

# Current Concerns

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English Edition of *Zeit-Fragen*

## “Medicine of relatedness” rather than diagnosis related groups Corona should be a wake-up call

Interview by Britta Fecke, German broadcast “Deutschlandfunk”, with Professor Giovanni Maio, M.D., medical ethicist

*Britta Fecke: This pandemic, this state of emergency, reveals what is really important: well-equipped hospitals for instance, sufficient numbers of intensive care beds and most of all, medical personnel not constantly working at the brink of their limits. On 18 April 2020, Klaus Reinhardt, president of the German medical association, stated that “... Hospitals need to serve their patients, not the profit” and he demanded a new financial model for the time after corona. Professor Giovanni Maio is a medical doctor, philosopher and well-known of his outspoken criticism of the German medical system. I wanted to know from him whether hospitals face problems in the crisis due to the long years of economy-driven health care.*

*Professor Dr Giovanni Maio: Yes, this is obviously a big problem! Basic-*

*ly, we are presented with the bill for recent years right now. The concept of capitalising medicine and medical care has resulted in a deficiency that cannot be overlooked any longer: deficiency of personnel and deficiency of resources. We have set wrong priorities for saving money and now we have dangerous deficiencies because of our wrong thinking. We had postulated that medicine should work no different from an industrial enterprise, where everything is fine so long as money gets invested wisely and sustainability is defined in economic terms. But this is wrong thinking – medicine just is no industry but part of the social fabric, in essence a practice of forehandedness and this social practice is governed by laws different from those of the economy. We had been wrong on this one.*

### We have set wrong priorities – the result: wrong thinking

*In what way is this social logic violated by the diagnosis related group (DRG) reimbursement system?*

The DRG system was deleterious. It opened the gates for a thorough capitalisation, in that hospitals were urged to save money at any costs. And saving money they did, but not sensibly but with wrong priorities. They cut personnel costs, they cut personnel patient interaction time, they created a care time deficiency thereby evoking stress and reducing the job satisfaction of nursing professionals. At the same time, the DRG system encouraged hospitals to generate business volume and that turned the whole philosophy of medicine upside-down. Suddenly the question to ask was no longer: What helps the patient, but: What kind of business volume can we generate with this case? And this is wrong thinking which in my opinion never should have been allowed to take root because the medical professions wouldn't have any of that from the beginning. This was wrong thinking, established by the reimbursement system. Nobody considered that a whole culture would be altered that way, and so they kept doing what lead to more reimbursement, many operations because they generate business volume but at the same time cutting time for patient contact, for relatedness. This was a wrong orientation of medicine!

### “I do hope that corona will be understood as a call-to-action”

*This disorientation may be reflected by the current practice that the economic director often is higher in the chain of command than the medical directors. Do you expect this to be reversed again after corona? That now, after we have found out how important a functioning healthcare system is for our societies, things will be put in a different perspective?*



Professor Dr med. Giovanni Maio studied philosophy and medicine. After many years of internistic-clinical practice, followed by a period as a scientific assistant at medical theory institutes he habilitated in the field of ethics in medicine (July 2000). In 2002 he was appointed to the Central Ethics Committee for Stem Cell Research by the German federal government. In 2004 he had been offered a professorship at the University of Bochum followed by the C4 professorship for medical ethics and history of medicine. In 2004 he has been offered a chair (C4 professorship) for history and ethics of Medicine at Aachen University, in 2005 a professorship at the University of Zurich (Ordinate for Biomedical Ethics). In 2005 he became the Managing Director of the Interdisciplinary Ethics Center in Freiburg and since 2006 he is the Director of the Institute for Ethics and History of Medicine. Since 2007 he is an appointed member of the Committee for Ethical and Medical Judicial Basic Policy Issues of the German Medical Association.

In his publications since 1998, Giovanni Maio has been committed to human medicine. In 2018, his book „Werte für die Medizin. Warum die Heilberufe ihre eigene Identität verteidigen müssen“ (Ethic values for medicine. Why the healing professions must defend their own identity) (Munich: Kösel) was published. The second edition of his medical ethics textbook, “Mittelpunkt Mensch. Lehrbuch der Ethik in der Medizin” (2017)(Centre of Man. Textbook of Ethics in Medicine) contains an introduction to the ethics of care (Stuttgart: Schattauer). In his book “Geschäftsmodell Gesundheit. Wie der Markt die Heilkunst abschafft” (Business Model Health: How the market is abolishing the healing arts), published in 2014, Giovanni Maio describes, among other things, what he means by “relational medicine”.



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**“Medicine of relatedness’ ...”**

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I do hope that corona – tragic as it is – will be understood as a call-to-action, as a wake-up call which shows what is important. It is reasonable to have economic expertise in hospitals, but economy needs to serve as a helping hand for medicine to live-up to what medicine should be like – economy should not define what medicine should or shouldn't do! And we should learn from current events that there is a social sphere which might necessitate economic reasoning but should not be restricted to just this aspect. Thinking in mere reimbursement categories is wrong thinking. Now we see how badly we need the hospitals! Just imagine that many hospitals might go bankrupt at the very time when they are needed most, this reveals at once how distorted this reimbursement system has been. A hospital which is more desperately needed than anything, might be driven into insolvency because there is not enough reimbursement – crazy!

**“The market will not solve the social problem”**

We need to acknowledge that hospitals should be financed by the state and by the health insurance companies with the aim to provide for the care of the population. Imagine that only a few weeks ago it was propagated that half of our hospitals should be shut down for economic reasons, now the craziness of that thought is open to see for everybody. We must never create a deficiency in that precious resource of patient care time, only for the sake of hospitals always to be in the black! It is up to the state to guarantee that hospitals get the resources they need, and to rule where hospitals should be situated and which services they should offer to the population. And this cannot be determined by economic analyses, but the question is, where are hospitals necessary and where unnecessary. There are political decisions which can never be made by the market. The market will never solve the social problem, let's face that.

**Promoting a “medicine of relatedness”**

*But we cannot blame everything on the political class. Many patients misunderstood themselves as customers of the health care system and used or rather abused it in the wrong way. There are more than 500 million patient physician contacts per year in Germany! That makes one wonder, where all these diseases might come from.*

Well, you see, first of all we have to acknowledge that patients demand to make decisions themselves nowadays. It is our task to help them make good decisions. And we must establish a system without

misleading stimuli, for instance the stimulus that it is worth doing things just for the sake of doing them, such as: as many operations as possible. This stimulus is deleterious. In my opinion, such stimuli challenge the very essence of medicine and may lead to a situation where doctors recommend procedures because they get reimbursed for them. I think one has to create stimuli for a medicine of relatedness, for a medicine of care and stewardship rather than doing anything for reimbursement. And patients are per definition in a situation where they cannot objectively analyse all facts and decide what is best for them. They depend on the experts and have to rely on their advice, therefore we need to use the tools we have in order to encourage the experts to act responsibly. And in this regard, we had established a culture of misleading stimuli which had negative effects on the whole culture.

**“The whole purpose of medicine is to help people”**

*What would be a feasible alternative approach? If we want to replace this reimbursement system which rewards a philosophy of “the more the better”, i.e. more CAT scans, more MRT, more operations leads to more reimbursement for the economy-driven hospital – so, could an alternative approach perhaps reward the number of people who stay healthy in an area which belongs to a certain hospital? Does this sound intriguing to you?*

No, not at all. Look, this may sound appealing, but we should not expect medicine to produce as many healthy people as possible. The purpose of medicine is to help those who cannot help themselves, these are per definition often chronically ill patients, incurable patients, these are sick patients who just cannot get cured. At the end we must leave it to the logic of medicine to figure out what approach is best in each individual case. We have to appeal to professionalism and liberate medical doctors to once again be guided by medical criteria alone. What we see today is a deformity, a misshaping of medicine by criteria alien to medicine as such, which have little to do with medical logic. That's why we need to strengthen professionalism. A patient wants to be treated by a medical doctor who follows the guidelines of his textbooks rather than what reimbursement policies suggest. And this is a crucial point: We have in fact down-rated professionalism. Part and parcel of professionalism in medicine is the ability to build relatedness, to invest in the relation, one needs to listen a lot at first, in order to figure out what the problem of the ill human being is, because in most cases this mischief cannot be solved by a single procedure but requires care and stewardship, one simply has to spend time.

**“We need a system that rewards patient care”**

We need a system that rewards those who spend actual time with and care for patients – currently we have the exact opposite. Because the lack of human resources we are facing today – that neither medical doctors nor nurses have enough time – has been artificially implemented, it is not unavoidable, an artificial stress. In my opinion this is grossly negligent, that these professional groups who are so important for the well-being of the society have been put under such pressure – for no reason! There was no good reason for this, really! Instead, this new reimbursement modality lead to rising costs, we did not even save money, since all that was done was operating on patients rather than talk to them – such a system is crazy!

**The diagnosis related group system has failed**

*That means, regarding the concerns, that are often voiced, such as: “If we completely restructure the health care system everything will get more expensive”, you would reply: “Not necessarily, because many operations and procedures that had been performed without compelling reason will be avoided and this will save costs.”*

Absolutely, you put it exactly right. When it all started political support for the DRG's could only be obtained by arguing: “If we don't do it everything will become more expensive.” But that was not true. Costs did not rise. Not in reality, at least, just as a media hype. Costs exploded only afterwards: Due to the DRG's mainly costly procedures were performed. And costs have kept rising ever since rather than going down. So, one must say, this new DRG system has failed in several regards. Politicians must face that and acknowledge the fact rather than stay in denial. They have to humbly admit that it was a mistake to introduce the DRG's, a mistake of catastrophic proportions, which eroded the social core of medicine, and even jeopardised the mentality of health care professions. And it destroyed the faith of the public in the social character of the health care system. These are the consequences of the total fixation on economy: the devastating result of lost faith. And therefore we must revise the system. And a little bit of fine-tuning won't do, we need a new system in which making money has no place in medicine, but only the question how one can help people. I see it every day that this is exactly what my students want to do. They want to help other people. They don't want to get involved with accounting. Of course, the other extreme of wasting money must be avoided, too, but this is not achieved

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## Just rhetoric, or discernment?

