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Chapter 04: Social norms

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Chapter 4 of:

Law and Anthropology
Outlines, Issues, Suggestions

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The present part of “Law and Anthropology: Outlines, Issues, Suggestions” is an abridged version of the text of the hardcover edition, shortened by certain subchapters or other sections. The text and the footnotes left out are indicated by the words: *not included*. The reader who wants to see these omitted parts is referred to the hardcover version (see preceding paragraph).

Chapter 4: Social norms (the theory of law, morals, custom, etiquette, habits, religious norms, political force, consciences fora)

The Forum Romanum was the place of litigation and adjudication in old Rome. A Roman Citizen was held responsible on the Forum. Literally forum means „a place outside”, a plaza, a place between the houses. The plural is fora, or forums. Social norms address humans and ask obedience from them. Thus, social norms establish for a, or platforms, on which a human being is held responsible under the standards of the applicable norm. A court of justice is such a platform when the social norm is one of law. It may be said that every kind of social norm has its own forum, the law the legal forum, morals the moral forum, personal convictions the forum of the conscience, etc. Hence, this field of cultural anthropology may also be called the theory of the forums (Latin: fora).¹

The issue of social norms, well-known in moral theory, has not yet been much discussed in cultural anthropology. Chapter 4 develops a theory of social norms by identifying them with the fora on which humans can be held responsible. Five questions will be discussed:

- (1) The question whether all societies have law was answered in the affirmative in Chapter 1 III. A related question is whether are other norms, similar to law, such as moral norms, habits, customs, or political instructions. Could all these “oughts” be named by one word, for example “social norms”? Are there societies that have only one category of such “social norms” and do not distinguish between customs, habits, and law?
- (2) Whenever we find that there are more than one kind of such social norms, we should try to list them all. How many kinds of norms that steer life in human society can be identified? Is this list closed or one?
- (3) If several of these social norms co-exist, can they conflict with each other? If so, this would mean that a human being may be confronted with conflicting norms and duties. What does this imply for the human being which sees herself addressed on several such conflicting „fora”?
- (4) If there are multiple fora such as law, habit, custom, etiquette, religion, conscience, political authority, etc., how do these fora relate to each another? What are their differences and criteria for definition? Is there a ranking possible, for example „religion first” and only then all the others, or „law first”, or “morals first”?
- (5) Historically, what may be said to be the oldest forum? In other words, which social norm can claim to have the “primate”? Was there first religion only (as Henry S. Maine, *Ancient Law*, 1861, conjectured), or was law first; or habit and usage? In this context, the theory of the „original mononorm” will have to be considered, as it was developed by Marxist thinkers, and accepted by German Nationalsocialists..

Social norms are difficult to define (I.). Their kinds and number are not well understood either. Most societies distinguish the fora (or forums) of morals and law, and many of them know more fora, for example, religious and political ones. A remark already made in the context of the definition of law, may serve as an example (Chapter 1 III.): Sanctions distinguish law, morals and customary norms from religion. Religion may make use of authority or of authorities. But it lacks, as such, sanctions. Where, however, religious sanctions are imposed – as when, e. g., the breaking of a taboo is punished by death – there is, as Pospíšil states, “religious law”, “church law”, and therefore law itself (II). A series of issues grows from social norms, such as conflicts between social norms and possible preponderances, the debate about the primate (“which kind of norms was first in human evolution?”), their precise delineation, and the possible or factual transitions from one kind of norm to another This relates to the controversial question whether there has been law in every society,

¹ Volker Heesch, *Humanethologische Aspekte der Sprachevolution*, in: J. Gessinger & W. von Rahden (eds.), *Theorien vom Ursprung der Sprache*, vol. 2 Berlin 1988: de Gruyter, 221, 232; the following paragraph is a revised version from W. Fikentscher (1995/2004), XXXIII.

from the beginning of mankind; or whether very early and native societies only know moral norms from which the forum of law emerges at a later stage of development and social differentiation; finally, whether in early societies, at least, there existed the mentioned so-called “original mononorms”, which served at the same time as moral *and* legal norms (III)..

