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*Werner Gephart (Ed.)*

# In the Realm of Corona Normativities

A Momentary Snapshot  
of a Dynamic Discourse



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# Foreword

The following volume aims to provide a snapshot of the current corona crisis: from gradual astonishment to ironic distancing to total insecurity to latent outrage. From the radical shutdown of social life and its successive abolition to the setbacks and successive recovery of civil liberties, freedom of movement, professional freedom, freedom of religion, freedom of assembly, artistic freedom, etc.

I must extend my gratitude to the wonderful authors who, in the shortest possible time, almost as if by acclamation, magically responded to the invitation to comment on the pandemic from their specific regional and disciplinary experiences with regard to the normative dimension of crises. Without the tireless efforts of Jure Leko, who was responsible of the volume's organization, it would not have been possible to coordinate 50 contributions from all over the world within a few weeks. I would also like to thank Carina-Nora Bockard, Sergio Genovesi, Theresa Hanske, and Felix Leven for their invaluable help researching the topics at hand and adapting submissions to the publisher's stylesheet. Our publisher, Vittorio Klostermann, has supported the project with great enthusiasm in every respect from the start. Lastly, I would like to express appreciation to Candice Kerestan, who lent the language skills of her mother tongue as far as this was possible in a very short period of time.

The extent to which the project might also have fulfilled a self-therapeutic function during lockdown will become clear later. But there is no doubt that swiftly »shutting down« the normative achievements of modernity and replacing them with a new type of normativity represents a civilizational break. The modest aim of this book is thus to bring more clarity into this new realm of the normative and its *Kulturbedeutung* for the human condition.

Werner Gephart

Bonn, June 21, 2020



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## Introduction: The Corona Crisis in the Light of the Law as Culture Paradigm

The corona crisis is met with reflection from experts – especially noticeable in official statements, TV show debates, and podcasts related to the natural sciences – upon which political decision-makers rely. And, at the same time, the power to »define« events has shifted into the sphere of science. It is becoming increasingly clear, however, that value-based decisions are at stake – decisions which are fundamental in nature and call for ethical and cultural-scientific consideration. A cultural-scientific perspective on this all-encompassing crisis in the light of the Law as Culture paradigm can be found in the following debate, which was sparked by a call for contributions and is being continued by successive texts from the Center's former Fellows and friends. From the outset, it was important that the Center address current issues using a research perspective that is rooted in the fundamentals. As such, the normative requirements and consequences of the Arab Spring gained special attention early on at conferences and in publications,<sup>1</sup> problems of normative pluralism were discussed in the context of circumcision,<sup>2</sup> questions of material justice were raised in debates about the restitution of stolen Jewish property,<sup>3</sup> as were provocative inquiries about a legal aesthetic that is reflected in courthouses, films about courts, and portrayals of Justitia. We also discussed the cultural significance of masks at the Art Museum Bonn when they had masks on exhibit,<sup>4</sup> and we pondered the normative requirements of the *flâneur*,<sup>5</sup> a type of movement that, when done in large numbers, is currently penalized in many places.

<sup>1</sup> Cf. Al-Azm: Civil Society and the Arab Spring; Gephart/Sakrani/Hellmann (eds.): Rechtskulturen im Übergang.

<sup>2</sup> Cf. Gephart: Constitution as Culture.

<sup>3</sup> Cf. also the project of the Rose Valland Institute, an artwork by Maria Eichhorn.

<sup>4</sup> Cf. Panel discussion on the exhibition in the Art Museum Bonn: *Maske – Kunst der Verwandlung* (June 2, 2019) – a cooperation between the Art Museum Bonn and the Center »Law as Culture«.

<sup>5</sup> This has been the unexpected outcome of our discussion at the Art Museum Bonn, dramatically proven right during the corona crisis when visitation of museums and the innocent *flâneur* were forbidden! In the general context, cf. Panel discussion on the exhibition in the Art Museum Bonn: *Der Flâneur als soziologische Figur der Moderne* (January 13, 2019) – a cooperation between the Art Museum Bonn and the Center »Law as Culture«.

Modernity has not only established itself in a confrontation with nature and in various forms of communicative self-assurance, but it has come to express itself in its normative dynamics: Revolutions are defined by breaking from given normative orders and replacing them with new ones – the act of which, however, is met by restorative counter-movements. Crises of modernity unfold in the ›realm of normativity‹. And sociology emerges as a science of crisis that, especially in Durkheim's work, analyzes the structural change of modernity as a dynamic of its development from repressive to restitutive normative orders; views ›anomie‹, or ›normlessness‹, as a fundamental ill of misguided modernity; and blames individuals' struggles to bond with others as the cause behind rising suicide rates.<sup>6</sup>

Even though Weber devotes great methodological effort into differentiating between empirical and normative validity, the basis of social order – namely the avoidance of a Hobbesian state of nature ›where life is poor, nasty, brutish, and short‹ – can be found with Weber in the orientation towards an at least collectively imagined normative order. Of course, ›validity cultures‹ vary among societies and civilizations and, to this extent, their crisis scenarios also differ. This is recognizable, for example, in world wars and the ensuing cultures of martial law, as well as in the handling of financial crises. In such normative crises, an *Ausnahmezustand*, or state of emergency, is declared. It is impossible to imagine the realm of normativity without this ›exception‹. On both the left and the right, the protagonist of the state of emergency, Carl Schmitt, is quoted: He still attempts to give a legal form to both the ›a-juridical‹ and the history of validity of the state of emergency,<sup>7</sup> as examined by Giorgio Agamben, which he typologically introduces to the source of charismatic, anti-legal rule *per auctoritas* thoroughly in the sense of Weber.<sup>8</sup> Here, however, neither the ›actual‹ nor the ›fictive‹ nor even the ›intended‹ state of emergency of constitutional theory is meant, but rather the extraordinary ›mode of validity‹ of law, morality, custom, decorum, and lifestyle that is encapsulated in the overarching concept of the *normative complex*. This basic orientation becomes clearer when reminded of the main elements of the Law as Culture paradigm.