### Surprising demands for a resumption of industrial production in France

by Pierre Lévy, France

*The relocation of pharmaceutical production is showing dramatic consequences in the current health crisis. They are part of the long relocation process of the pharmaceutical industry.*

Shortage. The word had disappeared from the developed industrial countries' economic vocabulary since the end of the Second World War. In the midst of the coronavirus crisis, it is experiencing a strong comeback. Lack of hospital beds, but also of masks, disinfectants, tests, respirators and drugs...

COVID-19 has highlighted these dramatic deficiencies. In France, they are the result of a deliberate and long-term policy of relocating industrial production and de-industrialising the country. Since the mid-1970s, the share of manufacturing industry in the French economy therefore has halved: it now accounts for only 10% of domestic wealth. And the slight changes in recent years have not made it possible to seriously reverse the trend.

#### The state's withdrawal: destruction of jobs and services of general interest

One example among many others is the closure of a large mask factory in Plaines in the Côtes d'Armor at the end of 2018, for which a relocation was planned. Before, in 2010 the French company *Spérian* had already switched to the American flag of *Honeywell*.

The machines could produce up to 20 million FFP1 and FFP2 masks per month.

#### "Medicine of relatedness' ..."

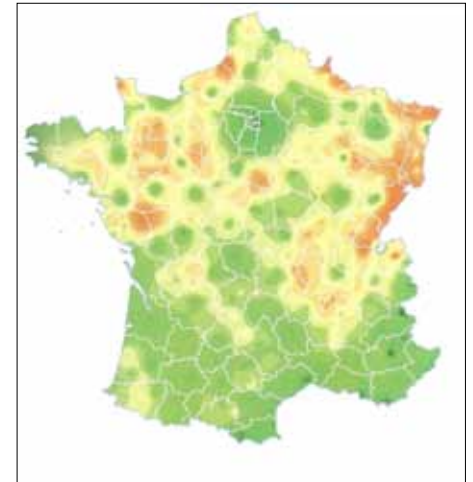
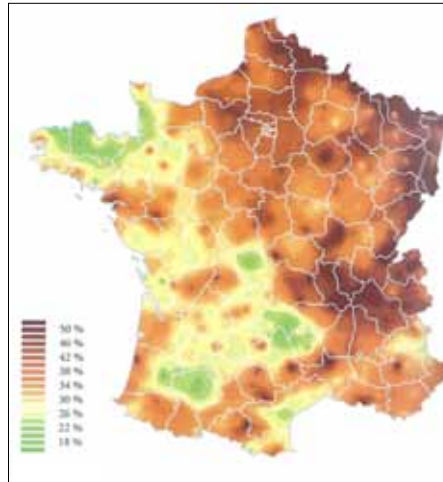
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with the DRG system either, but only with prudent investment in professional medical care, which upholds the value of carefulness, the approach of small and careful steps, rather than doing things for the sake of doing.

*But why don't more medical doctors rally to stand up for these values? Most of them are highly educated, they have a lobby and especially now – since virologists' expertise in particular is in such high demand – their voiced are heard much better?*

Yes, this is very, very important question indeed, which in my opinion can only be answered by

a) acknowledging that medical doctors are divided among themselves and don't speak with one voice, and that there are many doctors who are win-



*The industry of France in 1968 (map left) and 2008 (map right) – part of the active population in secondary branch (Industry and building trade). (maps ma)*

In 2005, 6 million euros were still invested by the public authorities and this enabled massive production in 2009, at the time of the H1N1 virus, before the state decided to withdraw.

At the time of the closure, the conveners from CGT and CFDT of the factory had asked *Emmanuel Macron* and the Minister of Economy, *Bruno Le Maire*, to save the company. Without success at the time.

In addition, the management had taken great care to destroy the eight production lines so that they would not fall into the hands of a competitor. Recently, it was heard that trade unionists and affected

communes are trying to revive the company.

A similar tragic scenario is taking place at the *Luxfer* plant in Gerzat (Puy-de-Dôme), with the Anglo-American group *Luxfer Gas Cylinders* acting as liquidator. Until the spring of 2019, French employees were producing medical oxygen cylinders there – the last to be manufactured in France and even on the entire continent. Once again, the same incapacity of the state, but also the same willingness to resume production on the part of the workers, who still do not want to give up. All the more so because this material has gained crucial importance for revival, given the soaring demand.

"Even in a wartime economy, it is difficult to mobilise non-existent capacities, evaporated know-how and to fill the gaping holes of specialisation," remarked the economists *Elie Cohen*, *Timothée Gigout-Magiorani* and *Philippe Aghion* in a column in *Les Echos* (31 March 2020) on this massive deindustrialisation. They remind us that Germany, for its part, has not stopped increasing its production capacity: German gross exports of tests that can now be mobilised for COVID-19 amount to almost 2 billion euros per year, compared with almost 200 million euros in France.

#### Severe dependencies

The pharmaceutical industry, for its part, is at the forefront in the dismantling of production lines. Today, between 60% and 80% of active ingredients are produced outside the European Union, com-

ners of the old system. Many doctors have been corrupted by the good salaries they received for just operating. Not all of them suffered. And

b) medical doctors are not very political in general. Neither are they organised in any bigger political bodies. All they want to do is helping patients, they want to help sick people. As for their main inner compass they are not politically minded persons. And this is their disadvantage right now.

*I spoke with Giovanni Maio, medical doctor and philosopher at the Institute of ethics and history of medicine, about a new reimbursement model for our health care system.*

Source: [www.deutschlandfunk.de](http://www.deutschlandfunk.de) from 19 April 2020; Transcript *Current Concerns*; Reprinted with kind permission of Professor *Giovanni Maio* and *Deutschlandfunk*

(Translation *Current Concerns*)

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**"Just rhetoric, or discernment?"**

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pared with 20% to 30% twenty years ago. Not to mention France itself. The European Commission says today that it is considering a "reassessment" of production chains within the EU. But then?

India is the biggest supplier of generic medicines and vaccines, meeting 20% of world demand. But this quest for financial efficiency leads to dangerous dependency, all the more so as the subcontinent itself is affected by the coronavirus. On 4 March 2020, for the first time in its history, India decided to halt exports of 26 active ingredients such as paracetamol, antibiotics and antivirals. The country also wanted to protect itself from the no less severe dependence in which it finds itself: India imports almost 70% of its active ingredients, which are at the heart of pharmaceutical production, mostly from China. Under pressure, particularly from the United States, Prime Minister *Narendra Modi* finally released 13 medicines and additives on 7 April.

This fragmentation across several countries of production is all the more dangerous because the corporations, from *Sanofi* to *Novartis*, believe that the data on the origin of their products they are zealously protecting are manufacturing secrets.

After several warnings of supply disruptions for Europe, the French company *Sanofi* launched on 24 February the creation of a company in order to bring together the six European plants producing active ingredients. Solid consolidation?

**Short-term profit optimisation  
for a few instead of long-term security  
of supply for everyone**

In reality, the concern intends to list this future company, which ultimately only holds 30% of the capital, as a subsidiary to the stock market. In this way, you can discreetly say goodbye to this unit. While public institutions like BPI-France (the *French reconstruction credit institution* KfW) are welcome to participate in the financing round of the new company, it is very likely that foreign funds will also be

happy to participate to influence its decisions.

By disassociating their production in this way, the manufacturers have reduced their costs, but at the same time made their production chain extremely vulnerable. And not just in the pharmaceutical industry. Another activity that is closely linked to the industrial history of France is currently paying its price: the automotive industry.

*Carlos Tavares*, president of PSA (Peugeot-Citroën) can boast that he "only" has 300 Chinese suppliers out of a total of 8,000, which is enough to block the production chains in Poissy and Rennes. In this case China focuses on low value-added production, which is 4% of the price of building a vehicle in France. Overall, however, these parts represent 20%, and even 50% for small mechanical and plastic components. Under these conditions, there is no point in continuing to manufacture bumpers in Europe if screws and nuts are missing so that the cars can leave the factories.

**Surprising changes**

In the current crisis all of this leads to some surprising changes in how we do it. *Philippe Varin*, former head of Peugeot-Citroën (PSA), who had decided to close the Aulnay-sous-Bois site, now is the president of the lobby of the French Federation of Industrialists and believes that the crisis "can take the character of a chance because it enables the resumption of production in France".

Another turning point: *Laurence Dazi-ano*, a researcher at Fondapol, who calls herself a "liberal and European think tank", demands the "reconstruction of French industry" in *Les Echos* (7 April) with a "steering and financing function" for the state that is asked to "participate in strategic industries with a stake up to 10% or 15% in the capital of all French strategic industries."

But the most spectacular rhetorical U-turn can be found in the Elysée Palace. On 13 April, Emmanuel Macron pleaded for "the reconstruction of France's independence in the areas of agriculture, health,

industry and technology", not without recalling his mantra: "more strategic autonomy for our Europe". "Our Europe", in this case the EU, is still based on the free movement of goods, services and workers. And capital.