I. Social norms

The term “social norm” has been used in both a wider and a narrower sense. In a wider sense, it includes legal norms since they gear society in a way comparable to the norms of morals, customs, etiquette, etc. In a narrower sense, the term excludes law but still includes other fora.² Henceforth, “social norm” will be used as including the norms of law, because law is a socially relevant and often effective body of norms. For the theory of judgment, law counts on “practical reason” no less than other kinds of “ought” prescripts. The juxtaposition of “informal” social norms and “formal” legal rules misses the correct criterion since there are quite formal non-legal norms such as strict religious commands, and informal rules of law such as burden sharing in case of contributory negligence although there is no duty against oneself. Rules of law should be counted among social norms because for many purposes the different kinds of social norms have to be distinguished with precision especially since they easily transgress from one kind to another. Indeed they border so closely to each other, as the following examples show, that excluding legal rules from the body of social norms seems impractical and arbitrary. The proximity of the social norms is, by the way, one of the reasons why this book is not called “Legal Anthropology” or “Anthropology of Law”, but “Law and Anthropology”: for practical reasons, in anthropology norms of the law are to be distinguished from norms of the morals and customs, from norm of religion, etc. Talking of law alone makes not much sense, since the other fora are often close in function and still liable to be clearly distinguished. Thus, for anthropological ends norms of law are to be counted among social norms.

II. Kinds of Social Norms

There is no easy way to count the number of kinds of norms do existing in human societies. Western traditions distinguish the norms discussed in subchapter I. But when a Confucian Chinese says that in Chinese tradition there is no real distinction between „must” and „should”, or a Paiwan aboriginal from Southern Taiwan that „it never occurs that the rule to respect one’s neighbor’s right in the fruits of a planted tree is not obeyed, you simply don’t do this”, or the ethnologists find that in many tribes it is „brave” to challenge the spirits’ demands, there may be quite different kinds of norms and prescripts in use than „Westerners” are used to. Hence, the list of culturally distinguishable norms is open-ended. Other cultures may have other types of „ought”. Here follows a Western inventory:

² Some authors who include law in the concept of social norms are: J. Ensminger & J. Knight, *Changing Social Norms: Common Property, Bridewealth, and Clan Exogamy*, 38 *Current Anthropology* 1 – 24 (1997); L. Bernstein, *Social Norms and Default Rules*, 3 *Southern California Interdisciplinary Law J.* 59 (1993). Authors not regarding legal norms as social norms: Robert D. Cooter, *Three Effects of Social Norms on Law: Expression, Deterrence, and Internalization*, 79 *Oregon Law R.* 1 (2000); Robert C. Ellickson, *Law and Economics Discover Social Norms*, 27(2) *Journal of Legal Studies* 537 – 552 (1998); Eric A. Posner, *Law and Social Norms*, Cambridge/Mass. 2000: Harvard U.P.; Richard A. Posner, *Social Norms and the Law: An Economic Approach*, 87 *American Economic Review* 365 (1997); idem, *Social Norms, Social Meaning, and Economic Analysis of Law: A Comment*, 27(2) *J. of Legal Studies* 253 - 266 (1997); Christopher Fennel, *Sources on Social Norms and Law*, www.anthro.uiuc.edu87/faculty/cfe (as of Dec. 8, 2006), who expressly distinguishes between informal social norms and formal legal rules.

1. Norms of Law

Legal norms have been defined above in Chapter 1 III. 3. c. as being characterized by authorizingness and sanction. Legal rules require authorization of persons in charge (of administering the law), and the sanction to be executed. By contrast, religious norms, though represented by an authority (such as a shaman, a mullah, a priest, a pope, etc.), lack sanction (again: if there are sanctions of religious norms like excommunication under canon law, this is religious *law*). Inversely, if there is no authorizing, but at least possible sanction, one speaks of custom, or morals, or ethics.³ This leads us to recognize law as one of several ought-mechanisms, or fora. A table:

	morals	religion	law
authority	no	yes	
sanction	yes	no	yes

This simple tripartite distinction looks easy, and it may be applied as a rule of thumb. For example, if in the context of an adoption of a child from an African tribe by European or North American parents the pertinent “Western” rules of conflict of laws point to the tribal law, and the social norms of that tribe require a sacrifice of a chicken for making the adoption valid, the question arises whether the sacrifice belongs to local law or local religion. Only if it belongs to law, the sacrifice must be performed. Otherwise conflict of laws do not point to it. If it appears that the tribal spirits require the performance of the rite for traditional reasons but no sanctions accompany its omission, a conflict of law does apply. While cases of this sort are frequent, the rule of thumb has its limits. One reason is that in many early or traditional societies sanctions include supranatural ones, such as curses leading to death or illness,⁴ shamanic performances, persecution by Erynniae or similar goddesses of revenge, etc. In anthropology of law, there is no valid reason to exclude supranatural (“superstitious”) sanctions from the register of sanctions.⁵ If supranatural sanctions are sanctions in the meaning of the law, not *every kind* of authority can be accepted as constituent factor of law, because once the authority is also of supranatural character, law and religion can no longer

