



Sociology
of Law

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In times of pandemics and populism: increasing inequalities?

Presenters' Abstracts

Pierre Guibentif, Portugal/France

Socio-Legal Agency in Late Modernity – Reappreciating the Relationship Between Normativity and Sociology of Law

The paper takes as a starting point an article of Reza Banakar published 1998, in which he compared sociology of law with feminist scholarship, arguing, firstly, that the success of feminist scholarship would be due to the fact that feminist scholars ‘share a common ideological objective that does not exist to the same extent and with the same intensity in sociology of law’, and, secondly, that, just like feminists, who ‘freed themselves from the limitations of the traditional and academically established disciplines’, sociology of law ‘must in the same fashion limit its dependency on both law and sociology’. The discussion of these two arguments may offer an appropriate structure for a contribution to the debate about the relationship between sociology of law and normative debates. In a first part, a case for a possible ideological objective for the Sociology of Law will be put forward. In a second part, the relationship between Law and Sociology will be discussed, with a view to this objective, proposing one possible understanding of Banakar’s programme of “Merging Law and Sociology”

Nayumi Nakamura, Japan

Changes in Gender Stratification among Japanese Lawyers after Judicial Reform

This paper assesses the impact of the population increase on the gender stratification of Japanese lawyers, using two survey data sets (The 2008 data and the 2019 data). The vast increase in the lawyer population widened the gender gap in income and the possibility of becoming a partner in the Middle Ages for Japanese lawyers. Before the introduction of the law school system, the scarcity of the lawyer population help woman overcome the gender gap in income and status (at least to some extent), but due to the increase in lawyer population, such gender gap in income and status seem to intensify, especially in middle age

João Paulo Dias, Portugal

Access to Portuguese courts during the pandemic: risks of (re)producing patterns of inequalities

COVID-19 introduced major changes to the functioning of Portuguese courts which tried to adapt to not deprive citizens of access to law and justice. The central issue is how they did it and the risks of emerging inequalities in the access of citizens to courts.

This paper studies the Portuguese judicial system's responses during 2020, promoting a reflection based on: issued legislation; measures taken by governmental and judicial entities; questionnaires; interviews; and judicial statistics.

Courts were always open during the pandemic, with a reduced level of functioning that would safeguard, in particular, urgent situations. The results show that, during 2020, there was a decrease in the courts caseload. However, the caseload is disparate between different legal areas, which highlights the need for deeper studies to understand the potential suppressed demand, tackling the risks of potential inequalities on the access to law and justice derived from the impacts of the pandemic.

Pablo Ciocchini, Great Britain

The “War on Drugs” in Philippine Criminal Courts: Legal Professionals’ Moral Discourse and Plea Bargaining in Drug-Related Cases

The “War on Drugs” in the Philippines, unleashed by President Duterte in 2016, has put pressure on legal professionals to respond to the drug problem more efficiently. The police's drive to arrest an unprecedented number of suspects of drug-related crimes has translated to a massive influx of cases into the justice system. Prosecutors, public attorneys, and judges managed this deluge of cases by embracing the device of plea bargaining, previously banned from those types of cases. The Supreme Court's new rules enabling plea bargaining in drugs cases were prompted by a set of uncoordinated actions by different legal professionals, though the result was clearly welcomed by all of them. Given the weakness of the legal cases of drug-related offenses assembled by the police, conviction of the accused is often in serious tension with the duty and commitment of prosecutors, public attorneys, and judges as legal professionals to decide cases on the basis of law and evidence. At the same time, acquittals

appear anathema both to the government's aggressive anti-drugs campaign and legal professionals' own moral judgment of drug users. Plea bargaining allows legal professionals to avoid these unwanted outcomes and satisfies their belief in rehabilitation. This paper draws from interviews with prosecutors, public attorneys and judges to explore their moral discourse against poor defendants and how it affects the justice system's response to drugs cases.

Denis De Castro Halis, Brazil

Companies' Responsibilities and Political Dissent: High Moral Grounds, Law, and Money

Political dissent has gained relevance in times of digitalization and polarization, which have changed people's interactions, governance, and companies' responsibilities. Questions about new roles of corporate private actors regarding political dissent have gained relevance in the face of those digital and social developments. It is with this background that the proposal concerns an investigation into exemplary cases in which companies' political and legal responsibilities became the center of attention and controversy. Those responsibilities might be the new frontier of corporate social responsibility (CSR) in times and because of digital technologies. The particular focus is on cases involving the protection, promotion, or restraint of collective or individual manifestations of political dissent. The companies and business organizations selected in the investigation have multinational operations. They reacted voluntarily or forcibly to manifestations of dissent that gained great media visibility and caused controversy and social polarization. They saw themselves involved in legal, moral, and monetary considerations and dilemmas

Hironao Kaneko, Japan

Inequality of living for the handicapped amid the COVID-19 pandemic

Person with a disability, including me, needs to ask shop clerks for help placing our buys into our bags. The governmental promotion to reduce plastic waste and bring one's own bags lead shops ban help for infection prevention purposes. Automated paying machines of stores to prevent infections do not consider the disabled.

