
Liquid Legal: Organization 4.0: Using Legal Competency for Building Fluid & Innovation-Driven Structures

Gerrit Mauch

Abstract

Innovation-driven organizations are characterized by their adaptability to the environment. A combination of flexible processes and stable social interactions with the environment enable the development of adaptability. The interaction of the product “labor” must be imagined beyond organizational boundaries and be adapted for the existing frameworks of the organization.

This calls for employees who act in a self-reflective way and who are willing to consider the daily context critically. Such employees monitor the product “labor”, identifying degrees of freedom for their personal development, design options in their work performance and their personal responsibility of their conduct. Conversely, this means that personal reflexive qualities of employees are required to allow for the development of strong innovative organizations.

How can organizations enable the development of this type of person within their own ranks, and what can organizations do to set up a stable framework for work relationships despite of permanent critical observations?

1 Taylorism: Once a Brilliant Idea

To this day, organizations in developed countries are mostly characterized by production organization theories, aiming at the optimization of the value chain rather than its modification. Talk of innovation in organizations frequently turns out to be no more than an improvement of the value chain. The spirit of Taylorism is inherent in the most common management theories.

G. Mauch (✉)
RETENCON AG, Freystr. 4, 80802 München, Germany
e-mail: gerrit.mauch@retencon.de

All economic inefficiencies can be solved brilliantly by separating thinking (reserved for the management) and action, as well as by separating functionalities in production and services. The simplification of complicated structures seems to be the logical consequence of our perception of cause effect. Occurring side effects of the common management theories such as conflicts within departments, different rationalities within organizations, or relationships between superiors and employees are perceived as deficiencies of the acting person rather than a deficiency of the principle of Taylorism. The globalized, dynamic, networked progress breaks the value chain. For example, a search engine developer can suddenly become a car manufacturer, turn car manufacturers into suppliers, or even transform a car manufacturer into a software developer. Many organizations continue to look at last century's methods to figure out how to handle innovation in a positive way. Rituals and dogma of Taylorism and Fordism¹ in corporate governance satisfy managers' longing to resolve every problem by means of reduction. In an environment of changed conditions for decision making, where coalitions of interest become more complex and motivation changes all the time, such a way of thinking is the real culprit for blocking innovation.

1.1 The Future World Is VUCA²

Today top managers and their organizations act in environments in which information ceases to have any prognostic significance. The consequences are volatility, uncertainty, complexity and ambiguity: VUCA. In the end, it is all about two parameters: How much information about a particular situation is available, and to what extent can I estimate the consequences of my actions? In principle, this means giving volatile frameworks sufficient fluctuation buffers and giving uncertain situations a solid amount of information. Complex developments are counteracted by a combination of information and resources. Back in the beginning of the

¹See <http://www.humanecology.ch>: **Taylorism and Fordism:** Frederick W. Taylor (1856–1915) was an American engineer who sketched a system of the scientific management which should entail a maximum in achievement by means of a working rationalization. It founded on empiric data which Taylor won in the course of time studies and motion studies in workers who worked according to his appraisal already fairly efficiently. Besides, every activity became in her smallest components disassembles and as a result examines each of these components how it could be explained best of all, i. e. with the slightest time involved. The principles culminate in the technical implementing of Ford image of line production.

²See Wikipedia: **VUCA** is an acronym used to describe or reflect on the volatility, uncertainty, complexity and ambiguity of general conditions and situations. The notion of VUCA was introduced by the U.S. Army War College to describe the more volatile, uncertain, complex and ambiguous multilateral world which resulted from the end of the Cold War. The common usage of the term VUCA began in the 1990s and derives from military vocabulary. It has been subsequently used in emerging ideas in strategic leadership that apply to wide range of organizations, including everything from for-profit corporations to education.

nineteenth century, even Clausewitz urged the military leader to explain complex situations in a simple way, but not to think in an easy way.

People who think about the future, such as philosophical essayist Nassim Taleb and his interpretation of epistemology, no longer apply the logic of value chain. Today, the evolutionary power of organizations supersedes process creation. Nassim Taleb is trying to figure out how the robust tayloristic system can lead to development of versatile, adaptable and thus resilient organizations. Taylor's attempt to control the dynamic of systems by creating a self-similar structure depicting the economic reality, is opposed by Taleb's model of evolutionary development. Taylor's idea copies seemingly essential points of economic reality, thus creating a self-similar copy of what we consider necessary. In contrast, Taleb attempts to establish an idea for the reorganization of rules, norms and principles which establish a framework, but do not claim to dominate all contingencies. The shape of a treetop is not necessarily as important as its environment which allows the tree to grow and bear fruit.

Once, a Bavarian forest farmer said to me: "*Only change what you are able to change.*"³

The difference between Taylorism and the thinking of Nassim Taleb can be explained by means of a stone—its structure reminds us of rocks or even mountains. The benefit of such simplification is apparent. Complicated structures become transparent and manageable. There is a danger to succumb to misconceptions, if the management of such simplification is taken for granted. Due to self-similarity, attributes of mountains such as danger of avalanches, are eliminated. Such a fractal invites misconception and ignorance of seemingly irrelevant information. The stone displays a deceptive similarity to reality, however without the identity of the mountain. The increasing dynamic of markets unmasks Taylor's fractal.

Organizations exposed to the complexities and dynamics of megatrends, like humans who are exposed to forces of nature, can permanently resist development pressure, once they are able to develop self-similar systems from within. In Taleb's view, there is an evolutionary correlation, making biology and economics face similar challenges: both disciplines try to explain survival and innovation in an unpredictable world. The evolution resolves this by constant self-reflection about the available resources and the possibilities of the environment. Next to that, the system develops alternatives for the most different scenarios. For enterprises this means owning an idea, rather than the solution for the recombination of products and processes. A new culture of feedback and dialogue is the precondition for that.

