

TECHNOLOGIES OF NORMALIZATION

An international online seminar series

29 September – 13 October 2020

Normality is a well known concept in pathology, sociology and demography. It has statistical, qualitative and evaluative connotations. The *norm* describes rules and social expectations, while *normativity* expressly refers to ethical or legal standards. Canguilhem's work on medicine established that the normal is valued as the opposite of the pathological. We see similar assumptions in social affairs where, in fields from law and politics to public health, the normal is often seen as a desirable state. When it is disrupted, by social, medical or legal deviance, measures are sought to re-establish the normal, or (increasingly, in extraordinary times) a 'new normal'.

The seminars examine these measures in a range of fields: legal, urban, and sociological. The technologies of normalization to be examined include architecture, information technology, discourse and communications, and disciplinary fields from science to medicine. They are applied in a variety of case studies, including family conflicts, legal procedure, judicial deliberation, disaster planning and recovery, and death.

Fourteen scholars and practitioners from Italy, Australia, Portugal and the Netherlands will present insights into their work in a series of five seminars, on Tuesdays and Thursdays from 29 September to 13 October 2020. Papers will be followed by questions and discussion.

Workshop organisers

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Centre for Social Studies
University of Coimbra



Social Research, Policy & Planning

TECHNOLOGIES OF NORMALIZATION: FULL PROGRAM

Tuesday 29 September 2020

Normalizing Death in the Time of a Pandemic

Marc Trabsky

Latrobe Law School and Centre for Health, Law and Society, La Trobe University, Melbourne

Hostile architecture and design: questioning the legal meaning in the urban environment

Valerio Nitrato Izzo

Department of Law, University of Naples Federico II

Time

Europe: 10-11.15 (CET) 9-10.15 (WET)

Australia: 18-19.15 (AET)

Thursday 1 October 2020

The best interests of the child, parents' dietary choices, and percentiles. On normativities and technologies of normalization

Patrícia Branco

Centre for Social Studies (CES), University of Coimbra

The calm after the storm? The tricky path for restoring the normality of individual rights in cases of intimate partner violence

Rosanna Amato and Davide Carnevali

Institute of Legal Informatics and Judicial Systems (IGSG-CNR), Bologna

The medicalization of family and children's judicial conflicts

Paula Casaleiro

Centre for Social Studies (CES), University of Coimbra

Time

Europe: 10-11.30 (CET) 9-10.30 (WET)

Australia: 18-19.30 (AET)

Tuesday 6 October 2020

Community-led disaster planning: reshaping norms

Amanda Howard and Margot Rawsthorne

University of Sydney

When Normality Fails: Discursive Reactions to Disaster

Richard Mohr

Social Research, Policy and Planning PL, Sydney

Times: week 2

Europe: 9.30-10.30 (CET) 8.30-9.30 (WET); Australia: 18.30-19.30 (AET)

Thursday 8 October 2020

Cross-border dispute resolution in Europe: looking for a new 'normal'

Marco Velicogna

Institute of Legal Informatics and Judicial Systems (IGSG-CNR), Bologna

Normalising the use of electronic evidence in civil procedure. Exploring ways to bring new forms of technology into a familiar normative path

Elena Alina Onțanu

Erasmus University, Rotterdam

Tuesday 13 October 2020

Regulating (Artificial) Intelligence in Justice: Normative Frameworks and the Risks Related to AI in the Judiciary

Giampiero Lupo

Institute of Legal Informatics and Judicial Systems (IGSG-CNR), Bologna

Double normalisation: when procedural law is made digital

Francesco Contini

Institute of Legal Informatics and Judicial Systems (IGSG-CNR), Bologna

Dory Reiling

Independent IT and judicial reform expert; Retired Senior Judge, Amsterdam District Court

Time: week 3

Europe: 9.30-10.30 (CET) 8.30-9.30 (WET); Australia: 18.30-19.30 (AET)