The Act on Promotion of Smooth Transportation, etc. of Elderly Persons, Disabled Persons enacted to improve the accessibility of public transports and public buildings. However it does not cover the accessibility necessary services for the handicapped to keep daily life including shopping.

I will discuss how the COVID-19 pandemic undermines the right to life of the handicapped guaranteed by the Japanese Constitution Article 25

Stefanie Lemke, Germany

A milestone: Europe's first guidelines on legal aid

Although Article 6 of the European Convention on Human Rights does not explicitly guarantee a right to legal aid in civil cases, in its case-law the European Court of Human Rights (ECtHR) established that state authorities should provide everyone within their

jurisdiction with the assistance of a lawyer when this proves indispensable for effective access to court, or when lack of such assistance would deprive a person of a fair hearing. The ECtHR also held that the requirement to pay fees to a civil court should not hinder access to a court for applicants who are unable to pay them. Yet Europe's first guidelines on civil legal aid were adopted by the Council of Europe only in 2021. With the author having been commissioned by the Council of Europe to develop these guidelines, this contribution discusses the content and structure of this new, landmark document and how it could help to further access to justice across Europe in future

Rui Caria, Portugal

Populism in Criminal Policy as a driver of inequality

Populism has indiscreetly made efforts to influence criminal policy. It constructs a narrative in which criminals are enemies of society deserving retribution in the form of heavy punishment, resulting in legislative proposals for longer prison sentences. This narrative is not supported by the evidence gathered from various criminological approaches which explain delinquency as a byproduct of social vulnerability. Inequality can deny opportunities for the development of capabilities which are essential for living life responsibly without committing crimes. Populism ignores how crime can stem from failures of the state in providing opportunities for development, and how not all of us have access to those opportunities. By doing this, populism acts as a driver of inequality in criminal policy, going against the principles of the democratic state of law that guide it. Among them, the obligation to provide aid to its most vulnerable citizens, including convicts

Inês Rebanda Coelho, Portugal

Blockchain: A new way of art distribution and its legal implications

The blockchain is a technology that has become a big deal between society during the last few years. Bitcoin has been the most well-known format inside this system. However, there is more to the blockchain than the cryptocurrencies. The blockchain has, as one of the main purposes, to create a fair economic future and in the future, its technology could be used for the distribution of heavy files, as films. There are several advantages that this technology could bring, not only in terms of works distribution and promotion but also of gains. This can provide, in countries with smaller cinema industries and which are ruled mainly by government subsidies, like several European cases, an economic, artistic and cultural improvement of their industries.

The purpose of this study is centered on analyzing the distribution of films and music using blockchain technology and legal procedures like smart contracts and NFTs – Non-Fungible Tokens, and expose the main differences from the traditional way of distribution, in terms of efficiency and complexity of the processes. In other words, the Author's Rights and Related Rights of European countries for music and films will be analyzed along with their legal practices and compare its efficacy with the blockchain system use. The purpose is to discover in what way this new technology can contribute to a more adequate form of distribution during a time where people are being so dependent of the digital technologies to communicate and receive information, in a time where the artists are even struggling more to sell and expose their work and when it seems important to discover viable ways for them to develop a career and to make a decent living out of it.

Hiroshi Fukurai, USA

Deconstructing the Legal Fiction of the State and the Corporation with Original Nation Approaches to Inter-National Law (ONAIL)

This paper aims to offer the prophetic vision to the construction of an alternative world based on cognitive transformation and mutual cognitive liberation. Specifically, the Original Nation Approaches to Inter-“National” Law (ONAIL) scholarship urges the construction of the system of law which ennoble the rights of people and the natural world, i.e., organic and biological entities that exist in an objective reality, over and above the rights of the state and the corporation, i.e., legally-constructed, fictional entities. Original Nation scholarships then expose the fictional and ephemeral nature of the state and corporation, delegitimize their existence, and promote the construction of the system of law to place the rights and interests of people and the nature over and above the fictional collectivist entities of the state and corporation. Further, the ONAIL scholarship promotes the federated, global network of the close collaborative relationship of organically-composed, free association of communities that have to be constructed on the basis of preserving the dignity and autonomy of people through mutual support and mutual aid

