



Dignity, Democracy, Diversity

29th World Congress of the International Association for Philosophy of Law and Social Philosophy (IVR), University of Lucerne, 7 -13 July 2019

Special Workshop 97: Preserving democracy through undemocratic means?

Thursday 11 July, 08.30-13.00, 4.B02

Contrary to the legal saying “Fiat iustitia, pereat mundus”, can the preservation of democratic ideals sometimes justify to undermine or even violate legal norms? In other words: Can there be (democratically) legitimate – though illegal – action at and beyond the limits of a democratic legal and political system? Or does a deviation from the legality always surrender the normative ideal of democracy?

The workshop engages with a variety of constellations, in which the adherence to democratic norms and legal principles conflicts with upholding the democratic system or with preserving its basic normative pillars. The perspectives addressed by the workshop range from the role of civil disobedience in a democratic society to question political decisions, to the suspension of basic rights in a state of emergency to maintain security or the suspension of humanitarian law in supreme emergency cases, to the fundamental violation of human dignity through the practice of torture to save lives.

8.30-10.30

Wulf Loh, IZEW, University of Tuebingen

Digital Civil Disobedience in Transnational Publics

Forms of online activism are often still highly criminalized. As these acts can make essential contributions to the control as well as translation functions of the public sphere in the realm of the digital, it is highly desirable from a theoretical democratic perspective to decriminalize at least some of them. In this talk, I will assess whether some promising forms of online activism (e.g. DDoS actions, website defacement, leaking, doxing etc.) can be defined as digital civil disobedience (DCD), thereby legitimizing these illegal actions. Employing Rawls' central criteria for traditional forms of civil disobedience (such as publicity, nonviolence, and fidelity to law), this talk explores whether and to what extent different types of online activism meet these criteria. In answering this question, I will discuss some puzzles of DCD, such as the question of anonymity as well as the possibility of online violence. I will then argue for a recognition of some forms of online activism as DCD – and therefore as a legitimate form of (digital) political contestation. These forms should not only be decriminalized, but also (morally) applauded, as they serve important purposes for democracy by strengthening transnational digital spheres.

Annette Förster, Political Science Department, RWTH Aachen University

Torture and the Foundations of Democracy

(How) Do democracy and torture relate to one another? The absolute prohibition of torture and the normative foundations of democracy seem to suggest that torture and democracy are incompatible. Nevertheless, there is a broad discourse on the justification of torture in 21st century Western democracies. I address this discourse by organizing the central approaches to it along the supposed legality or legalization of torture and/or its legitimacy from a Political Science perspective. This endeavor is central to my habilitation project, which I outline and discuss in the workshop.

11.00-13.00

Mathias Lemke, Federal College for Public Administration, Section Federal Police in Lübeck

The Normalization of the Exception

Between November 2015 and October 2017, France has seen the longest state of exception in the history of the Fifth Republic. It lasted nearly two years. Some observers argued, that President Macron ended emergency measures by November 1st, 2017, while critics say, that implementing emergency provisions into the standing law has normalized the non-normal. The talk will give an overview on state of emergency measures during these 719 days in France. Following these developments in their legal, political and public dimension might allow giving an answer to the question of whether the new normality really is - normality.

Katja Stoppenbrink, Department of Philosophy, University of Münster

Moral Tragedy or Justified Exemption? – Reconsidering ‘Supreme Emergency’ Beyond Rawls and Walzer

Taking Michael Walzer's conception of a 'Supreme Emergency Exception' (SEE) as a point of departure I will systematically reconstruct and contrast his variant of SEE with John Rawls'. In his *'The Law of Peoples'* Rawls borrows the terminology from Walzer but ignores him for the rest. I will show that he owes much more to this blueprint than he is willing to admit and that his 'unjust warrior – heroic statesman' approach to SEE faces a similar objection of inconsistency as Walzer's conception does. My reconstruction differs, however, from Watson (2012) for whom Walzer's inconsistency originates in the supra-individual community vs. individual lives and liberties tension in grounding *ius ad bellum* and *ius in bello*. Both, Rawls and Walzer, aim at a legalized SEE within a framework of just war theory but deliver only a case presentation of WWII. I will submit that beyond a mere casuistic answer there can be a categorization of SEE as a justificatory device for the killing of non-combatants. However, tragically, this will still be moral tragedy.