Constituting Inclusion through Law and Regulation: What do we now know? And where do we go from here?

Brussels School of International Studies, University of Kent
September 5-7, 2018

- PROVISIONAL PROGRAMME -

05 September 2018 - Wednesday

11:30 - Arrival of Participants in Brussels
Check-in opened at Hotel Le Berger - 24 rue du Berger 1050, Brussels

18:30- Social Welcome - Dinner/Drinks (free adhesion, venue to be announced)

06 September 2018 - Thursday

Breakfast/registration proceedings from 09:00

10:00-ish OPENING SESSION- 2018 IPP WORKSHOP

Welcome Talk and Opening Remarks on the 2018 IPP Workshop edition

10:30-12:45 — PAPERS SESSIONS (ROUND I)

Re-imagining cities as spaces of care – a perspective from street homelessness
Helen CARR, Maria Fernanda REPOLES and Edward KIRTON-DARLING

The eyes and ears of the streets: the role of BID Ambassadors in Canterbury, UK
Tracey VARNAVA

Change the law to grant the right to housing and contrast social exclusion in time of crisis: The challenge of Social Movements in Spain.
Gabrielle D'ADDA

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12:45-14:00 — Lunch

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14:00 - 16:30- PAPERS SESSIONS (ROUND II)

'Security and Development'? A Story about Petty Crime, the Petty State and its Petty Law
Luis ESLAVA/Lina BUCHERLY

Informal work in the colonialist, capitalist, patriarchal, Western and modern world-system: a dissident approach to labour law and its inclusionary practices
Pedro Gravatá NICOLI

The exclusionary politics of digital financial inclusion: what's the role of law and regulation?
Serena NATILE

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16:30-16:45- comfort break
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16:45- 18:30 - PAPERS SESSIONS (ROUND III)

Digitalisation, inclusion, and consumer vulnerability
Asta ZOKAITYTE and Will R. MBIOH

Digital divide, digital inclusion and their hidden inconsistencies: how Big Data can deepen the critique against the universal discourse on knowledge commons
Fabricio B. Pasquot POLIDO

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18:30 - 19:30h - Reception including local Brussels attendees
20:00: Dinner (free adhesion, venue to be announced)
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07 September 2018 - Friday

Breakfast: from 08:15/Hotel Le Berger

09:00- 11:00 - PAPERS SESSIONS (ROUND IV)

Subaltern Voices: Expression and Advocacy in Brazil through Emerging Technologies
Ana CAMELO

Traditional Knowledge Protection in Brazil: the strategic role of local communities
Vitor IDO

Women and the Brazilian tax law:
a feminist critique towards inclusionary taxation practices
Marcelo Maciel RAMOS and Luisa Santos PAULO

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11:15-11:30 — comfort break

11:30- 12:30 - PAPERS SESSIONS (ROUND V)

Exclusive Humanity and Fascist Inclusivity
Rose PARFITT

Abusive Obiter Dicta: A Typology of Illegitimate Judicial Pronouncements
Thomas da Rosa BUSTAMANTE

Toni WILLIAMS

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12:30-13:45 — lunch break (NB: shorter than day 1)

13:45-15:45: Next steps of Incl Practices Project /Planning & Workshop Closure

Participants to discuss next steps of the Project/Planning activities and strategic actions in view of upcoming funding applications and research grants

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16:00h – Departures from Brussels

2018 KLS-UFMG Workshop
Constituting Inclusion through Law and Regulation: What do we now know? And where do we go from here?

Collaborative Research Project - Inclusionary Practices, Law and Regulation in Europe and Latin America

Brussels School of International Studies, September 5-7, 2018.

- BACKGROUND AND MATERIAL -

As part of the collaborative research project **Inclusionary Practices, Law and Regulation in Europe and Latin America**, funded by the British Academy's International Partnership and Mobility Scheme (2015-2018), the Brussels Workshop "**Constituting Inclusion through Law and Regulation"** will critically examine the methodologies, legal and regulatory techniques and theoretical debates involved in the implementation of social and economic inclusion policies.

Over the past 30 years, inclusionary policies have been officially supported by international organisations and domestic governments to counteract the economic, social and cultural effects of uneven development, austerity and crisis on marginalised people and to open up new markets for global corporations. Official support has generated substantial policy and technical assistance literatures on social and economic exclusion as well as advocacy and evaluation reports on various types of inclusionary policies and there is an established body of work that engages with socio-political concepts of inclusion and exclusion. This workshop features a complementary strand of inclusionary policy research that focuses on the role(s) played by law and regulation in the development and implementation of inclusionary practices.