<sup>6</sup> For this context, cf. Gephart: On Law and Religion; see also Gephart/Witte (eds.) The Sacred and the Law.

<sup>7</sup> Cf. Schmitt: Politische Theologie; see also Schmitt: Der Begriff des Politischen.

<sup>8</sup> Cf. Agamben: Homo Sacer; see also Agamben: Ausnahmezustand.

## Some Rules of the Law as Culture Paradigm<sup>9</sup>

### FIRST RULE:

*Legal facts are to be analytically broken down into a symbolic, normative, ritual, and organizational dimension.*

The Center's past work has been shaped by the fruitful and novel insight that a *multidimensional concept of law*<sup>10</sup> – which can steer one away from the constrictions of a purely juridical-occidental self-description as an order of norms by capturing a *symbolic* dimension of representation and an appeal to what is right and just in representative symbols – allows room for effervescent forces like anger and revenge to be tamed in the ritualization of procedures and bundles deontic forces in court organization and legal community. This multidimensional concept of law also guides the inclusion of cultural studies.

The consequences of an expanded concept of law for juridical reception research are dramatic: only those who identify the concept of law with legal text as a linguistically formed normative construct are able to insist on questions of translation adequacy or expect that the nominal insertion of a legal concept or legal institution could easily impact the respective legal culture.<sup>11</sup> As soon as the deontic force is drawn not only from a linguistically bound belief in norms, but a symbolic dimension supporting the *force du droit* (Pierre Bourdieu), and the ritual dynamics and organizational power are added, a dimension of social practice that transcends the literal sense comes into play when understanding the interaction between legal cultures!

### SECOND RULE:

*Both genetically and structurally, »law« bears a special relationship with »religion« and thus requires constant consideration of the difference between the sacred and the profane.*

The presumption that »law«, even in modernity, only acquires its concrete form through its opposition to »religion« could only be strengthened in individual research papers<sup>12</sup> and colloquia.<sup>13</sup> Enigmas of the modern constitutional state's

<sup>9</sup> Cf. esp. Gephart: Einführung. A brilliant extension of the paradigm, done mainly by introducing a narrative dimension and transferring it into a multidimensional analysis of conflicts of legal cultures by Jan Suntrup: *Umkämpftes Recht*.

<sup>10</sup> Cf. Suntrup: *Das Faktum des Rechtspluralismus*.

<sup>11</sup> For translation concerns, cf. Renn: *Übersetzungsverhältnisse*.

<sup>12</sup> Cf. Al-Azm: *Civil Society and the Arab Spring*; Gephart/Sakrani/Hellmann (eds.): *Rechtskulturen im Übergang*; as well as Sakrani: *The Law of the Other*.

<sup>13</sup> Cf. »Recht und Religion in soziologischer Perspektive« – a Conference of the DGS-Sektionen Rechts- und Religionssoziologie at the the Center »Law as Culture« (June 6–7, 2013) or Philipp Stoellger's presentation »Deutungsmacht und Deutungsmachtkonflikte zwischen Recht und Religion: Ergebnisse eines Forschungsprojektes« as part of the Forum »Law as Culture« (July 10, 2012).

deontic power cannot simply be solved by referring to civil-religious foundations. However, following traces of lost sacrality<sup>14</sup> in law is not only due to religious melancholy, but also contributes to enlightenment about the dangerous illusion of secularism, which supposedly bid farewell to the sacred. Whether as a perspective of alienation, as real reason for validity, or as a structural elective affinity, the religious-sociological view of law (and its environments) leads to important insights.

Here, too, consequences for reception research are undeniable: precisely because our kinship with the religious sphere puts us on the trail of *the identity-forming role of law*, it is evident that the reception of the law of others is subject to a *reservation of identity* from the outset. If too many terms are incorporated, a feeling of normative alienation, of an impending loss of identity, arises and different strategies of asserting identity are mobilized. Finally, an analysis of the religious components of a particular legal culture would also indicate how difficult it is to assess transferal burdens and cultural inertia. Therefore, it seems indispensable to take the religious environment of the respective legal cultures into account for paths of reception and modalities. The adoption of a substitute's legal institution for the adaptation forbidden in Islamic law, namely the Kafela,<sup>15</sup> is a fine example of this.

