

THE PUBLIC SPHERES OF FUNCTIONAL SYSTEMS

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Abstract

Although Luhmann developed a concept of public sphere (*Öffentlichkeit*) which is plural and refers to each functional system, he did not demonstrate which would be the public spheres of each system, limiting himself to only briefly highlighting the public sphere of politics and economics. The objective of this text is to propose a classification of the public spheres of the other functional subsystems (law, science, religion, art, health, sports, education and mass media), so that the author's conceptual proposal becomes complete. We also criticize Luhmann's position on public opinion as the public sphere of politics, showing its limitations as a medium of second-order observation.

Keywords

Luhmann; public sphere; public opinion; functional systems; politics.

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AS ESFERAS PÚBLICAS DOS SISTEMAS FUNCIONAIS

Resumo

Embora Luhmann tenha desenvolvido um conceito de esfera pública (*Öffentlichkeit*) plural e referente a cada sistema funcional, ele não demonstrou quais seriam as esferas públicas de cada sistema, limitando-se a destacar brevemente a esfera pública da política e da economia. O objetivo deste texto é propor uma classificação das esferas públicas dos demais subsistemas funcionais (direito, ciência, religião, arte, saúde, esporte, educação e mídia de massa), de modo que a proposta conceitual do autor se torne completa. Criticamos também a posição de Luhmann sobre a opinião pública como esfera pública da política, mostrando suas limitações como meio de observação de segunda ordem.

Palavras-chave

Luhmann; esfera pública; opinião pública; sistemas funcionais; política.

1 INTRODUCTION

Niklas Luhmann developed his own concept of the public sphere, distinct from the one best known in Habermas' writings. However, Luhmann never paid much attention to the concept, leaving it in the background when compared to other concepts such as differentiation or communication. Despite Luhmann's neglect, his concept of the public sphere is a key category for reflecting on observation processes between systems. Other works (Amato, 2020; Blanco, 2019; Palmieri, 2024, 2025) have sought to explore the potential that the concept brings. One of these potentials, which we would like to address here, concerns the exploration of the system/environment difference based on the concept of the public sphere. Let us remember that, for Luhmann (1996, p. 184-185), the public sphere is the internal environment of social subsystems - interactions, organizations and functional systems. This means that it is incorrect to talk about “the” public sphere; in reality, it manifests itself in different environments, depending on the systemic reference that is adopted. The theory therefore renounces the understanding of the public sphere as an instance that refers to the totality of the social (as would be the case of the “political public sphere” in Habermas). There are only “public spheres”, in the plural, and each of them refers to a specific communicational environment that allows the system to be observed by other observers.

The foundations for a functional theory of the public sphere were laid by Luhmann. However, he did not develop the systemic references of the concept. He limited himself to giving only two explicit examples:

[The public sphere is] the reflection on each systemic boundary internal to society, or, in other words, as the internal social environment of social subsystems - that is, of all their interactions and organizations - but also of functional subsystems and social movements. The advantage of this definition is that it can be transferred to functional systems. The “market” would thus be the internal environment of the economic system of organizations and economic interactions; “public opinion” would be the internal environment of the political system of organizations and political interactions (Luhmann, 1996, p. 184-185).

Regarding other functional subsystems, he did not write about their public spheres, providing only indirect clues by indicating certain instances as means of second-order observation, but without using the expression “public sphere” (Luhmann, 2000a, p. 312-313). The objective of this text is to complete Luhmann's reasoning, seeking to reflect on what the public spheres of other functional subsystems would be, and also to make some criticisms and additions to the author's suggestions (especially about the public sphere of politics) based on some epistemic criteria extracted from the text by José Javier Blanco Rivero (2019). In this way, a theory of the public sphere thought of from the semantics of functional differentiation can be considered complete.

2 METHODOLOGY

We have chosen three criteria to carry out this exercise of describing the public spheres of functional systems. The first concerns which systems will be analyzed. Here we follow a meta-analysis carried out by two authors, in which they find 10 dimensions of society that are consensually considered among Luhmannians as functional systems (Roth; Schütz, 2015), although there are divergences regarding the criteria that make up each of their features (codes, programs, function, etc.). These systems are: politics, economy, science, law, mass media, education, health, sports, art and religion. Other proponents, such as culture, morality or love, according to them, do not find sufficient support to be considered a functional system. The authors' analysis has its limitations, but every choice to be made about what would constitute a functional system is contingent. We do not have space in this work to discuss what would or would not be classified as a functional system. Furthermore, this restriction is not a problem for our argument, because we are not proposing an exhaustive classification. It would be perfectly possible, for example, to think of a public sphere of love, if one were to take it as a functional subsystem. The problem is no different regarding public spheres, since there are a multitude of different interpretations

of what constitutes the public sphere of each system, as we will see along the text. Our proposal for describing and classifying public spheres, therefore, cannot escape the contingency that underlies any observation of the social.