Technologies of Normalization

Collected abstracts

Normalizing Death in the Time of a Pandemic	
Marc Trabsky.....	2
Hostile architecture and design: questioning the legal meaning in the urban environment	
Valerio Nitrato Izzo.....	2
Regulating (Artificial) Intelligence in Justice: Normative Frameworks and the Risks Related to AI in the Judiciary	
Giampiero Lupo.....	3
Double normalisation: when procedural law is made digital	
Francesco Contini and Dory Reiling.....	4
Cross-border dispute resolution in Europe: looking for a new ‘normal’	
Marco Velicogna.....	4
The calm after the storm? The tricky path for restoring the normality of individual rights in cases of intimate partner violence	
Rosanna Amato and Davide Carnevali.....	5
The medicalization of family and children's judicial conflicts	
Paula Casaleiro.....	6
The best interests of the child, parents’ dietary choices, and percentiles. On normativities and technologies of normalization	
Patrícia Branco.....	6
Normalising the use of electronic evidence in civil procedure. Exploring ways to bring new forms of technology into a familiar normative path	
Elena Alina Onțanu.....	7
When Normality Fails: Discursive Reactions to Disaster	
Richard Mohr.....	8
Community-led disaster planning: reshaping norms	
Amanda Howard and Margot Rawsthorne.....	8

Normalizing Death in the Time of a Pandemic

Marc Trabsky

Latrobe Law School and Centre for Health, Law and Society, La Trobe University, Melbourne

Governmental responses to the Covid-19 pandemic have made use of an array of technologies for managing life, maximising its efficacy and exploiting its vitality. This can be seen by the tabulation of mortality rates, construction of makeshift morgues, techniques for disposing multiple corpses and representations of the pandemic as an anomaly. Indeed, the adaptation of the financial moniker, ‘black swan’, depicts Covid-19 as an aberration of governmental practices, or to put it differently, an incongruous disruption in the habitual economy of life and death. The rhetoric of aberration undoubtedly conflicts with the institutional routinization of death, in particular its regulation by the state and a range of medical, legal and financial institutions, which gave rise in the eighteenth and nineteenth centuries to what Michel Foucault called *thanato-politics*. In this arrangement of governmentality, the technology of registration, which harnesses the bureaucratic logic of the file and classification systems for death causation, is deployed as a normalizing technique for managing relations between the living and the dead.

This paper will examine a tension between governmental representations of the pandemic as an anomaly and techniques for normalizing death as an inevitable outcome of life. The definition of death transformed during the twentieth century from the cessation of a heartbeat and/or the loss of breath to complex neurological concepts of brain death, the diagnosis of which remains the responsibility of medical professionals. The classification systems for death causation, which underpin the technology of registration, have moreover expanded due to innovations in epidemiology, pathology and forensics. During the Covid-19 pandemic, however, the definition of a cause of a death has been revealed as unstable: Covid-19 has been variously classified as causative according to the place where a person died, their symptoms prior to their death and whether a laboratory test was undertaken while they were alive. The technology of registering a death in the time of a pandemic therefore depends on differentiating between the normal and the pathological, standards and variations, and constancies and deviations. This paper will argue that what the Covid-19 pandemic exposes, particularly though the productive tension between the rhetoric of aberration and death as an inevitability of life, is that normalizing technologies are inextricable from how governmental, medical, legal and financial institutions define the limit point between life and death, how they take care of the dead and how they determine what deaths should be counted at all.

Hostile architecture and design: questioning the legal meaning in the urban environment

Valerio Nitrato Izzo

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The aim of the paper is to examine new trends in the regulation of access to public space, offering a reading of connections that seeks to bring out its legal dimension. More specifically, I will look at the adoption of hostile architecture and objects as a widespread tendency in urban design. This “hostility”, through a variety of shapes, materials and structures, contributes to make certain classes of subjects vulnerable or to render them socially invisible and add to a long-established pattern of dematerialization of public space in the

urban environment. While the phenomenon is relatively known but still under-theorised in the urban studies field, attempts to make sense of the legal dimension are just at an initial effort. Grounding on different approaches and insights from urban theory and legal studies and addressing the potential relevance for this topic of the recent “material turn” in law as well as the connections with technology thinking and rhetoric of the urban decency, I will explore how hostile design has a profound impact on law and rights enjoyment in contemporary cities.