As things stand, European heads of state and government, particularly the French, president, do not question this fundamental and existential dogma in any way. The gap between rhetoric and reality could therefore widen. But also become more and more visible. •

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# Thoughts on freedom, federalism and democratic participation

by Dr iur. Marianne Wüthrich

*It's amazing what you can hear these days. The Federal Council's measures to contain the corona pandemic had been completely exaggerated and the lockdown was not even necessary, it had only damaged the economy and restricted the basic rights of citizens. While some complain about the "centralist seizure of power" in Bern, others are annoyed by the "patchwork carpet" that the once again increasingly federalist decisions are entailed. Parliament, too, is being reprimanded for having ended the spring session a week too early because of the pandemic that had broken out, leaving the executive branch in charge. And finally, the Swiss EU-turbos are seriously announcing that it has once again been shown that we are doing much better with, or even better in the EU.*

*In this confusion of voices and moods, it is advisable to keep a clear head.*

## Health first – Swiss economy will recover

The vast majority of people were very happy that the Federal Council, in the extremely difficult situation, took on its constitutional task of taking "measures for Switzerland's internal security" (BV Art. 185 Paragraph 2). Today, the health-threatening situation has eased somewhat thanks to the temporary shutdown of parts of the economy, the tireless efforts of doctors and nursing staff, the level-headed behaviour of the population and the constant weighing up of the next steps by the Federal Council and its expert committees.

Afterwards it is easy to say that all these restrictions were not necessary. As a medical layman, I prefer to take note of the advice of experts that much about the virus is still unknown today, as well as their urgent recommendation not to let the obviously effective rules of distance and hygiene slide.

The economic damage caused by corona is certainly an additional heavy burden for many countries in the world, while Switzerland will be able to cope with it. For example, in a survey conducted by *Swissmem* (the Swiss Engineering, Electrical and Metal Industry Association), more than 70% of the companies stated that they expected a major decline in sales and orders in the current year, even after the end of the lockdown. Nonetheless, economic editor *Lorenzo Bonati* states in *Radio SRF News*: "Swiss industrial companies have so far shown resilience. There have been no mass redundancies such as in the USA, thanks in part to the instru-

ment of short-time working. Many companies still have sufficient cash. Only just 10% of the covid loans granted by the banks have so far gone to industrial companies."<sup>1</sup> If, as expected, incoming orders continue to stagnate in the second half of the year, there are still reserves.

Instead of complaining, we should rather think about how we can help other nations. This is what the *Foreign Policy Committee* (FPC) of the National Council, for example, is proposing to its Council in the June session for the current year. It is applying for a "supplementary credit for humanitarian aid" of CHF 100 million to the UN, the ICRC and other organisations for the fight against corona (motion 20.3131). Can it also be a bit more?

## What was it with the free Swiss Confederates?

As a teacher of civics in Switzerland for many years, I had discussions with my vocational students from time to time: Permit requirements for demonstrations? Even a police ban on a demonstration for reasons of public safety? Where is the freedom of assembly, which is in the constitution? One of my students is particularly memorable. He announced on his 18<sup>th</sup> birthday: "From now on I only do what I want!" But after only ten minutes he complained because I had not given him a worksheet – he couldn't stand not cooperating any longer.

After all, the freedom of the citizen in a direct-democratic state includes the knowledge and feeling that the rights of citizens are often connected with duties. This isn't of course applicable to fundamental human rights: for example, the right to life is unconditional and mandatory. In order to protect this right for every individual, financial sacrifices are sometimes necessary, as many entrepreneurs and workers have had to experience in recent months.

The democratic participation of the citizens, on the other hand, is one of give and take. The right to co-determine cannot and must not be one-sided in direct democracy. If we want a new school building in the commune, we may have to be prepared to increase the tax base. Our local councillors, our governments in the cantons and at the federal level know that they cannot simply order us fellow citizens around and we must obey. Have you witnessed some of the Federal Council's media conferences since the beginning of March (on screen)? The Federal Councillors confronted us – sometimes on a daily basis – from one moment to the next, gave brief

information and asked for further good cooperation, and then gave the media people and the population (by telephone) plenty of time for questions and critical comments. As a citizen, I was happy to participate and to take responsibility. Not as a restriction of my freedom, but as an expression of freedom to be able to contribute on my own responsibility. It was about the common whole – the individual freedom to go shopping or to meet on the village square receded into the background for a while.

Besides, the freedom the old Swiss Confederates fought for was also not about personal freedom rights of the individual people. At that time people were not even aware of them. Rather, the farmers in Central Switzerland wanted to retain their freedom as a community and not submit to a foreign ruler nor recognise foreign judges.

Freedom in this sense is still central to the majority of Swiss people today. We do not want to become members of the EU or NATO, nor do we want to submit to a framework agreement dictated by the EU. So the mainstream media can use the corona pandemic for a long time to effusively thank Federal President *Simonetta Sommaruga* for the opportunity to exchange views with the ministers of the EU member states in recent weeks. It is followed by the obligatory saying: Now we see that Switzerland is dependent on the EU. Therefore, let's lay out the red carpet for the Framework Agreement ...<sup>2</sup> As if Switzerland had not always been open to mutual exchange, mutual assistance and economic trade, but on an equal footing, as our forefathers in ancient and recent history have shown us. Neither Switzerland nor the EU member states need a centralist bureaucratic concept for this purpose, quite the contrary, as is evident in the current crisis situation.

## Federalism a "patchwork quilt"?

While some fellow citizens have been ranting for weeks against the "centralist seizure of power" by the Federal Council, others (or the same ones?) recently have been outraged at the emergence of a "patchwork carpet". What is meant are the different approaches of the cantons to the gradual reopening, for example of schools. Some started on 11 May with half-size classes, others in small groups with 1-2 hours of lessons per day, yet others with complete classes (subject to strict hygiene rules) and many other al-

## Summer Session from 2 to 19 June 2020: some important issues

### **mw. Legal basis for a proximity tracing system (urgent amendment of the Epidemics Act)**

In the extraordinary May session, the National Council and the Council of States instructed the Federal Council to present a legal basis for the introduction of a contact tracing app that it plans to introduce. This instrument should further contain the coronavirus.

The app has recently been used on an experimental basis. It traces back who has been in contact with a person tested positive for the new coronavirus and informs those affected that they may have become infected, while maintaining their anonymity. The data is to be stored decentrally – and only as long as necessary – the use of the app is voluntary.

The Federal Council has already drafted the amendment to the Epidemics Act and the dispatch to parliament. Both Councils will debate it in the June session, decide on the amendment and – if approved – declare the law urgent. According to Article 165 paragraph 2 of the Federal Constitution, a federal law that has been declared urgent enters into force immediately; the referendum may be held subsequently.<sup>1</sup>

High expectations are placed in the use of the Contact Tracing app, which will be fulfilled all the better if the highest possible proportion of the population is prepared to use the app.

### **Additional financing of CHF 14.2 billion for unemployment insurance (AIV)**

The Federal Council is requesting this additional credit to the 2020 estimate from parliament in order to counteract the massive indebtedness of the unemployment insurance system resulting from the sharp increase in short-time working since mid-March. For the current year, the Confederation is to assume the costs of short-time working

compensation for around 1.94 million employees (37% of all employees) in 190,000 enterprises. This is to prevent that in the difficult economic situation, the unemployment insurance premiums for 2021 would have to be increased by 0.3% in accordance with the debt brake.<sup>2</sup>

The high number of short-time workers shows that most entrepreneurs have done their utmost to avoid having to lay off their employees. Thanks to the short-time work compensation payments, numerous jobs were saved for the period after the reopening of the enterprises. This is a beneficial institution, which should be granted to employees in every country.

### **Economic consequences of the corona crisis (Postulate of the Council of States)**

In the May session, the Council of States requested a report from the Federal Council "on the economic consequences of the corona crisis and lessons for the future". The Federal Council has declared itself willing to accept the postulate and "to work out the economic consequences of this crisis in detail on the basis of the broadest possible data base [...]".<sup>3</sup>

What will be important for the future is above all to answer the question of the "medium and long-term lessons" that Switzerland and our authorities should learn from the crisis. This will certainly include improved security of supply, not only with medical supplies. We would do well to pay particular attention to this.

### **Extension of Swiss participation in KFOR (Kosovo)**

The Swiss Army has been conducting military operations in Kosovo (*Swisscoy*) for 20 years. *Swisscoy* is used to demonstrate the alleged necessity of Swiss Army missions abroad. Although these clearly violate Swiss neutrality and could easily be

replaced by civilian aid abroad, the Federal Council and the majority of parliament maintain that the *Swisscoy* deployment should be regularly extended. The Security Policy Committee of the National Council is therefore once again asking "[...] by 16 votes to 8 to approve the extension of the *Swisscoy* mission in Kosovo until the end of 2023 and an increase in the number of troops". The only pleasing aspect is the justification of the minority motions: "A minority considers a military mission abroad by neutral Switzerland to be fundamentally wrong. In addition, the *Swisscoy* mission should not become a permanent mandate and must be terminated after 20 years on the ground. Another minority considers the use of military means to be inappropriate and calls for a strengthening of civil development cooperation".<sup>4</sup>

Together with the SVP and other members of the Council who uphold Swiss neutrality, the many new green and green-liberal parliamentarians should actually succeed in obtaining a majority in favour of ending the military operations in Kosovo that are contrary to neutrality.

<sup>1</sup> To be dealt with in the Council of States on 3 June, in the National Council on 8 June.

<sup>2</sup> 2020 estimate. Addendum IIa (20.042), to be dealt with in the National Council on 3 June, in the Council of States on 4 June.

