COMMUNICATION BETWEEN VALUES, SANCTIONS AND NORMS

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Abstract

When a person crosses a road without a pedestrian crossing, he or she commits a criminal offense. Admittedly, there is hardly an adult in the world who has not committed this act. But these people are very likely to be punished more in Switzerland, for example, than in Turkey. Without any doubt, these divergent practices can be explained by the cultural background, value system and infrastructure in these countries. First question is what does this observation and explanation say about the norms, everyday practices, habits and laws in general? The related question is, how is it that in everyday life we follow informal habits and cultural-religious obligations at least as much as formal laws? That there is a difference between them is usually not consciously perceived. At the same time, independent of the actors' conscious perception of their difference, they influence, indeed determine the way in which action is taken, thought about, and how the facts and concepts that present themselves are evaluated in the respective situations. Consequently, the third question is what are values and, related to this, in what they differ from norms. To answer these questions, a methodological distinction is made between sociology and philosophy. This differentiation allows on the one hand to look at norms and values from their genealogy and on the other hand to subject one's own orientations to a critical examination in the light of certain principles and these not only in everyday life, but also in science.

Keywords: Value, norms, sanction, facts, validity.

DEĞERLER, CEZALAR VE NORMLAR ARASINDAKİ İLETİŞİM

Öz

Bir kişi yaya geçidi olmayan bir yoldan geçerse suç işlemiş olur. İtiraf edilmeli ki, bu eylemi bu dünyada yapmayan tek yetişkin neredeyse yoktur. Bununla birlikte bu kişilerin Türkiye'ye nazaran örneğin İsviçre'de daha fazla cezalandırılmaları çok daha muhtemeldir. Şüphesiz, bu farklı uygulamalar bu ülkelerdeki kültürel geçmiş, değerler yapısı ve bizzat ülkelerin altyapısıyla açıklanabilir. İlk sorumuz şu; bu gözlem ve açıklama, normlar, günlük uygulamalar, alışkanlıklar ve yasalar hakkında genel olarak ne söylüyor? Daha da önemlisi, nasıl oluyor da gündelik hayatta en az resmi yasalar kadar gayri resmi alışkanlıklara ve kültürel-dini yükümlüklere uyuyoruz? Genellikle, bunların aralarında bir fark olduğu bilinçli olarak algılanmaz. Bununla birlikte, aktörlerin bu ayrışımı bilinçli olarak algılamalarından bağımsız olarak, yasal ve yasal olmayan kanun, kurallar, değerler ve olguları değerlendirmek için başvurduğumuz normlar bireyin eylemi nasıl yaptığını, nasıl düşündüğünü ve günlük yaşamda karşılaşılan olgular ve kavramları nasıl değerlendirdiğini etkiler, hatta belirlerler. Dolayısıyla üçüncü soru, bu değerlerin ne olduğu ve bununla bağlantılı olarak bu değerlerin normlardan farkının ne olduğudur. Bu soruyu cevaplamak için metodolojik olarak sosyolojik değerler ve felsefi normlar arasında bir ayrım yapılacaktır. Bu ayrışım, sadece günlük yaşamda değil, ama aynı zamanda bilimde de bir yandan norm ve değerlerin farklı kökenine bakılmasına, diğer yandan da kişi ve/veya kurumların yönelimlerini belirli ilkeler ışığında eleştirel bir incelemeye tabi tutmasına olanak tanır.

Anahtar kelimeler: Normlar, değerler, yaptırım, olgular, meşruluk.

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1. THE EMERGE OF NORMS

At the very latest, with the founding of nation states and the adoption of civil and human rights, we as human beings transformed a set of ethical-normative principles into the form of binding rights and duties. These were then codified as laws, ratified and passed into law in national parliaments (Luhmann: 2008c). The difference between them is that in contrast to the disregard of (one's own) customs and moral conceptions, the violation of the laws has material consequences, for the supervision of which the state has the monopoly on the use of force. In this way, morality, which was inherent in the exemplary nature of concrete leaders, was subjected to a rationalization through a generalization from individuals and abstraction from concrete circumstances (Levi-Straus, 1994: 31; Habermas, 1976: 97 ff). This process continues today. The input for that is coming from social movements, such as the Mee-Too movement, Black Life Matters, in the form of political demands, such as those for the environment, managing the cyberspace and governing international relations. In all of these cases, new norms are being generated on the daily basis.

