

Working Paper:

## **Law and “Gemeinschaft”**

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at the Käte Hamburger Center for Advanced Study in the Humanities “Law as Culture”

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The current 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. Mariacarla Gadebusch Bondio certainly gives good reasons for this placement in her answer to my call to participate in the humanities’ debate about the crisis.<sup>1</sup> It is becoming increasingly clear, however, that value-based decisions are also at stake – decisions which are fundamental in nature and call for ethical and cultural-scientific consideration<sup>2</sup>.

A cultural-scientific perspective on this all-encompassing crisis in light of the Law-as-Culture paradigm will be presented, especially in the second part of this paper. From the outset, it was important that the Center address current issues using a research perspective that is rooted in a cultural analysis of the law. As such, the normative requirements and consequences of the Arab Spring gained special attention early on at conferences and in publications<sup>3</sup>, problems of normative pluralism were discussed in the context of circumcision, questions of material justice were raised in debates about the restitution of stolen Jewish property, 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 in Bonn when they had masks on exhibit, and we pondered the normative requirements of the *flâneur*, a type of movement that, when done in large numbers, is currently penalized in many places. These topics have ironically reappeared in the current crisis.

In the first part of this paper, I will discuss the by no means undisputed, yet indispensable categories of “community” and their limits – from Ferdinand Tönnies to Durkheim and Parsons to Luhmann – in order to localize them in the legal sphere. In doing so, various levels of community will become visible, ranging from the figure of the “legal community” to the “European community” to family and neighborhoods as primordial communities (I.). In the second part, I will attempt to illuminate the normative implications and consequences of the Corona crisis in light of the Law-as-Culture paradigm. These will undoubtedly have an extraordinary impact on political, religious, and familial communities – an impact that, under the conditions of a normative state of exception, establishes an extensive realm of the normative

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<sup>1</sup> See on our website: Mariacarla Gadebusch-Bondio and Maria Marloth: [Clinical Trials in Pandemic Settings: How Corona Unbinds Science](#) (April 29, 2020); <http://www.recht-als-kultur.de/en/news> (last accessed on April 30, 2020).

<sup>2</sup> For a general view on the crisis from the perspectives of the humanities, including legal philosophy, see on our website: Laurent de Sutter: [The Logistics of Pandemic](#) (April 09, 2020); <http://www.recht-als-kultur.de/en/news> (last accessed on April 30, 2020).

<sup>3</sup> See Werner Gephart/ Raja Sakrani/ Jenny Hellmann (Eds.), *Rechtskulturen im Übergang-Legal Cultures in Transition*, Frankfurt am Main 2015.

(Foucault) (II.). The conclusion will underline some “communal” aspects of the current crisis and its relevance for the new “realm of normativity”.

## I. General considerations about the relationship of Law and “Gemeinschaft”

The relationship between law and community is of central importance to understand both spheres: Without having a legal community as the basis for sanctions and obligations, normative projections from professional guardians of justice amount to nothing; without legal penetration and consolidation, “imagined communities”<sup>4</sup> remain relevant as just that, imagined, and not as an actual force that shapes social life. If nothing else, such a force should ‘integrate’ highly complex societies and provide them with the resource of ‘solidarity’<sup>5</sup> – without setting the limits of all solidarity with the ‘limits of community’ in the process.

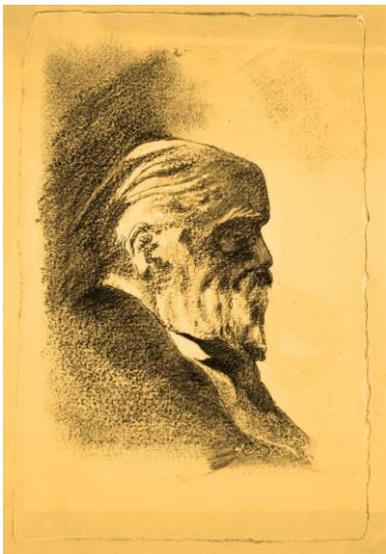


Fig 1: Werner Gephart, *Ferdinand Tönnies (Yellow Version)*, 1998.

Ferdinand Tönnies opens his famous work *Gemeinschaft und Gesellschaft*<sup>6</sup> with linguistic examples through which he tests the semantic sensorium of language communities.<sup>7</sup> He does so to then juxtapose the *Aktiengesellschaft* (joint stock company, literally: ‘stock society’) with the *Forschungsgemeinschaft* (research community) in examples clearly and strongly influenced by law. As much as it is claimed that Tönnies objectifies the conceptual pair, the distinction between *Wesenswillen* and *Kürwillen*, both volitional and based in subjective conceptions, often goes unnoticed. While this juxtaposition may appear old-fashioned to us in such terms, this subjectifying impact gains importance when Weber dissolves the opaque formula of *Gemeinschaft* into a *Gemeinsamkeitsglauben* (roughly: communal faith, or faith in communality).<sup>8</sup> Particularly when *Einverständnisgemeinschaften* (roughly: communities in accordance), as fictional consensuses, provide the basis for the factual validity

<sup>4</sup> See Benedict Anderson: *Imagined Communities. Reflections on the Origin and Spread of Nationalism*, London 1983.

<sup>5</sup> Alain Supiot (Ed.): *La Solidarité. Enquête sur un principe juridique*, Paris 2015.

<sup>6</sup> Ferdinand Tönnies: *Gemeinschaft und Gesellschaft*, Berlin 1887.

<sup>7</sup> We are excited that Neill Bond, Tönnies’s great-grandson, will use his fellowship at our Center to explore more deeply the relationship between law and *Gemeinschaft* in a historical and systematic way.

<sup>8</sup> This meaning is emphasized in Werner Gephart: *L’identità sociale tra i concetti di Gemeinsamkeitsglaube e solidarietà sociale. Alcuni problemi teorici per la costruzione sociale e sociologica dell’Europa*, in: L. Tomasi (Ed.), *I giovani non Europei ed il processo d’integrazione. Per una cultura della tolleranza*, Toronto 1992, pp. 39-48.

of normative orders in order to circumvent a substantive understanding of the social world – here in the sense of Weber’s theory of action that distinguishes between *Gemeinschaftshandeln* (communal action) and *Gesellschaftshandeln* (societal action) – the link to the normative realm is established: Legal communities are to be understood as *Einverständnisgemeinschaften*, bound together by a *Gemeinsamkeitsglauben*, the belief in a legal community! This also leads to the problem of creating a common collective identity. It thus makes the category of *Gemeinschaft* (community), which René König wanted to ban from



Fig. 2: Werner Gephart, *Max Weber* (with his own handwriting), 1997.

sociological language due to its history of misuse<sup>9</sup> during the extinction of sociology during the Nazi-period, highly ambivalent. Nevertheless, we cannot oust the idea of community from sociological or legal thought: Drawing upon Tönnies, German negotiator Ophüls drafted the European community as a ‘legal community’<sup>10</sup>! This sociological origin in naming Europe has been very often overlooked. It would merit a proper study in itself! Each in their own manner, the classic sociologists circled the problem of ‘community’ and its boundaries, which Helmut Plessner so clearly set in his dissertation *Grenzen der Gemeinschaft*, defended at the University of Bonn.<sup>11</sup> His main problem was the universalization of community.