³ Unlike other social sciences, anthropology does not distinguish between customs, morals, and ethics, but uses these terms interchangeably. In the social sciences, there is no established terminology of these nonlegal and at the same time non-religious norms. In divinity, some writers identify ethics with prescriptive, postulative normativity, and morals with a more descriptive attitude towards good behavior. In law, good mores serve as extra-legal standards of desired behavior whereas customs signify what is usual and generally accepted. Another important distinction in law is custom as non-legal prescript to which law refers as valid standard of behavior (custom as fact referred to by law) and custom “raised” to valid law (= customary law). See Cooter and Fikentscher (1998), at 329; Edward Coke established that reasonableness of a custom is a question of law, for the court, and not a question of fact, for a jury, *Rowles v. Mason*, 2 Brown 192, 123 E.R. at 892 (1611), a discussion by David L. Callies; Custom and Public Trust: Background Principles of State Property Law, 30 *The Environmental Law Reporter* 10003-10023, at 10009. But this does not imply that custom as such is of legal, and not of factual nature.

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□ Example: bone pointing among the Walbiri, see note 642, below.

⁵ □ See John Comaroff & Jean Comaroff, Policing Culture, *Cultural Policing: Law and Social Order in Post-colonial South Africa*, 29/3 *Law and Social Inquiry* 513 – 546 (2004).

be distinguished as different kinds of social norms. In the statement, "If you do not obey god, you will go to hell", both sanction and authority are supranatural, and the norm would resort under law. This is an undesirable result since it makes an important distinction between social norms impossible. Therefore, the proposal is here that if sanctions are supranatural, authority must be secular.

Of course, these categorizations are often applied to empirical findings in an ethnocentric way. It may very well be that in a given tribal setting supranatural sanctions administered by supranatural beings are regarded as law. But observation of this phenomenon from the outside requires categorization for comparison's sake. This is the reason and a justification of the distinctions proposed. No wrong should be done to the observed culture.

Obligatio as second element of law in anthropology poses its problems. Now a solution for these problems can be offered: The meaning of *obligatio* is a this-worldly tie of the illegal relationship in order to exclude supranatural elements from law so that law and religion can be distinguished (see Chapter 1 III., above). *Obligatio* was rejected as valid element of law with a view to those cultures that dislike human bondage to this world. It appears that *obligatio* serves the same purpose as the rejection of supranatural authority in cases of supranatural sanctions. But the proposal made above is more flexible: It accepts supranatural sanctions and asks for this-worldly authority only in those cases where sanctions are supranatural. Pospíšil's intention to distinguish between law and religion is fulfilled, but the reality of supranatural sanctions remains valid.

2. Ethics, Morals, Customs

Customs, religious duties, morals, political orders, etc., are also *fora*. There is no fixed system of these other normative settings. An additional issue is the inconsistency of terminology, in the social sciences, in philosophy, and in theology. To address this topic, I propose to distinguish "is" and "ought". From regularity, there follow habits. Habits are a matter of „is“, not of „ought“. Habits are facts, open to proof in court. Habits as such do not have moral or binding legal force. They are outside of the authorized sanctions of what we have called the law. If somebody violates a habit, she or he may be criticized but not punished. Sometimes habit-breakers become respected innovators. The first farmer who used a plow instead of a digging stick discarded a habit.