Secondly, we follow the two definitions put forward by Luhmann (1996, p. 184-185) to define the concept: internal environment of systems and medium for second-order observation. The focus is on functional systems. Systems of interaction and organizations are of interest to us insofar as they are associated with functional systems (for example, in the form of political/economic/scientific interactions and political/economic/scientific organizations), since, following Luhmann's definition (1996, p. 184-185), each of the public spheres also encompasses the organizations and interactions that occur in that system. This second definition, in particular, will be of greater value to us when discussing the public spheres that Luhmann did not explicitly mention or did so indirectly. Therefore, it requires additional clarification. It is already known that second-order observation refers to first-order observers. This means that there is the observation of a specific communication flow (Palmieri, 2025), which is defined by this internal environment. There is a communicative specification of the observed environment (Palmieri, 2025): the second-order observation of the public sphere refers to the communications that the first-order observers are operating. Thus, for example, the market (public sphere of the economy) does not only serve to observe companies, but also observe the flows of economic communications that companies produce regarding price variations, the rise and fall of shares, investment opportunities, etc, and publications (public sphere of science) do not only serve to observe scientists, but also the flows of scientific communications that they produce in their discussions about research methods, work conclusions, theoretical interpretations, etc.).

Finally, we follow the argument put forward by Jose Blanco (2019, p. 12): the public sphere, or rather, what he calls “forms of publicity,” is performed in specific spaces using some kind of material or technology. This definition by Blanco is in line with what we

referred to as the communicative specification of the environment, because it more directly presents the spaces and media mobilized to give materiality to each of the communications that occur in public spheres.

3 FUNCTIONAL SYSTEMS AND THEIR PUBLIC SPHERES

3.1 Politics

Luhmann explicitly states that public opinion would be the public sphere of politics. We disagree with this proposition. Public opinion is not an instance tied to a specific system because, as Luhmann (1998, p. 1108) and Javier Garcia Blanco (2003) state, it is at the same time the communicative availability of society and the result of society's communication. Therefore, it is not limited to politics. Above all, public opinion is an instance of socialization, because it enables individuals to participate in a shared reality through a series of schematisms and expectations that become stereotyped to understand communication (Blanco, 2003). These schematisms can be referred to any social dimension: religious, scientific, artistic, etc. Therefore, public opinion is present in other functional subsystems. However, it is common to consider it an instance tied only to politics. One reason for this is that the term usually refers to some kind of lay and public language, which is not institutionally or semantically linked to any functional system. This line of reasoning takes up Habermas's precepts of a public and universally accessible language: all people have the potential to participate in a political public sphere through public opinion, because the meaning of "politics", here, refers to *polis*, to civil society, to the unity of the system, to common problems that potentially affect all citizens and that, for this reason, can be addressed by anyone. However, the progressive functional differentiation of society strips away this old semantics represented by the term "politics". The consolidation of organizations and mechanisms of operation specific to politics (parties, protest movements,

bills, parliaments, party alliances, elections, taxation, etc.) transforms politics into what Giddens (1991) calls “expert systems”: a complex apparatus whose entire functioning is incomprehensible to lay people. It is only understandable by experts, and even they sometimes only understand parts of the apparatus (for example, an airplane pilot knows the mechanics of the aircraft, but may not know the calculations for conducting air traffic without crashing into other planes). The lay person can only trust or distrust the expert system according to the impressions that they build. This process of trust is emphasized by Luhmann (1998, p. 382-383) when he talks about generalized symbolic media and, more recently, by Esposito (2013a) on the issue of the *reviews*, in a process of indirect trust. A large part of the impressions about politics are therefore constructed by public opinion, which should be called “public opinion *of* politics” instead of “political public opinion”, to emphasize that it is the opinion about a specific system, and not about something like “the state of society as a whole”.

At first glance, it makes sense for Luhmann to attribute to public opinion the second-order medium for observing politics, considering that the political system depends on votes made by the entire population in general electoral processes to carry out the assignment of political positions and it is assumed that people’s votes reflect, in some way, their impressions about the state of politics. However, there are several problems with this linking of public opinion to the public sphere of politics: firstly, there is a very large temporal gap between electoral periods, as pointed out by Luhmann (2000a, p. 281) and Gerhards and Neidhardt (1990), which reduces the windows of feedback in relation to the systems performance. For Luhmann, public opinion is a mechanism that tries to compensate for this lack of feedback through the constant production of communications about a government (decisions, actions, scandals, etc.). However, for the system, what matters is only the time-span that is relevant for the electoral period, and not all the length between one election and the other. This becomes more visible if we consider that the subsystem of mass media

(SSMM) is the system responsible for regulating the remembering and forgetting of the issues that circulate in society (Luhmann, 1996, p. 192-193): through its incessant logic of producing “news”, the SSMM does not build a stock of all decisions and promises made or not made by politicians, comparing what was done with what was not done during a term. This may even appear occasionally in some news, but it is not a large-scale effort nor an objective made by this system. People are always occupying their heads with other “news” which may even be political news, but which have no comparative value because a past occurrence has already been forgotten. Put simply: if a government did 10 bad or good things during its term, when it comes the time to vote, only the last 2 will be remembered, simply because they are more recent events¹. Therefore, for the political system, there is no point in placing an ongoing reference on the feedback of public opinion considering it will be forgotten in the future during the electoral period.

