



Norm, normal and disruption: Introductory notes

OÑATI SOCIO-LEGAL SERIES VOLUME 12, ISSUE 3 (2022), 414–423: NORM, NORMAL AND DISRUPTION:
THE ROLE OF LAW, KNOWLEDGE AND TECHNOLOGIES IN NORMALISING SOCIAL LIFE

DOI LINK: [HTTPS://DOI.ORG/10.35295/OSLS.IISL/0000-0000-0000-1308](https://doi.org/10.35295/OSLS.IISL/0000-0000-0000-1308)

RECEIVED 18 MAY 2022, ACCEPTED 19 MAY 2022, VERSION OF RECORD PUBLISHED 1 JUNE 2022

RICHARD MOHR* 

FRANCESCO CONTINI* 

PATRÍCIA BRANCO* 

Abstract

The eleven papers in this special issue analyze how different sources of disruption collide with normality, the consequences on individual, social and institutional life, and efforts to re-establish the old or to create a new normal. They arose from a series of online seminars in September and October 2020 investigating normality, disruption and normalization in the wake of the current environmental, technological,

The inquiry started with a call for papers circulated among research groups working in different disciplinary areas, including sociology, law, philosophy, technology and political sciences, in June 2020. The papers submitted have been discussed in five online seminars held between the 29 of September and the 13 of October 2020 (<http://srpp.com.au/projects/technologies-of-normalization-home/>). After the seminars, organisers and participants agreed to submit a special issue proposal to OSLS. The Journal accepted the proposal for the issue at the beginning of December 2020. Since then, authors and editors have worked to transform contributions presented at the seminar series into this collection. The organisers wish to thank the managing editor of the Journal for the support and the excellent professional guidance during the entire process of submission, review and editing of the contributions.

* Dr Richard Mohr is an urban and legal sociologist and a director of Social Research Policy and Planning Pty Ltd. He has worked as a community health coordinator, planning and evaluation consultant and academic in Law, Architecture and Sociology at the University of Wollongong, Sydney University, UNSW, and McGill University. Email address: rmohr@srpp.com.au

* Francesco Contini is a senior researcher at the National Research Council of Italy, Institute of Legal Informatics and Judicial Systems (www.igsg.cnr.it). He studies the institutional transformations of justice systems focusing on the intersections between the rule of law, technology and democratic legitimacy of the institutions. He collaborates with international organizations to promote judicial reforms in Europe, Africa, and Asia and is regularly called, as invited speaker, at the Italian School of Judges and the European Judicial Training Network. Some key publications: *Judicial Evaluation* with Richard Mohr (VDM, 2008), *ICT and innovation in the public sector* (Palgrave Macmillan, 2009) and *The Circulation of Agency in e-Justice* (Springer 2014) both edited with Giovan Francesco Lanzara, and *Handle with Care: assessing and designing methods for evaluation and development of the quality of justice* (IRSIG, 2017). With Sharyn Roach Anleu and David Rottman he has been editor of the OSLS special issue *Evaluating Judicial Performance*. Email address: francesco.contini@cnr.it

* Patrícia Branco is a researcher, hired under the Scientific Employment Stimulus Program (CEECIND / 00126/2017). Centro de Estudos Sociais, Universidade de Coimbra. Contact details: Colégio de S. Jerónimo, Apartado 3087, 3000-995 Coimbra, Portugal. Email: patriciab@ces.uc.pt

epidemiological and socio-economic shocks. Disruption is a window into the underlying fabric of social arrangements. It allows us to investigate the concept of normality and its implications, the tensions and conflicts between economic, social, legal and technological means used to re-establish normality. Technologies of normalization may paradoxically cause further disruptions. Human dignity is a landmark value in these inquiries. The introduction and the papers suggest possible measures to anticipate disruptions and consequent harms. They alert us to the risks to human dignity arising from disruption and from attempts to reimpose forms of normality.

