

# Program

Organização . Sofia Aboim

# Rights and Inequalities

Paradoxes and Alternatives

10,30h

## Welcome and Introduction

**Jorge Vala**, Director of the ICS-ULisboa  
*Presentation of the Conference*

10,40h

**Sofia Aboim**, ICS-ULisboa  
*Opening Remarks: Paradoxes, challenges and alternatives*

11,00h

## Opening Session

**GÖRAN THERBORN**, University of Cambridge, UK  
*Dynamics of Rights and Inequalities*

Lunch

14,00h

## Session I. Economy and the Crisis

Chair: Ângela Barreto Xavier

**PEDRO LAINS**, ICS-ULisboa  
*The rise and demise of the Troika virtues: Portugal, 2011-2013*

**JOSÉ CASTRO CALDAS**, CES, University of Coimbra  
*Inequality and crisis: from the IMF back to Malthus*

Coffee break

16,00h

## Session II. Rights and the Law

Chair: Pedro Magalhães

**MIGUEL NOGUEIRA DE BRITO**, Faculdade de Direito da Universidade de Lisboa  
*Are social rights more like civil or political rights?*

**MARGARIDA LIMA REGO**, NOVA Law (Faculdade de Direito, Universidade Nova de Lisboa)  
*Statistics as a basis for discrimination in the business of insurance*

17,30h

## Closing Session

Chair: Nina Clara Tiesler

**LUKE MARTELL**, University of Sussex, UK  
*Austerity, inequality, rights and alternatives*

18,30h

Wine reception

# RESUMOS ABSTRACTS

Sessão de Abertura Opening Session (11,00h)

**GÖRAN THERBORN**

UNIV. CAMBRIDGE

*Dynamics of Rights and Inequalities*

Inequality is a modern discovery and a modern experience, which derived from conceptions of human rights developed in 17-18 century European political theory. Inequalities differ from primordial differences between rich and poor as well as between men and women and between young and old - by being in-equalities, i.e., violating some norm of human equality.

However, there are many kinds of both rights and inequalities, which, very often do not support each other. The equal rights of the American and French Revolutions basically referred to civic rights among White, adult, non-servant males only. As the long modern history of, e.g., US racism and French patriarchy, shows, prevalent rights discourse has proved compatible with persistent, blatant, and militant inequalities. In current US politics there is also a remarkable discursive division between "rights" (of the 18th century Constitution, good) and "entitlements" (from 20th century social legislation, bad). Nevertheless, politics of rights do contain a potential egalitarian dynamic, mostly latent, but which may suddenly unfold under propitious socio-political circumstances, as American history also demonstrates very clearly. Social scientific analysis of inequality, and egalitarian politics, need to adopt and to argue from an explicit moral foundation, and both have to embrace the multidimensionality of inequality. The most promising starting-point for this seems to be the assertion of a fundamental and universal human right to live a life of full human capability, as healthy biological beings, as recognized autonomous persons, and as actors with sufficient resources to fully participate in human social life. This means three interacting but irreducible targets, vital, existential, and resource inequality. Their empirical record in recent times has been very different. A basic grid for an empirical understanding of contemporary inequality should be at least a six-pack: looking globally at current tendencies of vital, existential, and resource (first of all income) inequality, between nations and within nations. But there is also, an important inter-temporal, inter-generational dimension, so far most researched from resource points of view, of "(in)equality of opportunity", but pertaining also to the frontier areas of neuroscience, medicine, psychology, and social science, where the reasons and the pathways of vital inequality are being explored.