What interests the political system, therefore, is not the public opinion about politics as a whole, but voting intentions, which are made available by opinion polls. These cannot be confused with a part of public opinion, as Luhmann (2000a, p. 284) and Habermas (1997, p. 94) rightly point out: public opinion has a social and collective feature, and is constructed intersubjectively among people. Opinion polls, on the other hand, are mere aggregates of individual opinions. But it is these individual opinions that have informative value for the political system; they are the ones that “make a difference”, to use Bateson’s expression, because they determine an election. It is not enough for public opinion to say something, it must be translated into an effective voting action. But it is very difficult to capture this translation. From the point of view of the political system, opinion polls appear as a necessary refinement of public opinion: the latter is too chaotic, dispersed and incomprehensible to encompass directly. It needs to be reduced to a language that can be

¹ In the Brazilian scenario, for example, the issue of forgetfulness is explored in the concept of “electoral amnesia”: people forget who they voted for in legislative positions a few months after the election (Almeida, 2006).

read by the system in the least ambiguous way possible. It makes no sense to ask people about their impressions of the economy, whether they trust politicians, etc., because these questions do not clearly signal voting intentions. There are several reasons for this. For example, people choose candidates from a limited range of options, and they very often choose the ones they consider as “the least of the evils”. The decision, therefore, is not weighted in relation to the impressions of that politician alone, but in relation to the impressions of other politicians. In this scenario, it makes perfect sense to ask the person which button they will press, instead of trying to deduce their action through their talkings. There is also the fact that some bad impressions of politicians are so sedimented that they end up not being included in the voter’s calculation: for example, in undeveloped countries, there are always complains about the lack of infrastructure for basic issues such as health, transportation, schools, sanitation, etc; these are issues that are not addressed by any kind of government. Nevertheless, politicians win reelection while not addressing this terrible state of infrastructure in their cities or states. It is an ongoing complaint made by public opinion that, nevertheless, does not present itself with an informative value in the action of voting.

Opinion research is a technique. For Luhmann (1998, p. 524), this term means a “simplification that works”. The technique of opinion research reduces the complexity of the environment and makes it more domesticated and readable. Herbert Marcuse, albeit in different terms and in another theoretical tradition, points to the same problem when he talks about the closure of the illocutionary universe. The image replaces the concept. The image, he argues (Marcuse, 1973, p. 101), has an immediate association with the thing it represents, while the concept keeps the possibility of thought open. In other words, opinion research (image) legitimizes itself as opinions on complex political issues (thing). Everything is reduced to the coldness of the number that, in some way, it is believed, expresses people's worldviews. For this reason, public opinion would be a very imprecise medium of second-

order observation. From a political perspective, polls are more accurate surrogates, at least when it comes to the moments in the political system when there must be a change of personnel. But elections and change of personnel are not the only relevant communication flows of the political system. We will continue to explore this issue.

A second reason why we do not consider public opinion as a public sphere of politics refers to its generalized presence in society. If public opinion is the communicative availability of the result of communication, it involves other topics besides political issues. Public opinion also builds its impressions of science, law, religion, art, etc. In sports, especially, we can observe a very large presence of public opinion commenting about gaming performance, for example. The functional differentiation of society allows us to think, in this sense, of specialized audiences (Ribeiro, 2012, p. 189-190) for each system. So, at the same time that we have a lay audience that can potentially comment on any subject, there is also the presence of specialized audiences that are formed from functional differentiation, along the lines of what Stichweh (1988) called *Klientelrollen*. Science would have peers as its audience; medicine, patients; education, students; sports, fans; politics, voters, etc. It is interesting to note that in none of these cases involving other functional systems besides politics does public opinion or the specialized public are considered public sphere of that system. Some might respond that this has to do with the fact that in these systems the occupation of positions does not depend on a direct vote and the system is therefore able to ignore communications from its environment. But this reduces the function of the public sphere to a very limited period of operation of the system. This is stating that observation of politics only happens at the selection of positions and personnel in state organizations, which makes no sense, because this proposition discards all occurrences of the system that are not tied to electoral periods. Furthermore, we do not observe this practice in other systems: science is not observed only when there is a change

of personnel in a journal's editorial board, and the market is not observed only when a company is firing or hiring people.