Key words

Disruption; normal; pathological; normalization; legal norms

Resumen

Los once artículos de este número especial analizan la forma en que diferentes fuentes de perturbación colisionan con la normalidad, las consecuencias en la vida individual, social e institucional, y los esfuerzos para restablecer lo anterior o crear una nueva normalidad. Surgen de una serie de seminarios online de septiembre y octubre de 2020 que investigaban la normalidad, la perturbación y la normalización en la estela de los shocks medioambientales, tecnológicos, epidemiológicos y socioeconómicos de la actualidad. La perturbación es una ventana al tejido subyacente de los acuerdos sociales. Nos permite investigar el concepto de normalidad y sus implicaciones, las tensiones y los conflictos entre los medios económicos, sociales, jurídicos y tecnológicos empleados para restablecer la normalidad. Paradójicamente, las tecnologías de la normalización pueden causar más trastornos. La dignidad humana es un valor referente en estas investigaciones. La introducción y los artículos sugieren medidas posibles para anticiparnos a las perturbaciones y consiguientes daños, y nos alertan de los riesgos para la dignidad humana provenientes de la perturbación y de intentos de reimponer tipos de normalidad.

Palabras clave

Perturbación; normal; patológico; normalización; normas jurídicas

Table of contents

1. Introduction	417
2. Sources of disruption.....	417
2.1. Environmental.....	417
2.2. Technological.....	417
2.3. Epidemiological	417
2.4. Social and economic	418
3. How disruptions unfold.....	418
4. Responses to disruption	419
4.1. Return to normality	419
4.2. Finding a “new normal”	419
4.3. Testing the limits of the normal.....	419
4.4. Collapse of norms	420
5. Normality, normativity and the rule of law	420
5.1. Normality as a hidden assumption in law	420
5.2. Studying up: Disruption from above.....	420
5.3. Law, knowledge and technologies.....	421
References.....	422

1. Introduction

The special issue presents a collective inquiry into different aspects of normality, norms and disruption. The choice of this topic was stimulated by the multiple sources of disruption affecting current times. What had been taken for granted as normality has been disrupted by various environmental, technological, epidemiological and socio-economic shocks. The papers respond to an initial call to inquire into the technologies of normalization. These include the information and communications technologies (ICT), as well as social and discursive technologies, including law. The norm itself is one of the most powerful of these technologies, whether employed in statistics, medicine or law.

In each of the contributions to this project, the normal is contrasted with some form of disruption. The different sources of disruption are analysed according to their consequences, including efforts to construct a new normal or to re-establish the old normality. These normalization efforts are underpinned by a range of legal, social, physical and electronic technologies. As will be seen, they are often in conflict with each other, and the balance between disruption and normality is mediated by these technical interactions.

The choice of the topic also reflects the wide range of researchers in the special issue, coming from different countries (Australia, Italy, the Netherlands, Portugal, and Romania), from different academic and professional backgrounds (law, sociology, political science, economics, and community development), and in different stages of their careers (between early career and senior researchers, as well as magistrates).

2. Sources of disruption

2.1. *Environmental*

Extreme weather events, such as floods and fires, are made more severe and frequent by climate change. They disrupt human affairs by threatening lives, destroying property, interrupting utilities and communications services, and blocking roads and escape routes.

2.2. *Technological*

The pursuit of disruption as a capitalist ideal goes hand in hand with technological innovations (Perez 2002). Information and communication technologies have been functioning as the primary disruptors in the early twenty-first century, coupled with financialization to become “computational capitalism”. Stiegler (2019, 123) has linked these developments to social and psychological damage at the “critical threshold of the Anthropocene”.

2.3. *Epidemiological*

While pandemics have always been foreseen by epidemiologists, the impact of the COVID-19 pandemic has come as a disruptive shock to social, medical and economic activity. The term “unprecedented” has been applied to so many aspects of its impact

that it was awarded “word of the year” status for 2020 by various English language dictionaries.¹

2.4. *Social and economic*

All the above sources of disruption have social impacts: the social impact of disruptive ICT and other “creative destruction” (Schumpeter 1954), leading to economic impacts (lost jobs and impoverished regions); the social and economic impacts of infection control measures (“lock-downs”, social distancing, collapse of tourism and travel); and the loss of lives (human and non-human), as well as the destruction of vital infrastructure, including housing, caused by catastrophic weather events, which then leads to impoverishment and the loss of jobs.

Disruption can also be generated independently *within* the social sphere. This is seen in the case of violence between intimate partners, young people and police: see the contributions of Casaleiro, Amato and Carnevali, and Branco and Pedroso. Yet even this socially generated disruption can be impacted by other disruptive cycles, including the economic. This is particularly notable when youth offending is concentrated geographically, linked to national and global factors such as globalization (Soumahoro 2019).