Habits can be divided into more „serious“ and important customs (such as the rule that the first to arrive at a four-stop intersection should go first) and the less „serious“ rules of etiquette (such as sending a birthday card). If habits (mainly customs, but the same can be said for etiquette) are reinforced by the conception that they *should be* observed but not authoritatively enforced, we enter the moral (or ethical) forum. Now customs become a must (see the remark to Malinowski, below). A misbehaving individual may be shunned, or ostracized, so that she or he will be exposed to a (moral) sanction. But there is no authority in charge of inflicting a sanction upon the perpetrator. Common sanctions for breach of morals are boycott, ostracism, refusal to talk, act if someone wasn't there, etc.⁶ Such reactions may be very effective and painful. Sometime in the 19th century, Mr Boycott, a harsh Irish tax collector, had to emigrate to the United States. So the story goes. He did not break any law, he broke a moral code. From a certain day on, Mr. Boycott found nobody in Ireland who wanted to talk to him.

Habits (customs and etiquette) may change into law whenever people become convinced that such behavior not only *ought* to be observed (as in the case of morals) but also ought to be enforced by some authorized person, persons, institution or entity. Then morals take the form of law, and custom,

⁶ M. Gruter & Roger Masters (eds.), *Ostracism: A Social and Biological Phenomenon*, New York 1986; M. Gruter & Manfred Rehlinger (eds.), *Ablehnung - Meidung - Ausschluß*, Berlin 1986

etiquette, as kinds of habit, become customary law. Customary law grows from the conviction of the people who agree to live under that law.

However, the ought may also come from a very different direction, for example, from the orders of a political leader. The way from politics to law is comparable to the way from habits to law, but the source is different.. To compare both developments, Pospíšil designed the following graph:

Graph: Authority and custom see next page

Part of Pospíšil's explanation reads: "...customary and authoritarian law.... may be depicted as two foci, C and A.....Laws of a traditional nature which do not fit completely the characteristics of the two ideal types (at the two foci) are placed between them, and laws whose legal characteristics are weakly differentiated from the neighboring nonlegal categories are near these categories, just inside the zone of transition" (1971, 194).

Malinowski held that customs usually are self-evident and therefore strictly followed by the people as a matter of course, but that law quite often is subjected to doubt and dispute, and therefore requires for a decision. Unlike law, custom for Malinowski means a psychological must, asocial machinery of binding force" (p. 55). By contrast, law has to be ascertained.

3. Habits, Etiquette

Examples are applauding after a concert, letting the lady walk on the right side (the knight's sword was on his left and should not get entangled in her gown), letting the lady walk on the inner side of the walk way and not expose her to the dangers of by-passing cars, not sitting down at a table where already somebody is sitting (US), sitting down at the table where somebody is already sitting (Bavarian country inn), write a thank-you letter after an invitation to dinner (US, Northern Germany), not writing a thank-you letter for a dinner invitation but only for an invitation to stay overnight (Southern Germany, Austria), no-tipping (Switzerland), tipping (rest of the world),⁷ etc. This is just a list of examples, not a definition in re: law.

4. Religious Norms

The delineation of law and morals has been described above (1.). As a rule of thumb, religion requires an authorized entity which administers norms, but – except for religious *laws* - sanctions are absent. Religions are *belief* systems (the wider category), and believing means to hold something for being or not being the case..

The distinction between law and religion is well understood in pre-axial-age societies. One of the questions I used to ask on my visits to the Pueblos in New Mexico between 1986 and 2003 referred to the inner organization of the Pueblo. My question was who appoints or nominates the director of the local irrigation system, the "ditch boss". In all but one Pueblos where I asked this question I received a straightforward answer. In one Pueblo my conversation partner told me that my question was not permissible and could not be answered because it concerned religion. I apologized, and from then on I asked all conversation partners to warn me as soon my questions should approach the realm of religion too closely, instead of law. This was always accepted.

⁷ R. von Ihering, Das Trinkgeld, 52 Westermanns illustrierte deutsche Monatshefte 83 ff (1882),

Regarding the conceptualities and subdivisions of religion, reference may be made to subchapter IX, above (religion as a concept), and to an earlier publication (2004a, 190 ff., with a schematic table on p. 195).

5. Habits and craft practices of a religious nature

In many cultures certain activities, such as agricultural events (the first calf, the last bundle of harvested grain, beginning to plow, etc.), boat building, migrations, marching, making music, dancing, etc., combine customs and religion. B.Malinowski (in *Crime and Custom in Savage Society*. London 1926) mentions several examples, among them boat building. These examples show that for a may be combine, for example custom and religion. Where fora combine, there may, but need not, be a conflict.