Accordingly, in addition to existing normative and legal sources such as traditions, ethics and prescriptions derived from religious views, programs also emerge as neu sources of norms developed with the help of science. In fact, science as an endeavor under universalistic principles represents a prototype for an example of norm generation under purposive conditions (Weber: 1985b; Abbott: 1988; Stichweh: 1994; Chalmers: 1999). Among others are philosophy, mathematics, logic, computer engineering even specialized in norm generation. In line with this development, the next step was the differentiation of the existing norms; within the modern nation state and as a consequence of functional differentiation of society, each functional system today has its own value system with its own means, goals, purposes and motives (Luhmann: 1997b). Based on this thesis, it is assumed here that, just as in old, segmentally organized types of societies and just as individuals within the lifeworld take reflexive access to the principles of their ethics and morality only under certain conditions, for example, in cases of their problematization, so also within a functional system the explicit execution of the rules developed for certain purposes and values are *not always consciously* accessible to either the actors or the addressees. We can indeed observe even in experts in any field that they perform their actions with the utmost as self-evident, but are hardly able to explain to a third party why they perform in that certain way, which step they are going to take for which purpose and how. This example illustrates the fact that a system of values and rules, once established, is transformed from consciously performed actions into self-evident facts, which permits reflexive access only under certain conditions rationally set up for this purpose. The question is what does these conditions look like for values, norms and principles? How exactly are they developed where and what exactly is programmed with them for what purpose? In the following, we will deal with these questions.

1.1. SOCIOLOGY AND PHILOSOPHY

These are questions that have relevance not only in social science and public administration, but also in everyday life. In order to deal with these questions adequately, we will methodically distinguish first between first and second order and then between sociological facts and philosophical aspects of validity. This methodological approach will allow us to subject the existing norms to a critical examination by reviewing the existing literature on the subject according to this method. Traditionally, philosophers such as Aristotle in *Nicomachean Ethics*, Immanuel Kant in his *Critique of Judgment,* John Rawls (1971) and Jürgen Habermas (1992b) have been concerned with the validity of norms. They are articulating the question, under what conditions do norms legitimately claim a universal validity? The difference between these is also the difference between ethics and meta ethics; while the first asks the question „what should I do", is meta-ethics about more general question, like „what is good"? Aristotle and Immanuel Kant are among classics in that area. Within these philosophical considerations there are two types of questions; what types of norms are good for me

or for us and what types of norms ar good at all, for every human being, indeed for every living being. In the end, while ethics and moral philosophers like John Rawls deal with the first type of questions, Jürgen Habermas as a political philosophers deal with the second type of questions from a metaethics view of point. Consequently, while Rawls, for example, posed the question of how to achieve a just society within liberalism, Habermas posed the question of under what conditions is the inclusion of others possible, or how reconciliation can be achieved through the public use of reason (Rawls, 1975: 86 f; Habermas, 1996c: 65-95).

This has consequences for the whole social science. So classics in sociology such as Max Weber (1986c) and Emile Durkheim (1981b; 1991d) have joined the question of how norms bind individuals to society. Weber and Durkheim have dealt with morality, values, norms, and sanctions in their own ways and methodological approach. Durkheim saw morality as a sphere of community in which it motivates the individual to act in a desirable way. In his work under the name of *Suicide*, Durkheim saw the function of norms in voluntary self-punishment for the benefit of society (Durkheim: 1983c). It is vital to see that Durkheim is here concerned with the social reasons for suicide and not with suicide itself. Consequently, he is interested in the residuals in different societies and not, to give an example, in the question of how suicide can be justified from the principle of self-determination. A similar observation can be made for Max Weber's research interests. Thus, in his famous introduction, he asks himself the question;

> „the son of the modern European cultural world will inevitably and justifiably deal with universal-historical problems under the question: what concatenation of circumstances led to the fact that precisely on the soil of the Occident, and only here, cultural phenomena appeared, which nevertheless - as at least we like to imagine - lay in a direction of development of universal significance and validity?" (Weber, 1986c: 1)

The focus here is on „we". It is a matter of self-definition, even if the author gives his subject a universalistic claim. It is about an ethics that claims universalistic traits or the demand on social scientists to at least acknowledge the traits that are considered by him as universalistic. Whichever way we turn, it is about the basic features of an ethics and not about meta-ethics.