#### THIRD RULE:

*Only when law is removed from particular and local contexts of validity and is understood as a transnational normative force of movable judioscapes or arbitrary transnational norm-setting can it also be conceived of as »global«.*

It is simply naïve to formulate the relatively late historical special product of the *nation-state as a universal production site of law*. The fact that local, national, and transnational normative orders are intertwined, that *judioscapes* are spreading, that they are not hierarchical and are not placed next to each other in the same order, but rather are interwoven in the multi-level model, only proves that we must pay greater attention to the *fact of globality* in legal analysis – not least by cutting through vertical connections of derivation and validity in order to pay greater attention to competitors for validity, which is irritating for the lawyer.

These considerations represent something like the unspoken *premise of unbiased reception research* that does not consider the reception space as closed, but rather as open. And that means that any exchanges, interactions, and cultural contacts always also have a normative side, in which reliability and expectability (between rulers and those ruled, colonizers and those colonized, victors and vanquished, and all the competitors) occur for normatively correct law. Determining who is the bearer of the reception process – whether law professors, lawyers, or

<sup>14</sup> Cf. Gephart: On Law and Religion.

<sup>15</sup> Cf. Gephart/Sakrani: »Recht« und »Geltungskultur«.

imperial powers who prescribe the reception as an octroi – depends on the respective historical circumstances.

FOURTH RULE:

*Overlap, mix-ups, clashes, and collisions of normative orders take place both within and beyond the nation-state. These conflicts of legal culture deserve greater attention.*

FIFTH RULE:

*The law not only has an underlying relationship to religion and politics, but is also closely bound to the aesthetic sphere. Legal analysis as cultural research cannot omit this level without ending up in a dangerous legal aesthetic or even legal kitsch. The aesthetic dimension of legal acts cannot be denied: legal style, the art of abstraction, analytical power, elegant jurisprudence. It is suspect to us as an aestheticization in fascism and totalitarianism that veils power or even glorifies violence. The fact that laws are admittedly in a hidden relationship – with literature in its narrative dimension, with sculpture in its Laconian dimension, with the fine arts in their representational power, with music in its extraordinary ability to detach itself from representation and the representable as a power of abstraction, borrowing its performative power from the theatrical, etc. – makes the spherical relationship of law and art interesting for reception research as well.*

Should theater cultures, the rhetoric of law, and differences in ›legal styles‹ caused by legal culture not influence whether and how a legal concept, an institute, a legal illusion, or an idea of truth is framed contradictorily, inquisitorially, narratively or transported by the ›spirit of the laws‹? Wouldn't sensitivity to the role of aesthetics in the respective global relationship be necessary, not only to be able to compare, but also to sensuously grasp the aesthetics inherent in the reception of the ›foreign‹?

SIXTH RULE:

*This relatively stable paradigmatic core sums up the epistemological, globalizing, religion-oriented, and aesthetic practice-inclusive perspectives on law. At the same time, it bears unique potential for comparative research.*

The idea of an analysis and typification of *validity cultures* that is at odds with legal cultural analysis has been met with great response.<sup>16</sup> The analysis of validity cultures can concern the normative complex's structural characteristics and demands semantics of validity of different validity cultures, their symbolic, ritual forms, and guarantees of order. It investigates the logic of understandings of validity and dissent, fictions of validity, and validity gaps in their normative orders, and it attempts to determine the normative power of a particular validity culture.

<sup>16</sup> Ibid.

The importance of the problem of comparison was formulated not least by Émile Durkheim, who is particularly respected at our Center: »la méthode comparative est la seule qui convienne à la sociologie«.<sup>17</sup>

## About the Volume

In the light of this basic orientation, our questioning deals with the specific mode of validity thriving on the pathos of the ›exception‹, which counters the banality of the ›normal‹, an exception that tends to be »normalized« at the risk of smoothening its very specific deontic power! As an extra-judicial decision-making power, it clings to the illusion of normative form in order to place the *totality* of normative orders under a single premise of validity for that which is extraordinary; the decision-making power to suspend normative orders appears as an impersonal institution of war<sup>18</sup> – or the pandemic as we now know it worldwide, including criticism towards unresponsive people who do not understand what ›exception‹ means – in order to frame ›real life‹ as a deadly ritual ›vitalism‹ of wartime propaganda or recommend the remedy of social abstinence by way of physical distancing. Using the coronavirus pandemic as an example, it will be illustrated how the normative dynamics and normative implications of a societal crisis, which I understand as a *Gemeinschaftskrise*, can be analyzed fruitfully from the perspective of the Law as Culture paradigm.<sup>19</sup>

The structure of the volume is oriented as such: it begins with general socio-juridico reflections (I.) before attempting to trace the peculiarities of its proper ›corona-normativity‹ (II.), which unfolds in a global realm of normativity with all its contradictions (III. ). Finally, it examines the role of culture and the arts in the pandemic, as a lost place of reflection or new space of critique (IV.), and takes up the much-discussed question of whether we are able to learn something from this crisis or should rather refuse to do so (V.).

### *I. Socio-Juridico Reflections*

Mariacarla Gadebusch-Bondio's and Maria Marloth's contribution begins with a special sensitivity for the relationships between epidemiological and virological knowledge and the lack of knowledge for political decision-making processes from

<sup>17</sup> Durkheim: *Les règles de la méthode sociologique*, p. 153.

<sup>18</sup> It is no wonder that Maurizio Ferraris uses the warrior-like metaphor of ›mobilization‹ in his wonderful essay which bears the same title, *Mobilization*, in this volume.

