

Programme Ateliers de travail en sessions parallèles/Workshops

28 Septembre 2018

11h00-13h00

Axe 1 - L'impact de l'exceptionnalisme sur le droit et la justice

ATELIER 1. Globalisation et justice d'exception - Wanda Capeller (SciencesPo-Toulouse, CES, Unilasalle)

1) Wanda CAPELLER - *La dronification du Pouvoir, une exception pénale*

Le phénomène de la dronification du pouvoir témoigne de l'émergence de nouvelles rationalités post-étatiques, dont l'impact sur le champ pénal est particulièrement significatif, car cela a permis l'affirmation des technopolitiques pénales globales. Trois logiques se trouvent sous-jacentes à la transformation paradigmatique du pénal, à savoir: celle de la globalisation du crime et du contrôle, celle de l'hybridation de la sécurité et celle des illégalismes pénaux. Il faut savoir quelles sont les conditions de soutenabilité de la démocratie pénale à l'ère des démocraties illibérales.

Mots-clés: dronification du pouvoir; exception pénale; démocraties illibérales

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2) Daniela Piana, Luca Verzelli - *La fabrique des exceptions: regards croisés sur l'innovation pérennisée dans le cadre de la création et de la mise en œuvre du principe de l'Etat de droit*

La primauté du droit fonde son existence sur la certitude normative. Cette vision, qui représente l'héritage d'un débat vaste et influent, repose sur l'idée que les normes représentent une ressource et une contrainte. Le droit est un instrument de régulation, à savoir un moyen de créer un ordre institutionnel qui est un système de méta-règles, qui définit les espaces à l'intérieur de laquelle la puissance est exempt de toute forme de la discrétion et toute subversion possible du principe libéral et démocratique de la primauté du droit. La «substance» elle est faite du droit est celui d'un «fait institutionnelle»: une réalité créée par les actions humaines et, par conséquent, sous réserve d'une reconnaissance explicite, ce qui lui confère l'autorité et la capacité performative.

Ces dernières années, l'affirmation progressive de l'exceptionnalisme sape les fondements mêmes de cette «cathédrale». La thèse de l'article est que, compte tenu de la nécessité de parvenir à un consensus à court terme, l'utilisation des politiques d'innovation, pour la définition exceptionnelle et urgente, est devenue la méthode par laquelle tâtons pour gouverner la complexité des sociétés contemporaines, en négligeant la réelle mise en œuvre des réformes et vérification des résultats obtenus. L'innovation est passée d'une exception à une règle, même quand il n'y a pas de besoins et de contingences extraordinaires. Tout cela signifie que les règles sont de plus en plus précaires et fragmentées, avec des conséquences évidentes en termes d'élargissement des injustices sociales et d'érosion de l'ordre institutionnel de la primauté du droit.

L'article vise à développer une réflexion sur l'utilisation continue de politiques innovantes, de nature exceptionnelle, notamment dans le domaine de la justice et de l'immigration. Le document se concentrera sur quatre pays aux traditions différentes (France, Italie, Portugal et Espagne), choisis sur la base de deux critères: le degré de fragmentation institutionnelle et l'âge de la démocratie. Le caractère novateur de l'article réside d'une part, l'application d'une approche interdisciplinaire et comparative et, d'autre part, à lire dans plusieurs phénomènes systémiques clés de politique, juridique et social, jusqu'à présent analysé de manière décousue.

Keywords : Exceptionnalisme, innovation, normativité, performativité

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3) Ana Júlia França Monteiro - *Race in Brazil: what does the legislative power have to say about it? (1946 - 2013)*

This study aimed to show how the issue of racial segregation in Brazil has been approached, and if the efforts of social struggles manage to have an impact on the legislation for the Black population in Brazil. It is based on the content analysis of the propositions of law about race presented in the parliament from 1946 to 2013, and their classification into the Accommodationist, Integrationist and Assimilationist theoretical approaches for segregated societies. Through the word frequency of their summaries, it was possible to design a framework to explain how the government has handle a segregated society within the legislative. Peculiarities, such as the words that are strongly associated with these approaches, show us key-terms associated with what the parliamentarians thought to be the better way to approach this issue.

Accommodationist bills of law would have terms that emphasize “difference” in both public and private spheres. These could be symbols of resistance, quotas etc. An integrationist proposal would have a neutral and common public arena, and difference is reserved exclusively to the private sphere. In that sense, terms such as “equality”, and forms of emphasizing memory to unite society against a “common enemy”, would be more likely to appear. In assimilationist ones, the emphasis is on the creation of something new from the mix of “founding” cultures. For instance, the notion of “Brazilian” seen as an outcome of the “indigenous”, the “white” and the “black”.

Keywords: race, Brazil, democracy, legislative, content analysis

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4) Bruno Aguiar Santos, Leonardo Jose de Araujo Ribeiro e Fernando de Lucca Signorelli - *Brazil: the dystopic present of juristocracy*

This paper intends to discuss the current scene of constitutional rupture and democratic Law Fare State erosion in Brazil. By this view, the focus is directed to the Judiciary participation in the fate of representative lack and distance with Brazilian people. In order to do so, here there are inquired philosophical bases and ideology theories nowadays in the county's constitutionalism, verifying if the so-called "neoconstitutionalism" is responsible for the fever of activists postures in Brazilian Courts. It is here established, as an academical necessity and terminological precision, the adopted concepts of judicialization of politics and judicial activism in an urgent definition to, by its ends, verify an even less democratic future. The manner that Brazilian judges and Courts decide finds bases on the liquid, technicist, individual and neoliberal society that overcomes the current Brazilian imaginary. By mottoes as impartiality, technic and authority, it's possible to verify that the dystopia is already present in Brazil: Federal Constitution is put aside for the judges and Courts to decide as their own conscious or journalistic articles. Where there was a "still-fragile" democracy and a Law Fare State, it's being built a new shape of aristocracy: Judiciary sustained by a Police State.