Regulating (Artificial) Intelligence in Justice: Normative Frameworks and the Risks Related to AI in the Judiciary

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Recently, there has been a growing diffusion of tools based on Artificial Intelligence (AI) technology supporting justice professionals. Artificial Intelligence algorithms are starting to support lawyers for instance through artificial intelligence search tools, or to support justice administrations with predictive technologies and business analytics based on the computation of Big Data. The introduction of AI tools in the justice sector poses several ethical implications as for instance (1) the availability of data coming from courts and proceedings and issues in terms of protection of privacy or (2) the use of predictive technologies and issues regarding data protection, discrimination biases and transparency. Private and public actors are growingly dealing with the risks related to the use of AI by developing normative frameworks that discipline AI application in several contexts. Most of the normative frameworks are not binding and only deal with some of the many concerns related to the impact of AI in justice. This study will shed light on the topic of ethical implications of the application of AI in justice by inventorying and analysing a set of framework documents with techniques of content analysis. The use of content analysis will allow to put in evidence which are the main risks related to AI application in several contexts and above all the justice systems as they are highlighted in the framework documents and to cross-reference this factor with other variables as the type of organization drafting the framework document and target audience. The paper will first discuss the main challenges related to the use of AI both by lawyers and by the justice administrations through some examples of AI tools recently developed; second, it will present the results of the content analysis of framework documents selected. The analysis acknowledges the several ethical risks related to the use of AI in justice; moreover, it draws the attention to the lack of comprehensive and binding normative frameworks regulating AI.

Double normalisation: when procedural law is made digital

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The work of courts typically occurs in hyper-regulated contexts where formal regulations established at different levels prescribe in detail who can do what, when and why. The scope of this detailed regulative framework is to have judicial procedures based on the rule of law, hence predictable, equal and impartial. Formal regulation is a quintessential normalisation technique and is the carriage of a proper normativity. When court procedures have to be made digital, information technology brings in a distinct, additional type of normativity. It establishes much more compelling pathways of action, requires different forms of collaboration between subjects, redesigns the boundaries between what humans do autonomously, under the guidance of the software, or what artefacts do autonomously or under the guidance of the normalisation techniques. The result of this assemblage cannot be taken for granted and reveals some of the properties of both normalisation techniques.

The paper explores these entanglements analysing the development of three different e-justice platforms: e-Curia (EU Court of Justice), Trial on Line in Italy, and KEI in The Netherlands.

The innovation processes (i.e. technology design, development, and deployment) are analysed considering some of the critical issues faced when similar large-scale projects are implemented in private business. Indeed, the development of an e-justice platform has to face many of the challenges to be addressed when companies implement enterprise information systems as ERP (enterprise resource planning) making interoperable internal systems with those of external partners. Then, it considers the specificity of judicial procedures, in particular the consequences of developing IT in a hyper-regulated context, and hence the need to assemble law and technology. Is this leading to dynamics not observed in the private sector where the legal framework is largely irrelevant? Is this revealing of peculiar dynamics that occur when technological deployment interacts not just with bold sets of organisational constraints but also with a complex legal framework? What kind of governance should be established to support the development and supervise the functioning of IT in judicial business? And what is the joint effect of the double normalization deriving by (procedural) law made digital?

Cross-border dispute resolution in Europe: looking for a new ‘normal’

Marco Velicogna

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Free movement of goods, capital, services, and labor within the European Union, the growing role of e-commerce (according to Eurostat, in 2018 nearly 70 % of internet users living in the EU had bought goods or services online and 36 % of these individuals ordered their purchases from sellers based in other Member States), and the changes taking place in the digital world (in particular platformization) are producing changes with which traditional (geographically bounded) forms of justice service provision are having problems to cope.

In the attempt to cope with the change taking place, and based on the principle of subsidiarity, EU institutions deployed a number of legal instruments (directives, regulations, etc.) to facilitate the coordination between national rules in areas such as international jurisdiction, cross-border service of documents, recognition and enforcement, and taking of evidences. Harmonised procedures have also been introduced for certain types of civil and commercial matters. In order to support the use of these instruments, which have failed to achieve the expected results, the European Commission has developed a portal to provide information and services to potential court users. Furthermore, a cross border e-justice services infrastructure (called e-CODEX) has been developed and tested by EU Member States. Once again, the response seems insufficient to establish the new 'normal' needed to cope with the radical changes which are taking place.