<sup>19</sup> Cf. esp. Gephart: *Einführung*.

the perspective of the medical humanities.<sup>20</sup> While Thomas Dreier has his sights firmly set on the Law as Culture paradigm,<sup>21</sup> the view of a new realism, as shaped by Maurizio Ferraris, illuminates the crisis's potential to mobilize,<sup>22</sup> as we know, for example, from observations of World War I. Markus Gabriel subsequently presents a disputed metaphysical meaning of the crisis<sup>23</sup> – which Slavoj Žižek<sup>24</sup> denies – before Laurent de Sutter unveils the subtle logistics of the pandemic.<sup>25</sup> Jure Leko<sup>26</sup> and Dieter Gosewinkel<sup>27</sup> then shed light on the obvious problematization of the social and political demarcation of an infection that ignores borders. While Angelo Condello reveals that we find ourselves in an enormous laboratory of normativities – which we want to use with this volume –,<sup>28</sup> Olivier Beaud and Cécile Guérin Bargues show the inner logic of an »état d'urgence sanitaire« from the perspective of French constitutional law in an exemplary way.<sup>29</sup> And Martin Schermaier, irritated by the fact that in the eternal question of the relationship between positive law and substantive justice morality seems to gain the upper hand in the context of corona regulation,<sup>30</sup> is met by Jacques Commaille, who sees principal opportunities for a new knowledge of the law.<sup>31</sup>

## II. Corona Normativities

How do upper limits, as seen with gatherings of 1,000, 100, or two people (*pas de deux*) or two-meter distances for entry into stores, gain their own self-evident *normative power*, and which roles do the natural sciences play in this? What are the paradoxical effects of the standardization of culturally determined distances, which Argyle analyzed in social psychology and which are now being held responsible for the different speeds at which the illness spreads in the Global North and South? In places where family solidarity does not exist anyway, the occurrence of infection is less dramatic. Comparative family sociology teaches us, of course, how simple and misguided these images of family are, especially if we look at Italy.

Corona normativities span customs, recommendations, normative orders, and severely sanctioned behavior, such as not wearing a mask or coming too close to

<sup>20</sup> Cf. in this volume Gadebusch-Bondio/Marloth: Clinical Trials in Pandemic Settings.

<sup>21</sup> Cf. in this volume Dreier: »Law as Culture« in Times of Corona.

<sup>22</sup> Cf. in this volume Ferraris: Mobilization.

<sup>23</sup> Cf. in this volume Gabriel: We Need a Metaphysical Pandemic.

<sup>24</sup> Cf., e. g., Žižek: Pandemic!

<sup>25</sup> Cf. in this volume de Sutter: The Logistics of Pandemic.

<sup>26</sup> Cf. in this volume Leko: At the Borders of Europe.

<sup>27</sup> Cf. in this volume Gosewinkel: Corona and the Legal Barriers of National Border Restrictions.

<sup>28</sup> Cf. in this volume Condello: Immersed in a Normative Laboratory.

<sup>29</sup> Cf. in this volume Beaud/Guérin Bargues: L'état d'urgence sanitaire.

<sup>30</sup> Cf. in this volume Schermaier: Morals Suspend Law.

<sup>31</sup> Cf. in this volume Commaille: In a Troubled World.



someone. The range of possible reactions – from social disapproval to surveillance by the police – indicates a normative pluralism in the realm of normativity and a fascinating interpretation of rules by the subjects to the law: shop owners and others who feel they are victims of such regulation express their discomfort with the rules. Theresa Strombach has thus reserved an explicitly linguistic take on this phenomenon.<sup>32</sup> In his contribution, Gianmaria Ajani raises the question of whether the corona experience will require a new era of European normativity, the time before *and* after the crisis.<sup>33</sup> Upendra Baxi, who is known for founding the human rights complex on the idea of ›suffering‹, is instead focused on whether the obligation to protect people equally from disease, as formulated by different legal documents in international law, will be sufficiently be respected.<sup>34</sup> Can a kind of *Corona-Knigge*,<sup>35</sup> as Theresa Hanske claims in her article, be observed that should be analyzed according to manner books of the 18<sup>th</sup> century?

At the other end of the spectrum of normativities, we find the normative order of illegal organizations like mafias, masterly studied by Diana Villegas.<sup>36</sup> Contrary to initial judgement, the crisis has increased the space of illegal orders. Though border closures have hindered the trafficking of drugs and other illegal goods, this has opened new opportunities to provide illegal pharmaceutical products, masks, and hydroxycloquine. In addition, the old-fashioned way of delivering drugs and pizza found new grounds in the imposed nutrition system. And – as we know from other crises and events where the state is inefficient and gangs are the guarantors of protection – the mafia becomes a safeguard of social order. Therefore, the Brazilian Minister of Health emphasized the necessity to collaborate. In this sense, the pandemic crisis has, according to Villegas, not only potentialized spaces of illegal action, but also led to a crystallization of normativities.<sup>37</sup>

Without meaningful explanations, the uncertainty generated by the pandemic can hardly be endured. Which roles do *religious patterns of meaning and justification* play in the process? The financial crisis revealed, for example, how the biblical metaphor of the Great Flood plays a central mythological role.<sup>38</sup> Doesn't economic globalization take on such a role if the coronavirus is interpreted as a punishment for the crimes of globalization? And how do religious systems deal with their greatest strength, namely the ability to create ›community‹ through ritual and communication, when authorities close holy places of worship? (We know that in Arab countries, mosques have been exempted from communications restrictions;

<sup>32</sup> Cf. in this volume Strombach: Stay (At) Home.