Nassim Taleb appeals to organizations, asking them to rethink their visions and strategies. He calls on the companies to also think about the unthinkable and to develop skills and tools which allow to think in a frame of diversity. The aim is to be prepared for the unforeseeable. He calls this *antifragility*.⁴ It is not about all-encompassing solution mechanics, but rather about the idea of facing the

³See Sepp Spann, <http://www.cluster-forstholzbayern.de/>

⁴Refer Taleb (2012), pp. 231–259.

environment in a reflexive manner. The forest farmer, quoted before, plants different kinds of fruit trees around his forest, knowing that parasites prefer special kinds of wood. Longer distances between individual trees increase the probability of birds catching the insects. In his view, fewer parasites mean a greater number of healthy trees, making the entire forest more resistant to changing adverse weather conditions. The amount of birds in the orchard are indicators for how well his system functions. In addition, he casually mentions the fruit's suitability to make Schnapps and jam as an attractive sideline of business for the family. In a sequentially operating system, the symptoms of pest infestation would have been combated with chemical pesticides. Initially, this would have worked, but would also have caused a negative effect on the entire ecosystem. Poisoned insects means fewer birds, fewer birds means less seeds in the forest, less seeds in the forest means less growth etc.

If the actions of a forest farmer secure survival in difficult situations, how can an organization benefit from this thought process? In relation to our economic behavior this would mean a transformation of tayloristic and fordistic social models into Taleb's world⁵ to allow for the development of innovation-driven organizations, organizations that are at ease with technical issues of flawless performance. The majority of organizations are well organized for creating optimal conditions for production of goods and the provision of services. The lever for change lies within employees' behavior and can be shaped by the design of modern employment. Due to a lack of experience with a VUCA work environment, one can only speculate about the changed expectations with regard to employment and its future; it certainly won't be as linear as labor research has predicted in the 1990s of last century.⁶

1.2 Only Change, What You Are Able to Change

As consultants we observe the effect of a changing economic landscape on the creation of employment. If we look at employment, we put change in the context of "*open innovation*". Rather than in a laboratory situation like those found in a traditional R&D department, which is more or less a closed laboratory situation, in open innovation, the process of "embodied knowledge" allows an exchange between the environment and the institution. This exchange allows the environment, such as a consumer but also software programs, to look behind the scenes of a company. The boundaries blur between inner and outer world. Does this mean that, to date, inside an organization these rules—rules of communication and interaction, interpretation and action—have been addressed in the context of open innovation dialogues? What are the circumstances in which organizations are able to change their own rules? Will they be able to determine the consumer regulations of an

⁵Refer Taleb (2010), pp. 85–99.

⁶Refer Robertson (2014).

organization in the future? Who will make this change and bring them in line with the company's interests? In our work, we discovered that this can only be the task of Legal, both at the present time and in the future. In order to ensure that legality is upheld Legal must transform from being the interpreter to becoming the creator of conditions required for new thinking. In labor law, Legal will no longer be the formal converter, but it will take on the role of the designer of formal working conditions—and that requires new thinking. Legal has to redefine its mission.

1.2.1 Theseus' Ship

The philosophical parable of Theseus⁷ highlights a different aspect of change. The legend starts with Theseus' departure to kill the Minotaur. In the course of the odyssey, every plank of his ship is being replaced. It is subject to ongoing change. The ancient philosophers discussed whether the repaired ship was still identical with the original one and what impact this answer would have on Theseus' story. The original state at the beginning of the voyage ceased to exist, but the function and basic system still existed without any restrictions. I don't want to continue the argument, but it clarifies the factors for change and identity. This ideal, that stability presents the unchanged functionality and yet still permits change, presents three important aspects of transformation:

1. A temporal dimension—the transformation lasted the entire trip
2. A functional dimension—the ship remained a ship
3. A social dimension—the discourse on the meaning of travel and its effects

We will focus on number 3., in particular on the question: How does behavior change in relation to its context? How can plank by plank be exchanged, how can a system of self-empowerment develop without questioning the learned norm? It means that the modification of rules becomes the norm rather than the exception.⁸ Philosophers discussed the factors time and functionality and the social question underlying change. Already back in the 1960s, Talcott Parsons und Niklas Luhmann tried getting to grips systemically with the transformation of the “structure mountain” into a stone, as described in the previous paragraph.

They were satisfied with the sociological role of the describing observer. Their intentions weren't to resolve anything, but rather than to help to understand the status of actions. They provided sorting instructions as in a puzzle: First, start with the pieces around the edges or with the sky. It became apparent that this these kind of hints can help clarify even complex pictures. However, this approach requires mainly time and social awareness. In his book “*Organisation for Complexity*”,⁹ Niels Pfläging describes the ideas of sociology and merges them with the aspects of change. He refers to this as a social, functional and temporal gap (see footnote 3).

⁷See J.J. Abrams, S. & Dost - Das Schiff des Theseus, 2013.

⁸Refer Luhmann (1984).

⁹Refer Pfläging (2015), pp 66–67 u. 217–220.

The social gap appears when management decisions prioritize functional and temporal dimensions, negating the social process. Decisions and procedures are being accelerated, but excluding social interaction can lead to pressure resulting in anxiety. Learning processes are being blocked which can kill creativity and inventive spirit. Changes made under pressure can result in no more than successful reflexes, but they will never match the quality of sustainable inventions. The VW scandal following manipulation of car emissions is an example of what can happen when social gaps are not prevented. This means the risk of innovation does not lie in the risks of a functional environment, but in the social acts of actors. In the future, the focus of legal needs to align more to the consideration of social interaction and less to the formal processes that describe this interaction. However: How can we recognize the difference?

The Social Act

The “*social act*”¹⁰ in organizations is defined by interaction with one another via communication, thereby creating relationships and identity. Personal flexibility and relationship structures are frequently regarded as rivals. This may also be the case for rigid and clear concepts—a circle remains a circle. However, this does not apply to relationships between companies and people or societies. Relationships can lose their power if they are being formalized rather than being based on trust.