Workshop presentations and papers will explore how inclusionary practices in different jurisdictions and different social and economic domains make use of particular forms of law and regulation and consider the implications of these differences and particularities for social justice, equalities and diversities and development. Through systematic and critical analysis and comparison of selected case studies, the workshop seeks to create additional knowledge about the meanings of inclusionary practices in different contexts and about how and to what effect law and regulation are implicated and instrumentalised to advance policies of inclusion.

Workshop case studies explore the roles of domestic and transnational regulation in respect of social exclusion and inclusionary practices in the fields of housing, security, work, education, finance and digital economies and political engagement.

Toni Williams-KLS
Fabrício Polido-UFMG

Selected Abstracts for the Presentations Sessions

Re-imagining cities as spaces of care – a perspective from street homelessness

Helen Carr, Ed Kirton-Darling and Maria Fernanda Salcedo Repolês

Contemporary politics imagines cities either as spaces for economic development, or spaces of insecurity. This has consequences for homeless people who are either required to position themselves as entrepreneurs, selling for instance the Big Issue, or organizing car parking for restaurants or they become subject to sanitary and security regimes which seek to remove their presence from the streets. This paper argues that cities can be reimagined as spaces of care, and, drawing on examples from street homelessness, from London and Canterbury in England and Belo Horizonte in Brazil, argues that there is a disruptive political potential in so doing. The paper begins by demonstrating how cities are constructed in the contemporary political imaginary, and examines the consequences for street homeless populations. It then turns to explore the possibilities of alternative imaginaries, taking inspiration from the Vatican City, York UK's self declaration as a city of Human Rights, and Sheffield UK's decision to be a city of sanctuary thus creating a culture of hospitality. It then considers what a city as a space of care might look like, and draws on examples from street homelessness to suggest that there are precedents for such an approach. The paper concludes by considering resistance to such a project, and the extent to which the re-imagination the paper proposes is a practical project of political disruption.

The eyes and ears of the streets: the role of BID Ambassadors in Canterbury, UK[1]

Tracey Varnava

It is widely argued in the literature that there has been a significant shift from public space as a sphere of production to public space as a sphere of consumption and that this explains the change of focus in responses to homelessness over time, from efforts to reintegrate people back into the workforce to one of removal and containment. Thus, Blomley (in the context of Canada) and Layard (Bristol in the UK) have both written about the way in which the commercial imperative has driven measures to restrict the ability of the homeless to exist on the streets, ranging from the design of urban spaces to the prohibition of behaviours such as begging. In this paper, the importance of consumerism in shaping identities and responses to homelessness is explored through the activities of Canterbury's BID Ambassadors. Employed on behalf of local businesses through the auspices of the Canterbury Connected Business Improvement District, part of their role is to welcome visitors to the city. However, they also perform other tasks,

[1] The Ambassadors are variously referred to in public documentation and on websites as 'BID Ambassadors', 'City Ambassadors', 'Street Ambassadors' or 'BID Street Ambassadors'. For the purposes of this paper which explores their role in delivering BID objectives I make the relationship clear by using 'BID Ambassadors'.

such as liaising with key stakeholders and reporting any issues that they identify on the streets. As such their activities have the potential to be either inclusionary or exclusionary. This paper explores the techniques that are employed by BID Ambassadors in performing their role and considers what their activities reveal about the way in which the street life of Canterbury is constructed and interpreted, and the implications for notions of belonging and citizenship.
[1]

Change the law to grant the right to housing and contrast social exclusion in time of crisis: The challenge of Social Movements in Spain.
Gabriele D'Adda

The right to housing is granted to Spanish citizens by Article 47 of the Spanish constitution and also by several international treaties signed by Spain. Despite this constitutional right, since 2007, hundreds of thousands of people have been evicted from their homes as a result of their inability to pay their mortgages. This mortgage crisis and its consequences are just the first symptom of a more generalized *precarization of the right to housing* which has emerged as a result of the financialisation and commodification of housing. The second, and more recent, symptom is the continuous increase of rents. This trend is particularly acute in the larger cities, as it is reinforced by mass tourism and processes of gentrification. In a context of economic crisis and austerity policies the institutional response to these social problems has often been problematic and, according to the social movement involved in the defence of the right to housing, inadequate. The consequence has been the diffusion of housing precarity. The insecure access to housing that affects an increasing number of families is often linked to social exclusion.
In my paper I will consider the case study of Plataforma Afectados por la Hipoteca (PAH) - 'Platform of People Affected by Mortgages', a social movement established in 2009 in Barcelona to support, through grassroots activism, people at risk of losing their homes because of mortgage default. Bypassing Spanish mortgage law PAH has successfully promoted thousands of individual and direct negotiations between affected people and banks. Nevertheless, the mortgage crisis was only one aspect of the housing crisis. In order to grant structural solutions to the people affected by housing related problems, PAH has developed a strategy demanding the need for a different legal model of housing rights regulation both at national, regional and municipal levels.
The first part of my paper will briefly analyze the extent to which the right to housing is incorporated in the International, European and Spanish legal framework. Official data provided by the Instituto Nacional de Estadistica (INE) – 'Spanish National Institute of Statistics' and the Consejo General del Poder Judicial (CDPJ) – 'Council of Judicial Power 'regarding the number of mortgage execution proceeding and evictions carried out since the beginning of the economic crisis in 2007 will be considered to analyse the consequences of the precarization of the right to housing in Spain. The second part will consider the strategies elaborated by PAH, focusing in particular on the campaigns to change the legal framework on housing in Spain through different citizens' legislative initiatives – *Initiativa*