## PEDRO LAINS

ICS - UNIV. LISBOA

### *The rise and demise of the Troika virtues: Portugal, 2011-2013*

The *Memorandum of Understanding on Specific Economic Policy Conditionality*, signed between the Portuguese Government and the European Union, the IMF and ECB, on 3 May 2011, was praised by a large number of Portuguese politicians, economists, and a considerable share of the public, from socialists to social-democrats and Christian democrats. The 34-pages long document was declared by many as an amazing, in-depth and detailed exercise, imposing measures that would overhaul the Portuguese economy, the State or the judiciary, in order to put the country in the right track and never default again in the future. The first press conference of the *Troika* representatives, on 5 May 2011, was attended massively by the media, and received widespread attention by a thrusting public, eager for a definite solution for the domestic economic problems. Since then, all has changed. The *Troika* representatives do not appear in press conferences or under the public eyes any longer and the number of politicians and economists that still praise its role has been reduced to a few diehards of austerity. This talk argues that the initial popularity of the *Memorandum* and the *Troika* is the outcome of a long-standing misperception of Portugal's growth potential and position in Europe, which has long roots back in History. The analysis of the *Troika* experience, however, may be a valuable contribute to a better understanding of the problems facing the Portuguese economy within the European Union.

## JOSÉ CASTRO CALDAS

CES - UNIV. COIMBRA

### *Inequality and crisis: from the IMF back to Malthus*

In 2010 Michael Kumhof and Romain Rancière, two IMF researchers, noted in a working paper that the two major economic crises experienced in the US over the past century were “preceded by a sharp increase in income and wealth inequality”, argued that there is indeed a connection between income inequality and the occurrence of economic crisis and identified the corresponding mechanisms. In 2012 the OECD admitted in a report (Going for Growth 2012) that equity and economic growth may be made compatible, and that “policy reforms that could yield a double dividend in terms of boosting GDP per capita and reducing income inequality.” Those pronouncements are only surprising because in the recent past the very same organizations were not concerned at all with growing inequality, both in the developed and emergent countries, and were instead very active in promoting the idea that attempts at a more equitable division of the “pie” would only shrink its overall size. The researchers in the IMF and the OECD, address the inequality-crisis and equity-growth nexuses as if they were revising a long established economic doctrine that pointed in the opposite direction. They may even be unaware of a lineage in economic thought in which even authors adverse to socialism or

- communism argued that inequality beyond certain limits would compress “effectual demand”, trigger economic crisis and/or preclude capital accumulation in the long run, thus countering “supply side” arguments on the irrelevance or undesirability of redistribution. Such a tradition of political economists, possibly originating in Robert Malthus, was rediscovered and developed by John Maynard Keynes during the Great Depression. In the light of those historical antecedents, the crisis induced revision of beliefs on the equity-growth relationship by the IMF and the OECD, suggests that the “equality is detrimental to stability and growth” idea, rather than a well-established economic doctrine, may have been only an unfortunate episode in the history of economic ideas. Bringing to the fore the historical antecedents of the current attempts to better understand the relationship between inequality and economic crisis or decline may shed light and encourage the current belief revision in mainstream economics, and increase the odds of having it translated in policy. Such is the aim of this presentation.

## Sessão II    Session II - Rights and the Law (16,00h)

### MIGUEL NOGUEIRA DE BRITO

FAC. DIREITO - UNIV. LISBOA    *Are social rights more like civil or political rights?*

Differences in the legal treatment of social rights are well known. Some constitutions do not include social and economic rights at all, like the German constitution. Others, like the Indian constitution, explicitly state that such rights are not enforceable by any courts, even if the State has the duty to take them into account in the making of laws. Differently, the Portuguese constitution contains a generous provision of social and economic rights, but does not confer to them the same juridical force it establishes for classic, liberal, rights. Finally, on the other extreme of the specter, the Brazilian constitution considers social rights on a par with liberal rights. In contrast with this situation there is considerable homogeneity regarding the legal treatment of the so called classical rights in the sense that all constitutions recognize them the same legal force, without relevant variations. Many explanations have been attempted to explain this contrast. First, social rights are “second-generation” rights on the face of classical rights, a qualification which implies a secondary character also in terms of priority. Second, social rights are considered as requiring positive action from the state for their enjoyment and involving a significant amount of public expenditure. Third, social rights are usually seen as inappropriate for judicial enforcement. These are all, at best, circumstantial explanations, which cannot reach deep in the matter of things. The category of classical rights is not uniform. Among the most common distinctions made in classical or liberty rights is the one that separates political from civil rights. Political rights are rights that involve participation in the exercise of sovereignty or the administration of a government. Civil rights are the nonpolitical rights of a citizen or the rights of personal liberty. Another way of expressing this same distinction is to say that civil rights protect the negative liberty of individuals whilst political rights guarantee the positive liberty of citizens. So the question arises as to whether social rights are more like civil rights or like political rights. I do not intend to ask whether social rights are supposed to protect the individual or to enable the citizen. Arguably they do both. What I wish to understand is the relationship of social rights to the appurtenance of their holders to a political community. In the