A legal contract (i.e. an employment contract) may be a suitable instrument to close gaps in trust. However, it can turn into a boomerang if it becomes incomprehensible for the contractual partners, or if it creates the impression that the contract is more in favor of one of the contractual partners. Trust is created by a process of exchange of information and power. Thereby, relationship means sharing of information within a community. In Organizations that are deemed to be innovative we observe a different kind of exchange and collective awareness. In the past few years, our social relationships have transformed from a hierarchy of doers and executives to the desire for relationships at eye level. It is not surprising that an agile movement group in Germany named itself “*eye level*”¹¹ for a film project.

1.3 Labor Subjectification or How Privacy Enters Organizations

In the future, the transformation of employment must take place at eye level. This can be facilitated by flexible work design on the one hand, and variable working hours on the other hand. Both points are regulated by state regulations and employment agreements, today, and they are designed in the spirit of Taylor. Separation of doers and executives in the production process can be compared to the bargaining parties in the area of employment, who are trying to regulate the respective shares in the workforce by means of institutionalized negotiation rituals. In this case,

¹⁰Refer Luhmann (1984).

¹¹See <http://augenhoehe-wege.de>.

collective action is understood to be a mandate for the representation of interests. Collective awareness of a seemingly new generation of employees is oriented towards a common feel-good atmosphere resembling the Communards—however, without of the commitment to change existing systems fundamentally. Collective behavior seems to aim at establishing a micro system within the system, rather than trying to change the system itself.¹²

So called “New Work” organizations prioritize teamwork, implementing the 4 ‘Cs¹³—critical thinking, communication, collaboration and creativity. The question of participation will certainly play a major role in the development of companies. The significance of existing mechanisms representing work-related macroeconomic issues will remain uncertain for the future. The individual employees want to determine their employment quality in discourse with others, rather than being represented by the solidarity idea of trade unions. In this case, autonomous work doesn’t seem to have anything in common with classic neoliberal thinking, while both might look the same from the outside.¹⁴

This transformation can be explained by pluralization and individualization of structures in household and family. When it comes to the development of the ego, mankind has just started to emancipate him or herself during the last centuries, starting with renaissance and enlightenment. Additional factors are the decline of Ford’s social model and the rapidly progressing digitization of our environment. The latter has led to the (practically unnoticed) removal of boundaries between private life and work. The tendency towards more flexible work environments and the variable usage of time relating to work performance lead to subjectification of employment.

Looking at “*crowd-intelligence*” as a product designer, we realize that crowd intelligence intuitively performs this role in relation to employment, too. Consumers naturally exercise their rights to participate in product design; equally, employees want to participate in the world of employment personally and creatively, rather than being represented by unions. The catchword “*democratic enterprise*” haunts the workforce of today’s organizations that are deemed to be particularly innovative. It is often overlooked that in those innovative organizations the traditional formalized functions of regulated participation which are part of our democratic system are non-existent. Andrea Nahles, German Minister for Employment, once cuttingly commented: “*works council over table tennis*”; but the need for table tennis seems to win. The possibility of satisfying personal needs through employment increases expectations in personified employment offers. The 180-degree-turn of the labor market, induced by demographics and prosperity of the economy (e.g. Germany), fueled to raise expectations. This unveils a paradox. The wealth of offers increases the employee’s worry of making the wrong career choice. Neuroscience explains this by means of evolution. Ancestors who ran away

¹²According Brühl and Pollozek (2015).

¹³According Farooq and Carroll (2007); NEA (2010).

¹⁴Refer Pfläging (2015).

when they heard rustling in the bush survived—and thus passed on their genes—, not those whose curiosity made them run into the bush.¹⁵

Simultaneously, there is a desire for individuality and the need to have one's decision made by someone else. There is also a desire for stability for the own life i.e. salary on the one hand and a maximum of self-development on the other hand. The first criterion, applicants look at in organizations, is their robustness, rather than their innovative capability in global economy. This behavior of employees possibly determines the strength of the innovation overall. It also means that the risk of innovation does not lie in the perceived risk from the functional environment, but in the consequences from social acts, as defined above. In the future, legal needs to focus on aligning to the considerations of social interaction and less on the formal processes that describe this interaction.

Matthias Horx has created the term "*flexurity*",¹⁶ explaining the alternation between stability and flexibility. Mastering both elements is a challenge for modern HR departments. Balancing subjectification and individualization of personnel management with securing collective accomplishments for the entire staff. At this point there is a need for a "creator" who understands that the element of security can only form basic conditions. Only the power of an institutional function can enable such a transformation process in organizations. Future oriented organizations need a switchboard that understands the different needs of people and can couple them with the specific necessities of one's own enterprise to design the labor framework required.

It can be compared to the cultivating influence of the forest farmer, who generates income from a plot of mountain forest. If cultivation did not take place, we would face a jungle which is insignificant for the economy. Nowadays, top management is in the role of the forest farmer. Employment lawyers are in higher demand than ever to trigger these processes and guide the whole management team. Though, seemingly paradox, outsiders frequently experience legislation as a jungle with pitfalls, or they have the impression that lawyers prefer sitting between two chairs, or brooding over legislative texts. However, as soon as the fog of blurred perception has lifted, the potential of creative power of labor and social legislation for the organization become apparent, and thus the potential creative power of the designing lawyer.

Let us use the picture of a tetris-game to explain the challenge for a designing function. At the current level, falling shapes had to be fitted into a particular pattern. Successful execution means good result. Success depends on speedy recognition of individual patterns and of matching the parts with the correct positions. Translated into our process thinking this means that on one level the same pieces are recurring and we optimize the time to move these. Yet, our reality is changing, we seem to have mastered a new level. Now, pieces which are unknown to us, are descending more dynamically. Just as the tetris player trains his spacial thinking and improves

¹⁵Refer Spörer and Prieß (2013), pp. 89–94.