Legislativa Popular (ILP). These proposals have been pushing for a different set of formal rights, and public policies capable of guaranteeing housing rights and contrast social exclusion. A proposal to promote social housing in Barcelona elaborated by different social movements will be also considered. This measure, already voted by the City Council of Barcelona, aims to remedy to the scarcity of social housing in Barcelona and consequently promote accessible rent and contrast both housing precarity and the gentrification of the neighbourhoods more interested by mass tourism.
What will be argued is that the different proposals to change the legal framework on housing elaborated by social movements represent an attempt to use law and regulations as a tool to grant the right to housing and contrast social exclusion. In this sense they represent also interesting examples of how laws and regulations can be improved - but also (re)formulated from below - to promote inclusion.

'Security and Development'? A Story about Petty Crime, the Petty State and its Petty Law
Lina Buchely and Luis Eslava

In this article we engage with the promises and limits of the 'Security and Development' discourse. Using Cali as our case study, we show how initiatives associated with this discourse, instead of helping states move beyond insecurity, exclusion and low levels of development by strengthening social relations, official institutions and legal frameworks, end up producing, instead, a particular set of precarious institutional and human arrangements. We characterise this precarity as moving in the realm of 'pettiness': a characterisation that for us suggests both the marginal kinds of solutions that ultimately form the core of Security and Development, and the flimsiness that has come to mark those institutional and human arrangements resulting from it. The result is a resilient liminality across the board and the continuation of insecurity

Informal work in the colonialist, capitalist, patriarchal, Western and modern world-system: a dissident approach to labour law and its inclusionary practices
Pedro Augusto Gravatá Nicoli

Standard employment relationship does not correspond to the multiplicity of forms of work incarnated in the colonialist world-system of capitalism since its origin. The field of informal work presents a multitude of ways of working which are not fully assimilated by the modern and Western labour regulation (despite the integration in economic gains, in the lines of a "coloniality of power" still in place). The perimeter crisis on labor law is therefore much larger than imagined in the global North. The project aims to centralize the margins of the world of work by problematizing the essences and structures of labor regulation. Such questions will be posed with dissident epistemological instruments derived in particular from Latin American decolonial theory and its articulations. The research aims to answer the following questions: is it possible to think of a labour law that is permeable to the heterogeneity of the forms of exploitation of work embodied in

the capitalism of the world-system? A labour law that brings to its heart the dynamics of the so-called informal work? How can epistemologically plural legal thinking contribute to this? In the end, this theoretical and critical framework will help understanding the ambiguities of labour law inclusionary practices.

The exclusionary politics of digital financial inclusion: what's the role of law and regulation?
Serena Natile

Digital financial inclusion has gained increasing attention as an instrument for growth and wellbeing, becoming a core feature of the global project for sustainable development. Initiatives such as branchless banking in Brazil and mobile money in Kenya have been acclaimed for facilitating the movement of money and access to formal financial services in places with limited infrastructure and resources. These services have functioned as platforms for a variety of economic and social inclusion projects, benefitting from regulatory arrangements between local and international institutions such as mobile network operators, tech companies, financial institutions, development institutions, NGOs and philanthropic foundations. While these arrangements have contributed to reframe the governance of financial inclusion involving more Southern actors, they have not challenged the development assumptions on which the logic of financial inclusion is built. Bridging socio-legal enquiry, feminist political economy analysis and law & development scholarship, this paper examines the global-local-global-local trajectory of the digital financial inclusion debate, focusing in particular on the Brazilian and Kenyan experiences. In doing so, it reflects on whether and how the law could play a role in decentring the politics and not just the organisation of digital financial inclusion.