At the same time, we can also note certain differences between Durkheim and Weber; We can see the difference between them in the fact that Durkheim, in contrast to Weber, separated value orientations factually guided by practical motives from norms derived from moral principles. This is essential insofar as in what follows we will distinguish between two types of values and punishments associated with them, which are complementary in their genesis only when the latter is subjected to philosophical evaluation as sociological facts. With this background and thesis in mind, two questions will be addressed below and first at the sociological level; what are values and how do they arise as a bundle of motivating/rewarding and sanctioning/punishing devices? Then, using Habermas' theory of discourse, a suggestion will be made as to why practical motives are already separable from moral reasons at the sociological level. Finally, it highlights what the added value is from this distinction.

2. VALUES AND THEIR ORIGIN

There is an internal relationship between conduct, behavioral rules, values, formal laws and norms. In fact, some informal expectations, values, and principals function as if they were formalized legal rules, even though they are not written down anywhere, are not mentioned in any law, and do not claim formal validity. We can see their effect in the fact that actors rely less on formally regulated, state-monitored laws than on these informal expectations (Parsons, 1951: chapter VII; Ellickson: 1991a; Ellickson, 2001b; Horne, 2001: 20 f). A good example of this is Niklas Luhmann's contribution (Luhmann: 1995a). He drew on the strength of local, culturally handed-down customs and Italy's weak state structures to explain the strong impact of Italian mafia organizations on the respective local populations (Luhmann: 1995a). Here, formal, legal laws compete with an expectation

system that is at odds with the political system and the judiciary, but achieves de facto a much higher effect. The actors obey the informal laws as if they were the legalized and legitimized law. With this, as long as the Italian state is not able to count on the loyalty of the people by ensuring that citizens consider the formal, state-supported laws as their own, as long mafia organizations will be able to count on the obedience of the people in that specific area. „For a norm to be present, expectation must be enduring and have a certain stability. They must appear with regularity each time a certain type of situation arises." (Aubert, 1967: 24) Trust in habits and customs is therefore abandoned in favor of a governmental, formal norm only if the new, formal norm is at least as reliable as the old, informal values over a certain period of time and in as many situations as possible. Empirically, the validity of formal laws can then be measured by the confidence of the addressees to rely on these new laws in times of crisis just as well as they had always relied on old familiar habits and customs, some of which had been developed over centuries.

A similar effect can be claimed regarding rules on the road in Turkey. Hardly anyone in Turkey drives *without any exception* according to the prescribed rules passed by the national parliament. Although there is a speed limit, very few people follow this rule. Although traffic rules also in Turkey are designed by law to protect pedestrians, the common, accustoms law overrides these. Car drivers hardly adhere to the legally prescribed norms. Since pedestrian crosswalks are hardly observed, pedestrians are usually at the mercy of motorists. Although the government has conducted several campaigns against this habit, it rarely has any factual consequence in behavior. Consequently, there is an awareness that the law of the strongest is the norm on Turkish roads, even though people do not consider this to be right or just. The attempts to recognize the rights of pedestrians with a kind of public awareness seem to work only on the level of consciousness without practical consequences in everyday life. As a result, cities such as Trabzon have begun to use increased traffic signals and other physical boundaries to force drivers to respect pedestrians' rights.

This examples also exemplifies the tension between legality and legitimacy. As long as the addressees do not follow a norm out of inner conviction and voluntarily, as long as the laws are perceived, in Ehrlich's words, as mere rules recorded in law books and not as lived law, they remain de facto ineffective (Ehrlich, 1913: 409 ff). According to Ehrlich, legal rules that „have remained mere decision norms" do not deserve the attribute „law" because they are „merely applied by the courts, preached from the pulpit, or taught in books and schools" but are not actually practiced and in that sense „lived" (Ehrlich, 1913: 47).

On the other hand, from the sole orientation to the living law, the living practice, not only does not legitimacy emerge, but also bears the danger of legitimizing already existing rule on the basis of facts alone. In order not to make precisely this mistake, Max Weber distinguishes between legal and legitimate ruling (Weber, 1980a: ch. III, § 2, p. 122 ff). Weber emphasizes that every ruling is ultimately based either on a factual, legal power or on a normative legitimacy, validity (Weber, 1980a: ch. III, § 1). In the first case, ruling is supported by customs, traditions, economic power, or coercive apparatus. In the second case, a legal norm provides its basis for action (Weber, 1980a: 181)

Coming from both points of view, norms can be considered, to speak with Parsons, as a value pattern, value system, wherein fragile expectations are mutually stabilized.

