

Call for Papers
“Communities and Community Practices”
11 June 2019, Paris
11 October 2019, Montreal

In preparation for the publication of a collective work on the theme “Communities and Community Practises” and the organization of an international symposium on 11 June 2019 in Paris, the Center for Business Law and New Technologies (DANTE) of the University of Versailles Saint-Quentin-en-Yvelines, and the Private Law Think Tank (GRDP) of the Université du Québec à Montréal are pleased to solicit your contribution.

The comparative and interdisciplinary approach guiding this collective endeavour is prospective, empirical and theoretical (see list of suggested research themes). It seeks to formulate new definitions of the “community” and employs the following statement as point of departure point:

Communities emerge along the margins of social organizations, which are expressly framed by law. While this phenomenon is not new (e.g., peasant, family, or artist communities), it has experienced a new growth engaged in the broader trend of reconceptualizing the relationship between persons and property. While this phenomenon is related to network communication tools and the dematerialisation of things, it has also expanded to include areas such as housing and the environment.

Currently, research in the civil law has been essentially concerned with the study of common property and the commons, the polysemy and polyphony of which raise the difficult issue of determining their respective borders. This project seeks to put into perspective different legal cultures and practices, and will prioritize the notion of community rather than common property or the commons as a starting point for the study of the common access, sharing, and

production of certain resources.

We start from the premise that where common property or commons can be found, there is also a community whose constitution and management are determinative elements for choosing to create the commons. We distinguish two types of communities: 1) those built around a common interest; 2) those created to manage and/or produce a common object (rights, things, or land). While communities can use or produce common tools in the first typology, the second typology suggests share common interest, but these characteristics are not essential to the community. On the basis of this distinction, studying “communities of interest” requires that we specify the notion of common interest that grounds such communities, whereas analyzing “communities of things” allows us to define the shared object that ought to correspond to the notion of the commons.

Communities play a role mandated to grow both within and outside of market economies. They build new social relationships marked by, among other things, the sharing of enjoyment and intergenerational solidarity. Communities, as we understand them, are constituted by a group of persons with a common goal, interest, or property right and who establish privileged social relationships among themselves. Although they are not necessarily legally structured, these communities are able to imagine rules to manage, preserve, or exploit their common property or realize their common goal.

In studying the characteristics and practices of communities, we hope that new concepts of “community” will emerge, concepts that will call into question the dominant proprietary model and unveil new relationships to property- even perhaps new proprietary models.

To fully grasp this phenomenon, empirical and theoretical approaches will be favoured. In carefully analysing some of these postulates, our objective is to understand different manifestations - or supposed manifestations - of communities, to then circumscribe the experiences corresponding to what we call communities. To be comprehensive, this method must be conducted in a comparative manner and include complementary disciplines. Indeed, legal considerations cannot be isolated from sociological, economic, and technical issues stemming from the concept of community.

Therefore, both legal and non-legal contributions will be welcomed with great interest. The feeling of community finds sociological, economic, and legal explanations. These different perspectives will allow us to reach the objective set by this colloquium.

Submission Directives

To participate in this project, please send a proposal by 29 October 2018. The proposal must include a bilingual title and a short abstract (250 to 400 words) in French or English and must include the name and institutional affiliation of the author. Proposals should be sent to the following address: communautes.2019@gmail.com.

As regards the publication of the collective book, papers should be submitted before 18 June 2019. Authors may request that their paper be submitted to a peer review process.

The papers will be presented in Paris during the first colloquium on 11 June 2019 and the book will be launched in Montreal during the second scientific meeting, on 11 October 2019.

Project Leaders

Mélanie Clément-Fontaine, Professor of Law, director of Laboratory DANTE, University of Versailles-Saint-Quentin-en-Yvelines, Paris SACLAY (France).

Gaële Gidrol-Mistral, Professor of Law, director of G.R.D.P., Université du Québec à Montréal (Canada).

Alexandra Popovici, Professor of Law, member of C.L.R.L (Critical Legal Research Laboratory), Université de Sherbrooke (Canada).

Scientific Committee

Valérie-Laure Benabou, Professor of Law, Aix Marseille University (France).

Mélanie Clément-Fontaine, Professor of Law, University of Versailles-Saint-Quentin-en-Yvelines, Paris SACLAY (France).

Gaële Gidrol-Mistral, Professor of Law, Université du Québec à Montréal (Canada).

Alejandro Lorite Escorihuela, professeur de droit, Université du Québec à Montréal (Canada).

Nicolas Jullien, HDR Lecturer in Economics, IMT Atlantique (France).

Alexandra Popovici, Professor of Law, Université de Sherbrooke (Canada).