This brings us to the third reason for our criticism: public opinion (or, rather, opinion polls) are not sufficient to fulfill the function of the public sphere as a medium that enables second-order observation, because it is too closely tied to periods of electoral decision-making. Outside of these periods, there are the events of everyday political life. Dirk Baecker (1996), for example, considers political decisions to be the public sphere of politics. However, the concept of “decision” in luhmannian theory refers to the code of organizations, and we do not want to overload a concept with multiple meanings. Adapting Baecker’s argument, we can say that it is not political decisions themselves, but their feature as part of the flows of political communications, that makes them part of the public sphere of politics. Following Blanco’s definition (2019), the public sphere needs to address the space that allows the observation of these communications. Thus, plenary sessions (for the Legislative Branch) and publications in Official Gazettes (for the Executive and Legislative Branches) constitute the channels for observing everyday political life. Through them, the population and also politics itself can observe the system's own communicative flow, looking not only at past decisions and present decisions but at the communications that lead to these decisions. Constitutional amendments, laws, decrees, resolutions, normative instructions, ordinances, etc., are concrete results of political communication that are observable only through these channels, and not by public opinion. Public opinion can, in fact, comment on these results, but it is not the public opinion that produces them or provides the means to access them. We observe that the space for political performance is made in the organizations of the State (the Executive and Legislative Branches), using legal writing to approve decisions and the oral medium of rhetoric for debate/argument. It is worth noting that, by placing plenary sessions as a space of the public sphere of politics, we are not adopting a Habermasian perspective, suggesting that in this space debates guided

by communicative reason take place. What we are focusing on is the fact that they are a space for the production of political communication, whose format can be made in a rational debate, but can also be realized in several other ways such as mutual insults, in monologues, in meaningless speeches, and can also be influenced by economic *lobbies* or private interests.

Finally, a fourth reason that leads us to disagree with Luhmann concerns who constructs public opinion. For it to be the public sphere of the political system, it would have to be a construct of the system itself, in the same way that the market and publications are constructs of the economy and science themselves, respectively. However, both Luhmann and his readers point to very strong correlations between public opinion and the SSMM in the sense of seeing the former as a product of the latter, and not of the political system, or at least not entirely of the political system. Luhmann's descriptions of public opinion in his work on the political system, *Die Politik der Gesellschaft*, are the same descriptions he later makes regarding the schemas and of the scripts when he writes about the mass media in *Die Realität der Massenmedien*: public opinion is organized through schemas and scripts, which are public memories without a specific obligation. They organize remembering and forgetting, and since there is freedom to forget, new contributions to themes can emerge and allow consensus and dissent (Luhmann, 2000a, p. 300-301; Luhmann, 1996, p. 192-193). The difference between the two works is that, in *Die Politik der Gesellschaft*, schemas and scripts concern refers to public opinion, and, in *Die Realität der Massenmedien*, they refer to the mass media. But they are not two distinct realities. In the first work, Luhmann (2000a, p. 310-311) considers public opinion as a structural coupling between the SSMM and the political system, therefore explicitly indicating the co-produced nature of public opinion and its co-evolution with the mass media (Blanco, 2003). In *Die Realität der Massenmedien*, Luhmann does not abandon this postulate of public opinion as a product of the SSMM. He states that the system's movement of treating opinions as facts is something that functions

as an indicator of reality for the SSMM (Luhmann, 1996, p. 159-160). The system is sensitive to changes in public opinion, which is produced by itself (Luhmann, 1996, p. 69-70), and can, therefore, change its operating strategies.

There is further evidence from Luhmann himself that indicates a very strong link between public opinion and the SSMM. In the fifth volume of *Sociologische Aufklärung*, published in 1990, Luhmann adds an interesting element to public opinion. We have already explained that the author understands it as a medium that enables second-order observation. However, in this work, he uses the medium/form distinction and argues (Luhmann, 1990, p. 176) that public opinion is a *medium* shaped by the SSMM, that is, the latter corresponds to the forms that the medium assumes. At this point, Luhmann anticipates the discussions present in his work on mass media and presents some forms through which the media consolidate public opinion (Luhmann, 1990, p. 176): time (new/old), conflicts and quantities (each of them corresponds to one of the three dimensions of meaning). These forms are later described as part of the programs of the SSMM (Luhmann, 1996, p. 52-81). The author's argument clearly points to public opinion as a creation of the mass media. It is difficult to say which of the two systems, the mass media or politics, Luhmann attributes more weight for the creation of public opinion, because there is no explicit mention by the author in this regard. However, in our view, given the theoretical uses of concepts from systems theory, the relations between public opinion and the mass media are much better established by Luhmann than the relations between public opinion and politics.

Other authors also endorse the view of public opinion as a product of the mass media. For Garcia Blanco (2003), public opinion can be understood as a medium both in relation to the potential for attention diffused among individual consciousnesses and in relation to contributions to communication topics. In one way or another, it is the SSMM that fixes this medium, that gives it forms by agglutinating this potential for attention and these