María Ángeles Álvarez López, Spain

Historical Reflections on Legal Responses to Major Pandemics to COVID 19. How Legal Systems have protected Humans against infection

One year after the World Health Organisation (WHO) declared COVID-19 a "public health emergency of international concern", WHO has, once again, stated that "the COVID-19 pandemic has claimed countless lives and caused enormous disruption to families, societies and economies around the world. The hallmarks of this response have been an unparalleled mobilisation of science, the search for solutions, and a commitment to global solidarity".

The gravity of the situation generated by COVID-19 has led virtually every state to adopt exceptional emergency health measures, or their equivalent, in order to cope with the catastrophic situation and try to curb the spread of the virus across the globe.

Thus, while the COVID-19 pandemic presents a global challenge, it also directly raises fundamental questions about the effective functioning of democracy, the rule of law and, therefore, of human rights guarantees.

However, COVID-19 is not an isolated event and major pandemics and epidemics have occurred several times before throughout the history of the human race.

These events have given rise to an understanding of decision-making mechanisms that surface across the fields of law and public policy, and which involve prioritising between human life and economic structures. In short, the historical evolution of perceptions about disease control and eradication, and how to introduce methods to prevent and control infection, has exposed inequality of treatment, especially regarding the most disadvantaged and vulnerable of society. There is therefore a need for legal mechanisms to address the consequences of the outbreak of pandemics.

Faced with such a challenge, that motivates finding solutions for difficult decisions, throughout history individual, institutional and state perceptions of epidemics all focus on

eradication of disease. And it has been a constant in legal history that laws are not always as effective as they should be when delivering outcomes, especially in their protection of fundamental rights.

Furthermore, applying insights from comparative law, similar conclusions can be drawn about different models of legislative innovation that protect health and human life during different epidemics and pandemics.

For example, in the Ancient World exceptional emergency health measures were introduced to deal with catastrophic situations in order to curb the spread of epidemics and, in the absence of effective medical responses, the population was left to the mercy of the epidemic. Today, thanks to advances in scientific development, "eradicating" COVID-19 has given way to rapid research into vaccines that combat the virus. However, in the context of scarce resources, overcoming limited vaccine production on a global scale has become an urgent priority, if lives are to be saved and states compelled to make difficult choices when evaluating and choosing between different ethical models that balance and protect both fundamental rights and the rule of law.

In short, this paper presents an historical overview that aims to reflect on the following:

- Mapping of the main pandemics throughout human history: starting in ancient Greece, with the plague of Athens (430 BC); then focusing on the analysis of Roman Law, with the Antonine plague (251-270 AD); followed by the plague of Justinian (529-542 AD) and later the plague of Justinian (541-544 AD); as well as different epidemics during the Middle ages, such as the Black Death (1300-1347), followed by the 20th century Spanish flu (1918-1919), leading right up to the current pandemic of COVID-19 (2020-);
- Consequences of the management of different pandemics and how these impact on the individual, institutions and the State; and
- How, throughout history, and in the face of limited resources, situations of inequality have arisen and influenced perceptions of Law

Ronagh McQuigg, Ireland

International Human Rights Law and the 'Shadow Pandemic' of Domestic Abuse

Since the onset of the COVID-19 pandemic, incidents of domestic abuse have increased substantially around the globe. The lockdowns which were adopted by many states, although necessary to limit the spread of the virus, nevertheless meant that those living in abusive relationships found themselves to be even more isolated in such situations. However, there is a danger of viewing this issue as simply being caused by the COVID-19 pandemic. In reality, the pandemic served to expose and exacerbate pre-existing difficulties with the responses of states to domestic abuse. This paper will examine the increase in rates of domestic violence since the beginning of the COVID-19 pandemic, and will focus on the responses of UN human rights entities such as the Committee on the Elimination of Discrimination against Women, UN Women and the UN Special Rapporteur on Violence against Women. The paper will discuss the recommendations which have been made by such entities regarding the measures which should be adopted by governments to address domestic abuse in the context of the pandemic and in a post-pandemic world

Barbara Giovanna Bello, Italy

A Critical youth approach to law and policy in times of pandemic

The presentation aims at presenting a critical youth approach to law and policy in order to bring youth from “margins to center”. The pandemic has been a litmus test for human beings' life and data show that youth inequalities have increased across countries. Policy documents supporting young people seem to embrace a short-term perspective which does not interrogate structural inequalities in employment and access to opportunities.

