

P·E·R

Pioneer in peer-reviewed,
open access online law publications

Author

Reinhard Zimmermann

Affiliation

Max Planck Institute for
Comparative and International
Private Law, Hamburg, Germany

Email

r.zimmermann@mpipriv.de

Date Submitted

22 September 2022

Date Published

27 October 2022

Guest Editor Karl Marxen

Journal Editor Prof C Rautenbach

How to cite this contribution

Zimmermann R "Re-orientation"
PER / PELJ 2022(25) - DOI
<http://dx.doi.org/10.17159/1727-3781/2022/v25i0a14838>

Copyright



DOI

<http://dx.doi.org/10.17159/1727-3781/2022/v25i0a14838>

From the autumn of 1347 onwards, the bubonic plague spread throughout Western Europe. It had been carried in ships along the Mediterranean trade routes and was the cause of what came to be known as the "Black Death". It first came to Sicily and Genua and from there to the South of France; in the spring of 1348, it reached Paris, in the winter of the same year London and, in the course of 1349, the territories of what is now Germany. "The epidemic of 1347 – 1350 was the greatest demographic catastrophe which Europe suffered in its recorded history", Jonathan Sumption writes in the second volume of his history of the Hundred Years War. More than one-third of Western Europe's population died; in Southern France, the death toll was even higher. Only in the 16th century did Europe reach the same population density as before the outbreak of the plague. Contemporaries understood the Black Death as God's punishment, given that "the wickedness of man was great in the earth" (Genesis 6,5). Shock and despair about the triumph of death did not, however, improve public morality. Rather, the contemporary chronicler Matteo Villani described how those who survived "engaged in greater depravity than had been known before". The Hundred Years War was also only briefly interrupted. The truce following the capture of Calais was extended at first, but by 1349 it had already ended. "Return to Arms" is the title given by Lord Sumption to the next chapter of his book, covering the period 1349 – 1352. One feels reminded of a poem by Theodor Fontane, which starts with the words:

The rising flood reaches Ararat/The waters are roaring and streaming/But the dove returns, and then that's that/They go on teeming and scheming" (*Die Flut steigt bis an den Ararat,/Und es hilft keine Rettungsleiter/Da bringt die Taube Zweig und Blatt/Und es kribbelt und wibbelt weiter*).

Four hundred years later, Europe had reached the age of Enlightenment. Faith prevailed in the principles of natural justice, which apply even if it is supposed that no God exists; trust was placed in the ability of man to appreciate,

on account of his reason, what is right and to adjust his actions accordingly; it was the time when the foundations of public international law and of the recognition of human rights were laid; and the natural sciences experienced an unparalleled ascent. Gottfried Wilhelm Leibniz taught that humankind lives in the best of all possible worlds, and that idea appeared to provide a convincing justification of God because of his power, wisdom, and kindness. Similarly, in England, Alexander Pope held: "Whatever is, is right." That was the intellectual climate when, on the morning of 1 November 1755, a tremendous earthquake occurred in Lisbon, followed by a devastating fire and an enormous tsunami. As a result, the capital of the Portuguese colonial Empire was largely wiped out. It is estimated that up to 100.000 persons died in Lisbon and its surroundings – many of them during the Holy Service, for it was All Saints Day.

That natural disaster, more than anything else, shook those living in the second half of the 18th century and influenced their worldview. The problem of the theodicy now appeared in a different light. How could it be claimed, given an event such as this, that whatever is, is right? In his autobiographical account "Poetry and Truth" (*Dichtung und Wahrheit*), Johann Wolfgang von Goethe remembers how deeply this "extraordinary event" affected him as a six-year-old boy:

God, the creator and preserver of heaven and earth had, by surrendering the just and the unjust to the same destruction, by no means proved to be a good father.

The leading writers and intellectuals of the age, Voltaire, Rousseau, Kant, Kleist, Lessing and many others, participated in the discourse revolving around that question. Once again, it can be asked whether the collapse of the prevailing worldview led to a revision of individual morality, social behaviour, and political reality. Significantly, in the course of the following year, the Seven Year War broke out: a war that affected all major European powers, that spread to many parts of the world outside of Europe, and that can thus be labelled a first world war.

Like the bubonic plague of the 14th century (and other epidemics, from the Justinianic plague of late antiquity to the so-called Spanish influenza of 1918 – 1920), the "Corona"-epidemic, which affects us today, is not just a once-off event. Like the earthquake of Lisbon, it strikes a world characterised by its belief in progress. How do we deal with the pandemic, and how do we react to it? Will it recondition our awareness and change the way we behave? Or will everything be as it has been before once the pandemic has been stamped out?

Our life has been, in some respects, retarded during the "Corona" crisis. We are travelling much less, and if we travel, it is to destinations reasonably close. In particular, we have to do without air travel – and we begin to think whether it is

really necessary in every case. For many of us, the chances of personal contact have been significantly curtailed. Several activities have been stopped or can only be pursued online. Interaction in the classroom, in a seminar, or in meetings has been limited. "Home-schooling" disadvantages those who do not receive support at home and thus further increases the imbalance in educational opportunities. If live conferences or academies must be abandoned, this curtails the possibilities of chance encounters and unpremeditated impulses, which can be as important for a person's education as the purposeful working-through of a fixed curriculum. Conspiracy-"theories" enjoy considerable popularity. They, as well as the increasing transfer of communication to the internet, strengthen tendencies for polarising society and the inclination to blame others for the evils of the world. Examples include "the Jews", who in antiquity and the Middle Ages (and sometimes even today) have been (and are) used as scapegoats, and more recently also "the Chinese" or "the pharmaceutical company groups".