### *Digression: The Limits to Universalistic Communities*

Given the structural limits to universal communalization, paradigmatically formulated by Helmut Plessner, the sociologist comes to the question whether this rhetoric of unity and community is more than an illusion.<sup>12</sup> The hard question for any theory of ‘community’ is whether or not community structures may be expandable at all beyond primordial or particularistic ties:

1. The first problem might be called the universalization of the particular. This phrase refers to the specific qualities of emotional closeness/proximity, harmonic interactions, etc. that are

<sup>9</sup> See René König: Die Begriffe Gemeinschaft und Gesellschaft bei Ferdinand Tönnies, in: KZfSS 7, 1955, pp. 348-420.

<sup>10</sup> See Carl Friedrich Ophüls: Zur ideengeschichtlichen Herkunft der Gemeinschaftsverfassung, in: E. v. Caemmerer (Ed.): Probleme des europäischen Rechts. Festschrift für Walter Hallstein, Frankfurt, pp. 387-413, p. 392.

<sup>11</sup> See Helmut Plessner: Grenzen der Gemeinschaft. Eine Kritik des sozialen Radikalismus, Frankfurt 2002.

<sup>12</sup> Helmut Plessner: Grenzen der Gemeinschaft: eine Kritik des radikalen Sozialismus, Frankfurt a. M.: Suhrkamp, 2002.

very much dependent on face-to-face relations. Or, to use the words of the phenomenological paradigm: the symbolic, spatial, and social structures of the 'life world', in Alfred Schütz's sense of the expression, are opposed to a generalization and widening beyond the limits of the visible social world.

2. Second, there are inherent limits to what Benjamin Nelson called 'tribal brotherhood'<sup>13</sup>. The most radical form of communitarian thought is the 'ethic of brotherhood'<sup>14</sup> – as Max Weber calls it – that stands in irreconcilable opposition to the inherent laws of the other spheres of social life, especially the political, economic, and also cultural ones represented in science or the arts. In modern societies, it is impossible to observe a total brotherhood ethics with regard to one's natural brother because our involvement in other differentiated fields of modern life does not only absorb our attention, but also much of our time. That means the substance of the particularistic ethics of communalism is not very open to generalization. Incidentally, it is now beyond doubt that the idea of a 'socialist brotherhood' was a misnomer, for it was nothing more than an empty formula to legitimize the domination of those who were defined as 'brothers' by the 'ethics' of the state.

3. Third, we come to other structural constraints on the generalization of 'communality'. The idea of community and its social form consists of the distinction between 'friend' and 'enemy' as Carl Schmitt defines that fundamental differentiation of the communal sphere.<sup>15</sup> Thus, the more a community provides its own members with life opportunities, the more it excludes others. I do not adhere to the so-called anthropological theory that the exclusion of the stranger is a condition for the survival of the group, for in the communal type of association, the distinction between the 'stranger' and the 'member' of the group is crucial. As Simmel demonstrates in his brilliant essay on the 'stranger', it is a highly specific and interactive situation that defines the member of a group as a 'stranger':<sup>16</sup> this brings him or her into a social relationship with the dominant group, which in turn allows him or her to play the role of a mediator between different opposing groups.

4. Besides these structural limits on overcoming hostilities by means of association built on the principle of 'discrimination' against the stranger, we have to examine some 'material' limits

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<sup>13</sup> See Benjamin Nelson: *The Idea of Usury. From Tribal Brotherhood to Universal Otherhood*, Chicago, 1969.

<sup>14</sup> See Max Weber: *Zwischenbetrachtung*, in: *Gesammelte Aufsätze zur Religionssoziologie*, Vol. 1, Tübingen 1972; pp. 536-573.

<sup>15</sup> Carl Schmitt: *Der Begriff des Politischen*, Berlin 2015.

<sup>16</sup> Georg Simmel: *Exkurs über den Fremden*, in: *G. Simmel.: Soziologie, Untersuchungen über die Formen der Vergesellschaftung*, Berlin: Duncker & Humblot 1983, pp. 509-512.



Fig. 3: Werner Gephart, *Emile Durkheim (with his own handwriting, Bleistiftpastell)*, 2000.

to the universalization of community, often thought to have been overcome in the globalization debate.<sup>17</sup> These do not only consist of the difficulty to transcend local and spatial commitments; they are also concerned with overcoming the ethnic tensions that are so closely connected with economic opportunities, which ultimately also means overcoming all sorts of class differences. Even if we accept the model of a pluralization of lifestyles as being at the very least combinable with the class model, this pluralization is in fact just the opposite of egalitarian communalism. Integration by ‘plural differentiation’, as one might read Durkheim’s *Division of Labor in Society*, is no longer compatible with the idea of some overwhelming ‘societal community’, to take Parson’s expression,<sup>18</sup> whether at the national or even the supranational level of the modern world. In the end, it has to do with the inherent conflicting structure that exists even in so-called ‘communities’.

After this deconstruction of the narrow by the wider, the transcendence of the particular by the universal, the continued marginalization of strangers, and the miracle of converting the struggle for opportunity into the paradise of harmonically peaceful relationships, the question remains whether, and in which sense, one could speak of a resurrection of community in times of collective fear and anxiety, characteristic of the corona crisis, too. According to Weber, the degree to which community can be universalized – for instance, into a global legal community – depends on the extent to which a *Gemeinsamkeitsglaube* is able to impact the social and transcend the local. For Weber, and incidentally also for Durkheim, it is thus a self-evident topos that only a nesting of universalist and particularistic communities correspond to sociology as a science of reality, a *Wirklichkeitswissenschaft*.<sup>19</sup>

The utopia of a universalist community, as represented by Parsons,<sup>20</sup> is therefore in need of correction, namely by using Luhmann to argue against ‘false’ communities<sup>21</sup> that are not capable of achieving emotional closeness and bureaucratic efficiency, rural idyll and urbanity,

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<sup>17</sup> This is a leading topos in the discussion about globalization.

<sup>18</sup> Here, one had to take into consideration the posthumously published work: Talcott Parsons: *American Society. Toward a Theory of Societal Community*, Boulder 2006.