Takayuki Ii, Japan

Inequalities and Civil Disobedience in the Spread of COVID-19: The Case of Japan

This paper deals with inequalities and citizens' noncompliance with laws and regulations in Japan in the spread of COVID-19. Since early 2020, the Japanese government tried to cope with the disease by means of legislation, which includes the declaration of a state of emergency under the Revised Act on Special Measures for Pandemic Influenza and New Infectious Diseases Preparedness and Response. However, the epidemic is going over one and half year after the outbreak of COVID-19.

The spread is brought about by the disease, which has a strong infectiousness to human body, but also by the failure of national policies. The quarantine activities for the visitors from foreign countries have not been strengthened at international airports and afterwards, which led to the never-ending national infection for a long period. The Japanese government has been reluctant to provide a PCR test system that surely detects COVID-19. The state of emergency does not have a force to compel the restriction on moving, but only on serving alcohol at restaurants. Additionally, the Japanese government was relatively slow to get COVID-19 vaccine, which led to a low vaccination rate among the population (28% as of the end of July 2021). The order of the priorities of the vaccination was problematic too. Besides the medical personnel and the aged, the athletes who were going to participate in the Olympic game to be held in Tokyo, Japan in July and August of 2021 were vaccinated with priority. Employees and students of big and rich enterprises and universities, which could employ medical doctors and nurses, were preferentially vaccinated too. This vaccination procedure brought about the sense of unfairness among the remaining persons, who includes those with the underlying medical problem.

Japanese citizens tend to comply with laws and regulations in general, however, after 2021, in the repeated states of emergency, their attitudes seem to have gradually changed. Among others, some restaurant owners engaged in eating and drinking industries violate the statutory alcohol restriction in their severe business environment with few and delayed compensations. Sociologically, the disaster is seen as a function of the hazard and vulnerability of the community and includes the natural disaster, human-made disaster, terrorist attacks and epidemic. From a point view of the sociology of law, the challenge will be to expand the prior or subsequent legal treatment of damages and inequalities caused by the disaster, whether it is natural or human-made one. The effective social and legal treatment is needed to deal with the disease and citizen's noncompliance laws and regulations after COVID-19 in Japan

Michal Agmon Gonen, Israel

Women and the COVID-19 Pandemic: A gender perspective on the socio-economic crisis and the opportunities for change

The COVID-19 pandemic is a global health crisis with broad socio-economic implications. Crises usually exacerbate entrenched inequality between men and women, which still persists in the 21st Century. The Covid-19 pandemic is not an exception to the rule. The pandemic exposed a reality of gender-based poverty that has grown worse as the crisis wore on, of women staying at home and trying to balance running the household, looking after their children, with their professional work, of women, including pregnant women, being the first to be laid off and the last to return to work. The increased socio-economic harm to women during the COVID-19 pandemic cannot be ignored, and this reckoning comes with a growing understanding that what has been happening under the guise of the pandemic runs much deeper.

I focus on two key factors that are becoming increasingly entrenched at this time: Inequality in the labor market, including the gender pay gap, and invisible labor, primarily in the home and with the family. This article proposes to lay down a path towards solutions for those problems, primarily through a demand for adequate representation of women in decision-making processes and a requirement to receive gender-specific data and gender analysis of the socio-economic solutions for the crisis. The article focuses on Israel as a test case, but both the figures and the solutions apply, with the necessary adaptations, to many countries facing the crisis

Joxerramon Bengoetxea, Spain

Sociological Approaches to Judicial Dialogue

My presentation discusses how words change their meanings in times of pandemic and examines the legal and social consequences of these changes in meaning

Richard Abel, United States

Lawyers in 21st-Century Societies: Directions for Future Research

The second of our two volumes on “Lawyers in 21st-Century Societies” (which I edited with Hilary Sommerlad, Ole Hammerslev and Ulrike Schultz) is almost done. I will be presenting thoughts about directions for future research based on nearly 80 chapters in those two volumes

Patrice Ruane, United States

From Pin Money Workers to Essential Workers: Lessons About U.S. Women's Employment And COVID-19 From The Great Depression And The Great Recession