¹⁶Refer Horx (2005), pp. 52–82.

his handling in order to master the next levels, Legal will have to understand rules, norms and principles as stable social interactions, rather than corporate risk minimization.

The player must place seven different blocks in a rectangle, so Legal can use seven principles for change. The possibility to rotate the blocks leads to an almost infinite range of alternative solutions. Therefore Legal can use this concept of seven principles for change. The leeway predetermined by Legal reflects the possible twists in the game. So Legal *must* have an idea for the recombination of norms and principles into new rules. The Seven Principles for providing innovations driven structures (in support of Hanjo Gergs¹⁷) are:

1. Know thyself—willingness for self-reflection of management
2. Communication and networking—dialogue leads to change
3. Allow diversity and paradoxes—learn to love contradictions
4. Doubts and forget—get rid of old ideas, to separate the known and proven
5. Explore and experiment—develop awareness and curiosity
6. Establish error and feedback culture—learn from mistakes and successes
7. Perseverance and thinking in systems—thinking in social action

¹⁸We distinguish the application of the seven principles on (i) the role and (ii) the task of labor law. In the short run, the main tasks and processes of HR will remain unchanged, despite of progressing digitalization and advancing technology; they will be optimized and secured in the traditional way. However, beyond that modern personnel management must embrace the transformation of organization in terms of change ability, demography, employer brand, leadership and corporate culture. These are the four chances and challenges with their HR must handle.

Transformation of organizations will need to happen by means of adopting new teaching and learning methods, which should follow Maria Montessori's principles of self-empowerment: "*Help me to do it by myself.*" Therefore, time and result must be separated in the learning process; for the teaching process it means, asking questions rather than teaching solutions. This also entails dissolving the surreptitious tunnel vision towards the younger generations.

The German comedy "*we are the new generation*"¹⁹ is about a commune of a group of elderly people that deal with the generation conflict, an issue which also professional organizations will have to face in the future. It is equally important to consider how the majority of staff can work towards a retirement age of 70 years whilst maintaining the company's performance.

¹⁷Refer Gergs (2016).

¹⁸Refer Hedderich (2011).

¹⁹See <http://www.imdb.com/title/tt3777462/>

We must distinguish between the brand product of a company and the product job of an organization which has to be sold in a jobseeker's market. This approach is more radical than depictions of current employer branding strategies.

The final transformation task concerns the continuing development of corporate culture; since the latter can only be considered retrospectively, leadership models and management development according to Taleb have to be understood as an evolution and thus must be constantly re-developed.

Today, we can only speculate about the changed expectations of future employment, since there is no linear development of employment that can be encountered. Feeling involved in tasks and responsibilities is the first indicator for staff identification with their organizations and their willingness to tackle change. The Matthias Horx Future Institute summarizes poignantly: The reevaluation of community will have an impact on organizations. At all levels, proven command structures are wobbling in the face of a workforce growing up with community orientation, a crowd offering diverse innovations, and leadership trainees who climb the career ladder with entirely different principles.²⁰

The peer-to-peer interaction is crucial for leaders who at most had to deal with management cybernetics. The community votes and negotiates the role and task, just the way old-school unions were dreaming about once—but it is an entirely different method. The acquisition of role and task presumably stems from an immense self-confidence, a kind of technical superiority of ensuing generations. Revolt of the cobblestones, the sharp distinction between capital and drudgery, the idea of dialogue creeps into our nation's organizations in its new disguise, the web. This kind of exchange still lacks many attributes of a reflexive discourse, but it shows effect. Corporate management needs to be convinced not to use legislation or contracts to shift risks onto someone else, but to understand legislation and contracts as the tools for stability, thus allowing for growth. Nowadays, standardized work specifications and availability of workforce, restrictions in decision making and a lack of room to maneuver don't seem to promote innovation any more.

The work requirements are leaning towards indirect control and self-organization. This has massive feedback effects on corporate culture. Organizations opting for more community have to be willing to learn. New forms of collaboration require new openness and transparency, the functional structure is replaced by "We". Company internal silos don't seem to be necessary anymore.

The systemic approach of observing, understanding and changing has been developed into deciding, development of ideas and trying out. This approach has ceased to be in the hands of a privileged person; now is the time to claim for the dialogue of a "We-collective".²¹

²⁰See Horx (2015).

²¹According Brühl and Pollozek (2015).

1.3.1 Next Practice by a French Hotel Company

Creating a dialogue space to allow for change has already been discovered by two smart Frenchmen who founded a European hotel chain at the end of the 1960s of last century.

Their service idea was built on the idea of “*new work*”.²² I take this example deliberately to illustrate that the new features do not depend on a technical innovation, but rather on the idea behind it. I agree with the thesis which has been developed at the DGFP Lab 2014: Sharing responsibility and having trust. Tomorrow’s successful employee thinks “We”. He or she actively demands other opinions, uses them and faces others respectfully, expecting the same fundamental understanding from others. How did the founders of the hotel chain solve this thesis? Rather than copying existing hotel concepts, they wanted to bring the industrial revolution into the hotel business.

They realized during the development phase that they could not be part of the existing hospitality business in 1969 which justified itself by means of its own norms and rules. Forty years ago, a bathroom as a part of the hotel room, good traffic links or a swimming pool, was still a privilege seen only in 5 star hotels. At the time, in hospitality, it was unthinkable to offer these services for a large number of travelers. The two founders of a hotel chain covered the existing concepts and quickly realized that the standardization of processes and the flexibility of service provided the key to a profitable hotel brand. They *exchanged the planks of the ship*, without compromising its functionality in the process. Their credo: “*Faire la course en tête*”—*lead the field from the front*²³ could only be realized if they were more innovative and faster than their competitors.