3. How disruptions unfold

In the different cases of disruption, there is a first phase of “incubation” (preparation and configuration) during which what will cause the disruption gets its shape, power and momentum. The case of exponential growth in COVID-19 is the clearest example, but similar dynamics occur in each of these fields. For example:

- Technological (and legal) components are created, connected and deployed;
- The virus starts to spread in communities;
- Carbon emissions create the greenhouse effect and global warming initiates feedback loops;
- The cycle of domestic violence begins with coercive control and psychological manipulation;
- Injustice and systemic racism incubate tensions between minorities and authorities.

Once the preconditions are in place it becomes difficult if not impossible to avoid disruptions escalating to catastrophic proportions: the most terrible bush fires in Australia, the woman killed by the partner, judicial independence put at risk by digital technology or a pandemic. For this reason it is essential to monitor and understand the preconditions that will trigger disruption.

This raises two issues. First, it is important to identify the preconditions that will cause the disruption. This is not easy because they are often hidden and difficult to spot,

¹ Indeed, the president of Oxford Dictionaries noted that the number of new words appearing in “word of the year” was itself “unprecedented”. BBC News 23 November 2020, *OED Word of the Year expanded for “unprecedented” 2020*. In Australia it had already been over-used to describe the bushfires of 2019, and then the floods of 2022. See <https://www.bbc.com/news/entertainment-arts-55016543> [Accessed 8 January 2021].

particularly in the first stages of the process. A series of warm winters may be understood as a random event, but are not necessarily understood as related to a global warming. The same may occur with early controlling behaviour in family violence or with the initial delegation of judicial tasks to digital technology. Those who identify the emerging preconditions risk being considered as apocalyptic or mythomaniac.

Yet even when the preconditions are clearly mapped out and the unfolding of events leading up to disruption is patently clear, we are not collectively able to stop the disruption. Indeed, action only becomes likely once the disruption has occurred (responses to disruption), rather than when the first symptoms of the disruption start to emerge.

4. Responses to disruption

4.1. *Return to normality*

Extreme disruption, whether environmental or epidemiological, is a powerful prompt to people's yearning for "normality". No matter how unrewarding or unsatisfactory "normal life" had been before, it acquires the glow of nostalgia in light of subsequent catastrophic disruption. This is one phenomenon that has prompted our inquiries into the desirability, and the very concept of the "normal". Is it possible to return to the old normality? The papers in this issue, even if implicitly, make clear that the return to the previous normality is impossible. The disruption leaves permanent consequences at multiple levels. Disruption is a component of the ongoing transformation of humankind and its environment. The paper by Rawsthorne, Howard and Joseph specifically explores the contests around the (re)construction of normality following disasters.

4.2. *Finding a "new normal"*

It may be a new year, but the same old question lingers: when will we get back to normal?... A better question, though, is what kind of normal should we be striving for now? Because, as any climate scientist will tell you, the old one was doing us few favours in the long term. (Leader 2021)

While some yearn to go back to some (imagined) prior state of normality, others advocate finding a "new normal". This is reflected in calls for resilience and adaptability or to "build back better", as well as technical preparations for climate catastrophe, improved ventilation standards or habitual good public health practices. Fundamental to defining and adapting to a new normal is finding suitable definitions and parameters for such a project.

4.3. *Testing the limits of the normal*

Discontinuities and disruptions are holes for penetrating into the underlying fabric of social arrangements. The collapse of our social and physical infrastructures, disrupting the everyday unfolding of actions and routines, makes visible elements and dynamics that remain hidden in "normal conditions" (Lanzara 2016, 3–4). Hence, the search for a new normal can benefit from viewing the old normal in a new light. Disruption shows the amount of trivial actions, and degrees of freedom that were taken for granted, but also rules, routines and behaviours that – while appearing as natural and necessary –

were actually false necessities (Unger 1987). The parameters of the new project should consider increasing the degrees of freedom and challenging false necessities.

4.4. Collapse of norms

In addition to its use as a statistical term, a “norm” can also refer to a rule, whether formal and legal, or to more informal “social norms”. Disruption often raises the spectre of a breakdown of legal or social order. This can occur most literally through criminal activity (looting), or through protests that add to the disruption. It has also been suggested that more generalised technical or economic disruption may in itself undermine the rule of law, as discussed in the following section.