- current financial state of emergency in which we are submerged it makes sense to question the relevance of the political dimension of social rights. In fact there are, today, two radically different perspectives on the issue of social rights which are imposing themselves in the public discourse. On the one hand we have the neoliberal perspective: effective social installments are a byproduct of a well-functioning capitalist economy and, as far as possible, they should be integrated in a system of private charity. On the other hand we have what may be called the patrimonialist or proprietary perspective: social rights are as enforceable as property rights and as individualistic as these. In each perspective we miss an important dimension of social rights. The neoliberal vision misses the obvious point that social rights are a matter of justice, not charity. The proprietary vision misses the solidarity dimension of social rights. Most importantly the two perspectives form the two sides of the same coin. This is the coin of the primacy of economic life over all other dimensions of social life. In the paper to be presented I propose to explore the political dimension of social rights in face of the view that centers the enhancement of their protection by means of an assertive judicialization.

## MARGARIDA LIMA REGO

FAC. DIREITO - UNIV. NOVA LISBOA *Statistics as a basis for discrimination in the business of insurance*

All persons should be treated as equals. This means that, as individuals, each and every one of us should be treated with an equal measure of concern and respect. It *does not mean* that we should all be given the same treatment in spite of our differences, such differences also being worthy of equal concern and respect as part of our personal identity. Treating persons as equals may call for unequal treatment when their starting point is different. What separates admissible criteria of differentiation from inadmissible forms of discrimination? It is a given that differentiation based on stereotyping, on unsupported prejudice, amounts to discrimination and should therefore be struck down. But what about differentiation based on accurate statistical and mathematical findings?

This is the type of differentiation most commonly used in the business of insurance, where, for instance, a large number of empirical studies have demonstrated that, *from a statistical point of view*, women have a higher life expectancy than men, that women are more frequent users of health care services than men, or that serious traffic accidents are more often caused by men than by women who nonetheless cause a higher number of minor traffic accidents. A recent decision of the Court of Justice of the European Union has held that as from 21 December 2012 insurers may no longer charge men and women differently on the basis of scientific evidence that is statistically linked to their sex, effectively prohibiting the use of sex as a factor in the calculation of premiums and benefits for the purposes of insurance and related financial services throughout the European Union.<sup>1</sup>

This decision marks a sharp turn away from the traditional view, still enshrined in our national law, that insurers should be allowed to apply just about any risk assessment criterion, provided that it is supported by the findings of actuarial science. The naïveté behind the assumption that insurers' recourse to statistical and mathematical methods, given their scientific nature, would suffice to keep them out of harm's way was exposed. In this presentation I look at the flaws of this assumption and question whether this judicial decision has nonetheless gone too far. ►



<sup>1</sup> Case C-236/09, Association des Consommateurs Test-Achats ABSL, Yann van Vugt, Charles Basseler v. Conseil des ministres, 2011 E.C.R. I-00773, available at: <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-236/09> (known simply as Test-Achats), on the invalidity of Article 5(2) of Council Directive 2004/113/EC of 13 December 2004 (implementing the principle of equal treatment between men and women in the access to and supply of goods and services).

## Sessão Encerramento    Closing Session (17,30h)

### LUKE MARTELL

UNIV. SUSSEX

*Austerity, inequality, rights and alternatives*

Austerity is presented as an economic necessity and a technocratic solution to problems caused within society, rather than by finance or elites. But it's a political project to increase inequality and take away hard-won rights. Austerity has a class agenda against the poor and less powerful. It's carried out on behalf of the rich and those with power in pursuit of their interests. This situation is about taking sides politically, rather than an agenda over which we have no choice. There are other explanations for the crisis, and there are economic and political alternatives to austerity.

12 DE NOVEMBRO, INSTITUTO DE CIÊNCIAS SOCIAIS DA UNIVERSIDADE DE LISBOA