Keywords: Neoconstitucionalism; Ideology; Discretion; Juristocracy; Judicial Activism.

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ATELIER 2. Constitution, droits fondamentaux, droits humains: la crise des réfugiés - Mariana Canotilho (Université du Minho)

1) José Ricardo Robles Zamarripa- *Conventional theoretical conceptions on human rights: Reinforcing the social struggles "disconnection"*

Until today, there is a strong commonsensical way of understanding the human rights field that has been built upon multiple social processes. This approach is usually coincidental with national and international human rights standards and, therefore, with the usual juridical-theoretical approaches to such rights. Based on that frame, in this paper I will try to address how the conventional theoretical HR conceptions tend to generate several reasons to divide the social struggles for resistance and the defense of different ways of living and being.

Such dynamic is highly problematic when -quite often- the ways in which oppression works are multiple, and -most of the time- systematic. Additionally, it is not unusual that various forms of resistance are not connected and, on the contrary, the existence of a persistent fight between them is not uncommon. Based on that worrisome scenario, this text is focused on pointing out some ways in which the commonsensical theoretical work about human rights, far from reinforcing the communicating vessels between diverse forms of construction of counter-hegemonic alternatives, is one of the generators of several sources of disconnection.

Keywords: Human rights, theories of human rights, counter-hegemonic struggles, disconnecting theories, human rights law

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2) Annalisa Lendaro - *The 'refugees crises' seen from two EU Borders: ordinary exceptions in Lampedusa and in the Roya Valley*

This presentation compares two examples of the discretionary management of the EU borders, and underlines its effects on asylum seekers and inhabitants of these two border zones: the small Italian island of Lampedusa and the French-Italian border (from Ventimiglia to the Roya valley).

This study seeks to show that, facing a coercive legal system, migrants and some residents are also able to seize upon opportunities for agency that ordinary exceptions to the law made possible. Drawing on a qualitative survey conducted in Lampedusa in 2013-2014 (now extended to an ongoing fieldwork- from April to June 2018) and in Ventimiglia-the Roya valley (2017-ongoing), this presentation shows that the geopolitical context, and the presence (or absence) of legal experts are highly significant to understand the different faces of the crises of the "rule of law".

Keywords: Asylum seekers, Lampedusa, Roya valley, protests, legal experts

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3) Renata Neris Viana, Ana Luisa Demoraes Campos -*Transitional justice in Brazil: an analysis of Gomes Lund and others v. Brazil*

Transitional justice is a set of judicial and non-judicial mechanisms adopted by States who had instances of authoritarianism in the past to repair rights and restore democracy. This paper aims at verifying if Brazil implemented any such mechanisms after the military dictatorship. The methodology adopted is the analysis of Inter-American Court of Human Rights precedents, in particular the case of Gomes Lund and Others v. Brazil, in which State responsibility is argued for the arbitrary detention, torture and enforced disappearance of 70 persons and the execution of one person as a result of army operations for the eradication of the Araguaia Guerrilla. The State was accused of, among others, not having carried out criminal investigation, prosecution and trial of those responsible for the crimes, and of denying victims access to justice, truth and information. The Court held the State responsible, declaring that the Brazilian Amnesty Law is contrary to the American Convention on Human Rights, determining the payment of damages to victims and the arrangement of efforts to establish the whereabouts of the missing persons, among others. Brazil has not yet fully complied with the sentence and has not implemented mechanisms of transitional justice in accordance with Inter-American parameters.

Keywords: Transitional justice. Inter-American Court of Human Rights. Gomes Lund and Others v. Brazil. Amnesty Law.

4) Marjorie Beulay - *Statut exceptionnel, absence de droits exceptionnelle? Réflexions sur l'impact sur le statut des demandeurs d'asile des récentes réformes françaises en matière d'asile et d'immigration*

Le projet de loi actuellement en discussion au Parlement français est décrié tant par les professionnels de l'asile que par le Conseil d'Etat lui-même, que ce soit sur le fond que sur sa nécessité. Il se présente après plusieurs réformes antérieures, parfois non encore totalement appliquées, et qui présentent un profil similaire : lier dans un même texte deux objets totalement opposés, l'accueil et l'expulsion. L'autre similitude relève de la volonté d'accélérer toujours davantage les procédures. S'il est nécessaire de réfléchir à une amélioration de celles-ci pour permettre aux demandeurs d'être mieux accompagnés, la méthode paraît systématiquement erronée. En effet, l'humain semble disparaître derrière la volonté d'écouler le stock de demandes et de renvoyer plus rapidement les déboutés vers leur pays d'origine. Les droits des demandeurs sont donc de plus en plus limités alors même qu'ils sont déjà dans une situation de grande précarité juridique et sociale. La « vague migratoire » dont se prévalent les responsables politiques qui n'a rien de tangible et les motifs sécuritaires qui l'accompagnent, ont pour conséquence l'affaiblissement des droits de ces personnes, ce qui en fait un marqueur tangible de l'érosion de l'Etat de droit en France. La présente contribution propose sur cette base d'établir un portrait du statut juridique du demandeur d'asile et de démontrer quels sont les points sur lesquels ses droits ont été et sont encore toujours plus limités.