contributions into more or less coherent discourses, narratives and visions. Also, *Ciro Marcondes Filho (2008)* states, in this sense, that public opinion is a form created by the encounter of the indistinct mass with journalistic speech. And *Aguado (2009)* even goes so far as to denounce a supposedly very large focus that *Luhmann* gives to the operative coupling of the SSMM with public opinion with regard to news. All these arguments indicate, in some way, how the mass media act in the construction of public opinion and that, therefore, it confirms the inadequacy of it as the public sphere of politics. *Delgado (2014)*, in this sense, points out how the mirror of public opinion is misleading (“mirror” in the sense that the SSMM produces mirrors that allow other subsystems to observe themselves): it appears in the form of a public opinion produced by the mass media themselves. Politics, then, is not observing itself when looking in the mirror, but a reflection created by another system. If the SSMM is the one that enables the self-observation of society (*Luhmann, 1996, p. 173*), making widely available the themes that it produces, and if public opinion is understood by *Luhmann* as both the result of public communication and that which forms public communication, it makes perfect sense that public opinion is a direct product of this system. In effect, a public opinion in the sense of a collective and aggregated vision could be formed without the presence of the mass media. But in the context of modern society, with media of communication that surpass physical presence and reach those who are absent, it is no longer possible to directly observe who takes a particular position on a given issue. The space for communication becomes more diffuse, making it necessary to have a system that aggregates and synthesizes the different positions in relatively stable forms.

3.2 Economy

In addition to politics, the economic system is the only one that *Luhmann* explicitly designates as a public sphere. Its internal environment is the market. With the market,

argues Luhmann (2017, p. 175), it is possible to observe not only the internal environment of the economy, as a functional system, but also of its participating systems, that is, their organizations and interactions. For each of them, the market is different, but it is also the same environment for all (2017, p. 175). That is, the market generalizes as a space or dimension for the purchase and sale of economic goods. It is in the market that the “performance” of economic communication occurs, using money as a medium. In this sense of generalization, it is the same environment for the participating systems. However, it is different insofar as we can speak of market niches for distinct economic goods, but which never become totally independent because they relate to the same system and use the same medium.

3.3 Science

The public sphere of the science system is scientific publications. They are pointed out by Luhmann (2000a, p. 312-313) as mechanisms that allow for second-order observation of the scientific system, and he mentions them (Luhmann, 2000, p. 63-65) as mechanisms that connect first- and second-order observations. Interestingly, Luhmann does not mention the instances of oral communication of science (congresses, conferences, seminars, etc.), but they are also part of the public sphere of this system because they are media that allows for the observing the scientific productions of others. The performance of this public sphere is carried out in the space of academic journals through the use of written digital media, and in the most diverse conference rooms (virtual and in-person) through the use of oral and visual media. Roth and Schütz (2015) argue that scientific publications are related to the SSMM, but to say so would be incorrect. Although publications are made in media outlets that are referred to sometimes as (scientific) “magazines” this criterion is not enough to classify them as a product of the mass media. This system is not formed simply by the mere

sum of all the media outlets that exist, but by the processing of content considered informative (Luhmann, 2005, p. 39), located in delimited programmatic areas and fulfilling specific functions. Science content is not “informative,” in the sense of the mass media, because it does not fulfill the purpose of any of the selectors presented in the programmatic areas: science does not create a fictitious reality, does not report particular events, or prompt people to buy its products. If one of these phenomena ends up occurring within science (for example, a publication that analyzes a protest by farmers that occurred in a specific city), it is only in a secondary way and does not aim to fulfill the SSMM function of creating a background reality for people commenting about it (Luhmann, 1996, p. 120-121).

3.4 Religion

For the system of religion, Luhmann (2000a, p. 312-313) places God as the second-order observation entity/mechanism, in the sense that his omnipresence causes devotees to behave as if they were being observed. However, this criterion seems to escape Luhmann's own definition of the public sphere. Since it is a medium of observing observers, how can someone use God to observe other people? God can only be accessed in a particular way for each person, but not in an objective or intersubjective way. It is different from a scientific publication, for example, because here the same material dimension of communication is accessible to everyone. God, on the other hand, from a religious point of view, manifests himself in several forms. Furthermore, one cannot reduce all religious practices to the idea of God, because they go beyond it. They do involve a dimension that transcends the earthly world (Luhmann, 2004, p. 185-186), but they are not necessarily directed at God. At a wake, for example, the prayers that occur there may be aimed at the soul of the deceased, and not at God directly. In spiritualist religions, it is very common to

talk to the spirits of ordinary people through incorporations and *psicografias*², and not to talk to gods. In Catholicism, devotees ask for blessings and miracles from saints and not necessarily from God, and so on. This transcendental world of religions goes beyond God or divinities. A direct connection with his figure may be a particularity of Protestantism, so it cannot be established as a rule for all religions.

In view of this, we argue here that the public sphere of religion is not God himself, but the set of rituals, scriptures, and practices used in each of the religions to manifest this transcendent world (which may or may not include God). Thus, for example, the public sphere in the Catholic religion is realized in the commandments of the Bible, in masses, practices of praying rosaries and psalms, etc., and also in characteristic ritual events such as catechesis, and also the wedding ceremony (considering a traditional Catholic wedding and not the practice of marriage itself). We can only have access to the symbolic communications of religion, to what each kind of faith expresses, if we can access the construction of that faith, which is done through these media. What we are proposing as the public sphere of religion concerns an update of the “ritual” form, identified by Blanco (2019) in his article. It is performed in specific spaces and using a combination of specific media (still using the example of Catholicism, we can think of masses being performed in churches using the written medium of the contents of the Bible and also oral means such as songs).