Digitalisation, inclusion, and consumer vulnerability
Asta Zokaityte and Will R Mbioh

This paper conducts a thematic analysis of policy papers on industrialisation, digitalisation, and digital inclusion and participation to examine two research questions. Firstly, what role did the British government play in the digitalisation of UK society? Secondly, how did the government safeguard consumer well-being and address consumer vulnerability? It argues that digitalisation and digital inclusion/participation was part of the British government's new industrialization strategy, published in the aftermath of and as a response to the financial crisis of 2008. It aimed to widen and deepen the role of the British government in supporting selected, "competitive" industries. It involved a (re)alignment of government's action to "shape markets" and create business and regulatory environments favourable to the growth of the digital sector. The government used state subsidies and law to support and build consumer confidence in the digital sector and boost demand for its products and services. It also used digital inclusion and participation programs to do the same by targeting "digitally excluded" groups, who were

represented as vulnerable. This paper shows that consumer vulnerability was understood narrowly as a market failure. It was articulated either as a problem of market abuse by the digital sector or as an individual-consumer failure to perform the role of a market citizen. Amendments to data protection and consumer protection laws were adopted to accommodate this narrow framing of consumer vulnerability. In this paper we map out examples of consumer digital vulnerabilities that are not linked to market failures (e.g. mental health issues, work-life imbalance, increased danger to self-government and individual freedom, and problems linked to social welfare that 'prosumption' generates). We do so in order to expose limitations to the government's digitalisation strategy. But we also do so to show contradictions within the current regulatory frameworks on data protection and consumer protection, which can, and as the above examples show they do, exacerbate rather than reduce consumer vulnerabilities in the digital marketplace.

Digital divide, digital inclusion and their hidden inconsistencies: how Big Data can deepen the critique against the universal discourse on knowledge commons
Fabrício Bertini Pasquot Polido

Departing from the digital divides and digital inclusion debates and the existing domestic and international practices as to digital inclusionary practices in global information economy, the article seeks to explore the paradoxes emerging from the implementation of public policies on access to digital technologies, internet and knowledge by developing countries, particularly in south-south and north-south relations. Unlike the incentives for social inclusion and human development arguably generated by digital inclusionary practices, one should express further concerns about the adverse effects of a maximalist approach to the internet and ICT commons as endorsed by global indicators produced by international organizations and large corporations. The rise of global corporate power in computer and internet industry and the massive use of Big Data in informational transactions can be taken seriously as core elements currently shaping legal, institutional and regulatory patterns on digital inclusion´s policies at domestic and transnational level. In this sense, the existing 'divides' are likely to be also related to the knowledge gaps created by the inconsistencies of information collected, stored and shared by governmental and private actors relying on Big Data related mechanisms, codes and processes. The main objective of the paper is to focus on the deep interplay between the narratives associated to digital divides/inclusion, global indicators in this field (e.g. internet access, ICT´s use, digital literacy, access to cultural goods etc.) and the distinct theoretical views on Big Data and 'digital exclusion'. Recent cases on Brazilian Programme on Digital Inclusion and Digital Transformation may constitute a sound evidence to the inconsistencies of the inclusionary debate. In addition, as to the major theoretical and political background, the paper recourses to international legal studies to address some of the relationships between internet governance, global indicators and Big Data and how they interact with the digital inclusion argument in the formulation of domestic and international policies.

Subaltern Voices: Expression and Advocacy in Brazil through Emerging Technologies
Ana Camelo

Minority communities in Brazil face various historical injustices, which have simultaneously socioeconomic, ethical, technological and legal dimensions. They influence how their demands are framed. Due to the broader access to new technologies, especially ICTs, these groups have been trying to rebuild incumbent socio-technical-legal systems. In this context, regulatory arrangements either constraint their rights or function as tools for counter-imaginaries that are based on the communities' own narratives, realities, expectations and techno-political roles. By presenting a few recent cases in Brazil, we aim at exploring how different groups use legal and technology tools to transform the way they are seen by Brazilian society, the way law has been challenged to deal with their specific demands, and how technology has been co-produced within this process.