Keywords : Asile, Immigration, Droits, Réforme, France

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ATELIER 3. L'état d'urgence en France et ailleurs - Laure Ortiz (SciencesPo-Toulouse)

1) Bruno Domingo - *Détecter et signaler : les instruments d'appréciation de la radicalisation en France*

La mise en œuvre d'une politique de prévention de la radicalisation s'est traduite en France, notamment à partir de 2014, par la volonté d'instaurer des dispositifs de détection et de signalement aux autorités des personnes radicalisées ou en voie de radicalisation. Cette volonté politique qui cherchait à mieux prévenir la menace terroriste et le départ de combattants étrangers vers le théâtre irako-syrien s'est notamment appuyée sur la mobilisation de divers instruments (plans, grilles, indicateurs, espaces professionnels, etc.). Que peut-on dire à propos de cette nouvelle instrumentation de l'action publique? Comment a-t-elle été construite ? A-t-elle évolué dans son objet ou ses caractéristiques? Sur quelle(s) schématisation(s) des « radicalités » et de la « radicalisation » repose-t-elle? Quelles figures de la dangerosité fait-elle émerger et avec quels effets potentiels ? Quelles

transformations des rationalités de la lutte antiterroriste implique-t-elle? Avec quels autres effets sociaux ? On cherche ici à réaliser une première analyse de cette tentative française de s'outiller pour appréhender le développement d'un djihadisme endogène aux contours incertains.

Keywords : Radicalisation - Instruments d'action publique - Terrorisme

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2) Pierre-Alain Clément - *Anxiety state: the irreversible extension of exception powers in American counterterrorist law*

Since 9/11, the largest subatomic attack against a sovereign state, the United States has become one of the most active actors in the legal fight against terrorism. Foreign policy and military action aside, the government has adopted legislation prone to many frictions with the constitution-protected fundamental rights of the US citizens. However, the relative invisibility and the high technicality of the measures adopted (like classified intelligence gathering methods) did not provoke massive resistance to this trend, outside of civil and numeric rights activists. The only relative roll-back encountered was due to a massive public scandal in the form of the Snowden affair.

This communication aims at providing a theoretical framework explaining how happened the substitution of democratic stabilization by the stabilization of the exception in the recent history of US counterterrorism. It is an interdisciplinary endeavor, mixing a political science framework dealing with the legal translation of very technical state powers. While it focuses on fundamental civil rights, such powers have a spill-over effect on social and criminal law when used to repress traditional social movements.

Through the analysis of congressional debates preceding the adoption of the main laws since 9/11, this communication will show that counterterrorist legislation-making can be modeled as the irreversible extension of a simulation of legitimate control by the application of powers of exception.

Keywords: Counter-terrorism

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3) Heloise Vieira, Mariana Carioni - *Left-wing solidarity and threats to democracy in the world: the European parliament towards Brazil*

The replacement of the democratic values, foundations upon which the European Union was built, by the law of exception has spread all over Europe and elsewhere. In Brazil, the turmoil in politics started with a questionable impeachment process - a Coup de Stat, according to left-wing movements- and the state of exception has extended itself until the present day with no predictable outcome for the upcoming elections, since head of the pools former president Lula da Silva is now imprisoned. Acting its role as the "house of peoples", the left-wing groups in the European Parliament has manifested solidarity with Brazilian democracy and the many problems it now faces. Through the lenses of Security

Constellations and Collective Identities from the IR Copenhagen School, we seek to understand the relation between the manifestations of solidarity towards Brazilian democracy emanating from the left-wing of the European Parliament and the EU democracy enforcement ideals, focusing on Dilma Rouseff's impeachment process and the imprisonment of former president Lula da Silva.

Keywords: State of exception

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4) Alper Kaliber - *Understanding the Politics of Emergency in Turkey: A Temporary Rule or A Permanent State of Exception?*

Turkey has been ruled under a state of emergency declared soon after the failed coup attempt and extended for the 7th time and for three months beginning by 19 April 2018. Throughout nearly the 21 months of the state of emergency that provided Turkish state elites with sweeping new powers, the Turkish government issued 34 decrees having the force of law without any oversight by the national parliament. Although the government announced the emergency decrees would solely be about the attempted coup-related issues, the opposing groups and human rights organizations condemned the government for using the expanded powers to crack down on critics as well as on democratic checks and balances in the country. Besides, the state of emergency has been instrumentalized by the ruling elite to promote and justify a package of constitutional amendments aiming at transforming Turkey from a parliamentary republic to a presidential one. This study argues that Turkey is about to fall into the “emergency trap” where the state of emergency has turned out to be a permanent “state of exception” (SoE) under the recently established presidential regime. The securitizing domestic and foreign policy practices of the Turkish statecraft and the constitutional amendments granting considerable executive and legislative powers to presidency serve to institutionalize SoE as the dominant paradigm of rule in the country. This paper aims to develop a new analytical framework to comprehend better the patterns of interaction among governance of security and the politics of exceptionalism. In particular it explores how security practices of the securitizer and the emergency politics reinforced each other to legitimize and sustain the SoE as an enduring practice of government.

Keywords: state of exception, politics of emergency, securitisation, Turkey.

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ATELIER 4. État d'exception, contrôle social et mouvements sociaux - Jérôme Ferret (UT1-Université des Sciences sociales de Toulouse (UT1), MSH Toulouse);

1) Jérôme Ferret - *The counter-exception from below: Movements, publicized criticisms and reputation conflicts*

We will mainly study the counter-reputational work of new forms of activism, trying to understand how these "movements" weaken the political and policing institutions by a criticism largely backed by social media; it should also be understood how the official public institutions operate a similar work backed by traditional media and to harm the reputation of these new movements. And here too the strategies of depreciation of the activity of such movements are symbolic and performative. They are emotionally charged and carry heavy social consequences by becoming slogans to strike the public sphere.