<sup>33</sup> Cf. in this volume Ajani: Possible Effects of the Pandemic Emergency on the Internal Coherence of EU Law.

<sup>34</sup> Cf. in this volume Baxi: International Law and Covid-19 Jurisprudence.

<sup>35</sup> Cf. in this volume Hanske: Knigge in Times of Corona.

<sup>36</sup> Cf. Villegas: L'ordre juridique mafieux.

<sup>37</sup> Cf. in this volume Villegas: Les mafias en temps de pandémie.

<sup>38</sup> Cf. Gephart: Implosion von Wirtschaft, Politik und Religion.

in the Occident's European societies, funerals were all that remained of religious communitization, and these restrictions are only going to be relaxed very slowly.)

Yet religious communities fight for their re-entry into the public sphere. A comparative analysis of how religious communities are reacting to having this core of religious life, that is ceremonies and rituals, taken away is put forward by Raja Sakrani.<sup>39</sup> She insists on the religious narrative of the corona crisis, while Greta Olson enlarges the narrative component to questions of narrative ethics, namely to resist »the desire for narrative closure«. <sup>40</sup> Olson reminds us of the role of »dystopic post-apocalyptic fictions and games« that prepared a whole generation for the pandemic.<sup>41</sup> Frode Petersen's contribution is particularly interesting in this respect because he explores, by way of a narrato-critical analysis of the narrative, Sweden's response from the perspective of a Norwegian. He also warns of the sequent master narrative of a looming massive global economic repression »resulting in widespread unemployment, increased poverty rates and the real possibility of violent social unrest in many countries«. <sup>42</sup> I would like to add that September 11 had a similar effect on our visual memory: Was it not the movie *Independence Day* that foreshadowed the events and gave a surrealistic touch to the apocalyptic imagery? In the end, I would like to hear a hypothesis that the corona crisis itself has a sacred dimension ... because what is most relevant for the distinction between the sacred and the profane in Durkheim's sense is someone or something becoming taboo, untouchable, not apt to laughter: *nicht-comedian-fähig*.<sup>43</sup> The phrase of the day, as I am writing this introduction, is: »Berühren erlaubt« with regard to elderly people in nursing homes. This means that the inverse process of »opening« – the *Lockerung* of the lockdown, deconfinement – represents a sort of re-profaneation of the sacred sphere of untouchability. Peter and Sanja Bojanić have deeply looked into this »vocabulary« of distance by making use of Foucault and Simmel.<sup>44</sup>

### III. In the Global Realm of Normativity

But what exactly is meant by *globality* in the event of a pandemic?<sup>45</sup> The discourse, the medialization, the contagion as such, the infection's democratic character that appears to strike royal houses and slums equally? What kind of *global community*

<sup>39</sup> Cf. in this volume Sakrani: Religious Co-narration of Corona.

<sup>40</sup> Cf. in this volume Olson: Being in Uncertainty, cit. p. 431.

<sup>41</sup> Ibid., cit. p. 430.

<sup>42</sup> Cf. in this volume Pedersen: A Pandemic of Narratives, cit. p. 416.

<sup>43</sup> Cf. Gephart/Witte: The Social, the Sacred and the Cult of Law.

<sup>44</sup> Cf. in this volume Bojanić/Bojanić: The »Vocabulary« of Distance.

<sup>45</sup> With reference here to the very much adored Mary C. Douglas, cf. in this volume Whimster: Discovering Society in a Time of Plague.

was created when international organizations started refusing any further support from the U.S. government as a kind of punishment? Are slums affected in the same way as gated communities in South America or India? Is the spread of the disease more democratic than its curing? What are the patterns of risk distribution in this crisis? Is status a determining factor in being a victim of the disease as a current research in Germany tells us?<sup>46</sup> And what does it mean for standards and expectations to global health justice? Should we understand the exact similarity of lockdowns in France and Germany or substitutes for teaching like e-learning on campuses from Moscow to New York, Bonn to Marseille as an effect of globality? Is Matthias Lehmann right in saying that the »[n]ation-state is definitely having a come-back. It was never really gone but now forcefully demonstrates again its power«?<sup>47</sup> This corresponds by the way to a former observation by Jürgen Habermas, namely that the nation-state – despite all of globalization’s effects – remains the main power for upholding and enforcing human rights!<sup>48</sup> Insofar a global risk community is opposed by nation-protecting communities supposedly safeguarding their people from infection by the stranger. Borders gained a new symbolical meaning, denying in a way the Schengen Convention in Europe. Special attention has therefore been cast on legal barriers of national border restrictions by Dieter Gosewinkel,<sup>49</sup> and Jure Leko has focused on spatial mobility in Europe during the corona crisis.<sup>50</sup> But »has Covid-19 brought globalization to an end?« remains the question that one of the founders of globalization theory, namely Martin Albrow, replies to in a negative way: We have to distinguish the categories of »totalization« and »globalization« that allowed the specific event of a »total-global« moment in the world.<sup>51</sup>

Given the considerable tension between normative universalities and particular trends in global societies, it can be asked to what extent social-cultural factors play a role in the different patterns of spread. It also begs the question of whether the respective ways of reacting – the case of Argentina is revealed by Helga Lell<sup>52</sup> in a thorough description – are somehow related to collective patterns of overcoming fear, »stances on the world« based on active involvement, or diverging health economies that are derived from different understandings of social policy. Herd

<sup>46</sup> Cf. Deutscher Gewerkschaftsbund: Corona-Krise verstärkt soziale Ungleichheit.