Much of what is otherwise a matter of course has been lacking these days: for some time, it was not possible in Germany (and in most other countries) to visit a concert, or opera, or cinema; Church services had to be discontinued; team sport (except for professional sportsmen) was no longer allowed; nor was the visit to a restaurant for dinner with friends. Discussions as well as news reports often revolve around the pandemic, for which previously unheard-of sums of money are spent. The danger thus arises that other topics, which are at least as pressing, take a backseat in the public attention. What about the nearly 80 million persons worldwide attempting to escape war and persecution? What about the fact that in Africa alone, almost 230 million persons are starving and, according to UNICEF, every ten seconds somewhere around the world, a child under five years dies of hunger or its direct consequences?

But perhaps the pandemic also constitutes an opportunity. After all, it teaches us the significance and the value of social solidarity. Everybody must cut back in order not to endanger others. But in the modern world, often described as "globalised", social solidarity cannot remain limited to a city, a region or nation, or even a continent; it extends worldwide, i.e., also to those suffering from hunger in other continents and the refugees. Perhaps we also reappraise the constitutional order, all too easily taken for granted, which provides the framework for peaceful coexistence in our modern societies. Some of its foundations are under stress because of the emergency measures taken by the executive. Again and again, governments must engage in complex acts of balancing rights and values such as health protection, the free practice of religion or art, the freedom of exercising a trade, organising an assembly, or personal development. It is not a weakness but a strength of our democracy if the result of such a balancing act is the subject of dispute and if, therefore, it must be examined again and again

whether the measures adopted pass the test of proportionality and can be defended considering the core concept of human dignity. It is only on the basis of such a value compass and of an attitude that welcomes dispute without discrediting divergent opinions that the enemies of democracy can effectively be resisted.

Not least, the pandemic offers those of us active in teaching and research the opportunity to explain and clarify the significance and the functioning of scholarship. For several reasons, this is not a trivial task: the scientific discourses are marked by an ever-growing specialisation, impeding overview and comprehensibility (everyone knows more and more about less and less); an unfavourable impression is created, among those active in other professions, by disputes among self-appointed or real experts; and scepticism, or even hostility, can be noticed towards science, and scholarship in general, in parts of society – sometimes extending to the very top echelon of politics. Scholarship is a permanent process of gaining better insights, and it depends on hypotheses which are proposed and then are either falsified or (provisionally) verified, providing, in the latter case, the basis for further hypotheses. Dispute is constitutive for progress in science – for the struggle, as Wilhelm von Humboldt once said, to find something that can never definitively be found. Even the general relativity theory always needs to be re-examined; the work of Roger Penrose, Andrea Ghez, and Reinhard Genzel, Nobel laureates of 2020, provides a prominent example. In the humanities, scholars often aim at attaining plausibility: a criterion that can differ across ages and societies. Scientific findings, therefore, are only valid *pro tanto*. This is one reason why those engaged in scholarship have no reason to be arrogant and to display the attitude of wiseacres. They know about the value but also of the limitations of the insights that can be gained in their disciplines.

That we live in the best of all worlds is no more plausible today than in the second half of the 18th century; and that God intends to punish wicked persons by inflicting the "Corona"-virus upon them is the view only of religious fundamentalists. What, then, remains? Resignation?

So give up your ego, your noble strife/And all sanctimonious seeming/What value are you and your scrap of life/They'll still go on teeming and scheming (*So banne dein Ich in dich zurück/Und ergib dich und sei heiter/Was liegt an dir und deinem Glück?/Es kribbelt und wibbelt weiter*).

Or is it time to pause and re-examine the familiar patterns of behaviour? In a central text of the Jewish wisdom literature, we find the exhortation: "Teach us to number our days, that we may gain a heart of wisdom" (Psalm 90,12).

A man with a heart of wisdom will take on responsibility for himself, for others, and for the world within which he lives. That includes the ability to distinguish; to ask, for example, where we have hitherto been too slow in tackling pressing challenges and where the motto of "citius, altius, fortius" needs to be countered by the precept "more slowly, more plainly, more modestly". Will we, when the pandemic is over, be prepared to give up much of what has hitherto appeared to us to be attractive (e.g., to travel to distant parts of the world without cost and benefit being in reasonable proportion)? Will we be prepared to reduce our thinking pattern revolving around "demands" – a thinking pattern so very characteristic of the modern world? Will the way we behave be inspired by the idea of social responsibility? And will we be able to accept with composure the things we cannot change, to muster the courage to change the things we can change, and to know how to distinguish one from the other? That requires determination as much as humility, and active concern as much as critical distance.

Charl is a man with a firm value compass; he is a scholar; and he possesses a heart of wisdom. He is a humble person, but he has never shirked away from taking on responsibility. We met on the occasion of the marriage of our mutual friend Marius de Waal (now so sadly departed), and that was one of the chance encounters referred to in this little text. The encounter, and Charl's speech on that occasion, led to an invitation to spend a year in my department at the University of Regensburg in the early 1990s; and that year and all the events occurring during it – including a memorable trip to Budapest – have led to a friendship now lasting for thirty years. This text has originally been written in German for German students. I am confident that the English version will resonate with Charl, who is, above all, a gentle person with a sensitivity for the topics raised in it. I wish him well on the occasion of his 65th birthday!

R Zimmermann*

* Reinhard Zimmermann. Director of Max Planck Institute for Comparative and International Private Law, Hamburg (Germany); Affiliated Professor at Bucerius Law School, Hamburg (Germany). Email: r.zimmermann@mpipriv.de ORCID: <https://orcid.org/0000-0003-0348-7929>.