Keywords: Counter-surveillance, new media, violence, counter-exception, reputation, new visibility of policing

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2) Sara Tonsy - *Egypt and Democratic Prospects After 2011*

Egypt has been under emergency law for at least 30 years under the presidency of Hosni Mubarak. After the 2011 uprising and the prospects for democratization, the emergency law was lifted shortly after. However, given the circumstances at the time, it was reinstated along with a curfew for a designated period. Seven years after the uprising, the transition towards a more democratic rule was not achieved and despite the absence of the emergency law; new laws have been written that permanently encrypt the emergency law in regular rule of law. The main questions to be addressed are: What is the difference between Mubarak's emergency law and the current state? What prospects and hopes are left towards a more democratic rule in Egypt?

Keywords: Egypt, Emergency law, 2011 Uprising, democracy, transition

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3) Christelle Macq- *L'éloignement des étrangers en séjour légal pour motifs d'ordre public : sur quels fondements et à quel prix ?*

La lutte contre le terrorisme ainsi que les formes graves de criminalité constituent un défi permanent pour l'Etat de droit qui doit lutter contre ces phénomènes tout en veillant à ne pas remettre en cause les principes démocratiques sur lesquels il se fonde. Parmi les législations récemment adoptées par la Belgique sous couvert de lutte contre le terrorisme, figurent la loi du 24 février 2017 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers afin de renforcer la protection de l'ordre public et de la sécurité nationale ainsi que la loi du 15 mars 2017 modifiant l'article 39/79 de la loi du 15 décembre 1980, toutes deux entrées en vigueur le 29 avril 2017. Ces textes réforment de manière substantielle le régime

d'éloignement pour motifs d'ordre public des étrangers en séjour légal, élargissant considérablement les prérogatives confiées aux autorités administratives en la matière. Au cours des travaux préparatoires ayant précédé leur adoption, le législateur belge assurait contrebalancer le renforcement des pouvoirs conférés aux autorités administratives par la mise en place de garanties offrant une protection suffisante contre l'arbitraire. Il se targuait de s'inspirer largement de la législation et de la jurisprudence européenne afin de garantir le respect des droits fondamentaux des étrangers visés par ces mesures. Nous nous proposons d'analyser et commenter ces dispositions au regard des motifs ayant présidé à leur adoption ainsi que des difficultés qu'elles soulèvent en terme de respect des droits fondamentaux.

Keywords : Eloignement - étrangers -ordre public

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4) Mustafa Yaylali - *Law, Democracy and Authoritarianism in "Emerging Market States"*

The shift towards a more authoritarian governance is most probably conceived in the so-called "emerging market states". One of the problems that "emerging market states" are facing is that they are first of all "an emerging state" and only then an "emerging market". That is to say that their governing institutions are still underdeveloped, so still in their infancy, which has its effect in the further development state institutions and society.

The problems these "emerging market states" encounter in the transition towards a full-fledged state is the gap which ensues between the governing institutions and the society. While the state, or governing institutions somehow accommodates the smooth flow of capital and ensues its constitution. The society however attempts to break the chain which they see in those governing institutions that is thrown up in front of them every time change along.

My argument in this paper is to argue that although "emerging market states" show a certain persistence in institutionally transformations transition, towards implementing provisions and mechanisms that would enhance transparency and more democracy, after a certain period they tend to turn towards less transparency and more authoritarian form of governance. The reason for this I argue, turn should be found in the lack of going through the stage of modernisation in "emerging market states".

Although "emerging market states" can show a certain form of transparency and the application of rule of law, it does not always tend to match the way society adjust itself towards such a governing system. One of the main prerequisite of democratic system or the application of rule of law is that the population is willing to commit itself to abide by rules and norms which they have chosen for.

I will claim that the turn to authoritarian governance in most of emerging markets is the result of missing the stage of modernisation within society. The need for restoring order in those countries are at the highest when certain face of institutional change has been reached. In my argument I will refer to Ronald Inglehard, and Adam Przeworski amongst others. I will emphasise on the influence transition in society which will eventually

Keywords: Democracy, Emerging Market States, Rule of law, transformation, Authoritarianism

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16h30-18h30

Axe 2 -L'impact de l'exceptionnalisme sur le monde social

ATELIER 5. Erosion des droits sociaux et capacités d'agir populaires - Éric Darras (SciencesPo-Toulouse)

1) Véronique Rauline, François Cusset et Thierry Labica- *La démocratie universitaire à l'épreuve de « l'extrême centrisme »*

Celles et ceux qui, à des degrés divers et selon des modalités variées, prennent part au mouvement actuel de contestation de la loi ORE et de la procédure Parcoursup ne doivent pas seulement affronter les CRS et/ou des vigiles privés, dont la présence sur les campus se banalise. Il doivent aussi faire face à une remise en cause radicale des principes même qui fondent la démocratie universitaire et son système collégial : décisions des composantes bafouées, instances élues contournées ou reconvoquées quand elle n'ont pas « bien voté », communication mensongère et unilatérale sans droit de réponse, etc. Plus généralement, on assiste à un mépris flagrant et totalement décomplexé de certaines élues pour leurs mandats et les mandats qui leur ont été confiés.