<sup>47</sup> Cf. in this volume Lehmann: Legal System Reactions to Covid-19, cit. p. 186.

<sup>48</sup> Cf., e. g., Habermas: Die Krise der Europäischen Union im Lichte einer Konstitutionalisierung des Völkerrechts, fn. 79; see also Habermas: Die Einbeziehung des Anderen.

<sup>49</sup> Cf. in this volume Gosewinkel: Corona and the Legal Barriers of National Border Restrictions.

<sup>50</sup> Cf. in this volume Leko: At the Borders of Europe.

<sup>51</sup> Cf. in this volume Albrow: Has Covid-19 Brought Globalization to an End?

<sup>52</sup> Cf. in this volume the profound article by Lell: »Law as Culture« in Argentina’s Emergency Context.

immunity<sup>53</sup> politics against individual protection or the protection of risk groups, such as the elderly or immunocompromised, or strategies of tracing by way of apps and a perfect registration of contact in restaurants and universities? Not to forget the deep clashes between cultures beyond the religious line of demarcation, which Caroline Okumdi Muoghalu explains in the context of Nigeria.<sup>54</sup>

Coping with uncertainty and fear, as Raja Sakrani rightly points out, is the basis of religiously-impregnated worldviews.<sup>55</sup> How to absorb uncertainty by way of more or less transparency, or a strategy of hiding, has been a lesson in the German-French dialogue after Tschernobyl that took place exactly 34 years ago. As if the contaminated clouds would have magically stopped at its borders, no danger semantics were expressed in France. Germany, however, excelled in keeping children away from their sandpits; no mushrooms should be collected in the German forest, etc. The newly founded Centre Ernst-Robert Curtius at the University of Bonn is reflecting on scientific study to compare the reactions and perceptions of the current crisis in Germany and France. Jacques Commaille<sup>56</sup> and Olivier Beaud (together with Cécile Guérin Bargues) have opened a wide spectrum of questions with regard to the normative implications and problematic nature of creating a new type of emergency, namely: »L'état d'urgence sanitaire: était-il judicieux de créer un nouveau régime d'exception?«<sup>57</sup> Martin Przybilski's contribution »Imagining Infection in the Babylonian Talmud« is not only a further example of how to conceive this type of crisis in a religious context, but also most revealing and a basis for further comparative analysis.<sup>58</sup> Masahiro Noguchi has shown that Japan's cluster strategy for managing the pandemic can be better understood by looking at the meaning of traditional concepts like *Tatemashi* and *Jishuku*.<sup>59</sup> This seems to be particularly relevant for a new wave of awaited studies on resilience – if we pay more sophisticated attention to the specific cultural context! Even if this cultural context shines through in the contribution by Hamadi Redissi and other representatives of the Observatoire du changement sociale (ODCC) in Tunis – a post-revolutionary situation with a party system that does not accept joint responsibility, religious tensions, or extreme inequality structures that are reinforced by the crisis – systematic analysis is at the same time helpful for understanding one's own situation.<sup>60</sup> Although we recently became aware of Minnesota for quite different reasons – namely the murder of George Floyd and the subsequent un-

<sup>53</sup> In his piece, Thomas Dreier also touches upon this complex question; cf. in this volume Dreier: »Law as Culture« in Times of Corona.

<sup>54</sup> Cf. in this volume Muoghalu: Igbo Culture and Corona Virus Pandemic.

<sup>55</sup> Cf. in this volume Sakrani: Religious Co-narration of Corona.

<sup>56</sup> Cf. in this volume Commaille: In a Troubled World.

<sup>57</sup> Cf. in this volume Beaud/Guérin Bargues: L'état d'urgence sanitaire.

<sup>58</sup> Cf. in this volume Przybilski: Imagining Infection and Dealing with Diseases in Jewish Law.

<sup>59</sup> Cf. in this volume Noguchi: Cluster-Based Approach and Self-Restraint.

<sup>60</sup> Cf. in this volume excellent article by Redissi et al.: La Tunisie face au Covid-19.

rest – the analyses by our local cosmopolitan expert, colleague, and friend Joachim Savelsberg about a »peacetime emergency« in Minnesota are illuminating!<sup>61</sup> The moral sociologist formulates an urgent appeal for a »careful balancing between different types of rights and between rights and responsibilities«.<sup>62</sup>