<sup>3</sup> Postulate 20.3132 to be dealt with in the Council of States on 8 June. For more details see Marianne Wüthrich "Everything is as it should be according to the constitution". In: *Current Concerns*, No 9, 15 May 2020.

<sup>4</sup> "Schweizer Beteiligung an der Kfor. Verlängerung des *Swisscoy*-Einsatzes" (19.082). Media release by the Security Policy Committee of the National Council dated 11 February 2020. To be dealt with in the National Council on 4 June, in the Council of States on 16 June.

### **"Thoughts on freedom, federalism ..."**

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ternatives. And some people were already calling again for central uniform rules, although in the meantime major regional differences in the spread of the coronavirus had been observed.

This is how epidemiologist *Marcel Tanner*, member of the Federal Council's scientific task force, assesses the current situation: "There is no longer any need for national uniform measures, especially since the differences between the cantons are sometimes great. Now the cantons must "[...] keep a close eye on the situation on the ground and quickly intervene locally if necessary". *Tanner* adds: "We cannot afford a second, nationwide lockdown, both socially and economically, the damage would be fatal". With the use of the newly available

contact tracing and targeted containment measures of local outbreaks of infection, it is possible to keep infection rates low until a vaccine is available, says *Tanner*.<sup>3</sup>

So let's stick to the diversity of federal Switzerland and support the more affected cantons in the fight against the still dangerous virus as much as we can. What continues to apply to everyone is to observe the rules of distance and hygiene!

### **Swiss militia parliament concretely**

A few words on the criticism of the National Council and the Council of States, which decided on 12 March, when the corona pandemic hit our country with force, to break off their spring session after two weeks. According to the critics, without a formal decision, Parliament had thus forced the Federal Council into a role that it should actually have played itself.

Let us consider this accusation on the basis of the Federal Constitution to the end. First of all, the Swiss parliament, unlike most other European parliaments, is a militia parliament. It holds four three-week sessions a year and in the meantime meets in the various commissions to prepare the sessions and express its views on current issues. Specifically, dear critics: what should the two chambers of parliament have done in the third week of the spring session? Could they have debated and decided on the necessary steps for the coming months within five days in mid-March, when much was still unclear? A simply impossible task. Should they have given the Federal Council a power of attorney as they did before the Second World War? Heavens, no!

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# COVID-19 – often instrumentalised

by Karl-Jürgen Müller

Actually, the case would be quite simple: COVID-19 is a disease caused by a newly emerged coronavirus, which might also lead to death. A few months after the first appearance of this virus, the medical science already knows a great deal about the virus and its effects, but many questions are still open, also about the extend of possible diseases associated with an infection. Therefore, it is very advisable to keep the risk of infection as low as possible.

The core task of the state is to protect the health and lives of its citizens as best as possible and to organise the necessary measures to avoid contamination either by itself or by support of others. The question how to accomplish this goal best, has to be continuously discussed and decided according to the circumstances.

In doing so, it is quite possible – for a limited time – that other basic rights might be restricted in favour of the right to health and life. However, means and ways have always to be found, in order to allow every citizen to exercise all his fundamental rights as comprehensively as possible. How this can be achieved – this as well has to be discussed and decided upon, over and again, depending on the circumstances.

## Public debate is important

Even those who oppose the state measures aimed at the containment of the corona pandemic, must not be denied their seriousness and the concern in this matter. The

state measures have had and still have very drastic consequences in part. Today and also in the past months, nobody was able to say with absolute certainty: I know the right solution to our problem. The fact that today many critical voices are dismissed as “conspiracy theories” or worse is not appropriate and does not help the cause, but is often motivated by political interests.

It is favorable that government measures to protect citizens from illness with COVID-19 and to provide for a sufficient medical care of those who fell ill, be publicly discussed, even controversially. Ideally would be to have a continuous debate and communication completely oriented towards the facts, ever and again aiming at the best solution possible.

Is that what the situation is like in our countries?

## Change of mood

The matter is doubtful. On 27 May 2020, the programme *Zapp* of *Norddeutscher Rundfunk (NDR)* reported the results of a representative poll conducted by the opinion research institute *infratest dimap*. The survey took place in regular intervals since mid-march and a significant result of the latest one (18–22 May 2020) was the following: “Every fifth person in Germany entitled to vote believes that ‘politics and the media deliberately exaggerate the danger of the coronavirus to deceive the public.’” The percentage of those, who have this opinion,

varies strongly, depending on political orientation. So 54 % of German AfD supporters affirm the statement. The proportion changes depending on the media used: with persons, actively “using the social media platforms”, it is 31%. How is this to be explained? Are these people that suspicious of the state, because they are better informed than others? Or does this show how strongly one’s own ‘Weltanschauung’ and political orientations shape the opinions on COVID-19 and on the government measures?

On 29 May 2020, the *NZZ online* headlined: “In the networks, many used to show solidarity with their fellow men – now insults are increasing.” Concerning the investigation it says: “The *Sotomo*<sup>1</sup> research centre has examined the emotions, kind of actors and risk perceptions in the digital debate during the corona crisis. Some 930,000 online comments were used, published [...] from 3 March to 25 May on *Twitter* and on the Swiss online news platforms *20 minutes view online*, *Watson*, *SRF News* and *Nau*, accessible free of charge.” The *NZZ online* report says: “When around mid-April it became clear that Switzerland will probably be able to survive the first wave of infection of the coronavirus without a disaster, the dominance of comments with expressions of solidarity [...] somewhat decreased. Even the previously very pronounced praising of one’s fellows, the hospital staff, the scientists

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## “Thoughts on freedom, federalism ...”

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According to the Swiss Federal Constitution, this is not even necessary. It is the task of the Federal Council to discuss and decide on the necessary measures to maintain internal order, as it has had to do on a daily basis at times (FC article 185 paragraph 2). In addition, article 7 of the Federal Act on the Control of Communicable Human Diseases (Epidemics Act) provides: “If an extraordinary situation so requires, the Federal Council may order the necessary measures for the whole country or for individual parts of the country.”

In this sense, three professors of constitutional and administrative law at the University of Freiburg/Fribourg state: “In our opinion, the Federal Council has so far basically remained within the limits of its legal and constitutional powers.”<sup>4</sup> They point out that the legislator is also free to strengthen its own possibilities of exerting influence and control in similar situations.

Not to be forgotten: the health of the members of our National council and

council of States must also be a concern for us. If there had been corona sufferers or even deaths in their cramped meeting rooms – unimaginable!

It is also a fact that Parliament was always present in the background. On the one hand, all the parliamentary groups have backed the Federal Council and its powers to regulate the extraordinary situation. On the other hand, National Council President *Isabelle Moret* and President of the Council of States *Hans Stöckli* announced as early as 19 March 2020 that urgent committee meetings (for example of the finance delegation *FinDel*, whose approval is required for urgent loans from the Federal Council) would be held in compliance with the rules on distance, and that the extraordinary session would be prepared for early May. (“Swiss parliament remains capable of acting in the crisis”. *Media release* dated 19 March 2020)

As soon as it was advisable from an epidemiological point of view, the commissions of both councils resumed their work. From 6 April, they worked through the Federal Council decisions of the last few

weeks and prepared their special session on the corona pandemic (4 – 8 May 2020).

Incidentally, the Federal Council was the first to ask Parliament to hold such a session and to decide on the motions and decisions of the executive power. The objection that parliament could not change much at all is justified. However, it is an indication of the good, friendly confederate cooperation that the members of National Council and Council of States have supported the decisions of the Federal Council with very clear majorities and thanked it for its great commitment. •

<sup>1</sup> Bonati, Lorenz. “Krise trifft Schweizer Metallindustrie schwer.” (Crisis hits Swiss metal industry hard.) *Rendez-vous* from 26 May 2020

<sup>2</sup> see for example the Brussels correspondent of the *St. Galler Tagblatt*, Remo Hess, on 25 May 2020, under the significant title: „Fast eine Familie“ (Almost a family) and the lead “During corona, Bern and Brussels worked hand in hand. Now one hopes that this pragmatic spirit will live on a little longer.”

<sup>3</sup> Fabian Schäfer. “Mini-lockdowns” against the virus.“ *Neue Zürcher Zeitung* from 23 May 2020

<sup>4</sup> Stöckli, Andreas; Belser, Eva Maria; Waldmann, Bernhard. «Gewaltenteilung in Pandemiezeiten» (Separation of powers in pandemic times). Guest commentary in *Neue Zürcher Zeitung* of 26 May 2020

**"COVID-19 – often instrumentalised"**

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and the Federal Council declined. Since the first relaxations of measurements, insults and accusations have become more dominant.

The comments examined here include angry comments, curses, expressions of frustration and accusatory words, of which 'brainless' and 'stupid' are two rather harmless ones. Then anger rises to become the second most important emotion and continues to increase slightly.

How can this be explained? Are there sound reasons for this change of mood? Or do we witness the result of propaganda? Propaganda that by now has crossed the boundaries of the so-called alternative media and reached the mainstream?

**Ideologies, politics, interests ... and maybe some irrational things**

Today, it is true to say that COVID-19 - like many other issues - is being used - one might also say: abused - in order to pursue an ideological and political agenda and/or substantial (not per se unjustified) material interests that existed before the disease occurred.

Therefore all voices commenting the government measures taken until now to combat the corona pandemic shall be asked about their motives and objectives: "With your printed products, websites, social networks and public statements you have spoken on the subject of corona. Do you want to contribute in a constructive way to solve our country's problems in many small steps, together with all other relevant forces (reform approach)? Or do you think that our political, economic and social system is so ailing that only a radical change of system and a total disempowerment of the hitherto powerful can help (revolution)? Or do you have completely different, not openly declared motives and goals?" These questions might be exaggerated indeed - but they are meant to be challenging.