A partir d'un corpus varié de communiqués officiels mais aussi d'échanges écrits et informels, on vise ici à étudier les ressorts de ce profond changement de paradigme et la façon dont il s'exprime, mais aussi est intériorisé, accentuant ainsi, chez les étudiantes et les personnels, le sentiment douloureux d'une dépossession de leur parole et de leur pouvoir d'agir. In fine, on cherchera à montrer comment ce processus, amorcé depuis plusieurs décennies, s'est intensifié en ce mois de mai 2018, alimentant la fabrique de l'impuissance mais aussi celle de la radicalité.

Keywords : université

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2) Diamoi Joachim Agbroffi, Diby Kouamé Arnaud et Biagne Lucien - *Érosion des droits sociaux et capacités d'agir populaires a travers le temps et les espaces*

Le présent article traite de l'érosion des droits sociaux et capacités d'agir populaires. Il situe cette érosion dans le temps et dans des espaces vécus et connus. Il le fait à travers des types précis de démocratie parmi lesquels : la démocratie et ses autres noms ou spécifications que sont : la démocratie semi directive ; la démocratie représentative ; la république et la démocratie marxiste. Les espaces vont de ceux des anciennes sociétés aux sociétés de l'ex-URSS. L'érosion des droits et capacités d'agir populaires s'aperçoit dans le cadre : du gouvernement du peuple par le peuple et pour le peuple qui se fait de moins en moins directement ou semi directement, et qui laisse la place aux représentants qui ne représentent plus les gouvernés. Puis est venu le temps des républiques voisines de la monarchie et de la monarchie elle-même. Dans ces nombreuses phases d'érosion, la liberté d'expression a connu une évolution. Toutefois, elle est beaucoup plus une occasion qui est

offerte aux gouvernés de parler pour parler, plutôt que d'influencer les décisions et de peser dans la gouvernance ou le gouvernement. Les occasions de dévouement par la parole et par les écrits sont devenues très nombreuses. Ces occasions ont évolué en raison inverse des droits sociaux et capacités d'agir populaires. Elles sont un exutoire : ce qui permet aux gouvernés de se soulager de leur besoin de participer aux décisions et de réaliser le gouvernement du peuple par le peuple et pour le peuple.

Keywords : érosion, droits sociaux, capacités, agir populaire

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3) Leonardo José de Araújo Ribeiro, Bruno Aguiar Santos, Fernando de Lucca Signorelli - *Brazil: the democratic abyss without people nor social movements*

Since 2016, Brazilian Federal Law #13.260 (Brazilian Antiterrorism Law) states what may be considered terrorism act in the country. Within this short legislation, there are some huge internal mistakes on concepts and definitions, which conflicts to each other. This paper, however, tends to succeed the mere verification of the established legislation, going to and conjunctural analysis of nowadays democratic scene in Brazil, as well as a specific proposition of legislation change towards the mentioned the Federal Law. Even though the Brazilian Antiterrorism Law (BAL) has been conceived during the last months of Dilma Rousseff's [considered her itself a terrorist by the military dictatorship] Administration, it was used against this Administration supporters, when protesting the impeachment process (also called coup). The usage of the BAL against protesters could have showed the completeness its horror and mistakes. Nonetheless, as a consequence of Brazilian failure in maintaining its own democracy already a dubious term for this South American country considering its history, there are being a strong "alternative right" and right wings (such in established politics, as in society) tempts against original leftist social movements. The last temptation that has not been stopped yet is a legislation proposition that changes BAL to include specifics housing and landing movements as terrorist movements themselves.

Keywords: Brazilian Antiterrorism Law; Housing Movements; Landing Movements; Democracy Abyss.

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ATELIER 6. Austérité et l'exception en droit social - Carlos Herrera (Université de Cergy Pontoise) et Rafael Encinas de Munagorri (Université de Nantes)

1) Jessica Carvalho Morris - *Austerity Measures in Brazil's implemented in Violation of Human Rights*

In the name of economic stability, many countries around the world have implemented austerity measures to address so-called debt crisis. These measures usually have negative impacts on human rights. This paper intends to study Brazil's new austerity package and its impact on human rights. Specifically, this paper will analyze one of the most significant changes implemented in the last two years in the country: Constitutional Amendment 95. Before the Amendment, the 1988 Brazilian Constitution had been innovative in guaranteeing several human rights including social and economic rights, as well as programs focused on education and healthcare. In fact, the 1988 Constitution was groundbreaking making Brazil the only country in the world with more than 100 million people to have in its constitution a commitment to universal health care. However, soon after Mr. Michel Temer took office in 2016 and still serving as interim president, he made it a priority to significantly change the 1988 social pact and the structure of the government. He and his team began to push for a constitutional reform to limit public spending and, in a matter of months, they managed to get the votes necessary to approve Amendment 95 and establish a new fiscal regime freezing public expenditure on health and education for 20 years. This Amendment is the most restrictive austerity measure seen in the world today.

The consequences of Constitutional Amendment 95 are disastrous and will increase social inequality in the country. In 2017 alone, budget allocations for health and education dropped 17% and 19%, respectively.

Thus, this paper will analyze the impacts of Constitutional Amendment 95 on human rights and explore reasons for its approval and implementation. This paper will also consider possible alternatives to the Amendment.

Keywords: austerity; Brazil; Constitutional Amendment 95; human rights

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2) Jonas Van Vossle - *State of Exception or Demo-diversity: Crisis of Democracy in Austerity-ridden Portugal*

This paper discusses how the Euro-crisis in Portugal has impacted upon democracy in Portugal and how the concept of exception can be used to analyze the political situation between 2011 and 2015. It discusses the similarities and differences between the concept of crisis as used in the work of Jurgen Habermas - and the concept of exception ? as used in the work of Carl Schmitt. It applies the concepts to the recession, the intervention of the Troika, the implementation of austerity and the surge of a wide range of social movements, and draws the political implications and emancipatory possibilities of using these concepts. Can we talk about a state of exception in which a foreign actor - in the form of the Troika - suspends normality and constitutional norms, democratic legitimacy and imposes the dictatorship of a new or old sovereign? Or do we need to focus on the

potentially emancipatory meanings of the disruption of the hegemonic form of democracy; such as the diversity of voices claiming new, real forms of democracy?