In their view, they were able to be faster and more innovative if they were questioning themselves and, above all, if they gave employees a chance to discuss and question their system. Soon, they would learn that employees may have good ideas, but they were lacking the courage to discuss these. This allowed for the creation of company values right at the start of a new organization.

These values were considered the entry ticket into a protected dialogue space. Anyone could retire into this space who was able to explain their actions and behavior conclusively with a value. In that case, there wasn’t going to be a sanction. One of the founders is said to have uttered: “*Values make sense only if they are useless*”,²⁴ alluding to the sword of political games in organizations. This danger exists if from values undefined rules originate. Singles or parts of the organization can abuse values thus for own interests. Five of the values that had been introduced didn’t carry explanations of what the value canon meant, but consciously explained what wasn’t intended. Long word loops were omitted, in order to avoid taking away employees’ orientation.

²²See DGFB Lab 2014 Thesenpapier, Mitreden, Mitdenken, Mitgestalten im Unternehmen von morgen!

²³Refer to Virginie Luc (1999).

²⁴Refer to Accor reaching for the impossible 1967–2007, 2007.

This construction was tested during a discussion of company goals, which showed conflicts just like the magic square of business studies. The transparency and openness in which value conflicts are addressed in the hospitality business is unique, up to today.

Since then, the company has not formulated many rules regarding service delivery to the guest. These five values underpin the spirit and behavior towards guests. Not every employee or manager may understand this, but the ability for innovation has been imprinted in the company's DNA. A pattern which can be described retrospectively as culture. The Latin stem for "*colere*" means "to build, to order or to care for/nurture". This term became the center of discourse of culture in society and economy during the last 200 years. It now describes a certain moral behavior in comparison to an uncontrolled and random approach. The farmer tending his fields was considered uncultured since he didn't take the time to reflect his moral ideals and to cultivate them. This is at the center of the task which is presented to the legal function in the organization. Both, thinking about how the world might perceive the company's actions, and determining what is economically feasible touches moral boundaries.

1.4 Correlation of Task, Relation and Mind Model

As already described role and task create workplace identity and so does job functionality. Together with the company's big picture of business it will become the deeper meaning of employment. The supporting principle is each individual's contribution to act: are my actions related to the company's success, are they useful in relation to customer value and do they make sense in the overall picture of the organization. Management leaders never get tired of talking about the "big picture"—but they do not talk about the frame of work identity. In consulting, we explain the term "identity" as an act of social construction: oneself or another person is grasped in a web of meaning. The quest for identity has a universal and a cultural-specific dimension. It is always about producing a correlation between subjective "inside" and social "outside", i.e. the production of an individual social orientation.

In current management theories, results from roles and tasks, in combination with the company's vision, provide a practical and exemplary work environment. Is this really the case? Employee satisfaction is understood in terms of the usual economic theories and the respective measuring methods (e.g. morale of the team), as the exchange of a caring framework in turn for the performance of the individual. In the discussion about the design of the working environment of the future, the above is subsumed under the term "*work life balance*". But in the context of the New Work movement, private life and working life become unified. It is called "work life romance", as for example the Audi AG presents itself on the company's homepage with the statement: Some call it work, we call it passion!

In our work, we describe the potential built by the mental model of identity, by means of a matrix. We limit the space of identity, resulting in four directions from

which employment may stem, similar to those of a compass. Employee and organization are on opposing sides of one axis, and “*attractors and repellers*”²⁵ on opposing sides of the other axis. This compass doesn’t dissolve the demand for change, but it shows where employees and company are located in its dynamics. Innovative organizations emerge by the observing, understanding and locating of social actions within the framework of mental models. This means that the interaction between the macro level (organization), the meso level (potency of attractor & repeller) and the micro-level are (the individual) analyzed and understood. The mental model is developed from evaluating task and role based on motives and norms.²⁶ Nature has so far been a good example for change. We understand very little about a tree’s growth and we have equally little control over the development of companies. However, companies can deal with the ecosystem by recognizing it as both, growth and stagnation processes. An organization should concentrate on those conditions they can change. We introduced in our consultation the term “reflexivity”. For us, this means revising rules, principles and practices.

Taking a closer look at the organizational level and at individual motives, we can see three modes of action on each side regarding the factor work. On the organization side there are: vision, structure and culture. These mechanisms form a macro-level. On the individual’s side, the macro level meets the micro, i.e. the employee’s modes of “should”, “can”, and “want”. Thus, the meso level is the intermediate identity. In the research of complexity, the force that allows for a stable pattern in a dynamic system is called “*the Attractor*”. Attractors are community-building patterns, such as rituals or principles. An attractor can bring stability to a world out of order. In an experiment with flashing bulbs this can be shown. The light bulbs are not connected in this experiment but after a certain time a solid flashing pattern forms in all lamps. It acts as if the bulbs have an awareness. This physical process is geared towards certain bulbs (“*the Attractor*”). The attractors cannot be determined in advance, it is impossible to predict what patterns are triggered. However, statements can be made, regarding which actions destabilize the pattern. In a dynamic or social system, a number of employees moves towards a number of states or relationships. Each social interaction in a group tends towards this in the course of the enterprise development pattern. The force that dissolves the pattern, is known as “*The Repellor*”, as it has a repelling effect.

In 4.0 organizations both poles seem to contract and de-contract like a beating heart, due to blurred boundaries between work and life. On the side of the individual there is more usage of subjective potentials and resources. The transformation of work capital into work effort gradually ceases to be the obligation of an organizations’ control systems, it rather becomes the actor’s obligation. The actor doesn’t strive for renewal of existing legislation; instead, he needs a work life tailored to his personal circumstances in life. The dynamics of this system allow for the stability of these relationships. The resulting status will then remain near this

²⁵Refer Knapp (2013), pp. 134–144.

