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Workshop 18

Parliaments And Courtrooms In Action Around The Mediterranean

directed by

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Workshop abstract

Parliaments and parliamentary activities are little studied in the context of Mediterranean countries in general. The same holds true with regard to the judiciary. Attention was focused until recently to the subjugation of the law and its institutions to the ruler's interests, without raising the issue of their actual and detailed working and function. This workshop aims at filling the gap and seeks to encourage studies concentrating in an empirical perspective on parliamentary and judicial activities and, in particular, on the actual practices of the many people engaged in the daily performance of discussing politics, crafting the law, adjudicating, and contributing to these institutions' maintenance.

Workshop description

This workshop will examine parliamentary and judicial practice in the various contexts of the Mediterranean area. Participants will therefore undertake their analyses on the basis of contextualized practices oriented to the law upstream (the many instances of the legislative process) and downstream (prosecution, pleas, adjudication, etc.). Practice, here, is taken to mean legal processes in action, as revealed by the ethnographic and documentary observation of their performance. By focusing on context, we seek to show that practice cannot be abstracted from its cultural environment, i.e. the resources allowing users and practitioners to infuse their actions with meaning. The workshop seeks

to re-specify the study of the legislature and the judiciary, by taking particular interest in the modalities of the practical accomplishment of their work and its contextual rootedness.

On the one hand, most legal studies underscore the importance of rules and code. Hence the focus is on the “applicability” of such rules and normative values, or the congruence (or lack thereof) between the “theory” and the “practice” of the law. Applicability hence implies the level of “matching” theory with practice. A practice would conform to its code once it matches the presumed intention of the rule. That focus on codes and their applicability has distracted attention from the practices of the courts. Either the rule is applied or not, and if it is then why bother with the intricacies of the courts hearings and decision-making processes? Our aim is to precisely bypass such formalisms in the study of the legislature and the judiciary. Formal analysis is only interested in the externality of the rule, that is, the formulation of the law and its application, neglecting all what happens within the process of law definition and interpretation. It hence proves inadequate for accounting for the various practices that are involved in the making of law as such.

On the other hand, while political studies have rediscovered the importance of parliaments, and seen the renewal of parliamentarism as the first step of a negotiated political transition (Baaklani, Denoeux, Springborg), little has been done to really document the practices and activities of political and judicial staff at work. Indeed, when related to parliamentary or judicial actors, most studies focus on the social background or on the political identities of the Members of Parliament (Costa, Kerrouche) or on the question of judicialization of politics (Sweet). This contributes not only to overestimate the role of a specific category of actors but also to neglect the study of these actors in action. This workshop will consider the actual activities of these very acting people who contribute to institutions’ maintenance, such as MP’s and MP’s collaborators (Courty & alii), clerks, court interpreters (Berk-Selington), etc.

Research in that direction would prove useful in many respects. First, codes and legal texts are looked upon not simply in what they say (content and logic of codes), but also in terms of their performative value: that is, how effective they are within a particular situation, and how they are documented by users. Second, notwithstanding the primacy of content, the archival work, whenever available, that would document the process of making the code is of prime importance. The drafting of a code usually goes through a long and tedious process, which involves such things as the labor of a task force comprised of jurists, judges, lawyers, and lawmakers; or parliamentary debates that would question the code in part or in its totality; not to mention the debates that would ensue on a public forum (and picked up by the media in general). In sum, the drafting of codes and of legal texts in general, is a process that unfolds into several interrelated historically and anthropologically rooted practices, which cannot be limited to a so-called “theory” or discourse of law.

Parliaments: Whether a political system is democratic or authoritarian, it permits, within certain ascribed limits, a debate on the legal codes within the parliamentary institutions. For the researcher, such debates have a value of their own. In effect, parliamentary debates are themselves practice, with its own logic, *modus operandi*, and sets of routines and ways to proceed. From a legal perspective, what is of interest is that the legal codes (and other related texts) are usually only promulgated once ratified by parliament. The ensuing debates are therefore of prime importance and we should underscore performance over content: *how* a debate proceeds, and the strategies deployed by actors through their skills.

Courtrooms: The formal analysis of law either attributes too much importance to the space of courtrooms or none at all. In the first instance, courtrooms are perceived as the space where the law is

“applied,” and hence prove crucial for “testing” the congruence (or lack thereof) between codes and practices, or between theory and practice. In the second instance, and from the vintage viewpoint of legal theory, courtrooms have no importance at all, since they contribute little, if anything at all, to theory itself. Instead, the ways in which the law unfolds within judicial settings and the means through which people practically refer to the law, interpret it, apply it, and concur to its production are a primary focus of this workshop. In other words, it seeks to concentrate not so much on formal law or on the people who perform the law, but on these people’s actual practice of the law.

The workshop, by bringing together various disciplines addresses therefore some of the issues raised above, namely the practices of drafting codes and legal texts, the parliamentary debates on legal issues, and the courtroom hearings, attended in terms of the performance and documentation provided by actors. It aims to bring together an international group of participants from a wide variety of academic and research backgrounds, while fulfilling certain conditions in methodology (e.g. the use of empirical, transcribed and translated data). Papers will be preferably written in English, but French is accepted.

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