<sup>19</sup> As argued in Werner Gephart: *Gesellschaftstheorie und Recht*, Frankfurt am Main 1993, pp. 208 sqq.

<sup>20</sup> For a reconstruction of the development of communal thought in Parsons’s *Structure of Social Action to System of Modern Societies*, see also his work: *American Society – A Theory of the Societal Community*, Boulder 2007.

<sup>21</sup> See e.g. Niklas Luhmann: *Quod omnes tangit. Anmerkungen zur Rechtstheorie von Jürgen Habermas*, in: *Rechtshistorisches Journal* 12, 1993, pp. 36-56.

provincial living and a cosmopolitan global community. The secret community theory behind the theory of communicative action by Jürgen Habermas is reflected in such a universalistic community of communication; and, especially in relation to the issue of law, insight can be gained on the sociologically burdened but nonetheless indispensable theory of ‘community’.



Fig. 4: Werner Gephart, *Talcott Parsons as a pop artist*, 1998.



Fig. 5: Werner Gephart, *Niklas Luhman – The Magician of Society (Sachlichkeit)*, 1997.

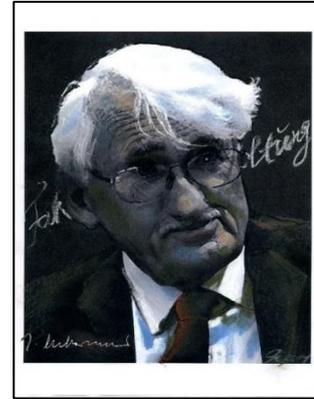


Fig. 6: Werner Gephart, *Jürgen Habermas – Faktizität und Geltung*, 2014.

This is so as the tension, which appears in theories of legal pluralism as a contradiction to normative orders and was studied as such during the Center’s fourth research year, only becomes explosive because individual social communities stand behind religious, indigenous, local, and regional normative orders that assert their claims. These communities, in turn, can fall into a conflictual relationship, thereby leaving overreaching legal bindings unstable and an often invoked and legally positively universal ‘human rights culture’ fragile, raising questions of global corona ethics as we will see later.

The normative, but also emotional-affective limits to a universalist community also reflect the limits of a legal community that shapes the life of legal comrades. What Tönnies called the ‘community of blood’, however, becomes the focus of our attention through the dissolution of primordial binding forces. Family law becomes the mirror of changing family forms and family ideals, of life in a community that is shaped by social closeness and emotional entanglements.<sup>22</sup>

<sup>22</sup> In his Introduction to the Sociology of Family, Durkheim wrote: “In summary, it is the inner structure of family that we need to attempt to reconstruct because it alone is of scientific interest.” Durkheim only recognizes one way of carrying out such an inner structural analysis, namely through the observation of “ways of acting as have become established through use, known as customs, law and manners” (both quotes translated by the author from Émile Durkheim: *Einführung in die Soziologie der Familie*, in: E. Durkheim: *Frühe Schriften zur Begründung der Sozialwissenschaft*, Darmstadt/Neuwied 1981, pp. 53-77, p. 62). The mystery of family structure is thus revealed wherever the normative aspects of family life congeal into a normative order. Family law therefore stands by the cradle at the birth of sociology out of the spirit of law (cf. Gephart: *Gesellschaftstheorie und Recht*).

Even in times of globalization and the concurrent pluralization of communal forms, family is still considered the central social place where society's normative resources are produced.<sup>23</sup> Moreover, family is the addressee of basic orders concerning the distribution of goods and reciprocal obligations,<sup>24</sup> which are, for this reason, frequently regarded as a real or imagined starting point for the transferring of norms from the family unit to society as a whole.

### Durkheim and Family Solidarity



Fig. 7: Werner Gephart, *La famille nucléaire, Émile Durkheim, his family (with a Dogon sculpture)* [mixed media], 2013.

The principle of family solidarity, which today extends far beyond the concept of *solidum*, or joint liability, in Roman law, finds its normative expression in numerous legal orders – both in matrimonial alimony and, as intergenerational solidarity, in claims to relatives' support, not at least in the times of corona. Demarcation between these forms of legally institutionalized familial solidarity, on the one hand, and solidarity within society as a whole, on the other, meanwhile varies considerably in individual legal orders and cultures, particularly given that the legitimacy of post-martial solidarity is questioned in light of increasing gender equality and autonomy manifested in form of greater freedom to divorce. A critical look, however, must be taken at the grounds of validity and limits of normative generational solidarity, which is gaining importance in many countries due to demographic change. Here, it is once again of great importance to the current project of saving lives of elderly people during the corona crisis through sacrifices of the younger.<sup>25</sup>

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<sup>23</sup> On which cf. Elisabeth Beck-Gernsheim: Im Kreuzfeuer: Familienpolitik zwischen 'Nicht mehr' und 'Noch nicht', in: M. Rupp et al. (Eds.): *Die Zukunft der Familie. Anforderungen an die Familienpolitik und Familienwissenschaft*, Opladen 2014, pp. 13-24. Concerning the many new forms of family, the state of tension between religious, biological, and social parenthood currently needs readjustment. This topic will therefore be the focus of the Family Law Department at the 71<sup>st</sup> German Lawyer's Day led by Nina Dethloff.

<sup>24</sup> On the European level, this issue was intensively discussed during our conference "Family Law and Culture in Europe: New Developments, Challenges, and Opportunities" (August 29-31, 2013). Cf. also the conference volume by Katharina Boele-Woelki/ Nina Dethloff/ Werner Gephart (Eds.): *Family Law and Culture in Europe*, Cambridge 2014, particularly the final contribution by Werner Gephart: *Family Law as Culture*, pp. 347-360.

<sup>25</sup> See Jens Beckert: *Familiäre Solidarität und die Pluralität moderner Lebensformen: eine gesellschaftstheoretische Perspektive auf das Pflichtteilsrecht*, in: A. Röthel (Ed.): *Reformfragen des Pflichtteilsrechts*, Köln et al. 2007, pp. 1-21.

But why is it so important to view the foundational links between family, as a structure and form of life, and family law under the auspice of ‘culture’? Under a cultural-sociological auspice, two overlapping orders can first be discerned analytically: on the one hand, there are the forms of family life that have symbolic and ritual characteristics, display numerous organizational styles, and are the object of plural normative orders. Their legal validity is derived from the multitude of legal cultures. Even though these exhibit a strong national character within Europe and are intertwined with respective religiously distinct traditions, there is currently a strong tendency towards the Europeanization of ‘principles’ of transnational family law.<sup>26</sup> On the other hand, we possess a common source of validity for binding rules that are, so to say ‘sacred’ or, in other words, untouchable, which was implied in the French Declaration of Human Rights and the Catholic interpretation of Article 6 of the *Grundgesetz*. At the same time, Article 12 of the ECHR laconically states a right to marriage and family – whatever ‘family’ may mean. With a view to human rights provisions in particular, it becomes evident which normative change accompanies changes in family notions and practices. The free choice of partner, a ban against discrimination based on sexual orientation,<sup>27</sup> gender equality,<sup>28</sup> postulates of equal opportunity in maintenance law and matrimonial property law,<sup>29</sup> and the guarantee of freedom of marriage through bans on forced and child marriage are all indicative of human rights standards adapting to processes of culture change<sup>30</sup> that strengthen individual autonomy in many cases.