„A value pattern in this sense is always institutionalized in an interaction context. Therefore there is always a double aspect of the expectation system which is integrated in relation to it. On the one hand there are the expectations which concern and in part set standards fort he behavior of the actor, ego, who is taken as the point of reference; these are his ‚role-expectations.' On the other hand, from his point of view there is a set of expectations relative to the contingently probable reaction of others (alters) – these will be called ‚sanctions', which in turn may be subdivided into positive and negative according to whether

they are felt by ego to be gratification-promoting or depriving. The relation between role-expectations and sanctions then is clearly reciprocal. What are sanctions to ego are role-expectations to alter and vice versa." (Parsons, 1951: 24)

Horn keeps these three models mentioned by Parsons apart. In her paper, she considers norms from the perspective of ego (Horne, 200: 5-9), from the perspective of age (p. 9-11), and from a negotiation perspective between ego and age (p. 11-14), and brings these three separate perspectives together in her model (Horne, 2001: 14-18) by distinguishing between action and actor on the one hand, and considering the utility of an action from the perspective of its respective consumer and beneficiary, as well as from the action as such, on the other. Her conclusion, which is consistent with Parsons' position, is that both in the interrelation *between* actions and *in the* action itself are part of an institutionalized system of expectations. „Norms will reflect the goals of group members - taking into account the consequences of their own actions as well as those of others. This argument implies that, in some situations, norms will appear to reflect behavior, whereas in others, they will constrain actions that produce externalities." (Horne, 2001: 16)

This structural-functionalist perspective assumes a system of value, even though we live in pluralistic societies. Indeed, it says nothing about what might be the difference between orientation, regulation, values and norms. Rather, it states on the factual level how they work. On the other hand, the world of values and norms extends from latent, internalized, reciprocal to implemented norms to a variety of phenomena, such as habits, customs, conventions, laws, role expectations and abstract norms (Horne: 2001; Aubert: 1967). In addition, depending on the discipline and within the same discipline, these terms are used differently.

2.1. GENESIS OF NORMS

For a better clarification of what exactly norms in the sense of values are, what they do and how, we can distinguish them from a sociological perspective in terms of their emergence according to whether they are formal and informal norms. Informal norms emerge spontaneously from a lifeworld horizon, while formal ones are intentionally created for a specific purpose. Formal norms are mainly dealt with by jurisprudence (Luhmann: 2008c; Habermas: 1992b), classical sociology (Durkheim: 1976a; Weber: 1986c; Rauhut and Jud, 2014); logic, political science (Hobbes: 1976; Axelrod: 1984), economics (Hayek: 1973; Vanberg: 1994; Bacharach and Gambetta: 2001), and International Relations (Keohane: 1982), while the former classically belong to the research fields of phenomenology, sociology, ethnology (Body and Richerson: 1985), anthropology (Bird and Smith: 2005), education (Rousseau: 2001).

Although we have just distinguished the norms according to their types, their sources, and assigned them to the various fields of research in terms of their logic, this does not yet explain their genesis. How do new norms emerge? What does it take for a norm to prevail despite many alternatives? These are not easy questions because the exact process of the emergence of new norms, their selection, and the more precise conditions for their change have not really been clearly worked out (Centola and Baronchelli: 2015; Ellickson: 2001b). Therefore, Helbing and his coauthors take up the challenge of explaining the process of the emergence of norms within heterogeneous societies with a mathematical precision. They want to know under what conditions do a multiplicity of norms coexist simultaneously in a space, when does a society fail to develop norms that bind all individuals living in it according to their own preferences? „Our main question is how and when shared norms emerge in societies with groups that have incompatible preferences and no shared regulatory interest." (Helbing et al., 2014: 2) They test this question in a computer simulation.

Helbing and colleagues' model is based on seven assumptions. First, they assume that the emergence of norms requires externalities, the coordination of which presupposes collective action.

According to the second assumption, a norm formation process requires the enforcement and maintenance of a system of punishment and reward. Third, strongly binding norms are most likely to emerge in tightly woven networks, that is, within a particular lifeworld in which actors assume, at least implicitly, recurrent interactions with respect to their social relations. They complement these three aspects with four further assumptions; According to these, norms are path-dependent, regardless of their content. The concept of path dependency has been developed especially in political science, according to which history counts (Braudel, 1972: 190). Every decision is based on the previous decisions. Accordingly, there is a critical moment in the implementation and control of programs that shapes the later stages of the path taken (Hall and Taylor, 1996: 941 f; Thelen, 1999: 384-388). In addition to path dependence, norms, according to Helbing and his colleagues, are characterized by local consensus and global diversity, so that different local norms can exist in different places. Finally, norms can vary abruptly and with a sharp boundary from one area to another and from one group to another (Helbing, et al., 2014: 5).