#### *IV. Art and Culture in the Times of Covid-19*

Camus's plague, Kleist's earthquake, Jünger's wars, and Dante's inferno are represented in the respective media culture's *phantasmagorias*: from theater to sculpture, painted pictures to negative utopias of film. How does an aesthetic reflection of the crisis develop, which, in symbolic representations, can hardly be denied its own *viral aesthetic*?<sup>63</sup> »Corona kitsch« cannot be overlooked when multiples of Beethoven are decorated with colorful face masks. Grischka Petri has taken the challenge by looking deeply into the human history of masking and linking it to the image of the plague doctor, as well as to the symbolic denominator for a virus and a monarch, which gives more plausibility for the choice of the covering image.<sup>64</sup> But convincing and valid artwork will be created sooner or later! While Enrico Terrone pleads for »the death of art by Covid-19«, Anne-Marie Bonnet seems to take the augmented awareness for our way of living, even for the »human condition«, as a kind of aesthetic experience urged by relating to the present, imposing a kind of *présentisme*, and rethinking »otherness«. From her analysis, I have learned that the current crisis pushes all of us to become artists, comparable to Joseph Beuys's slogan: »Wir alle sind Künstler«. However, Bonnet not only puts in question the existence of an institutionalized and de-differentiated autonomous art world, but also expects changes in art as a production system of symbolical capital.<sup>65</sup> Beatriz Barreiro Carril rather puts her hope into the legal dynasty of cultural rights, which are enshrined in both the Spanish Constitution and in the respective UN Convention (ESCR).<sup>66</sup> Especially when one pursues a non-conventional concept of »culture« that includes indigenous legal cultures and cultural rights, a wide field of new questions opens up that have not yet been addressed in this volume ...

<sup>61</sup> Cf. in this volume Savelsberg: Balancing Rights and Responsibilities during a Pandemic, cit. p. 316.

<sup>62</sup> Ibid., cit. p. 320.

<sup>63</sup> Cf. in this volume the ground-breaking philosophical reflection by Terrone: The Death of Art by Covid-19. On the structural relationship between law and the arts, see Gephart/Leko (eds.): Law and the Arts.

<sup>64</sup> Cf. in this volume Petri: Masking the Invisible / Segments of Political Space.

<sup>65</sup> Cf. in this volume Bonnet: Aren't So-Called Conspiracy Theories the Most Influential Art of Our Time?

<sup>66</sup> Cf. in this volume Barreiro Carril: Challenges to Coronavirus Crisis.

*V. No Lesson on the Lesson? Or: »In the Name of Corona«?*

The question can be raised whether we – at least for a certain period of time – should review all of our actions in the various spheres of society to ensure that we act in accordance with the demands the pandemic has induced. Put more exaggeratedly: Do politics, law, economics, art, and culture now take place *in the name of corona*? And what logic of action unfolds in the process? How will statistical assessments of the pandemic's suspected development and the protection of risk groups, which are prioritized over other factors such as economic stability, individual security, etc., be acknowledged? How can the once prevailing ›gerontic discourse of justification‹ be characterized more precisely? How can we avoid falling into the trap of ›triage choices‹? How can we preserve fundamental structures of the rule of law without denying the reality of a pandemic threat that also reveals a kind of *effet pervers*, the Anthropocene character of climate change?

Some answers may be found in the following articles that past, present, and future Fellows, friends, supporters, and collaborators have provided for this volume in the spirit of the Law as Culture paradigm. Whether there is a lesson to be learned, however, must be answered very differently: In a linguistic tightrope act, Peter Goodrich evokes a ›wild jurisprudence‹ that breaks free from the fetters of the past and looks to the future, recovering the lost spatiality of law and acknowledging the embedding of *homo juridicus* in a natural cosmos.<sup>67</sup> Yousra Abourabi likewise insists on the unexpected positive impact of anti-corona measures on an endangered environment,<sup>68</sup> and Pierre Brunet searches for new categories for an anthropomorphic worldview of jurists, in which a ›natural law‹ on nature does not yet have space.<sup>69</sup> And Alexander Filippov,<sup>70</sup> as well as Martin Albrow<sup>71</sup> and Richard Münch,<sup>72</sup> each accentuate different consequences of understanding our *condition humaine* as a new future orientation, present-ism, or even a new *Gehäuse der Hörigkeit* (badly translated as ›cage of enslavement‹), as Max Weber put it.<sup>73</sup> He died of a pandemic, the Spanish flu, exactly 100 years ago.

<sup>67</sup> Cf. in this volume Goodrich: Zoonoses, cit. p. 423.

<sup>68</sup> Cf. in this volume Abourabi: A Global Warning on the Global Warming?

<sup>69</sup> Cf. in this volume Brunet: Nous sommes la raison du virus.

<sup>70</sup> Cf. in this volume Filippov: States, Bodies and Corona-Crisis.

<sup>71</sup> Cf. in this volume Albrow: Has Covid-19 Brought Globalization to an End?

<sup>72</sup> Cf. in this volume Münch: With the Corona Pandemic into the Governmentality of the Present?

<sup>73</sup> Cf. Weber: *Wirtschaft und Gesellschaft*, p. 835.

## "It's Just a Flu" - What We Can Learn from Our Mistakes

*Tiziana Andina*

We can learn a number of things from what's been happening these past few weeks. I would like to try to articulate them starting from two sentences that we have all heard many times in recent days, when the course of the epidemic seemed more uncertain: "it's just a flu", on the one hand, and its opposite "it's more serious than a simple flu", on the other. The meaning of knowledge, common sense, and decision-making has been measured around these two opposite ways of interpreting Covid-19. These are all issues that concern, in different ways, common sense, science, philosophy and politics.