The pluralization of family structures thereby not only casts doubt on a *quasi* biological explanation of family and its naturalist implications, but should be regarded as the expression of a society’s social transformation and its normative foundations in general.<sup>31</sup> These, in turn, can be used as the starting point for cultural comparison. Nowhere does the construction of the *other*<sup>32</sup> appear so deeply anchored in the intuitions and beliefs of collective memory, which

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<sup>26</sup> See here, too, Katharina Biele-Woelki/ Nina Dethloff/ Werner Gephart (Eds.): *Family Law and Culture in Europe*; Dieter Martiny: *Europäisches Familienrecht – Utopie oder Notwendigkeit?*, in: *RabelsZ* (59), 1995, pp. 419-453.

<sup>27</sup> See European Court of Human Rights (2010): *Schalk and Kopf v. Austria*, Case no. 30141/04; European Court of Human Rights (2015), *Oliary and others v. Italy*, Case no. 18766/11 and 36030/11.

<sup>28</sup> See Art. 22 Charter of Fundamental Rights of the European Union; European Court of Human Rights (1994), *Burghartz v. Switzerland*, Case no. 16213/90.

<sup>29</sup> See for Germany BVerG, BVerfGE 17, 1, pp. 12 et seq.

<sup>30</sup> On the inclusion of homosexual relationships first under ‘private life’, then under ‘family’ within the meaning of Art. 8 ECHR, cf. European Court of Human Rights (2001), *P.G. and J.H. v. United Kingdom*, Case no. 44787/98; European Court of Human Rights (2010), *P.B. and J.S. v. Austria*, Case no. 1898402 No. 30.

<sup>31</sup> See Michi Knecht: *Die Politik der Verwandtschaft neu denken. Perspektiven der Kultur- und Sozialanthropologie*, in: G. Jähnert et al. (Eds.): *Warum noch Familie?*, Bulletin Texte Nr. 26, Berlin 2003, pp. 52-70.

<sup>32</sup> On the historical role in the construction of European identity cf. Raja Sakrani: *The Law of the Other. An unknown Islamic chapter in the legal history of Europe*, in: *Rg* 22, 2014, pp. 90-118.

shapes both the past and future, as with the family. ‘Family’ and the argument of what constitutes its normative character certainly possess a type of universal ‘cultural importance’; however, this discussion therefore also ignites *conflicts of cultural validity* as seen, for instance, in the context of Islamic conceptions of marriage and family.<sup>33</sup> In the way of conflicts of laws, the fact that international family law enables and demands the application of the *other’s* law surely did not reach a general consciousness through the reality of ‘legal pluralism’. At the same time, European legal history boasts a normative model of coexistence between Jews, Christians, and Muslims that, under the guiding idea of *Convivencia*, are again being put to the test both as a myth and social reality – this could especially gain importance given the pending integration problems following refugee movements in Europe.<sup>34</sup> Within European legal space, the principle of party autonomy links together ties to nationality and residence that have traditionally competed in the fields of family and estate law, each of which struggles to satisfy legal-cultural ties and integration interests.<sup>35</sup>

This thematic field gains another comparative level when considering further communal forms besides classic forms of family and their respective ties to applicable law: traditional local neighborhood communities with their diverse legal claims passed down orally, modern clan structures, and, lastly, contemporary subcultures’ ‘post-traditional communities’<sup>36</sup>. In all of these communal forms, systems of social norms emerge that can conflict with state law. The Center’s key guiding questions become virulent here once more: In which, possibly conflictual, relationship do particular and universal validity claims confront each other? To what extent do such communities accept applicable law? And how much does this acceptance coincide with attempts to pragmatically reconcile this law with one’s own normative conceptions or even enforce the latter beyond the boundaries of one’s own group?

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<sup>33</sup> From the context of the Center’s work, cf. the contribution by Werner Gephart/Raja Sakrani: ‘Recht’ und ‘Geltungskultur’. Zur Präsenz des islamischen Rechts in Deutschland und Frankreich, in: W. Gephart (Ed.): *Rechtsanalyse als Kulturforschung*, Frankfurt 2012, cf. further Andrea Büchler: *Islamic Law in Europe? Legal Pluralism and its Limits in European Family Laws*, Farnham 2011.

<sup>34</sup> On which cf. the lecture by Raja Sakrani: “The Three Cultures. Living together in Al-Andalus”, as part of the “Forum Law as Culture” held on November 24, 2015.

<sup>35</sup> Nina Dethloff: *Zusammenspiel der Rechtsquellen aus privatrechtlicher Sicht*, in: Paulus/Dethloff/Diederich et al.: *Internationales, nationales und privates Recht: Hybridisierung der Rechtsordnungen? Immunität*, Berichte der Deutschen Gesellschaft für Internationales Recht, Heidelberg 2014, pp. 47–86, at pp. 60 sqq; cf. also Heinz-Peter Mansel: *Personalstatut, Staatsangehörigkeit und Effektivität*, Munich 1996. Mn 570; Heinz-Peter Mansel: *Das Staatsangehörigkeitsprinzip im deutschen und gemeinschaftsrechtlichen Internationalen Privatrecht: Schutz der kulturellen Identität oder Diskriminierung der Person*, in: E. Jayme (Ed.): *Kulturelle Identität und Internationales Privatrecht*, 2003, pp. 119-154, p. 138.

<sup>36</sup> Ronald Hitzler et al. (Eds.): *Posttraditionale Gemeinschaften. Theoretische und ethnografische Erkundungen (=Erlebnisswelten Bd. 14)*, Wiesbaden 2008.