3.5 Law

The legal system also does not have a public sphere explicitly pointed out by Luhmann. We only have very general suggestions from the author when he speaks of legal decisions as media for second-order observations (Luhmann, 2000a, p. 312-313), which he

² A form of spiritual manifestation where the spirit takes the hand of the medium and use it for writing books or letters.

places alongside publications and the market. Here we have a situation similar to that of Baeyer (1996), who suggested political decisions as the public sphere of the political system. The same principle applies, therefore, of not taking legal decisions in themselves as the public sphere of the legal system, but as part of this public sphere because they constitute a specific communicational flow of this system. The space that allows the observation of these decisions and communications are the hearings and the procedural records. These spaces are modern updates of the “punishment” form of publicity described by Blanco (2019), using law-based claims as a medium of communication.

Other authors have already made suggestions regarding the public sphere and law from a luhmannian perspective. One of the arguments comes from Marcelo Neves (2013), who understands the public sphere as an instance that opens the political and the legal systems, constituting their instances of legitimation, although the author affirms the existence of other public spheres related to other functional subsystems. His focus, however, is on the public sphere that he calls “political” or “legal” (Neves, 2013). For him, the public sphere is an area of tension between law and politics, on the one hand, and other subsystems and the world of life, on the other: each “representative” of a subsystem takes its demands to the public sphere in order to influence the adoption of political and legal measures that respond to the specific rationality of the subsystem it “represents.” Neves does not attempt to construct the concept of public sphere solely from Luhmann, arguing that he does not see the public sphere as a systemically unstructured space (Neves, 2013). This notion is one that Neves incorporates from Habermas.

Although it is possible to construct the concept of the public sphere based on Habermas and Luhmann, it is not our purpose to make a comparative analysis between these two authors; therefore, we will not analyze Neves' suggestion in full detail. What interests us here is the luhmannian aspect of his argument: the public sphere as an instance of openness between the political and legal systems. In our view, and also in that of others

(Amato, 2020), this model does not take seriously the functional differentiation of modern society, as it constitutes a floating space between the legal and political systems. Although Neves affirms the existence of other public spheres related to other functional systems, he does not place them as a central focus of his text, giving the impression that, in some way, this political-legal public sphere would be more important than the others. Furthermore, these other public spheres do not seem to be conceptually linked to other functional systems, but only addressed to them in a thematic way. Neves (2013) gives the example of an organized boycott against a product or a company, which is not promoted by any particular organization. The public sphere in this case would be the unstructured space of the boycott, and it cannot be said that it is a public sphere of the economic system. It is closer to the Habermasian concept of the public sphere: the boycott does not belong to any system, it is formed by sectors of civil society that pose an objective social critique of the economic system and visible actions to carry out this critique.

Another proposal for the public sphere of law is put forward by Lucas Amato (2018). For him, it would be constituted by the juridical personality³, “as an anonymous referent to a set of rights, duties, powers and responsibilities that can be modeled and build different legal assets and legal subjects” (Amato, 2020, p. 131-132). He bases his argument on a comparison with the political and economic systems:

Every problem can only be of interest to politics when reflected as a topic of public opinion. And likewise any political, family, religious, economic or health issue will only become legal if valid law is put into circulation, when the issue is constructed in terms of claims (according to such legal order) of rights or obligations, of claims for recognition of the exercise of a power or the imposition of a sanction resulting from a responsibility. This is what I want to designate as “legal personality”, the public sphere or internal environment of the legal system (Amato, 2020, p. 11).

³ “Personalidade jurídica”, in the original formulation in Portuguese.

The first problem we observe with the proposition of juridical personality is that it is a reference that is very much focused on agents, instead of communication, because the author mentions an “anonymous referent”. In this way, we ask ourselves if the concept would not be closer to the public (not the public sphere) of the legal system, to its specific *Klientelrollen*. According to our understanding, the public sphere designates a certain kind of communicative flow. Juridical personality concerns, instead, the addresses of these communications, just as the market addresses buyers and sellers and publication addresses scientists.

But there is also another issue, which we consider to be the main problem of the argument. It is not clear how juridical personality, by itself, would allow for observation by observers. A given legal action may, in fact, construct a question of rights claiming, but that alone is not enough for it to be observed by others. It needs to be operationalized in some space, in the same way that a truth claim is put forward in scientific publications, that a product is positioned on the market or that a political demand is exposed in plenary sessions. This legal claim needs to be operationalized, it needs to be “performed”, in Blanco's terms (2019), in some way and by some media that allows its visibility by third parties. Put it simply, the communication must be materialized somewhere. Therefore, we suggest placing the hearings that occur in courts and the procedural records as the public sphere of law, because it is only through them that the *medium* of the law (Constitution, the coding of lawful/unlawful, etc.) can be applied. It is not possible to carry out a legal claim inside a bakery. As Luhmann (2000, p. 63) argues, for example, in relation to the system of science: the true/untrue code, its theoretical semantics and its programs become meaningful only in relation to the medium of scientific publication. In the same way, the claims and sets of law that guide the application of the lawful/unlawful code only have meaning in relation to the specific medium of hearings and legal proceedings in court records.