**More globalisation, more global governance, more conflicts, more poverty...**

There are also forces for whom COVID-19 is an occasion to speak up strongly for more global governance than even before. These forces have done this before COVID-19 ... and they are doing it again now. In the "Neue Zürcher Zeitung" of 23 May 2020, even *Richard N. Haass*, president of the US Council on Foreign Relations, took up the widespread criticism of globalisation in view of COVID-19. Nevertheless, he argued for more globalisation. "Globalisation is not a problem to be solved by governments, but a reality we have to deal with. Anyone who stands up for comprehensive deglobalisation not only opt for the wrong remedy, but also for something that surpasses the diagnosed disease."

The neo-liberal model of globalisation has not yet been shelved, although there are also powerful voices, which run in another direction. On 25 May 2020, for example, the same newspaper quoted the designated new Chief Economist of the World Bank, Harvard Professor *Carmen Reinhart*, as saying that the corona crisis is the "coffin nail of globalisation". Corresponding, the newspaper titled another article in the same issue with "politicians recollect on the nation state".

New cold warriors in the NATO countries and "NATO thinkers" elsewhere in the world see the corona pandemic as another opportunity to put Russia and China in the dock. The silver lining of hope that with a disease which threatens all peoples equally, more cohesion and mutual help will take root between all states and peoples has initially proved to be an illusion on the political level. On the contrary, in the shadow of the corona pandemic, many a further peace-threatening decision is being taken. This includes the announced cancellation of the Treaty on Open Skies by the US government<sup>2</sup> as well as the impending development in the Middle East following the new formation of government in Israel. The arms race will also continue.

It must also to be feared that the painstaking progress in combating hunger in the world will fade to nothing. Many countries in Africa, Asia and Latin America are particularly strong affected by the social and economic consequences of the corona pandemic.

**... and more digitisation?**

Not least, the impression that COVID-19 will be misused as some kind of 9/11 for the digitisation of schools is solidifying. Anyone who watched the ARD television programme "Hart aber fair" (firm but fair) on 25 May 2020 had to be shocked at how massive and one-sided public propaganda is now being made for the digitisation of schools and how the many solid critical voices on this issue are disregarded.

**What will happen to the EU?**

Particularly interesting for us in Europe is a look at the EU. What are the plans? "Man only accepts changes under the pressure of necessity."<sup>3</sup> *Jean Monnet*, one of the most important power brokers at the beginning of supranationalisation in Europe at the end of the forties and the beginning of the fifties, formulated this sentence, thereby expressing that "crises" should be a key driver in the gradual supranationalisation of the politics of European states. In mid-March, when the European nation states adopted their first measures against the Corona pandemic, the EU was plunged into a crisis. Many people, some recommending, some refusing - spoke of a "renationalisation of politics". The EU has no contractual powers in the area of health policy. National policy had and wanted to decide. Now, however, more, even more EU is emerging. Not in the

area of health policy, but in financial policy. Keywords are the resumed debate on euro bonds for highly indebted EU states, specifically the joint plan by *Angela Merkel* and *Emmanuel Macron* to grant the EU Commission a credit line of 500 billion euros as money for economic stimulus programmes of the EU states affected by COVID-19, which these countries do not have to repay. It is not only the critics of the programme who see this as a major step towards the "communitarisation" of the financial policy of the EU states and thus towards the undermining of national budget law.

Furthermore, it is said quite openly that the investments which are to be initiated with the planned 500 billion euro stimulus packages<sup>4</sup> should be part of the "European Green Deal". The economic structure in the EU states is to change radically, government controlled. In the television programme ARD-Extra of 22 May, (see article on page 4) the influential German CDU politician *Wolfgang Schäuble* called this "new normality".

However, the strong reactions to the verdict of the German Federal Constitutional Court on 5 May 2020 on the government bond purchase programme of the European Central Bank (ECB) also show how "nervous" the EU has become. The highest German court had ruled against a verdict of the European Court of Justice (ECJ) of 11 December 2018 and classified the verdict of the ECJ in part as "absolutely incomprehensible" and encroaching ("ultra vires").

**More direct democracy is better**

*Werner Wüthrich's* analysis of Switzerland's history and present "Politics during crisis - crisis in politics?" in *Current Concerns* No. 10/11 of 26 May 2020 is confirmed ex negativo when looking across borders. To take steps to expand the possibilities of direct democratic political culture and political decision-making therefore is not a bad advice to the citizens in the neighbouring countries of the Confederation. This would make it more likely to keep the feet on the ground and to keep oriented on the issue at stake.●

<sup>1</sup> *Sotomo* is an opinion research institute based in Zurich. Further information can be found on the institute's website, [sotomo.ch/site/](http://sotomo.ch/site/).

<sup>2</sup> *Treaty on Open Skies*, Open Skies refers to a treaty from 1992 between NATO and former Warsaw Pact states which allows participating nations to cross each other's territories on specified routes and take pictures (photo, Radar and since 2006 also infrared). This confidence-building measure is intended to secure peace and prevent conflicts. On 21 May 2020, *Robert O'Brien*, President *Donald Trump's* National Security Advisor, announced that the United States would withdraw from the treaty.

<sup>3</sup> Roussel, Eric. *Jean Monnet*, Fayard 1996, p. 68

<sup>4</sup> The current plan of the EU Commission provides that even 750 billion euros should be spent on stimulating economic growth, 250 billion as loans to the recipient nations. It is not yet certain whether the plan can be implemented. There is also contradiction within the governments of the EU states themselves.



# “The idea is to knock out China as an economic rival”

*Interview by Adrial Kasonata, Asia Times, with Alfred de Zayas, professor of international law, former secretary of the UN Human Rights Committee, and the UN’s independent expert on the promotion of a democratic and equitable international order from 2012 to 2018*

*Adrial Kasonata: There was the colossal international damage caused by Fukushima and Chernobyl, but when these occurred the world showed solidarity. When it comes to Wuhan, we are witnessing xenophobia and racism, not only coming from the mouths of main Western politicians, but also being sanctified by the mainstream media outlets.*

*Alfred de Zayas: Money rules the world. And a great many citizens of the US, Canada, UK, France, Germany – do not like China because of its economic success. The idea is to knock out China as an economic rival, to “colonise” China and make Chinese industry work for the West as in the nineteenth century during the times of the Opium Wars. Racism and xenophobia are present among politicians and the media, but they are not the source of the problem – but a useful tool to demonize China.*

*Does the plan to sue China for trillions of dollars have merit in international law?*

*Is it true that China has violated the 2005 International Health Regulations?*

The plan has neither justification under international law nor in fact. China has not committed a tort. An unbiased observer may think that China was perhaps too cautious at the outset of the pneumonia cases in Wuhan – tried to avoid panic, investigated, called upon the WHO for help. Retrospectively we think that they could have acted more expeditiously. But if the virus had originated in the United States, in Russia, in Egypt, would these countries have acted faster?

The WHO’s International Health Regulations [IHR] constitute a useful framework for international cooperation in exchanging information and taking coordinated action against pandemics. It consists of 66 articles and nine annexes. At present there are 196 state parties.

IHR is not a convention with liability provisions and certainly not with “unlimited liability.” Nor do the IHRs provide for any kind of “punishment”. Had there been

any “strict liability” in connection with the speed of sounding the alarm, *no* country would have signed the agreement, least of all the United States.

*Is China responsible for the ravages of COVID-19?*

No. China is a victim of the pandemic like everyone else. Although China was the first country to sound the alarm, it is not certain that the virus actually originated in Wuhan, as there have been numerous reports that the virus had already emerged elsewhere. Investigations are in progress and we are learning more about its origin and why it became so contagious.

This is the time for cooperation and international solidarity. Not a time for blaming others, nor for wasteful, frivolous and distractive litigation.

Obviously Chinese officials needed time to observe the pneumonia outbreak,

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## “Lockdown” and the “new normal”

*by Barbara Schur*

In connection with the coronavirus we integrate newly emerging words into our vocabulary. Many of them already existed, but were of no great importance to the majority of the population. Who has ever dealt with the wearing of face masks, except medical staff or people in industry or construction? Some of these terms are German, many are English. Who previously heard the word “reproduction rate” or “social distancing”, “prevalence” or “attack rate” every day? Which word will probably become the word of the year 2020? Will it be “lockdown” or the “new normal”?

### “Lockdown”

The “lockdown” presumably was a formative experience for all of us. Everyone had to cope with it in his own fields and reorganise his life in different ways. The hardest hit, of course, are single elderly people and those in care homes. For many, despite supporting measures, things are getting tight to critical.

On the whole, the effective lockdown was only a short period of time. Everywhere one hears calls for an opportunity to learn from this crisis and to shape the future better.

And maybe it’s not so wrong to go back to the drawing board in both personal and social life. Many more children, teenagers and adults can be seen playing outside than before. The fact that you do not need to rush from place to place these days and you can

relax on the balcony once in a while could be reinstated in your life from now on.

### “New normal”

However, what will last longer – nobody knows how long – is what comes after the lockdown. In any case, this will not be the old normal. It seems that we are actually heading towards a new normality. The term the “new normal” in regard to life after the corona crisis has been used daily on Anglo-American television for a few weeks now. It appears more and more frequently in the German-language media as well. The idea that we can get back to business as usual after the crisis is on the wane.

However, the concept of the “new normal” is not so new and was not shaped by the corona crisis. It has a longer history and has been adopted from the American.

