

Conference Report:

Normative Orders of the Digital

Cluster of Excellence “The Formation of Normative Orders”

Frankfurt am Main, 6-7 July 2017

From globalization and the management of conflicts over resources to the normative order of the Internet: For almost a decade, interdisciplinary research at the Cluster of Excellence “The Formation of Normative Orders” has been focused on the dynamic change of norms and the impact of norms on changing dynamics of power. In 2016, the Research Group Internet and Society was constituted at the Cluster. Its activities have culminated in the organization of an interdisciplinary conference on 6-7 July 2017.

The aim of this international and interdisciplinary conference dedicated to “Normative Orders of the Digital” was to confront the critical “Frankfurt perspective” on the formation of normative orders with the “digital” world, the conditions of a global society in which information and communication technologies, and particularly the Internet, play an ever growing role. Organized by Research Group members Christoph Burchard, Dominik Brodowski, Christopher Daase, Matthias C. Kettemann, Alexander Peukert, Thorsten Thiel and Valentin Rauer, the main questions conference speakers tackled were: Does the digital age lead to new types of normative orders that cannot be adequately described with(in) traditional conceptions of norms? Which norms collide on the Internet and which norms prevail? Is there normativity inherent in information and communication technologies that can and should be regulated?

After welcoming remarks by the administrative director of the Cluster, Ms. Rebecca Schmidt, Alexander Peukert briefly explained the purpose and concept of the conference. He identified one hypothesis and one research question that could – and in hindsight indeed did – function as a common basis and point of reference for all five panels. The hypothesis was that contemporary formations of normative orders in many cases cannot be fully understood if digital technologies are left out of the equation. And the common research question was whether digital networks are only a matter of quantity or whether they change the rules of the game in a very fundamental way to something qualitatively new.

The first panel addressed the complex relationship between digital communication, societal crises and public discourse from the perspective of political science. Jennifer Earl (University of Arizona) and Paolo Gerbaudo (King's College London) discussed how internet users and communities question societal orders. Their presentations showed that at least some phenomena of online protest cannot be fully explained by analogies to offline protests. This is also true of left- and rightwing “populism”. Thorsten Thiel (HSFK Frankfurt) moderated a very active discussion among conference participants.

The second panel concerned the fact that more and more formerly tangible goods are converted into digital goods, which are created digitally and marketed via digital networks. This shift from materiality to immateriality was discussed from an economic (Christian Handke, University of Rotterdam) and a legal (Marco Ricolfi, University of Torino) perspective. In their presentations, both speakers critically assessed Mark Lemley’s account that we are entering a phase where information, entertainment and many more goods are not scarce any more so that (intellectual)

property rights as the basis for market transactions become superfluous. Christian Handke pointed out that basic market laws remain intact, whereas Marco Ricolfi pointed out far-reaching philosophical and societal consequences of an economy without property rights. Alexander Peukert (EXC Frankfurt) chaired and moderated the session.

The conference continued on Friday morning with the third panel, which was entitled “Intermediaries and the Constitutionalization of the Internet”. Chaired and moderated by Matthias C. Kettemann (EXC Frankfurt), the panel was made up by two lawyers, Wolfgang Schulz (University of Hamburg) and Sophie Stalla-Bourdillon (University of Southampton) who discussed public and private laws regulating Internet intermediaries such as access and host providers and search engines. The presentations and the discussion highlighted the essential and hybrid role of those intermediaries for the Internet ecosystem. On the one hand, they function as enablers of the exercise of human rights online, on the other hand, they can be targets of regulations that interfere with those rights, in particular the right to freedom of expression and information. During the discussion the recent German “Network Enforcement Act” was hotly debated.

The fourth panel, chaired and moderated by Christoph Burchard (EXC Frankfurt) was dedicated to “The Privatization of International Cooperation in Criminal Matters”. It started from the observation that law enforcement agencies from all over the world are keen to access data gathered by major US Internet Service Providers (like Google, Facebook or Skype) but that ISPs increasingly decide themselves on whether to grant or refuse requests to access emails, chat protocols, motion profiles etc. Alexander Dix (European Academy for Freedom of Information and Data Protection), Markus Hartmann (Public Prosecutor’s Office, Cologne), Tania Schröter (European Commission) and Dominik Brodowski (University of Frankfurt) discussed whether the privatization of international cooperation in criminal matters is normatively justifiable and practically necessary.

The fifth and last panel on Friday afternoon raised again more general questions, this time from a sociological perspective. Under the title “Regulating Order: Algorithms”, Marc Lenglet (European Business School, Paris) and Robert Seyfert (University of Duisburg-Essen) addressed automated and machined actions, perceptions, and decision-making processes, which were classically considered to be a solitary ability of human beings. The speakers discussed the implications of these transformations for normative orders and possible means for regulations. Their prime example in that regard was the financial sector. Valentin Rauer (EXC Frankfurt) moderated an again lively discussion.

In his closing remarks, Matthias C. Kettemann pointed out that the presentations and discussions during the conference had confirmed the hypothesis that the panels – in spite of their thematical and disciplinary diversity – did indeed share common ground, in particular an interest in understanding the complex interplay between technological, legal and other modes of regulation in the digital world. The interdisciplinary composition of the panels and the economic, social science-based, legal and philosophical arguments raised brought to light numerous links between approaches to better understand and frame the normative order of the digital. The conference organizers wish to express their thanks to the organizing staff, in particular Antje Hofmann.

Alexander Peukert and Matthias Kettemann