5. Normality, normativity and the rule of law

5.1. Normality as a hidden assumption in law

Branco (2020) has shown that statistical concepts can be “smuggled” into legal decisions. This move masks any recognition of the transition from science to law, or from the empirical to the ethical.² It has also been shown that social norms, such as concepts of the “normal” family, have profound impacts on outcomes for young people in juvenile justice, from school and welfare interventions to policing and sentencing. Families and young people who don’t conform to an idealised family type become “objects for intervention through surveillance, adjudication and normalization” (Donzelot 1979, Carrington 1989, 304). Some of these implications are discussed by Casaleiro, Branco and Pedroso in this issue.

Such examples suggest that legal institutions and actors understand it as their role not just to enforce the law, but to enforce normality. This urge to normalize extends to architects and urban planners, as Nitrato Izzo discusses in this issue. Despite the common root of the terms “norm” (meaning a rule) and “normal” in a statistical sense, formal law is understood to be determinate and codified according to strict procedures. This contrasts with the enforcement of conformity to informally understood social or statistical expectations.

In the context of our inquiries into disruption as a condition opposed to and often in need of normalization, legal actors and institutions can be seen as agents of normalization acting against disruption. The agents of disruption, on the other hand, are generally seen to be minorities, criminals and other “deviants”. This is made explicit in the rhetorical coupling of “law and order”, expounded by authoritarian demagogues (including democratically elected ones), always aimed at these same “disruptive forces”.

5.2. Studying up: Disruption from above

It is possible to see another tension between law and disruption by “studying up” (Nader 1972). New digital technologies are well understood to disrupt the economic and social landscape. Despite the negative social impacts noted above, popular economic and political discourse tends to celebrate this disruption as part of the “creative destruction”

² On the concept of “smuggling” values into purportedly neutral discourse, see Smith 2010, 34-38.

by which capitalism advances, and institutions are “modernised”. Clearly, there will always be winners and losers as a result of technological disruption.

Here we focus on the systemic impact of this form of disruption, particularly in relation to law. This can be approached micro- or macroscopically. Macro studies identify the disruptive tactics of Silicone Valley and other “tech start-ups”. Stiegler cites the self-styled tech “barbarians” of France who explicitly set out to disturb “the established order”. In doing so, they challenge the rule of law, replacing it with the rule of fact, or at least dissolving the distinction, thus “render[ing] the very notion of law obsolete” (Stiegler 2019, 37, 40)

The “rule of fact” gained ascendancy in the White House as early as 2003, with Colin Powell invoking “the undisputable power of facts”, presumed to speak for themselves, to *establish* the “fact” of Iraq’s weapons of mass destruction (Latour 2005, 19). The tactic was spelled out in 2006 by an aide to George W. Bush, who stated that, as an empire, the US (Administration) created its own reality, simply through action (Mohr 2007, 106–7). Trump pursued a similar course of creating his own reality: not through action this time, but through Twitter, realising the potential of digital media. This has been taken to another level with the use of new and old technology to build the “reality” surrounding Putin’s “special operation” in Ukraine.

A steady-state image of capitalism sees recurrent technological challenges as creative opportunities for the next stage of progress. Even this view recognises that the challenge of technological disruption requires a period of normalization to overcome the crisis.

The introduction of digital technologies not only disrupts politics and economics. It has entered the inner sanctum of the law: the courts. Fine-grained analysis of the introduction of digital techniques and artificial intelligence highlights potential problems as well as nuances at the interface between ICT and traditional legal record keeping and decision-making.

5.3. *Law, knowledge and technologies*

We experience everyday life or institutional procedures as a state of normality *in retrospect*. Normality is only identified as such in contrast with, and subsequent to disruption. So what is this new state of affairs, the moment after disruption? We use terms like “disorder” (a state, like normality) and “crisis” (a moment, a rupture: disruption). Yet, for Canguilhem (1991, 194): “There is no disorder, there is the substitution for an expected or loved order of another order which either makes no difference or from which one suffers.” The difference between the normal and the pathological can be seen as a matter of adjustment to an environment. What is normal in one environment may be pathological in another. The move to pathology might derive from a change in the organism, in the environment, or in the relation between the two.

Humanity has always used tools to adjust to environments. Indeed, it might be said that technology is the means by which we adapt to and exploit our environments (in more or less destructive ways).