The “new normal” is a business and economic phrase that refers to the financial conditions after the financial crisis from 2007 to 2008 and the aftermath of the global recession from 2008 to 2012. It is said that the financial crisis has brought about a new normality which includes a fundamental restructuring of the economic order. The “new normal” is often used as a term for a digital capitalism, in the context of Silicon Valley or China. It was in 2001 someone used this expression in conjunction with the terrorist attacks on the *World Trade Center* 11 September 2001 (9/11)

had plunged the US into a “new normality”. Since then the phrase has been a buzzword.<sup>1</sup> It has since been used in a variety of other contexts to imply that something that was previously “not normal” is now part of our everyday experience.<sup>2</sup>

For example, in 2012 a US-American sitcom entitled “The new normal” appeared, which features new family patterns and gender issues.

In 2010, a journalist asked whether “being fat was the new normal” in the US. Her article is about the fact that many Americans are being overweight. This would shift the perception of what is slim or fat.<sup>3</sup>

These are just two of countless other examples. If you enter the keyword “new normal” in *Google* search, 11.5 million entries are counted (as of May 30, 2020). Even *Wikipedia* has already attended to the phrase.

Whatever our political position, the coronavirus challenges us as a whole society to rethink and, where necessary, reorganise politics, economics and our daily lives. We can’t just go back to normal. But whether what is called “new normal” will actually be a progress for mankind or whether specific interests are more likely to come into play is another crucial question. •

<sup>1</sup> Roberts, Alasdair. “Four Crises of American Democracy”, Oxford University Press, 2017

<sup>2</sup> Wikipedia: New Normal, business

<sup>3</sup> Rauh, Sherry. “Is fat the New Normal?”, 2010

# Transnational corporations must not undermine the rule of law

## Call for ISDS moratorium during COVID-19 crisis

cc. On 6 May 2020, the Columbia Center on Sustainable Investment (CCSI) issued a public letter calling for an immediate moratorium and a permanent restriction on all Investor-State Dispute Settlement (ISDS) cases during the 2019 novel coronavirus disease (COVID-19) outbreak. The letter calls for a restriction on claims against governments for measures related to health, economic, and social dimensions of the pandemic and its effects.

Extraordinary times call for extraordinary measures. The COVID-19 pandemic is the greatest threat to humanity since World War II. The fate of billions of people, and potentially millions of deaths, hang in the balance, particularly in the developing world. The United Nations Secretary General has recognized that COVID-19 is “the fight of a generation.” For this reason, the global community has taken and continues to take extraordinary and necessary actions. More than half of the world economy is locked down and related economic fallout generates major stress in fragile economies. Economic hardship is on the rise. Much of the world economy is in lockdown and 191 countries have closed schools, affecting 91% of all learners

“The idea is to knock out ...”  
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study its development, identify the new virus, evaluate the danger to China and to the world. They did inform the WHO on 31 December 2019 of 27 cases of atypical pneumonia, and the WHO reflected this information on its website on 4 January 2020, thus signalling a potential danger. On 7 January Chinese scientists identified the new pathogen and shared the genetic sequence with the WHO. As far as I can see, the International Health Regulations were observed. We may have preferred earlier identification of the virus – but we always know better with hindsight.

All responsible governments must have contingency plans to address unexpected events, such as volcanic eruptions, earthquakes, tsunamis, hurricanes but also pandemics. If the United States had not defunded hospitals and the health infrastructure, if the profit-seeking obsession had not led to the privatisation of much of the health sector in the United States, we would have been better prepared.

*The problem lies in the wrong priorities – the US Congress has prioritised military expenditures and approved a trillion-*

### What is meant by ISDS?

cc. The *Investor-State Dispute Settlement* (ISDS, Dispute between the Investor and Country) is a legal instrument of international law which investors can use in court against a country in which they have invested if they have perceived that their contractually guaranteed rights have been damaged. That means that they can make a claim against the specified country and can claim damages if their profit expectation has been impaired through a change in legislation or politics of the guest country. Many bilateral investment-protection agreements however, valid or planned free trade agreements such as CETA (Europe/Canada) or TTIP (Europe/USA) provide for ISDS as well.

According to these agreements, there is generally, no public court of law responsible for the dispute, rather a private arbitration tribunal. In this way, the settlement procedure commonly takes place at an International Centre for Investment Disputes (World Bank), at the International Chamber of Commerce (ICC), the United Nations Commission on International Trade Law (UNCITRAL) or the International Court of Justice.

Critical voices point out that ISDS, for example, according to TTIP, levers out national sovereignty, since foreign investors, since foreign investors, through threats of frivolous claims, can exert influence on the legislation and policies of a country.

globally. The ILO is predicting an enormous number of job losses, while people in many countries are falling into poverty, reversing a decade or more of progress in poverty reduction. The G20 countries are implementing a standstill on sovereign debt servicing in 2020 for the world's poorest countries, and further extraordinary relief will surely come after that.

In this regard, we call on the world community for an *immediate moratorium* on all arbitration claims by private corporations against governments using international investment treaties, and a *permanent restriction* on all arbitration claims related to government measures targeting health, economic, and social dimensions.

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*dollar military. We also have a worldwide “mass surveillance” program revealed to us by the former CIA operative Edward Snowden (read his book Permanent Record, 2019).*

All of that money could have been devoted to research and development in the health sector – to tackle diseases, develop vaccines, build better respirator machines, etc. Prevention and preparedness should have been US policy – instead of running in panic when an emergency arises.

Alas, the United States has an “I’ll sue you” culture that serves that infantile desire to “punish” the “bad guys” and to instrumentalise the law against others – instead of seeing the law as a common duty to constructive cooperation.

The pertinent provision in the IHRs is Article 56 on settlement of disputes before the WHO Health Assembly. But back in 2005 the US did not even want to envisage any potential US liability. In one of its reservations, the US made clear its understanding that the “provisions of the Regulations do not create judicially enforceable private rights.”

In this context, however, it would appear reasonable for states parties to discuss whether the sanctions imposed by the United States on Cuba, Iran, Nicaragua, Sudan, Syria, Venezuela, etc have not significantly

weakened the capacity of these countries to effectively combat COVID-19, and whether the Health Assembly should not call upon the United States to lift the sanctions at least during the pandemic, because the sanctions clearly contravene the spirit and letter of Article 44 IHR, which requires maximum cooperation in combatting a pandemic.

*How would you envisage the post-COVID-19 world? What “We,” and “Others,” have to do to draw a correct conclusion from this shared tragedy in order to leave this planet a better place for the coming generations?*

Either we cooperate or we go under together.

The post-COVID-19 world cannot and must not go back to “business as usual.” We need a paradigm change away from the neoliberalism that has significantly contributed to the unpreparedness of so many countries to combat the pandemic. We need a true commitment to peaceful resolution of disputes, to multilateralism rather than unilateralism. •

Source: <https://asiatimes.com/2020/05/achieving-an-equitable-world-order/>, May 19, 2020 (Excerpts) and <https://asiatimes.com/2020/05/road-to-recovery-no-time-for-blaming-others/>, 20 May 2020 (Excerpts)

## ISDS must be abolished as contra bonos mores

by Professor Dr iur. Dr phil. Alfred de Zayas



Alfred de Zayas  
(picture ma)

As former *UN Independent Expert on the Promotion of a Democratic and Equitable International Order* (2012–18) I strongly endorse the call for an immediate moratorium on the ISDS arbitration. Furthermore, ISDS awards must no longer be executed worldwide. In my reports to the UN Human Rights Council and General Assembly in the years 2015 and 2016 I documented outrageous cases in which transnational corporations were suing governments for

implementing democratically voted social measures, protecting the environment from pollution or raising the minimum wage. I explained that the ontology of a State is to legislate for the public good as the ontology of business – the very essence of capitalism –, is to take risks in the expectation of making a profit. Transnational enterprises must accept that sometimes they make a profit, sometimes they do not. But the risk cannot be placed on governments, which are democratically legitimized to tax and regulate businesses operating within their frontiers. Moreover, ISDS entails the undermining of the rule of law, since ISDS allows transnational enterprises to circumvent the public court system, which is transparent, accounta-

ble and appealable. ISDS arbitrations are secret and systematically ignore national legislation and even the judgments of the host country's highest tribunals. This parallel system of dispute settlement subverts established principles of the rule of law, particularly concerning the independence of the arbitrators.

Indeed, ISDS cannot be reformed – it must be abolished as *contra bonos mores*.

Sources:

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[https://www.un.org/en/iga/search/view\\_doc.asp?symbol=A/70/285](https://www.un.org/en/iga/search/view_doc.asp?symbol=A/70/285)

sions of the pandemic and its effects. These investor-state cases (often referred to as “ISDS” cases) empower foreign private companies to challenge government actions that affect narrow corporate interests, and often result in large payouts, sometimes of billions of dollars, to these companies for alleged lost profits. These suits pose an immediate danger to the ability of developing nations, and the global community as a whole, to confront the COVID-19 challenge.

There are three reasons for an immediate moratorium.

First, the necessary business closures and other emergency responses will create unprecedented changes in the business environment that will likely trigger a massive number of unjustified claims. Foreign investors will claim that they have lost their expected profits. And this will be true, but for the vital reason that every business in society will face an unprecedented situation. Governments have the duty to protect their citizens and to stop the pandemic without fear of lawsuits by foreign-owned businesses or foreign shareholders; typically these are claims that cannot even be brought against governments by their own domestic companies.

Second, governments must direct their attention to the urgent control of the COVID-19 crisis, and not be distracted by foreign companies and shareholders who might take advantage of the crisis using vague investment treaty standards to press their claims.