For claims of state rule – i.e. for expanded codified law – *neighborhood communities* have historically always been a challenge, as they tend to pass down a network of social norms stabilized by tight social control and, culturally, by local identities. Although they usually do not claim to be universally valid, these local normative orders nevertheless form potential to resist processes of modernization – a resistance that can even sometimes transform into a local ‘counter-law’. The social norms of *migrant communities* also occasionally clash with applicable legal norms of the host society. These contradictions and their underlying cultural conceptions of proper coexistence can be reproduced over longer periods of time through family structures. By no means, however, do these have to be a direct continuation of the home region’s communal forms. At times, they are first shaped rather through pressure from the respective diaspora. Lastly, *post-traditional communities* can develop at very different commitment levels, such as a loose community focused on after-work events, which are at best indifferent to normative orders for conspired subcultures that periodically enter political consciousness. All these communal forms reveal, in any case, that law can enter a relationship of cooperation and conflict with the social norms of a particular group that is not an organization or, in a Tönniesian sense, a ‘society’, but rather a ‘community’ – a broad thematic field that requires in-depth study, such as analyzing the normative order of strong community ties as expressed in the rules of anti-legal orders like the mafia. One of our future fellows, Diana Villegas, will relate to this paradox of non-legal orders of normativity as a specific kind of law.<sup>37</sup> We are therefore looking forward to her contribution, which is planned for next year!

Thus, the general outlook of the two-year thematic field emerges, including community structures and their relative normative orders – from friendship and family structures to neighborhood and regional entities like *Gebietskörperschaften* – as well as national communities, that is ‘nations’ held together by a belief in communality. Perhaps a political entity’s underlying idea of a communal belief, not to forget a new type of community that may be called digital community, based on media of communication and structured by a kind of global digital culture also plays a role here.<sup>38</sup> Their basis is in doubt: common values and norms like universal human rights; global institutions; global events like wars; mourning communities like that emerging from Lady Diana’s passing; or global threats like world wars, worldwide perceived terrorism, or world community (as a risk society) are held together not on voluntary grounds, but by cognitive coercion. The corona crisis is the most recent example – an example

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<sup>37</sup> See her most inspiring systematically and empirically convincing study by Diana Villegas: *L’ordre juridique mafieux- Étude à partir du cas de l’organisation criminelle colombienne des années 1980 et 1990*, Paris 2018.

<sup>38</sup> This particular topic will be pursued by Daniel Zimmer during his fellowship at our Center.

in which we are living. It delivers a laboratorium of the normative space, as Angela Condello<sup>39</sup> rightly called it in her analysis of the new ‘corona world’ in the light of the Law-as-Culture paradigm.

## II. The Corona Crisis in Light of the Law-as-Culture Paradigm: Law and Corona Communities

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.

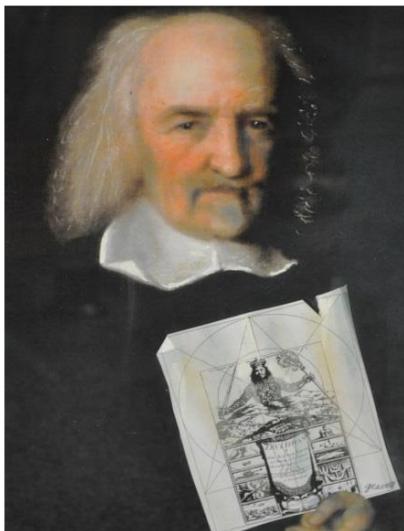


Fig. 8: Werner Gephart, *Thomas Hobbes – Holding the Frontispiece in the Own Hand*, 2008.

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 master 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>40</sup> as examined by Giorgio

<sup>39</sup> See her article on our website: Angela Condello: [Immersed in a Normative Lab](http://www.recht-als-kultur.de/en/news) (April 20, 2020); <http://www.recht-als-kultur.de/en/news> (last accessed on April 25, 2020).

<sup>40</sup> See Carl Schmitt: *Politische Theologie – Vier Kapitel zur Lehre von der Souveränität*, Berlin 1979; Carl Schmitt: *Der Begriff des Politischen*, Berlin 2018.

Agamben, which he typologically introduces to the source of charismatic, anti-legal rule *per auctoritas* thoroughly in the sense of Weber.<sup>41</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, which is encapsulated in the overarching concept of the *normative complex*.

This mode of validity thrives 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>42</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>43</sup>

### Normative Power

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 someone. The range

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<sup>41</sup> See Giorgio Agamben: *Homo sacer. Die souveräne Macht und das nackte Leben*, Frankfurt am Main 2002; Giorgio Agamben: *Ausnahmezustand*, Frankfurt am Main 2004.

<sup>42</sup> It is no wonder that Maurizio Ferraris uses the warrior-like metaphor of ‘mobilization’ in his wonderful essay of the same name: [Mobilization](#) (April 09, 2020); <http://www.recht-als-kultur.de/en/news> (last accessed on April 25, 2020).

<sup>43</sup> See esp. Werner Gephart: Einführung. Das ‚Recht als Kultur‘-Paradigma, in: W. Gephart/ J.C. Suntrup: *Recht als Kulturforschung II*, Frankfurt am Main 2015, pp. 7-18.

of possible reactions – from social disapproval to surveillance reactions 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. 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>44</sup> Upendra Baxi, who is known for his founding of 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>45</sup>

### *Religious Patterns of Meaning and Justification*

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>46</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; in the Occident’s European societies, funerals are all that remain 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 on our website.<sup>47</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”. Olson reminds us of the role of “dystopic post-apocalyptic fictions and games” that prepared a

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<sup>44</sup> See his article at the Center’s website: Gianmaria Ajani: [Possible Effects of the Pandemic Emergency on the Perception of EU Law](http://www.recht-als-kultur.de/en/news) (April 22, 2020); <http://www.recht-als-kultur.de/en/news> (last accessed on April 25, 2020).

<sup>45</sup> See his article at the Center’s website: Upendra Baxi: [International Law and Covid Jurisprudence](http://www.recht-als-kultur.de/en/news) (April 9, 2020) <http://www.recht-als-kultur.de/en/news> (last accessed on April 25, 2020).

<sup>46</sup> See Gephart, Werner: Implosion von Wirtschaft, Politik und Religion. Krisenanalysen, in: G. Pfeleiderer/ A. Heit (Eds.): Sphärendynamik II. Religion in postsäkularen Gesellschaften, Baden-Baden 2012, pp. 75-101.

<sup>47</sup> See Raja Sakrani: [La Co-narration religieuse du Corona](http://www.recht-als-kultur.de/en/news) (April 23, 2020); <http://www.recht-als-kultur.de/en/news> (last accessed on April 30, 2020).

whole generation for the pandemic.<sup>48</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 one someone or something becoming taboo, untouchable, not apt to laughter: *nicht-comedian-fähig*.<sup>49</sup> However, it should be noted that comedians play an important role in the public discourse in Germany.

### Globality

But what exactly is meant by *globality* in the event of a pandemic?<sup>50</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* was created when international organizations started refused 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? 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 that it is the ultimate holder of power."<sup>51</sup> This, by the way, corresponds 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>52</sup> Insofar, a global risk community is opposed by nation-protecting communities that are safeguarding their people from being infected by the stranger. The frontiers have gained a new symbolical meaning, more or less denying the Schengen Agreement in Europe.