6. Political prescripts

Another forum is politics. Political leaders may order their subjects how to act or omit. They may do this without expectation of internalization.⁸ Such political instruction of how to behave form the opposite of norms growing from habits and morals. Leopold Pospíšil drew a graphic table that illustrates the influences of political authority and custom on law:⁹ He comments A standes for political authority, C for customary law; g means that custom as fact becomes customary law, and h and a describe the development from political fiat to internalized law.¹⁰

7. Conscience

Another forum is human conscience. Conscience can be internalized other fora, for example religion, or political prescript, or exist quite independent from a forum. Its meaning and role, especially in relation to religion, cannot be discussed here.¹¹

III. Fora Issues

1. Conflicts between fora (examples)

A human being may be subjected to different and even conflicting norms. The history of religions ar full of such conflicts. When during the Babylonian Exile King Nebuchadnezzar of Babylon (605 - 562 B.C.E.) ordered the Jewish officials Shadrach, Meshach and Abednego to be punished because they did not obey the King's Orders, the three Jews answered that they would rather follow their own Jewish religious duties than obey (Daniel 3,13-18). The disciples Peter and John answered the Synhedrion in a similar manner that it is better to obey God than men (Acts 4, 19). Moral familiar duties caused Hamlet to become a rebel. Also, valid laws may contradict each other. Many tragedies center around conflicting fora.

a. The conscientious objector refuses to get drafted to military service and rather runs the risk of being punished because his conscience commands him to stay away from situations in which he

⁸ Cooter on Internalization (in Fennel collection)

⁹ see 2., above

¹⁰ (1982), 249.

¹¹ Thomas Aquinas, *Summa Theologiae*, Ia – IIae, quaestio 19, art. 5-6.

might be forced to kill a person. He understands the Fifth Commandment “Thou shalt not murder” in this way. One forum, the legal order of the nation to which he belongs conflicts with another forum, to wit, his personal conscience.

b. The legal principle of the civil marriage (marriage as a contract under civil law) was introduced by the French Revolution. In Germany, as in many other states, opposition to this principle was strong, most of all from Catholic citizens, since they understood marriage as a religious ceremony, or even a sacrament. The issue was among the most bitterly fought in Germany’s and Switzerland’s *Kulturkampf* (Culture Fight) during the years 1871 and 1887. The legal and the religious social norms were in conflict..

c. Do siblings owe one another financial support when in need? Legal systems differ in their answer to this question. Swiss law requires siblings to help each other. In Germany, the law is silent, but nobody doubts that a moral obligation to do so exists.

d. Religion may impose the duty to keep one day a week holy and stay at home. But what about the parents who on this day should be visited as good custom requires? Religious and ethical duties may oppose each other.

e. Former German Chancellor Helmut Kohl was obliged under the German law to tell the truth to parliament when involved in a case of illegal subsidies to his party. But he had given his word of honor to friends that he would keep silent about the financial source: law conflicted with his code of ethics.

f. Sophokles’ tragedy of Antigone confronts political instruction with religious-traditional-familial duties: Political norm conflicts with good mores.

g. In times of political crisis, law may require the purchase of public bonds. Good custom and family morals teach to invest your money in real estate or other valuables in favor of your children or other family in order to secure their future. And religion asks you to give your money to the poor: The choices to be a “just” person are threefold, and in conflict with each other.

h. Immoral law. The Nazis required children to denounce their parents when they criticized “the Party” or Hitler’s government. Some children followed the heinous law, not their moral duty to protect their parents, and thus caused their own parents to be arrested

i. Turkish women may be obliged by religious rule or custom to wear the veil in public, but law prohibited the veil in universities (until 2006).

j. The Bible mentions conflicting fora in many contexts: Peter, the apostle, said that “we must obey God rather than any human authority” (Acts 5.29; cf. Daniel 3, 18). Jewish law and Christian liberty conflict about circumcision, (e.g. Romans 3.1). Religious duty and reasonable secular law need not contradict each other (Matth. 22, 21 – God and Cesar). There are less examples in the Koran because according to its teaching God’s will is all-pervading so that, e.g., custom has to give way (Surah 5. 103 f). If religious duty conflicts with the moral duty to help others, the Koran follows the Bhagavad-Gita morale that one’s own salvation is more important than assistance given to the weaker (Surah 5, 105; cf. W. Fikentscher 1995/2005, 164, 361; for the opposite Christian position see, e.g., Romans 15.1; 1st Corinthians 8.9, 9.22; 2nd Corinthians 22.29; 1st Thessalonians 5.14).

k. Legal pluralism (Ch. 1 V., above) is a conflict between two or more legal fora.