It may be a professional bias, but every time I heard these phrases I was reminded of a famous aphorism by Friedrich Nietzsche: "there are no facts, only interpretations". Nietzsche's position, which was widely echoed among 20th-century philosophers, famously expressed skepticism towards the possibility of knowledge, i.e. towards the human ability to make true judgments: at most, he argued, we can make judgments that depend on the way we are made, perceive and reason. It is therefore very difficult to understand how things really are if, in the final analysis, all knowledge depends on us.

If you think about it, the fluctuations in interpreting Covid-19 seems to reflect the Nietzschean idea, all the more so because scientists, in expressing their views, have not shown the absolute harmony that people hoped for and politicians expected. In the early stages of the contagion, in fact, some virologists observed, data at hand, that the disease was not very different from the flu in terms of mortality and of the relationship between asymptomatic and serious cases. The most significant differences were likely to concern the higher number of patients admitted to intensive care, and the fact that Covid-19 had given signs of particular speed in terms of spread of contagion. Other virologists, instead, took an opposite view, namely that the flu was something entirely different, suggesting that the Covid-19 disease should be tackled through targeted strategies.

In this confusion, it should be noted that philosophy – especially the kind that still welcomes echoes of Nietzsche's reasoning – has not been of much help. Giorgio Agamben, for example, in an article published in "Manifesto" on 26 February, roughly supported the thesis of the scientists who interpreted Covid-19 as a variant of the flu, and reinforced it with the conspiracy component, which is always very appealing. The question Agamben posed is essentially this: if it is little more than a flu, as some scientists claim, why does the state take such oppressive measures in terms of restricting personal freedoms? Perhaps someone is artfully building this narrative to exert a form of capillary control over people's lives? In short, does power want to make the state of exception permanent?

So let's see what we can learn from this situation. These are, indeed, things that concern at least four major areas of our life: common sense – that is, the ordinary way of conceptualizing reality –, science, politics, and philosophy.

**Common sense and science.** Agamben's thesis is evidently absurd and makes instrumental use of certain positions expressed by scientists. In this sense, it is useful to make a few observations. There is a common-sense objection that we can make to the proponents of the thesis of the flu variant. It is the same argument that Moore opposed to Kant, who considered it an epistemological scandal that the existence of things outside of us – that is, outside our minds – should be accepted by faith. To prove the existence of my hands – Moore argued – I just need to raise them, move my right hand while saying "here is my hand" and pointing at it with my left hand. That's it. It is enough to exercise common sense to show that the flu and Covid-19 are not only not the same thing but probably not even similar things: what happened in China allowed one to draw these conclusions already a few weeks ago.

**Science and politics.** Then there's another point. Medicine is not an exact science, and neither is economics. This means, first of all, that the epistemological status of these sciences is different from that of mathematics or logic, but also of physics. Medicine and economics are empirical sciences that formulate hypotheses starting from a reality. Now, reality is not infinitely interpretable, and fortunately imposes strong constraints. However, it does have a margin of interpretability, which means that agreement among scientists is usually not absolute. A degree of disagreement, in fact, is part of the epistemological structure of science itself. Nonetheless, we are not allowed to conclude from this that the virus is a construction of the system or that climate change is not a real problem. It is typical of science not to express completely unanimous opinions, because that is the way it is, but the role of politics remains fundamental. It is clear that, within this framework, the exercise of political decision-making cannot be substituted by science.

**Science and values.** Another point that I believe should be of interest to the scientific community is the relationship between science, reality, and the values to which scientists refer when formulating their opinions. What does it mean for empirical sciences such as medicine or economics to be confronted with reality, especially when models or statistics seem incapable of explaining what is happening despite being formally correct? For example, even in the now highly unlikely scenario, in which the flu will cause more deaths in absolute terms than Covid-19, would this really indicate something significant when compared to the collapse of hospitals that are no longer able to treat the sick, cemeteries that can no longer welcome the dead, or entire communities in which children cannot stand by their dying parents? What values, in addition to objective data analysis, guide the formulation of scientific hypotheses?

**Philosophy.** Finally, let's come to philosophy. Great philosophers have never made fun of reality, simply because they generally regarded it as the most serious of all things. To explain its complexity they invented metaphysics, analyzed circumstances, reformulated problems,



## The Corona Crisis in Light of the Law-as-Culture Paradigm

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imagined possible worlds. They challenged it, like Nietzsche (who was defeated), but generally respected it. In my opinion, Agamben's position, in being unnecessarily radical, at this moment in history, has two faults, both of which are particularly serious: it is superficial and it is irresponsible. It is superficial because it tries to explain a very complex reality by means of a single idea, the conspiratorial exercise of political power, and it is irresponsible, in the double etymological sense of the word *respondeo* (*answer for* something and *answer to* someone), because it takes philosophy away from its main task, i. e. the commitment to provide non-dogmatic explanations through the exercise of critical thinking.

*Tiziana Andina is Associate Professor at the Department for Philosophy of the University of Turin. She is co-editor of the international journal Brill Research Perspectives in "Art and Law" and of the international series Analytical Aesthetics and Contemporary Art (Bloomsbury Academic). From March to September 2015 Tiziana Andina was Fellow at the Käthe Hamburger Center for Advanced Study in the Humanities "Law as Culture".*