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<sup>48</sup> See Greta Olson: [Being in Uncertainty: Thinking the Coronavirus Pandemic](https://www.recht-als-kultur.de/en/news) (April 22, 2020); <http://www.recht-als-kultur.de/en/news> (last accessed on April 30, 2020).

<sup>49</sup> See Werner Gephart and Daniel Witte: The Social, the Sacred and the Cult of Law: Some Introductory Remarks on the Durkheimian Legacy, in: W. Gephart/ D. Witte (Eds.): *The Sacred and the Law: The Durkheimian Legacy*, Frankfurt am Main 2017, pp. 7-30.

<sup>50</sup> With reference here to the very much adored Mary C. Douglas: Sam Whimster: [Discovering Society in a Global Age](https://www.recht-als-kultur.de/en/news) (April 29, 2020); ; <http://www.recht-als-kultur.de/en/news> (last accessed on April 30, 2020).

<sup>51</sup> See on our website: Matthias Lehmann: [Mothballing the Economy: Business Law Hibernating through the Corona Crisis](https://www.recht-als-kultur.de/en/news) (April 9, 2020); <http://www.recht-als-kultur.de/en/news> (last accessed on April 25, 2020).

<sup>52</sup> See, for example, Jürgen Habermas: Die Krise der Europäischen Union im Lichte einer Konstitutionalisierung des Völkerrechts – Ein Essay zur Verfassung Europas, in: *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (ZaöRV)* 72 (2012), pp. 1-44, fn. 79; Jürgen Habermas: *Die Einbeziehung des Anderen: Studien zur politischen Theorie*, Frankfurt am Main 1996.

### Normative Universalities and Particular Trends

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>53</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 immunity<sup>54</sup> politics against individual protection or the protection of risk groups, such as the elderly or immunocompromised? Not to forget the deep clashes between cultures beyond the religious line of demarcation, which Caroline Okumdi Muoghalu explained in the context of Nigeria.<sup>55</sup>

Coping with uncertainty and fear, as Raja Sakrani rightly points out, is the basis of religiously-impregnated world views.<sup>56</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>57</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>58</sup> Martin Przybilski’s<sup>59</sup> contribution “Imagining Infection in the Babylonian Talmud” is not only

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<sup>53</sup> See the profound article by Helga Lell: [A Different Kind of “Emergency Law”: The Days of Coronavirus in Argentina](http://www.recht-als-kultur.de/en/news) (April 14, 2020); <http://www.recht-als-kultur.de/en/news> (last accessed on April 25, 2020).

<sup>54</sup> In his piece, Thomas Dreier also touches upon this complex question: Thomas Dreier: „Law as Culture“ in [Times of Corona](http://www.recht-als-kultur.de/en/news) (April 09, 2020); <http://www.recht-als-kultur.de/en/news> (last accessed on April 30, 2020).

<sup>55</sup> See Caroline Okumdi Muoghalu: [Igbo Culture and Corona Virus Pandemic Social Distancing Order of Nigerian Government on a Collision Course](http://www.recht-als-kultur.de/en/news) (April 14, 2020); <http://www.recht-als-kultur.de/en/news> (last accessed on April 30, 2020).

<sup>56</sup> See Raja Sakrani: [La Co-narration religieuse du Corona](http://www.recht-als-kultur.de/en/news) (April 23, 2020); <http://www.recht-als-kultur.de/en/news> (last accessed on April 30, 2020).

<sup>57</sup> Jacques Commaille: [Dans un monde bouleversé: un nouveau régime de connaissance pour le droit?](http://www.recht-als-kultur.de/en/news) (April 9, 2020); <http://www.recht-als-kultur.de/en/news> (last accessed on April 30, 2020).

<sup>58</sup> See Olivier Beaud and Cécile Guérin Bargues: [L’état d’urgence sanitaire: était-il judicieux de créer un nouveau régime d’exception?](http://www.recht-als-kultur.de/en/news) (April 30, 2020); <http://www.recht-als-kultur.de/en/news> (last accessed on April 30, 2020).

<sup>59</sup> See Martin Przybilski: [Imagining Infection in the Babylonian Talmud](http://www.recht-als-kultur.de/en/news) (April 20, 2020); <http://www.recht-als-kultur.de/en/news> (last accessed on April 30, 2020).

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.

### Phantasmagorias and Aesthetic

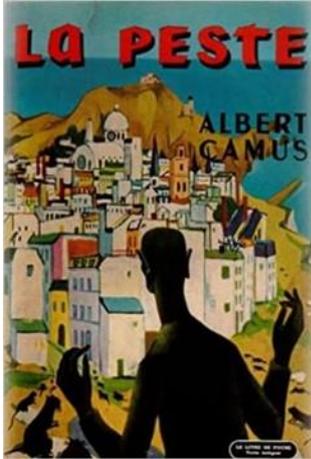


Fig. 9: Albert Camus, *La peste*, 1947.

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>60</sup> In this respect, the installation created and displayed by Dennis Josef Meseg on May 2, 2020, in front of the Beethoven Statue in Bonn deserves special attention: About 50 or so mannequins were draped with white and red ribbon and arranged to form scenes that showed both distance and closeness.

Wrapping the body with border markings is a strong sign that the public space is permeated by this logic of drawing borders. 'Corona kitsch' cannot be overlooked when multiples of Beethoven are decorated with colorful face masks. But the convincing and valid art work will be created sooner or later!

### 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 suspected pandemic development and protection of risk groups, which are prioritized over other factors such as economic stability, individual security, etc., be acknowledged? How can this 'gerontic discourse of justification' be characterized more precisely? How can we avoid falling into the trap of 'triage choices'? And why do we have to wait for commentary from the President of the German Parliament, Wolfgang Schäuble, to ask these questions as a member of such a risk group?

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<sup>60</sup> See the ground-breaking philosophical reflection by Enrico Terrone: [The Death of Art by COVID-19](#) (May 02, 2020); <http://www.recht-als-kultur.de/en/news> (last accessed on May 3, 2020).

The Validity Culture of the State of Emergency

The validity culture of the ‘state of emergency’, that is of the ‘corona emergency’, is determined by the unlimited power to suspend the *entire* existing normative order and align it with the extraordinariness of war, plague, or natural catastrophe. Symbols and rituals of validity, as well as the organizational validity of the commissioners, censors, and norm-bound agents of the state of emergency, are fixed on this one basis for validity, which superimposes traditional narratives of validity. As Marta Bucholc<sup>61</sup> has convincingly shown, the question remains why the ‘corona code’ has been followed in such an impressive way, creating an unusual state of conformity that might, however, embrace different national habitus to obey the law.<sup>62</sup>

Belief in Validity	Symbolic Validity	Normative Validity	Organizational Validity	Ritual Dynamics
Pathos of the ‘exception’  Pathos of the epidemiological argument  Scientism-based belief in validity	Symbolic power of the ‘exception’ against the banality of the ‘normal’	Power to suspend normative orders as legal, extra-juridical decision-making power  Illusion of a normative form	Institutions as decisions	Ritualistic vitalism of ‘real’ life  Singing “Ode to Joy”

Fig. 10: The validity culture of the state of exception.