As a result, more and more people seem to rely on alternative means to resolve or avoid disputes, based on tools provided by the platforms they use to interact. Considering this trend, it may have come the time to re-discuss what is to be valued, acceptable, or aimed for in the cross-border justice service provision, as evolutive changes seems to fail, and more radical actions seems to be required.

The calm after the storm? The tricky path for restoring the normality of individual rights in cases of intimate partner violence

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Normality is, by definition, “*a situation where everything is normal or as you would expect it to be*”;³ it includes the concept of “norm”, referring to rules or standard of behaviour shared by members of a social group and the relating external rewards or punishments, which follow compliance or non-compliance scenarios respectively.⁴ Often, we talk about normality or return to normality in relation to those major events or circumstances that are perceived as distorting the run-of-the-mill functioning of the society; however, this also more frequently applies to small social units, such as the domestic⁵ ones.

The so-called *intimate partner violence* represents the main form of pathology occurring within the individual's restricted circle of trust, which in the overwhelming majority of cases is a form of abuse committed by the male partner against a woman. It subverts the traditional dynamics underlying domestic and civil cohabitation, with an asymmetric relationship between the members of the couple in relation to the exercise of power. Violence is indeed used to exercise control over the partner without margins for negotiation.

To address this pathology and protect the rights of the person abused, a variety of legal instruments have been put in place at both supranational and national levels. For these legal tools to be applied, the justice systems must put in place complex and multi-layered mechanisms that ensure the respect of fair trial rights for victims, while enabling their participation, protecting them against secondary and repeat victimisation and granting appropriate relief.

The aim of this paper is to analyse these mechanisms and generate reflection on how justice and its institutions deal with the issue of restoring normality in the life of the individuals, whose rights have been violated within the framework of intimate relations. It also will look at those situations in which pathological conditions, such as the one described above, are further exacerbated by factors altering what we define as "external normality", i.e., the regular functioning of the institutions (in this case, the actors operating within the territorial support networks for victims, considered both individually and as a whole). A case in point is the situation caused by the pandemic COVID19, which has required to adopt a variety of "coping mechanisms" necessary to address those problems caused by isolation and social distancing policies and enhance the ability of the system to provide services remotely.

The medicalization of family and children's judicial conflicts

Paula Casaleiro

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The concepts of medicalization and pathologization have been applied to the investigation of areas as different as education or mental health, neglecting the field of law and specially the family and children law. This communication aims to observe the medicalization of family and child conflicts in the judicial processes of regulation of parental responsibilities.

It adopts a broad definition of the concept of medicalization, i.e, medicalization is understood here not only as the conversion of a social or moral problem into a disease or medical problem, but as a process that includes the definition of a problem in medical terms, using medical language to describe it, adopting a medical approach to understand it, or use a medical intervention to treat it. And it is assumed that this is a comprehensive process that may or may not directly include medical professionals and medical treatments.

Through the content analysis of a set of judicial processes and interviews with judicial and non-judicial actors, it is concluded that not only do medical assumptions echo in the rules of child custody, but there is a tendency in these processes to reduce and treat family conflicts to / as pathological problems and to adopt medical and / or therapeutic solutions and not "exclusively" judicial.

The best interests of the child, parents' dietary choices, and percentiles. On normativities and technologies of normalization

Patrícia Branco

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The links between food, families, and the law seem to be particularly strong in what concerns dietary issues, parental food choices and the best interests of the child. Within such framework, I will examine some recent decisions emanating from Italian courts that have had to decide disputes involving such questions. My claim is that the analysis of these food conflicts, and the normative apparatus behind the courts' decisions, may reveal the spaces of governmentality that inhabit a disciplinary society, and law, when it comes to familial practices and food practices. The Italian decisions show us that. But they show more: these decisions call attention to ongoing debates about children and parenting, particularly to the links between the cultural normativities behind food practices and dietary regimes, where growth percentiles have turned into technologies of normalization, especially when children

are involved. Hence, what begins with children's best interests leads to the complexities underpinning the ideals of childhood (protecting the child's health) and parenthood (the parents' rights and duties involved in parenting).