Traditional Knowledge Protection in Brazil: the strategic role of local communities
Vitor Ido

Indigenous traditional knowledge in Brazil is protected by a rather complex and fragmented regulation that involves biodiversity, intellectual property, indigenous peoples rights and contract law. It is a mix of public and private norms, statutory and contractual provisions, as well as guidelines and customary practices. More recently, particularly in the Amazon region, there has been a major rise in the number of creative initiatives led by indigenous peoples, including community protocols, heritage safeguard policies, new model contracts, sustainable products (food and handicraft), and social media campaigning. This also includes the use of property and intellectual property arguments and strategies, such as copyrights and collective trademarks. They work jointly with lawyers, anthropologists, environmental NGOs, governments and even businesses. In this process, following examples by other ethnographic settings around the world, identity issues are raised, and the whole process of advocacy is in itself a process of self-recognition. This research presents a few cases with an aim at recognizing not only how indigenous use legal and technology tools, but how they transform those very same instruments in a way they (need to) become also more open-ended and suitable for non-Western worlds and perspectives.

Women and the Brazilian tax law: a feminist critique towards inclusionary taxation practices
Marcelo Maciel Ramos/ Luísa Santos Paulo

In this paper, the authors seek to evidence, drawing from both the ideas of "capacities" and "dispossession", how in a historical horizon of construction of inequality, exclusion and marginalization, Tax Law's blindness to the peculiarities of those subjected to it not only impedes the development of a more equal society, but also reifies and strengthens the

precariousness of certain lives. To do so, one could resort to the analysis of marginality where women are placed in Brazil, and how taxation, in being indifferent to their plight, becomes yet another layer of oppression - subtle, but as perverse as other gender violences. Finally, in a feminist perspective, the paper looks into possible alternatives that can subvert the role of taxation as an instrument of perpetuation of power, showcasing its potential as a tool of justice and marginality eradication.

Exclusive Humanity and Fascist Inclusivity

Rose Parfitt

It's easy to get the impression, not least from the horrifying images of wartime atrocities that wallpaper the post-war international legal order, that the fascist world order whose expansion the 'united nations' thwarted in 1945 was founded on a logic of *exclusivity*. Whereas law (in the Western sense), and international law in particular, start from an inclusive understanding of 'humanity' viewed as a special, rights-bearing category, fascist normativity (this wallpaper suggests) was obsessed with excluding certain groups, not only from the body politic, but from the category of humankind per se.
Most notoriously, perhaps, Nazi projects including the Holocaust and *Generalplan Ost* were justified on the grounds that individuals belonging to certain groups were *untermensch* ('subhuman') and therefore fit only for enslavement or extermination. Largely in reaction to this, post-war international law places an inclusive idea of humanity at the centre of its concerns. All humans possess, by virtue of their membership of a special species, a common set of rights, which can be extended to other animals and things only to a very limited extent. It is in its disregard for the fundamental specialness of all human life, and from the norms stemming from that specialness, that fascism's horror is understood to lie.

Yet as Hitler's vegetarianism and as the contemporary alt-right's enthusiasm for veganism remind us, it might just as well be said that the world order which fascism sought to bring into being was characterised by a logic of *inclusivity*. For example, one of the first legislative measures to be put in place both in Fascist Italy and Nazi Germany resulted in two of the most 'humane' animal welfare regimes ever created. As the inmates of concentration camps were being subjected to excruciating 'scientific' experiments, their hair harvested for the production of felt and delayed-action bombs, detailed legislation was in place throughout the Third Reich prohibiting the 'unnecessary torment or rough mishandling' of animals, including the force-feeding of birds, the shortening of horses' tails and the performance of veterinary procedures without anaesthesia (Sax, 2013).

It has been well established by critical legal scholars that the term 'humanity' has always been in practice more exclusive, more hierarchical, more violent and more anthropocentric than its universalist promises suggest (Çubukçu, 2017; forthcoming 2018, Sayed, 2017, Eslava 2017, Otomo & Mussawir, 2013). This paper contributes another layer to that critique by comparing international law's gradual creation of an

exclusive special category known as 'humanity' with fascism's efforts to integrate all human and non-human subjects and objects into a complex, Darwinian hierarchy.

Abusive Obiter Dicta: A Typology of Illegitimate Judicial Pronouncements
Thomas da Rosa Bustamante

This paper intends to reconstruct the concept of obiter dictum, with two central aims: first, to provide an understanding for all judicial pronouncements that are institutionally relevant while not strictly authoritative, instead of only those traditionally classified as obiter dicta by the classical theories of precedent; second, to understand the legitimacy requirements of obiter dicta, i.e. the circumstances in which they are expressed in a morally justified way. I argue that by means of obiter dicta judges sometimes perform speech acts without the appropriate political legitimacy. Such speech acts can be abusive either because they interfere on political and legal processes in other institutions, or because they violate a role-obligation of judges in other ways. Since abusive obiter dicta are potential sources of legal instability and threaten the Rule of Law and the Separation of Powers, it is important to identify the situations in which they might obtain.