Third, awards against governments, frequently in the millions or billions of dollars, which can represent sizable percentages of governments' budgets, would weigh heavily against the dire budget crises facing developing countries in the context of the COVID-19 pandemic. As the International Monetary Fund has warned, the economic downturn in 2020 will be the most severe since the Great Depres-

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“Moreover, ISDS entails the undermining of the rule of law, since ISDS allows transnational enterprises to circumvent the public court system, which is transparent, accountable and appealable. ISDS arbitrations are secret and systematically ignore national legislation and even the judgments of the host country's highest tribunals. This parallel system of dispute settlement subverts established principles of the rule of law, particularly concerning the independence of the arbitrators.” (Alfred de Zayas)

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sion. Governments must ensure that ISDS does not deepen the inevitable fiscal crisis.

We therefore call for a complete moratorium on all ISDS claims until the pandemic has passed and governments have agreed on principles to ensure that future arbitration cases will not hinder countries' good faith recovery efforts. These principles should recognize the full and clear scope that governments have, and are required, to take all appropriate actions to save lives and fight global emergencies, even when the result is a loss of profits or business opportunities, including by foreign investors. Furthermore, they should ensure that any damages awarded in ISDS cases should respect the dire financial situation facing governments following the COVID-19 emergency. Short of these clear principles, there will be no basis for restarting ISDS processes. In addition, we call for an ongoing restriction on ISDS claims related to measures taken during the pandemic, including those targeting health, economic, or social dimensions of the pandemic and its effects.

We call on individual countries to advance this effort, and the United Nations and specialized agencies, the World Bank Group, the Organisation for Economic Co-operation and Development, and other mul-

tilateral organizations to implement it. We similarly call on all people of conscience – including lawyers who initiate and arbitrators who decide these arbitration cases – to put the lives of people ahead of corporate interests at this dire moment facing humanity.

**Phil Bloomer**

*Executive Director, Business & Human Rights Resource Centre*

**Juan Pablo Bohoslavsky**

*Former UN Independent Expert on Foreign Debt and Human Rights (2014–2020) Executive Director, South Centre*

**Olivier De Schutter**

*UN Special Rapporteur on Extreme Poverty and Human Rights*

**Kerry Kennedy**

*President, Robert F. Kennedy Human Rights*

**Jeffrey D. Sachs**

*University Professor, Columbia University Director, United Nations Sustainable Development Solutions Network*

**H.E. María Fernanda Espinosa Garcés**

*President of the 73<sup>rd</sup> Session, UN General Assembly (2018-2019); Ecuadorean Minister of Foreign Affairs (2017-2018)*

# The crashing classroom

## Problems with digitisation of schools widely underestimated

by Nike Heinen and Natalie Wexler

*German schools are to be digitised on the double. Is that really a good idea? A glance at the USA shows that there schools are clearly further ahead – and quite disillusioned as well.*

A primary school classroom in Washington D. C. Most of the six-year-olds are sitting in front of their tablets. They are supposed to deal with mathematical problems independently, while the teacher works intensively with a small group. One boy, let us call him *Kevin*, is staring at his screen. “Add 8 and 3,” the tablet demands.

He cannot read very well, so he presses the “read aloud” button. Again and again. Without giving an answer afterwards. He does not understand the word “add.” On the other children’s monitors there are instructions like: “Round 119 to the next ten” and “Find the area of the triangle in the squares”. If one child does not understand the word “add”, do the others understand words like “rounding” and “square”?

### Digital reality in US schools ...

The digital world has become a reality at most US schools long ago. In a report by *Gallup* polling institute, 89 % of students said they were taught digitally several days a week. 96 % of school and school board directors and 85 % of teachers supported “increased use of digital learning tools at their schools. At the same time, it is not clear at all whether the programmes are at all suitable as teaching aids. New studies suggest that they even intensified the problems of pupils with learning difficulties. So this enthusiasm rests on no data basis. At least some of the teachers seem to be well aware of this. When asked whether “much information is available on the effectiveness” of the digital tools used, only about a quarter of them answered “yes”.

The scientific evidence is thin indeed. Worse still, most of the data shows up negative effects. In 2015, for example, educational researchers published their investigation of millions of high school students in the 36 OECD countries. They found that those students who used computers intensively at school “performed less well in most areas of learning, even when the effects are adjusted for social background and demographic effects.”

### ... worse exam results

In a 2016 study of college-level students at the US military academy Westpoint, those who had laptops or digital devices in their classes achieved lower scores on exams.

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In a comparison at Northwest University in 2014, eighth-graders from North Carolina, who learned algebra online, were not able to calculate as well as those traditionally taught frontally. And a 2019 data analysis published by the Paris-based *Reboot Foundation*, which is committed to “stimulating critical thinking in schools”, found that fourth-graders who used tablets in all or nearly all classes scored an average of one whole grade lower on reading tests than children who used paper alone. The foundation had based its findings on data from the PISA tests, among other things.

This effect can also be seen in the so-called “flipped” courses: tutorials teach the material to learners at home. The lessons are then used to consolidate what has been learned; which is, so to speak, reverse teaching. This shows that those who were already strong in math made good progress. But all the others made not progress at all. So digitisation only made the existing differences in performance even greater.

### Not more, but less educational justice

And yet, technology was supposed to have exactly the opposite effect. The USA has long had a problem with educational justice. Whenever students are tested, massive gaps open up between the children of well-off families and those from poor backgrounds. In the past, attempts at compensation were made by improving teacher training accordingly. Today, educators are placing their hopes above all in software and online tutorials. Ed-Tech is booming. Even kindergartens and pre-schools have jumped on the digital bandwagon, with technophile philanthropists like *Bill Gates* and *Mark Zuckerberg* as eager supporters.

Kevin’s school is also one of those located in a poor district of the USA capi-

tal. Here, many children have difficulty reading – and because many do not speak English at home, they have difficulty understanding simple words. The school is all the more proud of its “one to one” policy. The term describes the practice increasingly popular in the USA of giving each child a digital terminal. “As technology continues to change and improve our world,” says the school’s website, “we believe that low-income children should not be left behind.”

### Errors of the individualisation concept

The vision of these digital enthusiasts includes personalised learning: all children are to be taught at their personal work stations and according to their personal abilities. The digital personalised approach even allows children to themselves choose some of the content they learn.

What is impressive about these approaches, however, is not the learning progress, but the extent to which children and learning programmes talk past each other when left alone together. It is true that children are supposed to take “pre-tests” so as to allow the software to determine the appropriate level of questions. But if the terms used by the software do not match the child’s conceptual world, the level does not matter. As is the case with Kevin, who gets into a continuous loop when trying to do his calculations, because he does not understand the words in the question. A human teacher would have gotten to the bottom of the problem immediately instead of asking the question again and again.

### Problems of teacher decoupling

The bizarre situations that result from this teacher decoupling can be seen with another first grade at Kevin’s school. Here

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the pupils are busy with a reading comprehension programme. On one girl's screen, one can see facts about bananas, including the sentence: "Most bananas come from India." This is followed by a multiple-choice question. Since the girl was not able to read the word „India“, she asked a classmate where bananas come from. His answer: "From trees." This is correct, but it was not one of the given answers. In the classroom the children might now have discussed what banana trees are and why most of them come from a country called India. On the computer, on the other hand, two children are left with big question marks over their heads.

A report published in 2019 by the *National Education Policy Center* at the University of Colorado gives poor marks to digital personalised learning. Above all, the scientists testify to "questionable assumptions about education" and "a lack of willingness" for scientific verification.

**Hardly any exchange of ideas, hardly any discussions left**

With individualised, self-chosen learning, an important part of previous school education is lost: the exchange of ideas and discussions, which sharpen the children's linguistic skills. In community with others they learn to argue, and to accept other opinions. Moreover, the special motivation that only fellow human beings can generate is missing when children work at the monitor. If a teacher had asked Kevin to calculate 8 plus 3, he would probably have been much more inclined to do so. "It is a completely different matter when you are taught by a person", says cognitive psychologist *Daniel Willingham* of the University of Virginia. "It becomes important what he or she thinks about you. In this way, children are much more likely to make an effort."

**Children left alone in the digital classroom**

And so, at the moment digitisation of schools in the USA means above all: leaving the children alone in the digital classroom. Computers are cheaper than good teachers. This makes the already disadvantaged the ones who suffer the most: One example is the commercially run *Rocketship Public Schools*. They are aimed primarily at low-income communes and rely heavily on digital technology. During the so-called learning lab time, a kind of assistant teacher supervises up to 90 students. A single "Learning Lab" thus eliminates the need for several positions for well-trained teachers. The demand is so great and the technology is used so uncritically that in Rocketship schools even

"With individualised, self-chosen learning, an important part of previous school education is lost: the exchange of ideas and discussions, which sharpen the children's linguistic skills. In community with others they learn to argue, and to accept other opinions. Moreover, the special motivation that only fellow human beings can generate is missing when children work at the monitor."

pre-school children spend 80 to 100 minutes a day in front of screens.

**Learning process disturbed**

It is exactly those who particularly need help in learning who are left to a technique directly interfering with their learning process. There are two reasons for this interference: Firstly, at the computer, leisure and learning time are much too close together. When their attention is constantly interrupted by thoughts of the current computer game or the next surf trip through the vast expanse of the net, the deep concentration necessary for sustained learning does not even come about in the first place. The younger the children, the easier it is to distract them. Kevin, too, allows himself to be seduced by the temptations of the tablet. Even after a quarter of an hour with the new information, he has not found the solution for 8 plus 3. Instead he is drawing bright pink lines with his finger, one of the many alternatives for which such a tablet can be used. He sighs and asks: "Can't I play a game instead?"