2. Acting in a forum conflict situation (text and its footnotes^{12, 13} and¹⁴ are *not included* here because they are just adding illustrative material; a theory of anthropological fora also in W. Fikentscher (1975a), 91 – 104)..

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3. The question of a historical primate: Which type of social norm was first?

Traditional ethnologists and researchers of theology often assume that the forum of religion is the oldest and the original. They claim that other norms emerged later from the religious ones by way of diversification or transfer to mundane issues. Other authorities assert that the law was present in all societies from the beginning of mankind (Pospíšil; Malinowski). Malinowski's theory says that the human beings became „human” by understanding that there must be met a „fundamental function ...to curb certain natural propensities, to hem them in and control human instincts ...” (Malinowski, *Crime and Custom*, 64) and thus started out with what we call law (and, if sanctions are not authorized, morals).

On the other hand, one may ask whether early man might have felt that nature is subjected to controls of a different kind, and whether this is the basic quest for religion. This theory would have to argue that law, morals and religion, as normative fora, started at the same time. It were indeed be strange if the humans would discover law for themselves without asking whether nature, as their nourishing and threatening environment, does not follow similar or different prescripts, and who might be the one or ones establishing them. An earlier study discusses these issues (W. Fikentscher (1975a), 60 ff. and for the following 91 ff., 100 - 104).

a. Some anthropologists claim that among humans religion was the first social norm among humans: Henry S. Maine,¹⁵ E. B. Tylor,¹⁶ Wilhelm Schmidt,¹⁷ William Robertson Smith,¹⁸ and Wolfhart Pannenberg.¹⁹ Generally speaking, according to these theories, moral and legal norms are later developments, mainly due to secularizing influences, but coming from a religious source.

b. Another opinion holds that there is no society without law, so that there must have been law from the very beginning of mankind.²⁰ But what about morals and religious norms at this early period?

c. The structuralist view postulates that in the beginning there was the structurally inherent normativity, and all the later developments of moral, legal, and religious norms are differentiations of that given structure.²¹

¹⁵ Henry S. Maine, *Ancient Society* (1861), 14, 28, 113 ff.; A. S. Diamond, *Primitive Law*, London etc. 1935, 49 ff., opposes Maine by returning to reasons, cited by Montesquieu and Bentham, carelessly rejected by Maine. Other critics of Maine, pointing to various reasons: Patrick H. Novell-Smith, *Religion and Morality*, in Paul Edwards (ed.), *Encycl. of Philosophy*, vol. 7, New York & London 1967: Collier, Macmillan & Free Press, 150 ff.; Henri Bergson, *Les deux source de la morale et de la religion*, Paris 1932; W. G. de Burgh, *From Morality to Religion*, London 1938; Alexander MacBeath, *Experiments in Living*, London 1952; W. Fikentscher (1975a) 93.

¹⁶ On him in this respect, Brigitta Benzing, Edward Burnett Tylor, in Feest & Kohl (2001), 492 – 498, at. 495.

¹⁷ Wilhelm Schmidt S.V.D., *Der Ursprung der Gottesidee*, 12 vol, 1926 –1956.

¹⁸ On him Hans G. Kippenberg, William Robertson Smith, in: Feest & Kohl (2001), 429 – 436, at 431, 435.

¹⁹ W. Pannenberg, *Christliche Rechtsbegründung*, in: A. Hertz, W. Korff, T. Rendtorf et al. (eds.), *Handbuch der christlichen Ethik*, Basel & Vienna 1978, vol. 1, 323ff., at 331; idem, *Anthropologie in theologischer Perspektive*. Goettingen 1983: Vandenhoeck & Ruprecht).

²⁰ In this vein, in particular L. Pospíšil (2004) 487; Pospíšil leaves open the issue whether in this early humanity-defining phase there may have been other fora besides law such as morals or religion.