3.6 Art

Luhmann also indirectly indicated a public sphere for art when he spoke of second-order observation mechanisms for this system. For the author, this mechanism occurs through the work of art (Luhmann, 2000, p. 69). The meaning of forms only becomes visible from the moment in which it is constructed for the purpose of observation, and a certain mode of observation (Luhmann, 2000, p. 69). But, the argument continues (Luhmann, 2000, p. 71), the work of art cannot be recognized as such by second-order observers if left isolated, and can be confused with copies or, we could add, with any kind of content that does not have an artistic purpose. This is where the importance of the spaces in which the work of art circulates comes in; they take part in the process of distinguishing it from anything else. “A work of art can be marked as such; it can be recognized by its presence in the museum, in the gallery, in the studio, in the concert hall, in the theater, in the publishers' advertisements, or by the names of well-known artists.” (Luhmann, 2000, p. 71). Artistic communication is therefore performed in works of art through diverse materials (musical instruments, canvases, clay, etc.), and also in these organizations mentioned by Luhmann.

3.7 Sports, Health and Education

The five subsystems described above had at least some degree of indication from Luhmann of what their public sphere would be. For the other subsystems, we need to make a theoretical (and imaginative) effort in a greater degree. To this end, we draw some conclusions from previous developments, which serve as a guide. It is possible to note that, for functional systems, the communicative flow of their internal environment is produced by some of some of the system's organizations. This is true for science, where publications are made by journals; for law, where hearings are held by courts; for our formulation of politics, where plenary sessions and publications of Official Gazettes are made by the

Executive and Legislative Branches; for the economy, where the creation of a market is carried out by companies; and for art, where works of art are recognized only by their exhibition in specific organizations such as galleries and museums. We will think, therefore, about what organizations in these systems carry out a specific communicative flow that fulfils the system's function.

Starting with the educational system, it is based on an effort to transmit content that is later required in exams and for exercising professional activities⁴. The organizations that take care of education are schools, universities and other educational institutions, since it is in these spaces, through various media (written, oral, visual, etc.), that the effort to transmit these contents is carried out. In this way, we suggest classes and assessments as the public sphere of education. Classes function at the level of teacher-student interaction: in classes, there are presentations of content by professors and the students can take notes and ask questions regarding these presentations. Assessments (tests, assignments, evaluations etc.) are more quantitative mechanisms, and function as a reflection of how much was learned in classes. It is not surprising that schools and universities, when advertising, constantly use results obtained in entrance exams, selection exams and several rankings in order to promote themselves. The quality of an educational institution is often determined by its position in rankings of national and international standards, which in turn are based in the application of student assessments. We can say, both for classes and for assessments, that the communicative performance of education occurs in the school space; more particularly, in classrooms.

The sports system has as its public sphere sporting events, whether they are non-official (such as friendly football matches, for example) or larger events such as championships, marathons, etc. This designation of a public sphere for the sport system

⁴ The notion of "transmission", in this case, is a construct of the system.

becomes evident if we consider that sporting events are one of the main forms of entertainment broadcast by the SSMM. Not only the events are broadcast, but also commentaries on games, sports debate programs, etc. In recent years, through digitalization, it became popular the phenomenon of *streaming*, which consists of some social media profile transmitting some content for others to watch. These contents are usually related to entertainment. In some cases, such as football, the connection with organizations is notable, considering that it is the clubs and federations that organize the matches. The connection with Blanco's propositions is also evident: athletes are constantly performing sports communication in the space of sporting events, and they mainly use their bodies as a medium of executing this performance. Events allow not only for others to observe sports, but for sports to observe themselves through evaluations of athletes' performance, which are measured both by the result of a match itself and by many other indicators (in the case of football, for example, there are considerations regarding number of shots on goal, offsides, etc.). Sporting events are also a functional specification of the "games" form of publicity described by Blanco (2019).

There is also the healthcare system. The global COVID-19 pandemic, which occurred in 2020 and 2021, put the healthcare system in the spotlight: during the pandemic, it acted as a mirror not only for itself, but also to measure the normal functioning of society, since other systems observed the healthcare situation to make decisions about whether or not to return to their normal activities. The criteria used for this, which concerns the access to the system, were case incidences (at the time of COVID-19, an important factor associated with occupancy rates of hospitals). Through these, the healthcare system can see its capacity to accommodate patients in relation to the number of beds, doctors and equipment available, as well as the level of presence of a certain disease or condition in the population of a given location. This criterion is measured individually by each healthcare organization (hospital, clinic, health center, etc.), but there is nothing to prevent it from being disseminated on a

larger scale, as we have seen during the pandemic. However, case incidences are a very limited criterion to serve as a public sphere, since they only concern the surface of the system, and not the care that the system provides to patients, or the health communication itself. In these situations, we can indicate examinations and medical records as part of the public sphere of the health system, considering that they contain patient data and notes on the treatments performed on each person: images of bones, cells and tissues, blood data, medications used in a treatment, records of improvement or worsening, discharges, etc. Interactions between doctors and patients also fall into the public sphere of this system, through which the doctor can observe the evolution of a clinical condition through the patient's report. In this second case, there is a great similarity with teacher-student interactions in the educational system.