**Purely digital learning runs contrary to the functioning of the brain**

Secondly, some researchers are convinced that purely digital learning runs counter to the way the brain functions: texts on the screen, they suspect, are much more difficult to commit to memory because the three-dimensional impressions of a book are missing (see *Technical Review* 11/2018, p. 26ff.). This is because the memory store in the human brain, the hippocampus, has evolved from a spatial orientation system of early vertebrates. It can make better use of information that is accompanied by a tactile experience. The "grasping" of information on paper is thus easier than that of information on a screen.

Such findings are slowly leading to a change in thinking, at least in the USA. For example, in the schools of Baltimore County the test results of digital schools suddenly slipped in comparison to conventional ones. Five years ago, the county had decided to abandon textbooks and paper altogether in the medium term, but now it has decided to go back to using fewer computers, at least in the early elementa-

ry school classes. And Rocketship had to abandon plans to open a third school in Washington D.C. Only 22 students had registered.

**While the USA is starting to rethink, Germany wants to repeat its mistakes**

Germany, however, is still moving in the opposite direction. In February 2019, the federal and state governments agreed on the Digital Pact for Schools: five billion euros in subsidies from the federal budget are to help to establish an "up-to-date digital education infrastructure" throughout the country. There are no signs at present that a more balanced approach than in the USA will be adopted.

It is true that this expansion is to have "scientific support through educational research". However, the issue is not so much to introduce digital methods with caution, but above all to ensure the smoothest possible process. Coordinator of the programme is *Michael Kerres*, Professor of Media Didactics at the University of Duisburg-Essen. His main task is to invite the various researchers supported by the BMBF (Federal Ministry of Education and Research) to his institute and to bring them together with schools. Officially, he is also to "identify gaps in knowledge".

Kerres is one of the German pioneers of e-learning, having started using Internet-based courses as early as in the 1990s. He, too, runs a "Learning Lab". As opposed to the learning labs of the Rocketship schools, however, here students are not supervised or even their learning successes measured. Here, the staff are considering how they can promote digitisation in schools. Their approach is teacher training and the linking of schools in digital networks so the wheel does not have to be reinvented by every school.

**Questionable "tablet classes"**

We find the same picture in Baden-Wuerttemberg: here, some secondary schools have been providing "tablet-classes" since 2015. They were not only introduced as vanguards of digitisation, but were advertised to sceptical parents as "scientifically accompanied school experiments".

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But even here, scientific evaluation is not about whether children profit comparably well by digital methods of learning. Only practical questions are examined, for example whether teachers, from the scientists' point of view, prepare the material of their digital teaching units in a way to fit the digital world.

Teachers, in particular, are becoming increasingly concerned about this trend. Schools are acting with conspicuous restraint. So far, they have only drawn 40 million euros from the funding pools, less than ten percent of the amount made available. "We are already getting the impression that the children are much more lacking in concentration," says a Lower Saxony representative of the teachers' union. "Digital equipment in schools only causes even more unrest."

### Classical textbook nowhere near superfluous

Brain researcher *Martin Korte* from the Technical University of Braunschweig adds: "There is a clear lack of research results that systematically and in the long term examine the use of digital media in teaching and training." He is now touring schools – at the invitation of teachers who would like to know what a neurobiologist thinks about digitised classrooms.

In front of the teaching staff assembled in school halls, Korte explains how attention control works, how the use of Internet search engines instead of learners' own knowledge archives is already changing learning, how it is already reflected in the structures of the brain – and why the classical textbook is far from being superfluous. He gets scene applause every time for these sentences.

Korte does not want to be misunderstood: He approves the fact that German schools are upgrading their digital equipment. He would be very much in favour of all children from the seventh grade onwards having to take computer science

"And so, at the moment digitisation of schools in the USA means above all: leaving the children alone in the digital classroom. Computers are cheaper than good teachers. This makes the already disadvantaged the ones who suffer the most [...]"

classes, so that they will really understand the digital world and its codes.

But what the educational researcher does not like at all is the use of digital media in normal lessons. "The digital world is more of a hindrance than a benefit to the transfer of knowledge," he says. "It is only useful for deepening what you have already understood."

### Even education entrepreneurs have serious reservations

Even quite a few education entrepreneurs have great reservations about the current trend. For instance Larry Berger, CEO of the US company Amplify which develops digitally enhanced curricula in math and science, as well as reading programmes from kindergarten to eighth grade: "While technology can reliably convey information, it is not so good at demonstrating the social benefits of knowledge," he says. "To do this, you have to put that knowledge into a social context." He would wish to see digitisation oriented a little more towards the classic forms of teaching. For example, he considers it fundamentally wrong to give different students material of varying complexity. "All children should get the same content, then they could deal with it together," he says. Differentiation, he believes, should only take place once the material is understood. "All pupils could read the Declaration of Independence, for example, but good writers could then write a whole essay on it, while others should only answer individual questions."

He sees digital methods as a way of making the teachers' work easier: Berger believes that learning programmes can easily group the children automatically and thus support the teachers in the differ-

entiated support and assessment of more than 20 pupils in a class. The system is also less discriminatory: When the computer takes over the task of ability streaming, no child knows which group another child is in. Also unintentional personal preferences of teachers for individual children are prevented.

Are digitised teaching methods to be used only as a support system for teachers, in the services of proven methodology? This is a much more modest role for educational technology than most participants in this sector have so far advocated and hoped for. But it would probably improve teaching – instead of worsening it. •

Source: *Technology Review*, April 2020

(Translation *Current Concerns*)



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## Family in the corona crisis – personal impressions

by Renate Diunki

Due to my age, I am in a high risk group and therefore practice self-isolation, social distancing and spend a lot of time at home. I live in an environment where everyone talks about the corona pandemic, but it does not completely paralyse everyday life. Neighbours and a friend go grocery shopping for me, I can order other necessities by phone.

Because I live rurally, it is easy for me to go out for exercise and enjoy the beautiful spring. Because my family all live in neighbouring countries and due to travel restrictions we can't meet each other, we maintain contact by writing and phone conversations. This is given opportunity to once again realise that conversations, interest in others are the elixir of life that everyone needs and that these can be established creatively.

One example that I recently experienced is based on this thought process: My daughter-in-law and her youngest daughter baked a sand birthday cake for me in the sandbox on the reopened playground. The "baking process" was precisely documented with photos, just like

in a professional cookbook, and in the end not "En guete" (Enjoy your meal!) but "Good luck" was written in the sand. They sent me photos of this little art-project as a parcel, accompanied by a "cooking guide" – a healthy, sugar-free, vegan cake for my birthday!

The enclosed letter described all kinds of everyday experiences from the time of the lockdown – although the schools are only being opened in stages and the extracurricular activities have been cancelled, the children seemed neither depressed nor bored or impaired by isolation.

Of course, this lockdown will not continue forever in our society. As a grandmother I was very happy and touched to experience how contact and affection can be maintained creatively in such difficult times.

My family and friends have made similar observations:

Especially in young double income families, before the lockdown the small children were in daycare, so that the women could continue to pursue their professions. The pandemic has changed many things. For example, in one family, the father is on

short-time work from home in a relatively small city apartment, a situation that requires night work and worries him. Nevertheless, the parents agree that their two boys make a calmer, but also more alert impression since the increased family time started. The parents come up with all sorts of creative ideas, for example simple experiments regarding air. These experiments are filmed and sent for sharing among the circle of friends with children. The time spent centred on the family, more peace and quiet, does the children noticeably good. And the parents experience that it doesn't take fancy things to make living together – "only" more time for each other.

My impression of this positive development is the simplification of daily life combined with a less tightly packed schedule, which allows more togetherness and quiet relationships within the family. This corresponds with the findings of developmental psychology, which gave great importance on the family. It would be positive if many parents could take this with them from the isolation imposed by the lockdown. •



1. The cake is formed.



2. The organic decorations are being prepared.



3. The finished organic sand cake.

(pictures rd)

Letter to  the Editor

## Notes on the book review “Hilde Domin – Poetess of the Nevertheless”

The excellent book review by *Susanne Wiesinger* in *Current Concerns* No. 9 from 15 May 2020, made me think about the poetess *Hilde Domin* and motivated me to read her biography. After reading it, I acquired the collected poems and the “Gesammelte autobiographische Schriften. Fast ein Lebenslauf” (“Collected auto-biographical writings. Almost a Curriculum Vitae”) (Fischer paperback 1998).

What is discussed in this biography authored by *Ilka Scheidgen*, becomes even clearer in Hilde Domin’s own writings: the ability and the will to enter into a direct relationship with the other person, without fear of contradiction, knowing that things should be clarified between people. The following is an example that

particularly impressed me: When Hilde Domin travelled to Italy with her husband in the 1930s to escape the Nazis, she met a German couple in Florence; they were both travelling as tourists. She had been friends with this couple since she was a student in Heidelberg. Not only does the couple not greet them, they demonstratively look away. This was a painful experience for Hilde Domin and her husband. When they returned to Germany from their Latin American exile in the early fifties, the same couple stood at the airport and greeted them warmly.

Hilde Domin was aware that she couldn’t continue a relationship with this couple without clarification of the incident in Florence. And she asked what happened at that time. “We were afraid,” she

was told. This was enough for her to continue a lifelong friendship.

Her humorous directness with school children and prisoners and with her reading audiences, helped her and her audience to overcome complicated situations. She vividly described how she always chose a face in the audience and spoke to this person in a very special way. This often lead to friendships.

Thanks are due to *Susanne Wiesinger* for drawing the attention of the readers of *Current Concerns* to this life-affirming and courageous poetess who stood up for peace.

*Rita Müller-Hill, Cologne*

(Translation *Current Concerns*)

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