Normalising the use of electronic evidence in civil procedure. Exploring ways to bring new forms of technology into a familiar normative path

Elena Alina Onțanu

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The rapid evolution of technology and digitisation of society are without doubt the biggest accelerators of change in the law and practice of evidence taking. The ongoing pandemic has been an additional incentive towards a total shift in electronic handling of claims, evidence, and delivering of justice in several countries. Although, measures are expected to be temporary they brought with them an increase openness towards the electronic environment and proceedings, and their effects are likely to persist beyond this period of crisis.

Looking at existing domestic legislations regarding electronic evidence, approaches are divergent or even lacking in the area of civil law and procedure.¹ Electronic evidence in civil matters has been left mainly to the free evaluation of the judges. Legislation is scarce and hardly dealing with the various forms of electronic evidence as the legal framework remains mainly anchored in traditional physical forms. The use and reliance on electronic evidence can bring with it series of potential issues judges have to deal with related to privacy of individuals (e.g. GDPR, Art. 8 ECHR), preservation of the material, diversity of sources, authenticity and integrity, legality of obtaining the evidence, and practical issues (e.g. standards, technical equipment needed for their handling, budget/costs for obtaining such evidence, trainings for being able to understand and meaningfully use such evidence). In this, judges are left very much to their inspiration to figure out what type of electronic evidence to accept, the requirements they need to comply with for their valid use, the methods to take such evidence, the reliability of technology, ways to interpret electronic evidence etc. Things become more complex in a cross-border setting. How to figure out what type of electronic evidence to accept? Is an electronic evidence taken in one country retained valid in another and under what circumstances? Should the judge proceed to an interpretation or a handling by correlation?

This paper aims to explore the normative gap in dealing with technology-based evidence in civil and commercial matters and relying on new forms of technology in legal proceedings. The existing EU legislation will be taken as reference point.

When Normality Fails: Discursive Reactions to Disaster

Richard Mohr

Social Research, Policy and Planning PL, Sydney

Shocks from extraordinary events – epidemics, natural disasters, massive technological mishaps – are a challenge to the day to day normality of social life. While the 'pathological' is the antonym to 'normal' in the organism, the 'disaster' or 'catastrophe' may be the equivalent antonym when applied to society. Immediate and spontaneous reactions to disaster

¹ Most developments so far address electronic evidence from a criminal law perspective. Also, legislation is much more developed in this area of law in dealing with ICT and its various forms.

include emotional and political components: anxiety, grief, anger, blame. These call for explanations and strategies, which are often seen as the responsibility of experts and political leaders, but are also open to media and local interventions. Each of these reactions and responses is played out in public discourse which, as a guide to action, becomes a crucial part of the response itself.

One goal of responses to catastrophic disruptions is a return to normality. However, this may become problematic when faced with the enormity of the disruption, or its incompatibility with other values, such as threat to life. Policies, strategies or decisions on how to act, taken by governments, individuals or communities, are based on situated and useable knowledges (Haraway 1987, Ravetz 1988). These are often in conflict, and never more so than when applied to those uncanny events that unsettle the body politic.

The paper analyses various knowledge sets, focussing on the moment of rupture, when normality fails in the face of disaster. At that moment the old normal of scientific reports and modelling, local knowledge and warnings become the new reality of death and destruction. From then on the stakes are high in the competition between experts, locals and conspiracy theorists. The inquiry draws on discursive material from two recent disasters, the Australian East Coast bush fires of spring and summer 2019-20, and the covid-19 pandemic. The aim is to inquire how these knowledges enter into and influence public discourse about responses and normality.

Community-led disaster planning: reshaping norms

Amanda Howard and Margot Rawsthorne
University of Sydney

The magnitude of climate change disasters is reshaping norms of power and knowledge in planning for these disasters. The traditional position of emergency services as saviours is now recognised by the leaders as unsustainable, despite continued media construction of emergency services as heroic. A new norm is emerging where communities are now asked to fend for themselves, told not to wait for the knock on the door or the boat to rescue them. This new norm sits very uncomfortably with the highly hierarchical and combat orientation of services on the ground. Communities are made responsible whilst told to follow orders whilst local knowledge is ignored.

This paper draws on extensive action research in diverse communities including small rural, peri-urban and coastal locations. It seeks to map how communities navigate this new norm and how others respond to, contradict and support this process.