²¹ Claude Lévi-Strauss, *Social Structure*, in : A.L. Kroeber (ed.), *Anthropology Today*, Chicago 1953 : Chicago University Press, 524 – 553 ; idem, *Structural Anthropology*, New York 1963 : Basic Books.

d. A peculiar theory concerning the primacy of norms was developed by the Soviet legal theorist and anthropologist A. I. Pershitz.²² Pershitz sees a “mononorm” as the original social norm that contains moral and legal norms in one. Religious norms are non-existent. The separation of legal and moral norm occurred later in history, in order to facilitate the expropriation of the working class by capitalists. According to Pershitz, the ideal state would lead back to the mononorm and thus to abolition of law as an ought.²³

e. Later, a similar approach was taken by Adolf Hitler. At the “Imperial Party Day” (Reichspartitag) at Nuremberg in 1935, Hitler pronounced: „From now on, there is no distinction anymore between law and morals.”²⁴ The political aim of Pershitz’ mononorm and Hitler’s legal-moral “uni-norm” is the prevention of comparability and hence control of one social norm by another, especially of laws by morals. A-moral laws are the intended political consequences. From a multi-forum point of view, a-morality means immorality. Both the Marxist and the Nationalsozialist doctrines are consequential: In Marxism, the guiding value is use value which can only be determined and administered by dictatorship. This dictatorship is, since value-related, totalitarian. In Nationalsozialism, “blood and soil” (*Blut und Boden*, popular-ironic abbreviation: “*Blubo*”) takes the place of use value. Thus, both central values, use value and blood and soil, are foreign-determined and one-dimensional ones, and do not tolerate co-existing values. Socialism that define itself on the basis of use values aim - if involuntarily or innocently - at totalitarian dictatorship. Use values can only be determined by political fiat, and they not only are hierarchically prescribed economic data (dictatorship) but also politically guiding data for correct and competent consciousness (totalitarianism). There are “leftist” politicians who think that democracy and socialism can be combined to form a “democratic socialism”. If that socialism is use-value socialism, democratic socialism is no thinking possibility because democracy requires the individual Parmenideian judgment.

*4. Challenge and transgression of forum

While fora regulate human behavior, they appear to invite humans to challenge and even to transgress them. Subconsciously, for a seem to be felt parts of culture, not of nature (which by the way is an interesting confirmation of their difference). As parts of culture they want to be remembered as such which occurs best by performing activities illustrating their changeability. Examples include wearing costumes of the opposite sex and using other means of anti-dimorphous behavior; or doing things that “normally” would be offensive such as at special occasions dancing with the Ashanti queen, disregarding social strata in carnival by otherwise offensive egalitarianism, or the imitating of feebleminded persons by members of the clown societies of the Pueblos in New Mexico and Arizona also as a warning against incest. Other examples are “Ladies Carnival” (*Weiberfasnacht*), “Ladies Choice” (*Damenwahl*) at a social dance, “trick or treat” visits at halloween, etc. This playing with or even transgressing of fora is always guarded in extent and limited in time, often concluding by a period of fasting; the social norm is now better remembered for the future, until it is playfully challenged again. Although a matter of time, forum challenging is to be distinguished from liminality such as birth or initiation rites. Liminal rites are serious markers

²² A. I. Pershitz, *The Primitive Norm and Its Evolution*, 18/3 *Current Anthropology* 409 – 413 (1977); cf., Piers Vitebsky, *Rethinking Soviet Anthropology*, 5 *Anthropology Today* No. 5, 23 – 24 (1989).

²³ Whether the Socialist Revolution would end in the abolition of law (E. Pashukanis), or whether a legal system could be made instrumental for the Revolution (Petri I Stučka; Wyshinsky: “socialist legality”) was a debate in the late 1920ies which by Stalin was decided in favor of the second opinion, W. Fikentscher (1976) 569 – 573, with more literature.

²⁴ Paul Nerreter, *Allgemeine Grundlagen eines deutschen Wettbewerbsrechtes*, Berlin 1936: Vahlen, Motto; a discussion: Pospíšil (2004), 491.

in one's life. Of course, both affect evaluative standards of correlational analysis (see Chapter 6).^{25*}

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²⁵ This subsection is owed to Kai Fikentscher – see acknowledgements – who refers to Hakim Bey and his temporary autonomous zone.

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