the parties to play a specific role with a limited action potential, the conflict is reduced to the level of role playing. The self of the parties, especially of the losing party, stays relatively untouched. The legal process also has the potential of letting the each party learn about the other party as well as themselves.

**Concluding remarks**

Plessner’s notion of man’s Unbestimmtheit has interesting parallels to Arendt’s conception of the meaninglessness of the world and Luhmann's emphasis on the complexity of the world. The public domain canalizes this contingency by offering social roles. In addition, Sennett emphasizes the social importance of role playing. The social role can be regarded as an instrument to explore the world and the self as well as a buffer against “undesirable intimacy.” The ambiguity of the human condition in Plessner’s conception parallels the ambiguity of the social role.

Applied to a legal context, the social role can be a fruitful concept for understanding the functioning of the legal system in general, and adjudica-
tion in particular. Huizinga, Arendt and Plessner all agree on the acting-character of the law, i.e. its roles, rules and symbols. Every person involved in a legal process is playing a certain role. Using the concept of role playing, Plessner analyzes human role playing at an anthropological level, while Luhmann analyzes it at a sociological level.

There are, however, different threats to both the stability of the self and the stability and functioning of the legal system. According to Sennett, the increasing public exhibition of the private sphere and the strive for authenticity are a danger to society. After the fall of the public man, legal discourse has become a dominant and common form in contemporary liberal society. However, the more the modern citizen identifies with his comprehensive legal status, the more he is defined by it, and the more he loses his self in this role. The relationship between private and public identity falls out of balance. When man has the illusion of no longer playing any role, but to "be" a legal subject, he endangers his self. This equates to a reification of man into legal structures. The tension between man and his roles eradicates (Dallmayr 1981, 76). As a result, the self gets "sucked" into the legal system, leading to phenomena such as the loss of any distance between a legal process and the full complexity of social reality.

According to Luhmann, the legal system, and more specifically, the legal process, can only function when the "authentic self" is left outside of the courtroom. It is essential for role playing that there is a distance between the self and the role. The rejection of roles and the withdrawal into private "authenticity" makes society a hollow artifact (Dallmayr 1981, 76). Ceremonies and other forms should not be discredited in a society, as they keep individual personality and human dignity at high esteem. It is a meaningful way to protect the individual soul (Plessner 2002, 87). Man inevitably has to be a Doppelgänger to protect the self and society.

Bibliography