The results of their computer simulation model confirm the assumptions they made. The authors find that if the majority in one society strongly follows a particular norm from the beginning, but the same norm is not followed with the same intention in another society, the majority of people from both societies end up adopting the norm in question anyway. On the other hand, if only a part of a society follows a certain norm and the same norm is followed in another society but also only by a similarly large proportion of the population, the majority of both societies will not adopt the norm:

„However, if a majority of individuals in population 1 initially shows the behavior preferred by population 2 ($p_1<1/2$) and the individuals of population 2 are very committed to their preferred behavior ($p_2>1/2$), the individuals of population 1 will adjust to this behavior, i.e. population 1 will assimilate to population 2. (…). Finally, if the fraction of individuals initially showing their preferred behavior is about the same in both populations ($p_1≈p_2$), none of the behaviors will gain the majority. In this case, the majority of individuals ends up doing what they prefer.“ (Helbing et al., 2014: 7)

In other words, in the latter case, no binding norm develops. According to the authors, binding norms also do not develop if the binding nature of the norm is not strong enough in both societies. On the other hand, an unpopular norm of a minority can prevail if the minority holds this norm with a strong conviction from the beginning. With regard to local cultures, they make a pessimistic prediction of a general nature, according to which these would disappear over the course of a „long“ time (Helbing et al., 2014: 8).

2.2. NORMS AND SANCTIONS

Having just described the emergence of norms, the next question is how norms relate to the sanctions for which they were developed to regulate? Norms are by their nature inclusive *for all*, while sanctions represent exactly the opposite and are consequently exclusionary *against some*. Having put that, there is an internal relationship between inclusive norms and exclusionary sanctions. The question is therefor with which type of norms is which type of sanctions preferred? Intuitively, we would assume a structural correlation between informal norms and internal sanctions on the one hand, and formal norms and external sanctions on the other. From a political science perspective, a popular initiative initiated in Switzerland by the Swiss People's Party (SVP) is illustrative example for a study the relationship between norms and sanctions. Its core idea was transported to Switzerland on the model of „three strikes and you are out“. According to that, young people born in Switzerland without Swiss citizenship were to be deported after three offenses to their parents' countries of origin. Precisely because some of these young people have never seen their parents' country and have no lasting connection to the language, culture and people there, the initiative divided the Swiss electorate into antagonistic for and against camps, which hardly contradicted the intention of the initiators. At the same time, contrary to the communicated goal of the initiators, the initiative led to a conscious,

explicit confrontation of political culture in the country. Having reached this point, attention turned from pragmatic „three strikes and you are out" campaigning to a public discourse on the internal relationship between sanctions, values and their political legitimacy in light of certain principles.

With regard to sanctions, this initiative illustrates a general tendency according to which normatively preferred conditions should be left less to intrinsic, internal motives for cooperation on the part of individuals, but rather should be precisely regulated by the judiciary according to the factual logic of a coercive apparatus. Indeed, during the campaign, the initiators of this popular initiative argued that social norms would disappear without external sanctions developed by the judicial system, monitored and, if necessary, enforced with disproportionate force of arms by state, which is why harsher and deterrent punishments are necessary in the case of norm violation.

Opponents of this initiative argued in return that these young people were born into Swiss culture and grew up here, which is why their failure is also society's failure to socialize them according to its values and norms. Especially since young people are more prone to violence and criminality regardless of their culture and socialization, the question arises in this context whether an external authority equipped with means of power in the sense of Max Weber is also necessary in these cases in order to get juvenile delinquency under control. Opponents on the other hand argued that juvenile delinquency can be explained, for example, from a neuropsychological and developmental point of view, by the weak formation of the internal moral faculty of the juvenile brain. Therefore, instead of expelling the children and adolescents in question, they should be helped to understand by gentler, pedagogically and much more effective means with long lasting result.