Crises ultimately have a tremendous effect on a society’s *mode of differentiating* social systems, or social ‘spheres’ as I prefer to say. While one can speak of an ‘implosion’ of spheres during the financial crisis, metaphorically described as a ‘deluge’,<sup>63</sup> an enormous mixing and blending of politics, economics, law, and culture is taking place as if the epidemiological idea of ‘contamination’ has also torn down the boundaries of spheres. This interpretation must remain open for discussion: Clemens Albrecht<sup>64</sup> is instead observing the shift to the sphere of science as the center of gravity!



Fig. 11: Werner Gephart, *Max Weber in the Spheres*, 2016.

<sup>61</sup> See her article on our website Marta Bucholc: [The Corona Crisis as a Test of National Habitus: The Imperative of Obedience](http://www.recht-als-kultur.de/en/news) (April 29, 2020); <http://www.recht-als-kultur.de/en/news> (last accessed on April 30, 2020).

<sup>62</sup> ...and the whole range of corona normativities until the very moment that divergent opinions nearly overnight became legitimate again: from types of civil disobedience to the disobedience of a federal system that does not want to follow the leadership of a chancellor with all respect!

<sup>63</sup> See Gephart, Werner: Implosion von Wirtschaft, Politik und Religion. Krisenanalysen, in: G. Pfeleiderer/ A. Heit (Eds.): *Sphärendynamik II. Religion in postsäkularen Gesellschaften*, Baden-Baden 2012, pp. 75-101.

<sup>64</sup> See Clemens Albrecht: [Viral Coupling - Society’s Fight for Survival](http://www.recht-als-kultur.de/en/news) (April 14, 2020); <http://www.recht-als-kultur.de/en/news> (last accessed on April 30, 2020). His observation is certainly not wrong, but does not exclude that the whole arrangement of sphere relations has become more porous!

## Conclusion: The ‘Communal’ Dimension of the Corona Crisis

Instead of relating the pandemic to ‘metaphysics’, as Markus Gabriel<sup>65</sup> suggests, I would like to view it more plainly as ‘physics of customs and law’ as Durkheim had entitled his “Leçons de sociologie: physique des moeurs et du droit”<sup>66</sup>, which could be described as ‘corona normativities’. First of all, the community-building effect is in striking proximity to examples of a *Schicksalsgemeinschaft* (community of fate), which is formed by the belief in a common fate borne by all in the face of an external or internal threat. The ‘corona community’ is an imagined community of those risking exposure to infection – many of whom will be viewed as ‘lepers’ as soon as they have been recognized and identified. Whether a community actually “generates, indeed produces” solidarity – as the well-meaning theory of community claims – is an open empirical question. As are the questions of how long this will last, and whether we are dealing with an ‘occasional community’, as was observed after September 11, for example, following a hot and effervescent phase of flag waving.

To generate ‘community’, politics – under the advisory authority of virologists and epidemiologists – again uses ‘community techniques’. They privilege dual forms of community, double monads, on the assumption that this reduces the risk of infection. One could call this technique ‘dual archaization’. The notoriously rumored herd immunity is also a ‘communal’ collective structure, a structural feature of the collective, the realization of which – as is common in the community of war and fate – requires individual victims. Following this logic, foreignness (*Fremdheit*) is defined as the *other*, who is in fact a potential vector. The *other* is not to be trusted. One must keep a distance from him/her, unmelodramatically, of course: a purely physical distance! This is why religious communities react so sensitively when third parties, i.e. ‘secular’ people, mistrust ‘fraternity’ and thus deny the possibility of a ‘universal brotherhood’ as we learned with Benjamin Nelson in the first part of this paper.<sup>67</sup> At the same time, epidemiological logic promises that the exclusion of the *other* is precisely the including requirement for brotherly solidarity becoming a universal ‘community of survival’. Popular education has had to overcome this moral hiatus during the times of corona!

While on the one hand social ‘cells’ are being created that are neutral to infection (as long as they, in their monadic existence, stay in Hyde Park, along the Champs Elysee, or in the English Garden and don’t interact with the outside world in any way), rules about distancing

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<sup>65</sup> See his article on our website: Markus Gabriel: [“We Need a Metaphysical Pandemic”](http://www.recht-als-kultur.de/en/news) (April 14, 2020); <http://www.recht-als-kultur.de/en/news> (last accessed on April 30, 2020).

<sup>66</sup> Émile Durkheim: *Leçons de sociologie: physique des moeurs et du droit*, Paris 1950.

<sup>67</sup> See Benjamin Nelson: *The Idea of Usury*.

are subjected to social control. The forces of law and order are therefore called upon and authorized to question two people who are closer than the prescribed physical distance of 150 centimeters, ask them where they live, and, in turn, identify them as cohabitants who are legitimately following the social distancing rules. (This is just one example of how deeply the ‘corona regime’ has intervened in the most private corners of everyday life). The contribution by Jan Suntrup is of peculiar interest in this respect.<sup>68</sup> The rules of a physical minimum distance thus have nothing to do with the Nietzschean ‘pathos of distance’,<sup>69</sup> ironically formulated by Jan Suntrup as ‘tact’,<sup>70</sup> which according to Georg Simmel makes the virtues of the metropolitan city dweller, as an ideal type of modernist inhabitant, possible in the first place – no longer ‘apartness’ and ‘capriciousness’, ‘anonymity’ and ‘blasé attitudes’,<sup>71</sup> but protection against infection through the realism of social distancing and mask wearing against the Marxian metaphoric of the ‘character mask’.<sup>72</sup> In the emerging ‘masked society’, social interaction is reduced to eye contact, and physical touch is principally excluded and incriminated. Even speaking to one another becomes suspect at the thought spreading droplets. Illocutionary binding effects, as imagined by speech act theory, are therefore impossible! An eerie silence thus hovers over our society – a silence known to us only from sacred places and times and their derivatives, such as museums.