Keywords: Exception, Crisis, Democracy, Troika, Indignados

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3) Patricia de Menezes Cardoso - *Luchas de defensa del agua como derecho fundamental y bien común*

La erosión de la Democracia y del Estado de Derecho produce Estados de Excepción Democrática que tiene en uno de sus pilares la criminalización de los movimientos sociales globales a partir de la narrativa de combate al terrorismo, como en países de América Latina, en el contexto de defensa de derechos sociales fundamentales y de los bienes comunes de la naturaleza.

La ocupación por cerca de 600 mujeres del Movimiento de los Trabajadores Sin Tierra (MST) de la sede de Nestlé como parte de las actividades del Foro Alternativo Mundial del Agua en marzo de este año en Brasil denuncia las estrategias de las grandes corporaciones y gobiernos en privatizar el agua. Se busca dar visibilidad para la defensa del agua como bien común y derecho fundamental conforme resolución de la ONU aprobada en 2010, sin el apoyo de países como Reino Unido, EEUU y Canadá, al mismo tiempo que proyectos de ley en el parlamento brasileño proponen la implantación del "Mercado del Agua" en el país, en el contexto de las traturas del Foro Mundial del Agua, y la definición del MST y MTST (Sin Techo) como grupos terroristas. La disputa del agua como bien común o económico está en el corazón de los conflictos globales y sus consecuencias en la financiación de los recursos naturales, por los ajustes del capitalismo tras crisis de 2008, que agrava conflictos socioambientales y territorios en América Latina, contexto alimentado por las medidas de excepción practicadas en Europa en nombre de la austeridad.

Keywords: agua; bien común, movimientos sociales; privatizaciones; criminalización

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4) Andreia Santos - *Labour rights: the exception or the rule?*

Labour rights are always on the core of structural reforms, underlining the importance of labour on society's regulation. With the austerity paradigm that arose from the 2008 crisis, many measures were taken as exceptional and urgent, with temporary application. However in Europe and especially on the countries under austerity, regarding to labour, the measures in action only reinforced the path of growing flexibility and vulnerability of workers followed since the 1990's. So bearing this in mind, this paper seeks to demonstrate that in times of crisis, labour rights are often mobilized as the first resource for solving economic and social difficulties becoming not the exception but the rule towards economic and political choices.

Keywords: labour rights, crisis, austerity, exception

ATELIER 7. L'Etat d'exception post-démocratique et la criminalisation des mouvements sociaux globaux - Jesus Sabariego (CES - Université de Coimbra) et Maria João Guia (IJ – UC)

1) Giuseppe Santangelo - *Les politiques d'exception comme gouvernance d'une crise systémique*

Con esta comunicación iré a enfocar el tema de la erosión de los derechos y de represión de las libertades políticas y civiles de los ciudadanos en relación recrudescimiento de las contradicciones producidas por el modo de producción capitalista y a la gestión totalitaria del orden económico social en términos de crecimiento de la violencia política.

Trataré el problema de las crisis de derechos que sufren los ciudadanos dentro del contexto de las siguientes actuaciones políticas totalitarias:

- Violencia política institucionalizada al interior y al exterior a través de la guerra social y geopolítica que se efectúa paralelamente a la represión de los conflictos sociales y a la contención de los flujos migratorios.
- Utilización de leyes excepcionales y suspensión del estado de derecho.
- Utilizo político de la estrategia del terror y manipulación propagandística en términos mediáticos (demonización de la figura del migrante).

A partir de algunos de los estudios más actuales de economía política hago referencia al gran interés que suscita hoy en día la teoría de la caída tendencial de la tasa de ganancia planteándome de no aislar los efectos que este elemento estructural del modo de producción capitalista implica sobre la totalidad de la crisis económico social contemporánea, por ejemplo los movimientos del capital hacia sectores no productivos como el sector financiero, las políticas de austeridad y de guerra.

El tema de la violencia política dentro de la gestión del orden social económico es investigado en relación al contexto político de las leyes de emergencia del retorno de las ideologías totalitarias por parte del sujeto y a la posibilidad de sujetivación expresada por las luchas sociales.

Keywords: État d'urgence, erosion de droits, totalitarisme, movimientos sociaux, economie politique

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2) Jessica Carvalho Morris - *Undemocratic International Pressures Behind the Criminalization Of Social Movements in Brazil*

Even though democracy was one of the defining pillars of the twentieth century, there have been attempts in the last decades to close democratic spaces in various regions in South, Central and North America, Europe, Asia, etc. In this "new wave" of constraints on democratic spaces, the legal framework has been used to justify the curtailment of freedoms. States are using their legislative and executive powers to enact laws to (a) regulate civil society organizations and activities; (b) restrict and / or criminalize the

public assembly or protest; and / or (c) empower states to dramatically increase the digital surveillance of their citizens.

In Brazil, an antiterrorism law was presented by the then-President Dilma Rousseff's government and approved in an accelerated manner by the legislative branch months before the Olympic Games. This law gave powers of supervision to the state, the ability to monitor citizens as well as criminalize social movements.