Frédéric Zenati-Castaing, Professor of Law, Jean Moulin Lyon 3 University (France).

For Additional Information

communautes.2019@gmail.com

Suggested Research Themes

Theme 1: Characterizing Community

What brings together members of a community? What allows us to determine the presence of the community? What creates the feeling of belonging to a community? Communities rest on a common federating interest, operate on a common territory, and dispose of common resources.

1) A Common Interest: every community holds a common interest above the individual interests of its members, a “we” superior to the sum of individual interests. Is there a gradation of the common interest (plural, collective, common)?

Does the common interest precede the community, created to protect it, or does the community make the common interest arise?

Finally, if the common interest can merge with the individual interests of its members—notably, on the economic front—, it may also transcend egotistical interests for altruistic ones. Therefore, how can communities’ efficiency be ensured? How can the law grasp such a disinterested interest?

The examples of social trusts (Quebec), foundations (France), or charitable trusts (Canada & UK) provide salient illustrations of these issues.

2) A Common Territory: the community is necessarily established on a territory that welcomes it. This space may be terrestrial or intellectual. The examples of environment and knowledge are interesting in that they allow us to conceptualize a territory that extends beyond both private/public property frontiers and state frontiers reaffirming the importance of communities. The global notion of ecosystem and knowledge commons permits a reflection on the shattering of such frontiers.

3) A Common Enjoyment : communities are also characterized by a common enjoyment of property rights. Do the type of community (closed or porous) and the nature of property (corporeal and rivalrous or incorporeal and non-rivalrous) have an impact on this common enjoyment? Could there be a change of paradigm where inclusion replaces exclusion? Scientific papers are an excellent example this characteristic.

Theme 2: Community Practices: Sources of Law?

The notion of community refuses to be circumscribed into only one known legal form. There is not only one organizing framework for communities, but a multiplicity of models that find their sources in various legal *corpus*. Is there, however, a *typology* of community organizational frameworks?

Moreover, communities establish practices that can resemble usages, which have yet to be qualified. If all communities establish practices resembling usages, do these usages therefore

become generators of rules or laws? The question is all the more complex due to the mosaic of sources to which communities are confronted.

1) Community Usages: the topic focuses not on the uses of common property or the commons, but rather usages as sources of law. Communities, in developing operating rules to organize themselves, create community practices. Are these practices convergent, diffuse, plural? Is there a transposition of mechanisms from other legal orders or a convergence of legal models? Do these usages take on a mandatory effect due to repetition? Do they create normative rules beyond the community? Are they sources of law?

2) Plurality of Sources: communities rest on a plurality of sources, which may be normative or not, national or international (international law and comparative law), legal, economic, fiscal, or social. This makes the community a transdisciplinary concept that is particularly hard to observe. Communities transcend the frontiers of discrete fields of law. They notably erase the boundaries between private and public law, as well as those within private law itself, between real and personal rights.

What are the consequences of this plurality of sources? Is law necessary to the organization of communities? Can diverse national models be the sources of an international model for the community? Must we reconceptualise the frontiers between private and public law when it comes to communities?

This shattering of frontiers is, in particular, very significant in regard to real property. The examples of self-managing community residences (participative residences, cooperative residences, co-housing) and self-financed residences (self-promoters, Mietshäuser Syndikat) reflect this plethora of sources and the need to establish a dialog between them.

Theme 3: Communities and Private Law

To adapt to the liberal economy's issues and imperatives, communities resort to the tools of private law. Communities simultaneously call for the private law's technical expertise, as they disrupt the frontiers of some of its key concepts and dogmas.

1) The Legal Tools of Communities: communities are spaces of solidarity, sharing, and creation of wealth that are *a priori* opposed to the fundamental concepts and notions of person, patrimony, obligations, exclusivity, or acquisition, which govern the architecture of civil law. Yet, communities use the legal tools provided by private law to ensure the respect of the common objectives they set out for themselves: access, sharing of enjoyment, and inclusion. The legal techniques used by communities are many and depend on the type of property at issue: rivalrous, landed property or non-rivalrous, incorporeal property. What are these tools? Are they adapted to communities? Examples of mechanisms include trusts, *fiducies*, or licenses.

2) Communities: A New Relationship to Property? Identifying the common characteristics of communities allows a functional definition of communities to emerge, whereas the observation of community practices uncovers a mosaic of communities. The community seems to be a concept more than a notion. Does this concept have its place in the architecture of civil law? How does it function with the concepts of person, patrimony, ownership, or responsibility? How can we make it coincide with property law? Can they be reconciled? Is the community a manifestation of the shattered proprietary model? Must we define ownership through usages rather than exclusivity? Are communities a springboard to imagine new relationships to property?

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“Communities and Community Practices”

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