In the case of children and adolescents, it is not the act but their very person that should be the focus of the discourse. Scientifically, there are good reasons for treating juveniles differently from adults, even if they are sentenced to prison: „In juvenile facilities, where the focus is on rehabilitation, adolescents receive counseling and go to school. It's no picnic, but it is much more forgiving than jail. In jail, this sole emphasis is on punishment." (Steinberg, 2014: 67)

From the perspective of the initiative's opponents, the crime at issue is juvenile crime, not crime by foreigners. Juveniles remain juveniles regardless of where they are located. From this perspective, it is a societal, social challenge that can and should be solved within the norms of the living world, in the sense of lifeworld. For this, they do not need excessive punishments such as the exclusion from society or the incarceration of barracked armed force. Instead of these, they make proposals that are more effective in their output, less costly, and can be implemented with means that set at a lower level. In fact, especially morally internalized norms can functionally achieve the same effect as legal requirements formally employed by the state. Functional, within a lifeworld, the participants also have the two sanction options, namely „exit" and „voice", without therefore having to set the mills of the entire justice system in motion. In fact, in the case of an „exit," the relationship with the norm breaker is terminated by seeking another interaction partner within the social network, within lifeworld. In the case of „voice," the norm-breaker is threatened with the sanction of, for example, making known the norm-breaking committed (Hirschman: 1974).

In both cases, the potential norm breakers are thus motivated to cooperative behavior by activating either an external coercion (social network) or an internalized, internal authority (morality/shame) in the sense of a sanctioning authority, for which a justice system equipped with armed force does not yet have to be invoked. The motive for cooperation in these cases can be traced back to a need for social norms such as trust, reputation and reliability. In the case of teenage mothers, for example, it has been shown that in certain places with high unemployment and low educational levels, pregnancy is a way for many young women to gain positive attention within a society (Fernandez-Kelly: 1995).

In such cases, motivation from society is imposed on an individual in such a way that the individual accepts society's power to reward and/or sanction as her own and follows them. As observers, we can see in these cases that people follow them as strongly as if they were the law of a legitimized rule of law. Their persistence goes back to the culturally embedded system of expectations. Especially since the actors in a lifeworld that is closely interwoven by means of cultural imprints assume that they can rely on each other, there is a high demand for accepted norms within a closely interwoven lifeworld and at the same time a high willingness to integrate them into everyday life and thus also a high motivation to keep the costs of externalizations high (Heckathorn: 1990).

2.3. FIRST- AND SECOND-ORDER

In other words, a distinction can be made between formal and informal norms, and internal and external sanctions, but functionally, at least from this perspective, they have no significant differences. As long as it does what it promises. Does it now follow from that there is no need for state coercion? Can we now solve all problems with life-world norms and rely on people doing the right thing out of inner conviction? The conceptual distinction between first-order and second-order problems helps to answer this question. At the level of society as a whole and functionally, punishment/sanctioning is a collective good that the state, with its monopoly on the use of force, has the necessary security, defense and sanctioning to ensure. In the process, problems and thus costs arise which, depending on the position, are (not) legitimately develop by society as a whole. The presumed structural correlation between informal norms and internal sanctions and between formal norms and external sanctions falls short where norms and punishment are localized on two different levels. Therefore, in social research we do differentiates between first-order and second-order problems. From that point of view, it is a first-order collective good problem,

> „when it is a matter of behaving in a norm-compliant manner and contributing to the production of a collective good, such as environmental protection or public safety. One speaks of a second-order collective good problem when it is a matter of incurring costs to sanction norm-deviant actors who do not contribute to the production of a collective good. While the first-order collective good problem refers to the emergence of social norms, the second-order collective good problem problem problematizes the enforcement of those norms." (Rauhut and Krumpal, 2008: 383)

The concepts of 1st and 2nd order go back to Ludwig Willhelmys (1851), who actually represented a concept of 0-order to n-order. From Willhelmys kinetics (kinesis=movement) they make their way into Norbert Wieners (1948) cybernetics, on which sociological systems theorists such as Tallcott Parsons, Heinz von Foerster (1911-2002), Maturana and Francisco (1987), and N. Luhmann (1997b) borrow. Sociologically, the question is how social stability is possible despite change (Parsons and Shils, 1962: 47-110; Parsons, 1968: 436 f). On a theoretical level, the first order refers to continuity, while the second order refers to discontinuity. Based on epistemology, Luhmann highlighted from this not only the respective perspectives of ego and alter, but also the difference between observation, information and communication (Luhmann, 1997: 336, 360). In terms of action theory, the question is how actors can transfer continuity to discontinuity in an orderly way, that is, without revolutions, in order to continue there again in the old order under new conditions. How can we change everything so that we (re)establish the (old) order - a paradox discussed by Giuseppe Tomasi di Lampedusa, the author of the novel, the *Leopard*.