²⁶Refer Hartman (1967).

attractor. An attractor then appears to be interpretable culture. Colloquially, the term “pattern” of the organization is used. Relationships are a state towards which systems move.²⁷

1.4.1 Subjectification of Work and Meaning for the Collective

On the meta-level, two developments indicate a rough direction. The creation of certain types of employment, such as permanent freelancers, or the distinction of structure, such as age, qualification etc. Often, this is presented as something new, but upon closer examination it becomes clear that Tayloristic employment organizations constitute our economy’s backbone; there is still sufficient flexibility and potential for optimization to carry the transformation of our society. The increasing disintegration of the value chain leads to virtual workforce focusing on one product or service relationship; however, they cease to be on-site due to their special and functional disintegration.²⁸

Contrary to predictions of work sociologists, it is not a social void like Pflägings definition of systems, rather it seems like Theseus ship: some planks must be replaced to ensure the functionality of work. When the old “planks” have been filled, this leads to a renewal of the identity of work.

Consider the example of the Sparda Bank in Munich. The business model of banking got under pressure, given low interest rate periods and loan comparison internet portals. The future of the bank is uncertain, however, the organization has still a model for the near future. In recent years, the bank has begun to offer new jobs which not only fulfilled the role and responsibilities of a bank employee, but it also recruited people who have special skills in addition to their experience as an employee of the bank. The combination of the special skills of employees and the existing infrastructure of the company are being used by the organization for its own transformation process. Today the bank develops consulting teams that handle different questions put forward by small and medium-sized enterprises. The task of HR was to lead the change in the employee selection procedure, the change in the payment scheme and towards a renewed personnel development. Legal had to develop contracts for new positions and performance schemes that are synchronized with the existing contracts. The intervention had to capture the individual expectations of the organization by means of rules and regulations. Changes in private life and societal consequences of digitization lead to transformation of the work environment.²⁹

The example illustrates how employment can change. Oriented to potential and interaction, work can change the subjective quality of professional actions. It develops a new idea of the working identity. Sparda remains the provider of a frame for a co-op commercial model. The resolution of existing working time structures, the significance of life-long learning and technological progress will

²⁷Refer Knapp (2013), pp. 134–144.

²⁸According ISF Munich Nick Kratzer (2003).

²⁹Refer Kötter et al. (2015).

accelerate the change of the working identity even further. The Legal function becomes the intermediary of the transformation.

Movements such as the grassroots community seem to take control of the executive's mandate, in order to soften legal requirements of employment law or even to avoid them entirely. It remains to be seen whether subjectification and flexibilization contribute to the development of work quality. How can there be a new and fair distribution of existing risks for the organization under the aspect of subjectification of labor? The transformation of work will lead to modified work environments and new job profiles, or it might even lead to their dissolution. At first glance, companies that introduce a flexible and individual approach in designing work environments seem to be more innovative and thus able to withstand a dynamic environment better. Legal has to keep an eye on both tendencies and be prepared to stop risk regulation by writing down every eventuality; instead, Legal should assume the mandate and foster the ability to actively create room for flexibility and to manage the risk associated with it.

Legal will thereby facilitate the continuous development and marketing of the product labor; Legal will co-create the organization's attractiveness and will thus contribute to its survival, similar to the forces of evolution.

1.5 How Companies Organize Their Own Transformation

I would like to outline this by looking at the practice of social activity and transformation in companies, rather than as a theory in social science.

Imagine yourself as hunter who suddenly sets his sight on the silhouette of a duck. If you aim at the duck, you won't hit it. The bang of your gun would scare the duck away before the bullet could reach it. A hunter is familiar with this problem. He has to fire at a fictive trajectory of the duck. Does this mean that innovation is hitting a fiction? What distinguishes innovative companies? A high degree of intuitive adaptability and a hunter's experience. How can individual skills turn into corporate goals? How can companies motivate employees to chase after a fiction which above all depends on factors that cannot be influenced?

Our work environments will be redesigned and this means transformation. HR will have to stop their reactive role of offering employment and will instead have to design a product which is both stable and can leave room for development, using social and labor legislation. HR does not yet use the "New Works" platform much, due to a fatal miscalculation of demographics or due to old prejudices regarding the competency of HR. Based on our consulting experience in employee loyalty projects, we would say today, that the creation of an interrelationship via individual development and security is the strategic key to corporate innovation. An innovative enterprise culture must ensure development of the individual—and must unite collectives of individuals at the same time into a comprehensive "We". Professional life and personal life must melt. The integration of a future professional life requires a new mindset, a new mental model allow the innovative organizational models to work and to foster free self-development within a stable "We-context".

As specified above, HR has seven levers at its disposal to create such an interrelationship. To set the seven levers well, effective managers (HR, Legal etc.) must have understood the correlations of social acts and gaps on the macro, meso and micro level. An example of misunderstanding, in history, is the production line process of Ford: the assembly-line production with a new separation of tasks and activities. The time saved led to the afore-mentioned social gaps. The attempt to fill these gaps with money was effective in the short run, but it led to a wage spiral in the long run, rather than to the identification with the Ford brand. This means the employee's identification with the company can be regulated via work tasks. If tasks are interchangeable or standardized, as in production or service, it doesn't matter where or in which organization it is performed. Ford's understanding has evolved to now appreciating the connection between loyalty and work task. Today, in production, there is teamwork—a backwards roll to Fordism. The application of multiple skills and the resulting increase in responsibility in production is supposed to lead to stronger identification with the task. Employees will not only want to execute sensible activities, but they will also want to determine these in the future. The catchwords "*Sociocratie*" or "*Holocratie*" develop into trends in the organizational theory of tomorrow. The director of an IT service organization once explained the following to me: "*I actually don't care how other people work. It was just important to me that I didn't want to work like this.*"