We contextualize complex events like recessions through narrative and storytelling. The story of working women is intertwined into the larger narratives of the Great Depression, the Great Recession, and the COVID-19 recession in the U.S., yet the popular picture of the average working woman has failed to match the reality. The responses to the Great Depression and the Great Recession, influenced by misconceptions about women and work, did not provide adequate support for female workers. Inaccurately framing the average working woman during COVID-19 as a remote worker in a two-income household steers recovery policy away from avenues that would help the majority of female workers. The unequal experiences of women and men after the two past recessions illustrate the effectiveness of sex-informed recovery policies. Because COVID-19 related job losses have been unevenly borne by women, sex-informed recovery policies are not only justifiable, but necessary to achieve equitable recovery

Dace Šulmane, Latvija

Tax reform of 2021 in Latvia. Poor Stabbed in the Back

Amendments to the Law on State Social Insurance, which entered into force on 1 July this year, have caused a great deal of public shock and outrage. The main reason is the new procedure for making minimum state social insurance contributions. The reform was largely due to weaknesses in the pandemic benefit system and large budgetary losses.

Mandatory state social insurance contributions from 1 July put many small companies and NGO sector in front of a choice. The only option was to dismiss the person who has no other job. Such a tax reform carried out by the state ""sets the stage"" for the already weak non-governmental sector, artists and small companies. The fact that all Latvian associations (as employers), and artists will be subject to the statutory obligation to monitor and make mandatory state social insurance contributions for employees (usually project assistants, coordinators, activity managers, singers, translators etc) indicates a lack of state involvement in the effectiveness and application of the law.

It can be concluded that in the legislative process the ex-ante (pre-legislative) evaluation of the draft law has not been performed qualitatively, the standard of good legislation has not been observed, as well as the annotation of the draft law does not convince a comprehensive tax reform impact assessment

Margaret Thornton, Australia

Coronavirus and the Colonisation of Private Life

The idea of a distinction between public and private life has a long history in political thought, but the boundary between them has become increasingly blurred as a result of temporal flexibility. Technological change lies at the heart of the ability to choose when and where work is performed, including 'working at home'. This refers only to productive work so that the unpaid domestic and caring work that women disproportionately undertake has been

excluded. Its invisibility has led to it ‘counting for nothing’ in the computation of the Gross National Product. With particular regard to the gender ramifications of working at home, this article analyses the responses to an on-line survey conducted in Australia when lockdown was a key prong of the government response to COVID-19 in 2020. As unpaid work was integrated with productive work, it is suggested that the rationale for discounting it in national accounts no longer holds, especially as the sphere of intimacy is insidiously being colonised by capitalism

Balázs Fekete, Hungary

“People showed so much empathy” – A micro-anthropological study on the functioning of the social distancing rules during the first wave of pandemic

"Although the first wave of Covid19 in 2020 did not hit seriously Hungary as compared with Western countries it had an enormous impact on the everyday life. The school closures, the introduction of social distancing, or the appearance of masks all meant an absolutely new experience. This study used some methods of legal anthropology – participant observation and semi-structured interviews – in order to understand how the officially enacted rules of social distancing – for instance the reservation of a daily special period during which only people being 65 years or older could go shopping, or the rule that allowed the people to leave their place of residence only with a “good reason” – influenced the societal behaviour in reality. The scope of the research was focused on a specific very small neighbourhood of Budapest (only a few streets in Buda), and the fieldwork was carried out from early March 2020 to the last days of April 2020. Participant observation was done in this period by the author who grew up in this neighbourhood and has been living there for 12 years, while the interviews were done during a week with two shopkeepers, two teachers, and three mothers. The selection of interviewees was based on the author’s personal network and the main selection criterion was that all of them participated in the local life actively before the pandemic.

The main conclusion of this study was twofold. First, smaller communities, for example families, schools, shops with fix customers, or sport clubs, had a crucial role in fostering the compliance with the brand new rules, as they helped and sometimes forced their members to respect them. That is, these smaller communities clearly functioned as semi-autonomous social fields in this case and they apparently increased the effectiveness of state law. Second, it can also be argued that people’s perception on the new rules had a crucial relevance in everyday legal meaning-making. In general, the inhabitants of this neighbourhood did not regarded the state law on social distancing as an outsider attempt to transform their settled way of life but they considered them as behavioural patterns that are necessary to go through this period of uncertainty. Thus, these new rules lost their official character and they quickly became broadly supported normative patterns in the eyes of the inhabitants of this area.

Obviously the generalization of these research findings is rather questionable but they can surely help in understanding the complexity of social distancing as collective social experience

Frances Olsen, United States

What can we learn from the language of Covid?

My presentation discusses how words change their meanings in times of pandemic and examines the legal and social consequences of these changes in meaning.

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