The discussion above still says little about how and whether social norms are to be enforced with informal or formal punishments according to their nature. Factually, a formal punishment is enforced by instances institutionalized and socially recognized specifically for this purpose, which is what the justice system specializes in. Citizens contribute to this, if only by abiding by agreements, pursuing an activity, raising children, cooking, learning and passing a traffic light. On the other hand, the establishment of second order requires a highly personal, conscious commitment that goes beyond

everyday life. In contrast to external punishment, here the punishing person must be largely autonomous to bear the costs of detection and the consequent costs of punishment themselves (Rauhut and Jud, 2014: 155). That this system of informal punishment or reward is effective and efficient has also been empirically confirmed by corroborating the correlation between neighborly levels of control and adherence to social norms (Ellickson: 1991a; Sampson et al.:1997). This punishment and reward system only works within a culturally defined lifeworld in which actors, instead of externalizing their problems and costs, internalize, actively and themselves address societal challenges. Intuitively, a solution is vigilantism and/or to privatize this collective good, public safety, by punishing the perpetrators. Vigilante justice would put the rule of law into jeopardy and would beside other consequences throw the principle of proportionality into disarray. Another solution is privatization. In this way, for example, a private company would help the actors to find out who the norm breaker is in the most cost-effective way. In certain countries, the justice system is indeed being partially privatized. The experience is not encouraging (Eisenmenger: 2012; Zado: 2013).

Moreover, the first- and second-order problem arises when there is no differentiation at the theoretical level between norms and values, and norms are used to address problems that arise from not following values. The result at the sociological level is that binary formal-informal and internal-external coding fail. The lack of differentiation is also transferred to ambiguity by calling internal punishment „altruistic punishment" for the reason that in this case actors willingly bear the costs of punishing free-riders (Fehr and Gächter: 2000a; Fehr and Gächter: 2002b). Although punishment has the attribute „altruistic", its reasons do not stem from moral altruism in the sense of Rawls (1971: 477 f) or Habermas (1991a: 150 f), but from its selfish, ethical, practical rationality.

> „Here, it is argued that cooperation can be worthwhile if the actors involved assume a sufficiently high subjective probability of encountering the same actors in a similar dilemma again in the future. If the shadow of the future is sufficiently large, cooperation is worthwhile even for rational egoists, since the expected gains from future cooperation are higher than the gains from one-time defection." (Rauhut and Krumpal, 2008: 382)

Accordingly, for rational-egoistic reasons, these actors gain the insight that altruistic punishment is better in the long run than turning a blind eye at a time and/or setting up expensive (state) structures to punish them (Fehr and Gächter: 2002b). The costly sanctioning is explained by the expectation of recurrent interactions in social networks or the shadow of the future. Conversely, according to this approach, actors gain the insight that without an altruistic punishment cooperation will be rendered impossible in the long run.

On the sociological level, according to Rauhut and Jud, the approach of altruistic punishment comes up short especially in cases where a society cannot delegate this expectation to individuals at all, if only because of its size. In many cases it is not only the anonymity, but also the fact that the victims, for example in the case of doping in sports or organized crime, are not even able to recognize the respective perpetrators. In these cases, the problem is already to identify the perpetrators and/or, in order to punish the perpetrators, to bundle the necessary and required power with their resources in such a way that the perpetrators can be forced to cooperate (Rauhut and Jud, 2014: 155).

On the theoretical level, on the other hand, the problem is that in both cases purposive rationale for a particular action (sanctioning/rewarding) is invoked, but a moral consequence is expected. Functionally, in the case of sanctioning or rewarding actions, the values are treated in terms of norms, although the problem arises at the level of values and therefore the solution, i.e. the sanctioning or rewarding action would also have to be sought there. They are neither moral problems, nor moral justifications, although the actors act altruistically. This altruism is about values and not norms. Altruism is a term of moral practice, while altruistic punishment is about justice within a society, which have a basic framework of solidarity, not morality. In this respect, altruistic punishment is about no-solidarity than about injustice.

The problem is thus that sociological means are used to address philosophical-moral questions, which leads to problems and alleged solutions that are not problems at all. Nothing changes in this structural problem if instead of internal sanctions the external ones, or instead of formal norms the informal ones, even better values, are used for explanation. As long as norms are interchanged with sociological-empirical motives, there is no solution either for the problem of the first or the second order. Because the problem in this case is not only in two different levels, systems of order (first nor second order), but also in two different spheres (sociology and philosophy).