One of the main organisms pushing for this law was the Financial Action Task Force (FATF), a body linked to the Organization for Economic Co-operation and Development (OECD). The FATF required countries to have laws banning the funding of terrorist organizations that were broadly defined. The threat posed by the FATF was that if Brazil did not pass such a law, it could be placed on a list of non-compliant countries and this could reduce the degree of foreign investment in Brazil. There was strong civil society mobilization in national, regional and international levels to prevent the bill from being approved. However, the law still passed in the Legislative Branch and was sanctioned by President Rousseff.

This paper seeks to analyze the role of international, unelected and undemocratic bodies, specifically the FATF, had in criminalizing social movements.

Keywords: criminalization; Brazil; Financial Action Task Force (FATF); social movements; undemocratic pressures; jessicamorris@ces.uc.pt

3) Bruno Barboza Muniz - *The genocide of black youth: colonialism, pacification and funk*

Is it possible to discuss the genocide of black youth in Brazil considering the use of the term more than an activist rhetoric? For example, the term genocide appears in some articles on the genocide of black youth in quotation marks. The use of quotation marks introduces the term genocide as part of a "narrative" of Brazilian black social movements. However, quantitative and qualitative data seem to indicate that black youth is systematically murdered and criminalised. Why then is the word used in quotation marks? This article deals with the issue of genocide from a political, non-essentialist and non-legalist perspective, aware of the destruction in the Brazilian favelas and peripheries of knowledges, cultural practices and affective communities.

Keywords: genocide; black youth; baile funk; criminalisation; activism

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4) Jan Christoph Suntrup - *The Symbolic Side of Exceptionalism: Strategies and Effects*

The rich debate on the state of exception has widely neglected so far its symbolic side. As important as the erosion of certain rights and democratic standards are, the search for the impact of exceptionalism on society should not ignore the political significance of crucial symbolic reconfigurations as expressed in specific images, narratives, rituals, and other symbolic actions to which the state of exception is connected. Therefore, this presentation will discuss various examples of this symbolic politics in order to illustrate multiple

strategies and effects of symbolic action typically used during states of exception: community-building by common rituals and rhetorical drawings of the friend/enemy line, symbolic degradation of the presumed enemy, public reassurance, expression of compassion and solidarity, signs of resilience and unyieldingness as well as the staging of leadership between decisive and pragmatic action and military glorification. Moreover, there are structural manifestations of the symbolic side of emergency situations, such as ritualized abuses of torture in detention camps or, in an even more material way, the building of new security walls and the reconstruction of metropolises, which are affected by (in addition to often barely visible surveillance techniques) visual and demonstrative expressions of protection, sovereignty, and preventive securitization a complex Stephen Graham has labelled “new military urbanism”.

Keywords: Symbolic Politics, Rituals, Staging of Authority, Friend/Enemy Distinction, Securitization

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5) Marcela da Silva Uchôa - *Crisis of representativeness and violence: The institutionalization of the State of Exception in Brazil*

The present proposal intends to examine the growing expansion of the exception in Brazilian Representative Democracy, for which we will use as a theoretical basis especially the thought of the Italian Giorgio Agamben and the German Carl Schmitt. We will start from an analysis of the State's failure to observe fundamental rights and guarantees, as a way of trying to criminalize social movements through the use of dictatorial methods and threats to the text constitutional. The arrest of activists for alleged demonstration planning, which has led to the arrest of people even before the crime occurred, many of these prisons being based on "futurology", with open investigations without concrete goals, is typical of fascist societies. According to a report by Amnesty International in 2017, Brazil is the country in the Americas where human rights defenders are most often killed, with a noticeable increase in the last three years. Under the pretext of protecting the people, the state of exception becomes a lasting strategic practice of contemporary governments, living in a kind of permanent exception.

Keywords: Social Movements; Permanent Exception; Biopolitics; Repression

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ATELIER 8. L'érosion des droit dans le monde de la famille - Paula Casaleiro (CEF, CES-Université de Coïmbra) et Patrícia Branco (Université de Coïmbra)

1) Masayo AIHARA, Maki KOYAMA - *L'état de normalité ou d'urgence dans une situation de post-accident nucléaire : les défis des familles après Fukushima*

Le 11 mars 2011, lorsque l'accident nucléaire de Fukushima s'est produit, presque totalité des familles qui habitait près de centrale nucléaire ont été évacuées vers des territoires où elles avaient des liens de famille, mais aussi, parfois, vers des endroits où ils ne connaissaient personne. Toutefois, des membres de ces mêmes familles, le plus souvent les maris/pères, ont dû rester, voire retourner rapidement, à Fukushima afin de garder leurs emplois.

Sept ans plus tard, ces familles ont dû prendre la décision finale : retourner à Fukushima ou rester là où ils s'étaient installés à cause de l'accident nucléaire. Le paiement de l'allocation compensatoire assurée par Tokyo Denryoku (Tokyo Electric Power Company, TEPCO), terminera dans un an. Beaucoup de familles décident donc de se réunir, à Fukushima ou ailleurs ; cependant d'autres n'arrivent pas à une solution partagée pour des différentes raisons, tels que la crainte des effets des rayons radioactifs, l'habitude à la vie quotidienne, surtout pour les enfants, loin de Fukushima, ou des problèmes relationnels entre conjoints dû à la durée de l'éloignement. Les femmes qui ont laissé leurs maris à Fukushima ont souvent été condamnés par leurs parents et par ceux de leurs époux. Pour ces femmes la question est ici : « quel est l'état normal? » La durée de sept ans après l'accident justifie le retour à la « normalité » de la vie à Fukushima? Les radiations n'ont plus aucun effet négatif sur la santé des enfants? Nous considérons que l'état de « normalité » ne soit pas identifiable de façon objective, mais que cela dépende de la personne concerné.