The global social experiment of lockdown according to the battle cry of old socialism? “All wheels standstill if your strong arm wants it” cannot yet be overlooked in its social and sociological consequences.<sup>73</sup> What trauma are we inflicting on our grandkids when it becomes clear to them that if they want grandma and grandpa to live, they can no longer go to the sandbox or play with friends? What type of damage does ‘isolation torture’ have on truly lonely people when they are denied minimal social contact? Isolation torture was a critical view of the ‘contact ban’ that led to Stammheim! It was given to ideological ringleaders and lawbreakers as the most

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<sup>68</sup> See his article on our website: Jan Christoph Suntrup: [Biopolitical Models and the Hygiene of Tact](http://www.recht-als-kultur.de/en/news) (May 2, 2020); <http://www.recht-als-kultur.de/en/news> (last accessed on May 3, 2020).

<sup>69</sup> Friedrich Nietzsche: *Jenseits von Gut und Böse: Vorspiel einer Philosophie der Zukunft*, Stuttgart 1998.

<sup>70</sup> Jan Christoph Suntrup: [Biopolitical Models and the Hygiene of Tact](http://www.recht-als-kultur.de/en/news) (May 2, 2020); <http://www.recht-als-kultur.de/en/news> (last accessed on May 3, 2020).

<sup>71</sup> See Werner Gephart: Georg Simmels Bild der Moderne, in: *Berliner Journal für Soziologie*, Heft 2, 1993, pp. 183-192.

<sup>72</sup> Karl Marx: *Das Kapital. Kritik der politischen Ökonomie*, Hamburg 2017.

<sup>73</sup> For an interesting interpretation of the economic dimension, see on our website: Valentino Cattelan: [Sacred Euro: Sovereign Debt\(s\) and EU’s Bare Credit in the Corona Crisis](http://www.recht-als-kultur.de/en/news) (April 20, 2020); <http://www.recht-als-kultur.de/en/news> (last accessed on May 3, 2020).

severe punishment. This ‘surveillance’<sup>74</sup> is the universal ‘punishment’ of the purely coincidental contemporaneity of the corona crisis.

The reduction to communal forms of life, from the digital communication community to simpler structures; the reduction of economies to bartering in small corner shops; the systematic outsourcing of education from schools and universities to the family; the movement of gainful employment with a company into the ‘home’, whereby the modernization dynamics of separating ‘household’ from ‘business’ are abandoned; the submission of a document to a state employee who is now sitting in his bedroom where he’s placed his computer; and not least the subjugation to ‘conviviality’ in private circles (the house party, the shared apartment, the mocked work gathering); the suspension of community rituals found in sports (the ‘wave’ in the stadium’s south curve); the structuring of one’s free time; the inevitable end to the aimless stroll through the city’s streets – all of this shows us what makes a modern society, and why we maybe really are ‘social beings’ beyond institutions and formal relationships. Social beings who are in a web of countless interaction processes that must systematically intersect following the logic of ‘corona socialization’. George Simmel described this excellently in his *große Soziologie*:

“Apart from phenomena that are visible from afar and impose their size and external importance everywhere, there is an unmeasurable number of smaller forms of relationships and types of interaction between people, which can be marginal in individual cases. However, the breadth of this in individual cases cannot be estimated at all, and, as they shift between the comprehensive, so to speak official, social formations, they bring about society as we know it.”<sup>75</sup>

Whether Peter Weibel is right in saying that the crisis reveals the true face of a new sociation (*Vergesellschaftung*) as a distant society (*Ferngesellschaft*),<sup>76</sup> or begins a nostalgic search for places of proximate *Gemeinschaft* based on ‘nation’, ‘family’, or ‘neighborhood’ (actually meaning the search for the lost community of place, blood, and spirit as Tönnies called it) – or

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<sup>74</sup> Corona apps, corona identity cards, etc. open up a whole spectrum for surveillance mechanisms that may be regarded as legitimate the more the risk affection is internalized. Remember how the artist Ai Wei Wei protested against those surveillance technics, especially in China, in a nearly prophetic way!

<sup>75</sup> “Es bestehen außer jenen weithin sichtbaren, ihrem Umfang und ihrer äußeren Wichtigkeit allenthalben aufdrängenden Erscheinungen eine unermeßliche Zahl von kleineren, in den einzelnen Fällen geringfügig erscheinenden Beziehungsformen und Wechselwirkungsarten zwischen den Menschen, die aber von diesen einzelnen Fällen in gar nicht abzuschätzender Masse dargeboten werden, und, indem sie sich zwischen die umfassenden, sozusagen offiziellen sozialen Formungen schieben, doch erst die Gesellschaft, wie wir sie kennen, zustandebringen.” (Georg Simmel: *Soziologie*, p. 14f.).

<sup>76</sup> See Peter Weibel: *Virus, Viralität, Virtualität. Wie gerade die erste Ferngesellschaft der Menschheitsgeschichte entsteht*; <https://zkm.de/de/virus-viralitaet-virtualitaet> (last accessed on May 3, 2020).

whether we are not tragically reminded of the secret pleasures of modernity as ways of life, such as the importance of fashion, the neurasthenic *Reiselust*, the diversity of life forms, and lifestyles and adventure – remains to be seen. There is nothing natural about corona normativity, as a romantic theory of community might imagine. And it is not just a flu, as Tiziana Andina rightly remarks in her philosophical reflection!<sup>77</sup> The pace of the ‘corona institution’ stands in sharp contrast to the deceleration and eerie stillness of its life forms, which appear as the face of death, as Valéry Hayaert<sup>78</sup> and Alexandre Vanautgarden<sup>79</sup> analyzed. Insofar, I think that Jan Suntrup is right to start his article by saying that “[t]he corona crisis reveals the ambivalence of the human condition in the 21<sup>st</sup> century.”<sup>80</sup> Where does the individual stand in this multilayered ‘realm of normativity’ that derives its deontic power from the force of *Gemeinschaft*?

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<sup>77</sup> Tiziana Andina: ["It's Just a Flu" - What We Can Learn from Our Mistakes](http://www.recht-als-kultur.de/en/news) (April 14, 2020); <http://www.recht-als-kultur.de/en/news> (last accessed on April 30, 2020).

<sup>78</sup> Valérie Hayaert: [Shallow Graves and Empty Tombs: The Architecture of Death under the Chinese Concept of Tianxia](http://www.recht-als-kultur.de/en/news) (April 20, 2020); <http://www.recht-als-kultur.de/en/news> (last accessed on May 3, 2020).

<sup>79</sup> Alexandre Vanautgaerden: [The Return of the Corpses. Nosferatu, Phantom der Nacht \(Werner Herzog\)](http://www.recht-als-kultur.de/en/news) (April 20, 2020); <http://www.recht-als-kultur.de/en/news> (last accessed on May 3, 2020).

<sup>80</sup> Jan Christoph Suntrup: [Biopolitical Models and the Hygiene of Tact](http://www.recht-als-kultur.de/en/news) (May 2, 2020); <http://www.recht-als-kultur.de/en/news> (last accessed on May 5, 2020).