2.4. HABERMAS DISCOURCE THEORY

A possible solution has been proposed by Jürgen Habermas. The system-theoretical proposal of the distinction between first and second order corresponds to Habermas' differentiation between values and norms. Norms are the subject of meta-ethics, which deal with the general principles that claim to be universal. In contrast, values can be of religious-cultural origin, as well as developed within a single department, domain and functional system. Here, besides Aristotle and Immanuel Kant, especially Jürgen Habermas belongs to the philosophers who have made the corresponding proposals for both fields. Habermas started to develop his concepts with his *Theory of Communicative Action* (Theorie des kommunikativen Handelns). This was followed by his theory of discourse (1991c) and his opus magnum, *Between Facts and Norms* (Faktizität und Geltung) (1991a). The content of these works probably belongs to a next post. But the core of his ideas concerning values and norms is given in the quote below.

> „In the light of norms it can be decided what is to be done, in the horizon of values what behavior is recommended. Recognized norms oblige their addressees without exception and equally, while values express the preferability of goods that are considered desirable in certain collectives. While norms are followed in the sense of fulfilling generalized behavioral expectations, values or goods can only be realized or acquired through purposeful action. Furthermore, norms appear with a binary claim to validity and are either valid or invalid; to normative propositions, similar to assertoric propositions, we can only take a position with „yes" or „no" - or abstain from judgment. In contrast, values establish relations of preference, stating that certain goods are more attractive than others; therefore, we can agree more or less with evaluative propositions. Furthermore, the oughtness of norms has the absolute sense of an unconditional and universal obligation: the ought claims to be equally good for all (or for all addressees). The desirability of values has the relative sense of an assessment of goods that is ingrained or adopted in cultures and ways of life: grave value decisions or higher-order preferences say what is good for us (or for me) on the whole. Finally, different norms, if they claim validity for the same group of addressees, must not contradict each other; they must stand in a coherent context, i.e. form a system. Different values, on the other hand, compete for primacy; insofar as they find intersubjective recognition within a culture or way of life, they form flexible and tense configurations. In summary, then, norms differ from values, first, in their references to various types of rule-governed or goal-directed action; second, in the binary or gradual coding of their claim to validity; third, in their absolute or relative bindingness; and fourth, in the criteria that the context of norm or value system must satisfy." (Habermas, 1996c: 72 f)

This differentiation has the advantage that everything, regardless of its genesis, can be subjected to evaluation according to principle. According to Habermas, this principle is to be developed in a theoretical discourse and then applied in the practical discourse under certain conditions, such as publicity, equal participation, truthfulness of the participants when arguing and the unconstrained nature of the opinions (Habermas, 1991a: 132). Therefore, instead of a bogus solution and having identified the problem precisely, we can make a distinction with Habermas at the theoretical level between norms and values and thus between legality and legitimacy, between facts and norms. The conditions proposed by Habermas, such as publicity, equal participation, are precisely norms that are consciously applied and can, in the course of time, take the form of rituals, which, however, in the case of their questioning, unlike habits, can be recalled to consciousness and are thus also the object of a next rationalization.

3. CONCLUSIONS

We can draw three conclusions from what has been written. First, norms are essential as patterns of orientation in Parsons' sense of a common, peaceful coexistence based on cooperation and mutual trust. They are the basis for silent revolutions, as Ronald F. Inglehart would put it. They are the reason, the source for change and stability. Without this foundation, there is no education, art, science, or culture in the broadest sense. Secondly, not so much the sociological approaches discussed and the explanation therein, but the fact that as a result of the rationalization of the living world and the differentiation of pluralistic forms of life in society, the emergence of values and norms is scientifically processed, can be taken here as a starting point for an explanation of what leads to problems in post-traditional societies and how new values can be generated here. The sociological discourse on values and norms illustrates both the multiplicity of problems and the multiplicity of possible solutions and (the adaptation, connection, and expansion of new) sources for generating new propositions. This has become all the clearer since the Covid-19 Pandemic and the regulations of life during that time. Third, the difference between legality and legitimacy remains in relation to norm development and norm application. Sociologically, this difference can be conceptualized in terms of the differentiation between first and second order. But this does not solve the problem underlying them. Rather, it needs a philosophy consideration that subjects the facts to a logical-critical evaluation. One proposal has been put forward by Habermas in his discourse theory. In it, he factually proposes a new type of norm generation, namely norms reconstructed from the genesis of existing traditions and moral theories handed down socially through culture and language, and at the same time subjected to evaluation in the light of principles obtained with the help of social science, philosophy, formal logic, and so on. From this he distinguishes the values that can be obtained in practical discourses within the framework of discourse ethics. The need for the connection of new sources of norms, justified, which can claim legitimacy beyond factual legality, characterizes contemporary societies.

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