Dans cette communication, nous aborderons les difficultés de la famille réfugiée de Fukushima, en mettant l'accent sur les familles qui ont été séparées après l'accident nucléaire.

Keywords : état de normalité ou d'urgence

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2) Cláudia Elisabeth Pozzi, Patrícia Branco - *Droits existentiels de la famille: entre la norme et la réalité*

Dans un pays comme le Brésil, avec un rythme accéléré du divorce, remariage et violence contre les femmes, deux récits dominant le scénario de la liberté de fonder une famille : les droits de la famille sont pluriels et les droits de la famille sont traditionnels. Le premier se vérifie dans les arrêts de la Cour Suprême en soutenant l'horizontalité des droits humains et les valeurs démocratiques dans les familles. Le deuxième, dans les arrêts et les approbations de divorces qui soutiennent souvent des conceptions étroites de famille. Les Statistiques de Registre Civil du 2016 suggèrent cet écart: arrangements familiaux avec uniquement des enfants mineurs représentent le plus grand nombre de divorces (47,5%), consensuelles et contentieuses, avec une prédominance de la responsabilité des femmes dans la garde des enfants (74,4%), même après la Loi n. 13.058/2014, lorsque le partage devient la règle. Les récits montrent des variations sociales et institutionnelles des familles, avec des formes plus ou moins démocratiques. Suite à un découpage qui a permis

d'observer la réalité des familles après le divorce, nous pouvons faire la demande suivante: le divorce sans égalité des responsabilités parentales viole-t-il les droits humains? Sont-elles des réalités qui érodent les principes constitutionnels? Méthodologiquement, nous irons analyser l'État de São Paulo, avec les sources documentaires suivantes: la base de données de la Cour de Justice et les Centres Judiciaires de Résolution des Conflits et de la Citoyenneté, qui, en général, traitent de la médiation pré-processuel. Les résultats présentés ont cherché à contribuer à la discussion qui relie les normes et la réalité dans les situations existentielles, la démocratisation de l'espace familial et de ses interactions avec les droits humains.

Keywords : Situations Existentielles. Responsabilités Parentales. Droits Humains. Démocratisation de l'Espèce Familial.

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3) Paula Casaleiro, Andreia Santos - *Family disputes in times of austerity: child custody and child support cases*

The analysis of the family justice statistics points to an increase in child custody disputes. In this paper it is argued that the crisis context and the implementation of austerity policies in Portugal contributed directly and indirectly to this growth, but also of to the transformation of the nature of the judicialized family conflicts, increasing child custody and child support disputes, namely to access social protection mechanisms. It discusses the impact of austerity policies in the family conflicts through the analysis of national statistical indicators on family litigation and the content analysis of child custody judicial cases.

It concludes that the crises increased the judicial mobilization to solve child support disputes (either to reduction of the value and failure to pay). Therefore, the crisis amplified traditional child custody disputes, as it transfers the adjustment cost for families. Secondly increased the judicial mobilization to regulate child custody arrangements, in order to access social protection mechanisms. It creates the conditions for the emergence of new conflicts. The reduction of the welfare state makes the mobilization of the courts for the child custody regulation the only way to access social benefits. Thus, the child custody proceedings are not an end in itself, but only a necessary means to access other social supports.

Keywords: family and children's justice; child custody; child support; austerity policies

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4) Patrícia Branco - *Playing with the Law. Or what the analysis of a playground may reveal in terms of normativities in everyday life*

A playground is much more than a place where children can play. It materializes the spatialization of a set of practices, roles and rules of conduct, social and normative. Hence, it is similar to jurisdiction, since it has to do with the reach of law, formal or informal, over a defined territory, where playing can take place. Thus play should not take place beyond

those limits, i.e. in the streets of the city or against what is allowed by a city suited to the needs of adults. As has been emphasized in reports such as that of the Italian Observatory for Children and Adolescents (2016), children's play is increasingly limited in time and place (privatization of spaces).

Playgrounds are also a privileged place to observe the law interacting and 'playing' with us, children and adults, how we react to such interaction and how this recursive relationship shapes the way we understand our place in the world, in an everyday basis. In this paper I'll analyze Piazza Cavour's playground in the city of Naples, Italy, and some of its many ways of seeing, feeling and experiencing law, examining it: first, as social structure, where the state of maintenance of the playground is shaped, and shapes, the way in which civil law still considers children, as minor citizens; second, as a site of emancipation, where children reclaim the effectiveness of their rights (to play, to safety, to autonomy, to learning and to participation) as full citizens.

Keywords: playgrounds; law in everyday life; children and family

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29 Septembre 2018

9h30

Table ronde organisée par l'Association La Repolitique (Étudiants de SciencesPo-Toulouse associés à la société civile ; David Lorant)

La table ronde proposée par les étudiants de Sciences Po Toulouse autour de l'association La Repolitique tentera d'explorer tant le concept que le discours de l'exception afin d'étudier leur rôle dans les transformations sociales et juridiques d'aujourd'hui.

La notion d'exception semble intrinsèque à l'idée de pouvoir et de souveraineté : imposer ce qui est norme et ce qui est exception est au cœur de la lutte d'énonciation menant à la légitimation des acteurs sociaux. Pourquoi alors l'exception est-elle devenue un thème omniprésent, comme inédit dans nos sociétés occidentales contemporaines?

Individualisation, dérégulation et hyper-juridicisation, rapport au temps, au droit, à la société et aux mobilisations, voilà autant de thèmes autour desquels les étudiants traiteront de l'exception pour y trouver une logique globale permettant de mieux comprendre notre époque.

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