Legal techniques range from the means of regulating the use of land to all the other means of regulating private property and public obligations, insofar as these mediate our relations with the environment. The Greek “nomos” (law) was originally a portion

of land on which sheep may graze, related to a line drawn with a plough (Fitzpatrick 2001, 91–92). In contrast to this normal and uneventful operation of the law, we see the suspension of law in states of emergency or public health orders that address disruptions. Other administrative techniques seek to order disrupted situations by drawing lines between the normal and the pathological, as seen in Trabsky’s work in this issue on the classification of deaths during a pandemic. Velicogna’s contribution analyses how the growth of dispute resolution mechanisms integrated into platforms such as Amazon or eBay brings in new contractual and technological arrangement with disruptive impact on traditional court procedures.

Technologies may pose a direct challenge to the law, as in the case of the “tech disruptors” or, more subtly, when digital technologies enter into the procedures (see Onțanu’s article). They may also interfere with judicial independence and fair trial, or disrupt the decision-making at the heart of law, as discussed by Lupo, and by Contini and Reiling, also in this issue. Yet other technologies are often invoked to “fix” (or to normalize) environmental disruptions, for example through carbon capture and storage, or vaccination. These two examples have in common a dream of a “new normal” that is just like the old: it is hoped that these techniques will allow us to behave exactly as we did before the disruption; burning fossil fuels, or gathering in large crowds. Conversely, other techniques of adjustment might involve different human activities, by changing our energy use and sources, or our social practices. Such “social engineering” requires shifting norms, in both the legal and informal social senses.

All forms of knowledge are drawn into mediating the struggle between the normal and the pathological in the state of disruption. The sciences analyse, and often predict, the disruption: climate science, epidemiology, and the social sciences such as those collected here. Technical knowledge – engineering, medicine, cybernetics – informs the required technologies. In addition to this professional know-how, or *savoir-faire*, there is also the know-how of everyday life, a *savoir-vivre* (described in Mohr’s article here) which each one of us uses in living through a crisis or adapting to disruption.

References

- Branco, P., 2020. Adequate Food, Adequate Parenting? Critical Insights on Family Law (and Justice) and Parenthood Through Food. *Law, Technology and Humans* [online], 2(1), 19–39. Available from: <https://doi.org/10.5204/lthj.v2i1.1477> [Accessed 19 May 2022].
- Canguilhem, G., 1991. *The Normal and the Pathological*. Trans.: C.R. Fawcett. New York: Zone Books.
- Carrington, K., 1989. *Manufacturing Female Delinquency*. Unpublished PhD thesis. Sydney: Macquarie University.
- Donzelot, J., 1979. *The Policing of Families*. New York: Pantheon Books.
- Fitzpatrick, P., 2001. *Modernism and the Grounds of Law*. Cambridge University Press.
- Lanzara, G.F., 2016. *Shifting Practices: Reflections on Technology, Practice, and Innovation*. Cambridge, MA: MIT Press.

-
- Latour, B., 2005. From *Realpolitik* to *Dingpolitik* - or how to make things public. In: B. Latour and P. Weibel, eds., *Making Things Public - Atmospheres of democracy*. Karlsruhe/Cambridge, MA: ZKM/MIT Press, 14–41.
- Leader, 2021. As the pandemic fades, the climate crisis must take centre stage again. *New Scientist*, 2 January, p. 5.
- Mohr, R., 2007. Identity Crisis: Judgment and the hollow legal subject. *Law Text Culture* [online], 11, 106–128. Available from: <https://ro.uow.edu.au/lawpapers/44> [Accessed 19 May 2022].
- Nader, L., 1972. Up the anthropologist: Perspectives gained from studying up. In: D. Hymes, ed., *Reinventing anthropology*. New York: Pantheon, 284–311.
- Perez, C., 2002. *Technological Revolutions and Financial Capital: The dynamics of bubbles and golden ages*. Cheltenham: Edward Elgar.
- Schumpeter, J.A., 1954. *Capitalism, Socialism and Democracy*. 4th ed. London: Unwin University Books.
- Smith, S.D., 2010. *The Disenchantment of Secular Discourse*. Cambridge, MA: Harvard University Press.
- Soumahoro, A., 2019. *Umanità in rivolta: La nostra lotta per il lavoro e il diritto alla felicità*. Milan: Feltrinelli.
- Stiegler, B., 2019. *The Age of Disruption: Technology and madness in computational capitalism*. Trans : D. Ross. Cambridge: Polity Press.
- Unger, R.M., 1987. *False Necessity*. Cambridge University Press.