HR and its sovereignty in the world of employment transforms into a being the designer aided by instruments of legislation. This means for HR to leave behind a sequential view of its organization and to reorient itself. If the approach of disruptive innovation is taken seriously, the newly formed labor market offers vast opportunities for changing one's job profile. How can HR lead this transformation? The challenge of a fluid network economy lies in defining new working time models and places, because in times of the "knowledge society", creativity cannot be tied anymore to the models of optimization related to production standards. As places to work become more and more adaptable, the creation of the firm working sphere also has a new relevance. This is not only a question of designers, but it is just as relevant for the juridical frame. The future staff of a "next" professional life and innovation culture wants to work and be led differently. Enterprises must appeal to new motives, to a changed thinking about achievement. Classical organizational structures and career paths disappear from new and adaptable working models. To be armed for the huge complexity that comes with such a development, enterprises must raise their own complexity. The new communication patterns and employer-to-employee relationships require a *modus operandi* of variety and diversity. The mindset of the future workforce is not hardcoded to a given identity from a role or a job or to fixed expectations, but it relates to the legitimacies of a network economy. At the same time, this has to be compatible with the self-relation of the employees.

Employment law and its proponents—mainly in HR—seem to oppose the degrees of freedom, of a dynamic development by means of an array of principles almost as solid as concrete. This is where the discussion about too much bureaucracy frequently begins; it is sometimes used to dissolve a fight for rights of

employees. I believe this is the wrong approach. It is not a question of having too many laws, but of whether we are prepared to view our guidelines and regulations as a system of repression or as a buffet of design opportunities. Well, I speak with the naivety of a non-lawyer and I am surrounded by a cloud of ignorance when it comes to all kinds of risks. I am also wishing for someone at my side who evaluates the risk of my environment and who excludes every risk innate to innovations, a risk relating to employees' behavior. Leaders who hide behind the line of legal counsels lack courage. In the future, leaders will have to stand in front of that line and decide for themselves whether employment contracts have 20 pages or maybe just 2.

HR and employment lawyers will have to decide how to coach leaders to enable them to distinguish between necessities of regulations and scope for innovation. Leadership must not withdraw from compliance rules and their application. Freeing leaders from their straight jacket of perfection and their superman role may enable this. Moreover, it must be possible to control different sides of power constellations such as influence, reputation and compliance. Leaders were drilled to have their staff on board. Temporarily, this became dictum in every management meeting. There was a perception that the right and legally correct information sufficed to change the acting people.

Organizations are structured by rules—rules of communication and interaction, of interpretation and action.³⁰ In the future, HR and employment law staff will have to ask themselves how organizations can change their rules. Is there such a thing as a rule for modification and evolution?³¹ Up to the 1990s, sociology and business science observed the transformation of employment in organizations from the point of view of organizational rationalization strategies in the capitalist society. On the side of economics, the term “Change Management” (see Levin's phase model) entered organizations. It seems that only a minority of consultants or leaders was given the key to change and only they were able to initiate change. The term empowerment meant giving the individual tasks but without giving them responsibility, as well. Former generations tried to fight for their rights to participate in work outside entrance gates of companies.

A team of young entrepreneurs like Larry Page, Sergey Brin and Mark Zuckerberg introduced a new understanding of power and responsibility, first related to their own role and then also with a view to the teams in their start-up companies. Their approach hasn't changed as they became the multimillionaire CEO, and as the company exploded in terms of size. Such patterns contradict the thesis that company development depends on the size of staff or on sequential planning of processes. The attitude of a framework-giving institution determines whether companies are innovative or not. Whether it has democratic legitimation or follows a capitalist founder motive is not relevant for the transformation of employment. It does become critical though, that the moral perception of rules is

³⁰Refer Moldaschel (2006).

³¹Refer Moldaschel (2006).

	Production organization	Transformation organization
Function	Routine tasks: balance or eliminate disturbances	Analysis of disturbances to allow for transformation of regulations
Criteria	Effectiveness and efficiency of the operational target tracking	Creation of transformation willingness and ability
Typical instances	R&D, Production, Personnel, Controlling, Marketing	Organization development, in-house consulting, project management, coaching, think tanks

Fig. 1 Difference between production and change organisation. Adapted from M. Moldaschel

trumped by the chance of renewal. The moral use of power in organizations will be the determining factor.

The crucial question for the development of employment will be: how can a newly understood power of collective decision making replace the existing idea of production process improvement, thereby leading to a change in employment culture? Ulf Brandes, one of the “New Work” drivers, writes in his book “Management Y”: new innovation approaches such as “Design Thinking” comprise methods and tools as well as employment-cultural recommendations.³² Success and innovation don’t depend on regulations; the design of rules which guide the interaction between the world in front of and the world behind the façade of companies. In his opinion it is a question of the distribution of and participation in decision making power.

The change of perspective on the employers’ side can be supported by distinguishing organizational regulations as to whether they are (i) primarily part of operational tasks or (ii) their permanent evaluation and adaptation. Manfred Moldaschl picks up on that in his approach of institutional reflexivity; however, his distinction between a production organization and a transformation organization is portrayed in an ideal-typical way (Fig. 1).³³

Can Legal and its principles of order help recreate a seemingly lost stability and tranquility? The natural distance between a term such as innovation and a collection of principles such as legal texts might explain why not many people see a connection. We do see a connection of innovation and Legal for the future, because for us Legal will be a navigation aid. In fact, innovation and Legal must meet on a new surface, which acts as catalyzer. On the level of employment, which creates stable relations through task and role in a company. On the level of organization, in order to build new frames of learning and change. It takes more than job description and a salary. In fact, the job itself must be considered a product, which has to prove itself in a tough market.

³²Refer Ulf Brandes (2015), pp. 41–59.

³³Refer Faust et al. (2005), pp. 355–382.