It is only through case reports, medical records, examinations and doctor-patient interactions that it is possible to monitor the specific communication of the health system, which is “performed” in the bodies of patients using medical instruments and medicines or, on a broader level, is performed in health organizations (hospitals, clinics, etc.). It is common to have operational couplings between the health system and science when using case reports contained in medical records to produce scientific publications about them. In fact, medical records are not public documents in themselves, but it is only through them that health can open itself up to second-order observation, since doctor-patient interactions are private. People may even comment to friends and acquaintances about their experience of a particular consultation, but this is not a significant practice to the point that the health system uses it to observe itself. With digitalization, however, there is the possibility of opening up doctor-patient interactions to a broader second-order observation that can irritate the system, as search engines such as *Google*, for example, allows you to post ratings and reviews regarding a specific service provided by an organization. A clinic or hospital, in

this case, could be exposed to what people are saying about the medical interactions that occur inside them.

3.8 Mass media

Finally, there is the mass media system. Similar to sports, its public sphere is quite notable, as it appears to us daily: it is the media content produced by the SSMM, whether in the form of news, reports, advertising, announcements, entertainment, etc. In part, it appears as a specification of the “modern advertising” form of publicity described by Blanco (2019), but it also encompasses the news and entertainment sectors. Its communicative performance takes place in newspapers, magazines, films, books and all other content that can be considered as mass media products.

The public sphere of the SSMM has a peculiar characteristic in that it tries to hide its own self-reference. While in other systems we can observe the public sphere as a mechanism that externalizes, in some way, the occurrences of the system (for example, publications in science as expressions of scientific practice), in the mass media this self-reference to the system is kept secret, because the topics always refer to another system or to something external to the SSMM. No occurrence portrayed by the mass media is presented as a product of the mass media itself. They make an effort to create in the audience the impression that they are external observers, with nothing relevant to say about themselves. There is, for example, no news about how an event was reported. For the SSMM, metacommunication is impossible. Esposito (2013) corroborates our argument by saying that, in the mass media, people only observe the reality constructed by the system, and not the ways in which this reality is constructed. But this does not mean that this effort to conceal carried out by the mass media goes completely unnoticed. Its degree of effectiveness is a matter to be investigated empirically, but people often criticize a particular

outlet for being ideologically biased, for example. They are able to perceive this because each organization present in the SSMM uses different criteria to construct reality. From the moment I observe constructions of different realities in the mass media themselves, I gain the ability to label them with specific attributes (for example, a “left-wing newspaper” or a “conservative podcast”) and I become aware that I am observing from a second-order perspective.

To observe the SSMM's observations, therefore, it is enough to observe its media contents and the way the topics are constructed. The different media outlets constantly observe each other to decide what to publish, creating what Bourdieu (1997, p. 33) called a game of mirrors: to decide what is considered relevant to be reported or not, media organizations use not only the selectors described by Luhmann, but also observe what other media organizations are publishing (just as scientists observe other publications, companies observe their competitors, etc.).

4 CONCLUSION AND SUMMARY

After classifying and discussing the public sphere of each system, we summarize the classifications in the table below to facilitate the visualization. In our view, for each subsystem, the corresponding public sphere represents the best medium of observing the horizon of communications constructed by that system. In some cases, such as medical records and classes, they are not publicly accessible media to external observers. However, they are accessible for second-order observation by observers internal to the system (hospital employees who have not worked directly with the patient and students of a school) and thus allow the system to observe itself in the second order.

Those communications that we designate as part of the public spheres did not originate in modernity. They were simply updated in the form of the “public sphere” after

the coming of the functionally differentiated society. However, it would be risky to refer to them as “public spheres” without this configuration, because in this case there is no autopoietic closure of the systems, their operations are still guided by criteria that are not entirely functional (for example, legal norms vary according to the status of the person).

Table 1 – Functional systems and their public spheres

SYSTEM	PUBLIC SPHERE
Policy	- Plenary sessions - Publications in the Official Gazettes - Opinion polls
Economy	- Market
Science	- Scientific publications - Congresses, seminars and conferences
Religion	- Religious rituals, practices and commandments
Law	- Court hearings - Procedural records
Art	- Works of art
Education	- Classes - Assessments
Sport	- Sporting events
Health	- Medical examinations and records - Consultations - Case incidences
Mass media	- Media publications

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