2 **Conclusion, Liquid Legal Can Only Develop If Theodor Storm’s Statement Is Taken Seriously: “Authority as well as trust can’t be rocked more than by a feeling of being treated unjustly.”³⁴**

There is an increasing need for self-empowerment and continuing self-transformation, not just in terms of employee behavior, but also for organizations. This is a common theme in the theory of modernization and organization. Legal is in the unique position to provide institutional observation criteria which allow for determining the extent and the quality of change. Equally, Legal can accelerate or block the dynamics of change by how well and creative it adapts, develops and applies functional best practices enabling adherence to rules and norms. In fluid organizations, this task becomes an innovation task, if the content of norms, rules or principles is not just evaluated by their flat content, but above all by a reflexive process in the context of the organization, the product “job” and the employees’ subjective expectations of teamwork.

In the future, jobs will cease to be the focus of organizations in favor of the individual in his or her occupation; any organization getting to grips with that will become anti-fragile and will develop a new working and learning culture. A culture based on the exchange of knowledge and with the inherent power that comes from relationships on eye level. A culture in which the principles are made clear, in which transparency prevents hidden agendas and in which a participation of all, regardless of their abilities within a function. No potentials or contribution will be separated from the development of a company.

Liquid Legal Context

By Dr. Dierk Schindler, Kai Jacob and Dr. Roger Strathausen

Mauch reminds of a fundamental role for legal in the transformation of the future working environment, which will be defined by VUCA: volatility, uncertainty, complexity and ambiguity. Success of organizations will depend on their adaptability. There needs to be a constant recombination of product and processes. Thus, the traditional security for individuals of a static correlation of their work to *the* product will fade.

Instead, open innovation and the modification of the rules that govern a working relationship will be the norm—not the exception. What does this mean for the employment lawyer? Mauch calls upon the role of legal in the future of employment as one that changes from an interpreter of regulations around current conditions to becoming the creator of them. Horx’ theory around “flexurity”, the alternation between stability and flexibility comes to mind.

(continued)

³⁴Theodor Storm an Dorothea Jensen, April 1866.

Mauch's broad thinking around the future workplace and its DNA creates correlations to Tumasjan and Welpé describing the settings of a co-creative enterprise—indeed a joint task of HR and legal, or as Mauch puts it: “*HR in the world of employment transforms into a designer aided by instruments of legislation.*” And Legal must step up as the co-creator.

References

- Abrams, J. J., & Dost, D. (2013). *Ship of Theseus*. Amsterdam: Mullhollands Books.
- Brühl, K., & Pollozek, S. (2015). *Die neue Wir Kultur*. Frankfurt: Zukunftsinstitut.
- DGFB Lab 2014 Thesenpapier. Mitreden, Mitdenken, Mitgestalten im Unternehmen von morgen!
- Farooq, U., & Carroll, J. M. (2007). Supporting creativity with awareness in distributed collaboration.
- Faust, M., Funder, M., & Moldaschl, M. (2005). *Die “Organisation” der Arbeit* (pp. 355–382). München.
- Gergs, H.-J. (2016). *Die Kunst der kontinuierlichen Selbsterneuerung*, 1. Auflage (pp. 52–144). Weinheim: Beltz Verlag.
- Hartman, R. S. (1967). *The structure of value: Foundations of scientific axiology*.
- Hedderich, I. (2011). *Einführung in die Montessori Pädagogik*. Reinhardt Ernst.
- Horx, M. (2005). *Wie wir leben werden* (pp. 52–82). Frankfurt: Campus.
- Horx, M. (2015). *5 Thesen zur Zukunft von Arbeit*. Frankfurt: Zukunftsinstitut 9/2015
- ISF Munich Nick Kratzer. (2003). *Flexibilisierung und Subjektivierung von Arbeit*. München.
- Knapp, N. (2013). *Kompass neues Denken*. Hamburg: rororo.
- Kötter, R., Kursawe, M., Schöning, P., & Klingenberg, M. (2015). *Design your life*. Campus.
- Luc, V. (1999). *Never take no for an answer*. Paris: Éditions Albin Michel.
- Luhmann, N. (1984). *Soziale Systeme. Grundriß einer allgemeinen Theorie*. Frankfurt am Main: Suhrkamp.
- Moldaschel, M. (2006). *Institutionelle Reflexivität*. Chemnitz.
- NEA. (2010). Preparing 21st Century Students for a Global Society
- Pfläging, N. (2015). *Komplexithoden* (3rd ed., pp. 67–68 & 217–221). München, Redline.
- Robertson, B. J. (2014). Hologracy—The new management system for a rapidly changing world, 2014—Part one
- Spörer, S., & Prieß, A. (2013). *Führen mit dem Omega Prinzip* (pp. 89–94). Haufe.
- Taleb, N. N. (2010). *The black Swan* (6th ed.). München: DTV Verlag.
- Taleb, N. N. (2012). *Antifragile—Things that gain from disorder* (3rd ed., pp. 231–259). München.
- Ulf Brandes. (2015). *Management Y* (pp. 41–59). Campus.

List of Websites

- www.augenhoehe-wege.de
- www.imdb.com/title/tt3777462/
- www.cluster-forstholzbayern.de
- www.zukunftsinstitut.de/artikel/die-neue-wir-kultur/



Gerrit Mauch The sociologist is Chief Academic Officer and consultant to the RETENCON AG in Munich. The company advises organizations on matters of employee engagement and loyalty. One of his special areas of interests is the transformation of enterprises with the help of a new learning and teaching culture. As an experienced human resources manager, he also accompanied senior ranks in organizations on matters of HR development. Mauch is a multiple award winner as a coach and training specialist. His awards include the “Initiativpreis Fort- und Weiterbildung” of the DIHK (2004), the “Chief Learning Officer-Award” of the trade magazine “Wirtschaft & Weiterbildung” and the “International German Training Award in Gold and Silver”.