Sixth edition of the Colloquium of PhD candidates and young Doctors of the Doctoral School 101

Weakness in Law

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CALL FOR ABSTRACTS

The PhD candidates and young Doctors of the Doctoral School of Law (ED 101) of the University of Strasbourg, in cooperation with the Doctoral School ED 101 and the Federation of Research *Europe in Transformation History, Law, Economy and Cultural identities* (FRU 6703) and Dehspus, the association of PhD candidates
organize the sixth edition of the Colloquium of PhD candidates and young Doctors of the Doctoral School 101.

The colloquium gives an opportunity to PhD candidates and young Doctors to give a presentation and thus to promote their work or their research subject.

All travel and accommodation expenses will be covered by the organizing committee.

The acts of the colloquium will be published in 2019.

The scientific committee is at your disposal at the following address:
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In *Gorgias*, Plato asks a recurring question: is law created for the weak or for the strong? The dichotomy between the strong and the weak can be found in many other cultural references: from the myth *The heifer, the goat, the sheep and the lion* of Phaedrus to *The Animals Sick of the Plague* from Jean de la Fontaine, to the character of Lennie Small from John Steinbeck, these works reveal, through the weakness of certain characters, the overall relevance of this question in the context of justice and the law.

These cultural traces also reveal that there is more than one form of weakness. A brief consultation of French dictionaries is sufficient to support this conclusion. From the latin word *flebilis*[1], weakness points out to the lack of force or vitality, to fragility, sickness, failure or absence of solidity, psychological disability, deprivation, shortage, imperfection, lack of authority, of power or of force, or something which is unimportant or scarce. Law is however making use of its own particular language and it is indispensable to know the exact meaning of each term employed. This need leads inevitably to the process of definition because, as it's often put, lawyers cannot afford "*being contemptuous towards a dictionary*"[2].

Yet, legal dictionaries often lead to synonyms like vulnerability and incompetence without actually defining the term "weakness". Even scarcer are the examples in which the French legal corpus itself makes use of the exact term *weakness* or the adjective *weak*. For instance, the French Criminal code in article 223-15-2 condemns the fraudulent abuse of *ignorance* or *weakness* while it enumerates at the same time a list of persons falling in this category. Nevertheless, this text cannot be considered as an exhaustive definition of weakness: such legal consideration would reduce the polysemous dimension of weakness which is vital for its adaptation to the social reality.

Deprived of definition and general framework, very often looked down upon, weakness, nevertheless, inspires nevertheless lawyers. Weakness would, thus, be one of these notions which "*by their existence and even more, by their perseverance*" confirm "*the lawyers' ability to conceptualize their knowledge, to give it the technical instruments which render it specific and rigorous*[3]".

The relevance of the chosen topic lies precisely within this multiplicity of interpretations. Indeed, the polysemous dimension of weakness is as important as the cases in which the law makes use of it. In this perspective, perceiving weakness in a legal context is synonymous to pondering over the use, the purpose and the ultimate goals of law[4]. The colloquium has furthermore the ambition to question the coherence of the law in its perception of weakness throughout the different areas of law. This question constitutes the common thread of this study as a whole: a critical analysis of the weakness in law could reveal gaps, faults and the inefficiency of the law.

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[1] Literarily, *miserable* ; BRACHET (A.), *Dictionnaire étymologique de la langue française*, 3e édition, Paris, Bibliothèque d'éducation, 1870, p. 229.
[2] CAPITANT (H.), *Vocabulaire juridique*, Paris, Presses Universitaires de France, 1936, p.7.
[3] ATIAS (C.), *Philosophie du droit*, 4e édition, Thémis droit, Paris, Presses Universitaires de France, 2016, p.353.
[4] OST (F.), *À quoi sert le droit ? Usages, fonctions, finalités*, Collection « Penser le droit », Bruxelles, Éditions Bruylant, 2016.

In order to examine this polysemous concept, rules of law must on one hand comprehend the diversity of situations touched by weakness and on the other hand determine the purposes to be achieved when tackling the weakness issue ***(first approach)***. The characteristics and effectiveness of those specific legal regimes should also be assessed ***(second approach)***.

Every proposed abstract can be placed in either of these two approaches of analysis of weakness in law.

First approach: The law's understanding of weakness: identification and purposes

"*I denounce before you the misery, this long agony of the poor, coming to an end by the death of the rich. Lawmakers, misery is the most ruthless rule of law!*" [5]. This plea by Victor Hugo indicates the constant preoccupation of the so called "economic" weakness". But the law's understanding of weakness, ever evolving for centuries, depends on the variety of political regimes, morals and customs. Could we adopt a static perception of weakness through the multiplication of examples across the centuries?

The notion of time is inherent in weakness: exactly like law, time is temporarily part of the social, cultural and political life of every human community[6]. Weakness, thus, lives through the various interpretations that the lawyer uses to apply rules of law. It is firstly found in the context of prevention of poverty, in social child welfare or even in the right of housing, the asylum procedure and the proceedings of default. Weakness can furthermore be deduced from a characteristic of the life of a person such as a disability, the age or sickness. Finally, weakness has also been understood as an unequal relationship. For instance, the consumer, the tenant and more generally the weak party to a contract or to an international treaty have seen their conditions of protection specified by a rule of law. Labour law is by definition apt to regulate an unequal relationship.

Thus, if weakness can be examined *ratione personae,* it can also be assessed *ratione materiae* or *ratione loci*. Indeed, weakness might affect a human being, goods, or assets. An exhaustive identification would be very complicated since the notion at stake is plural and has a continuously evolving character. In this context, in order to better grasp this reality, the theory of law has proposed several solutions entailing a cooperation between Law and other social sciences.

If Law can adapt its objectives according to a rich overview of different evolving interpretations of weakness, common patterns can be identified through its intervention. Indeed, protection in general is emerging from multiple branches of law and raises a great number of questions to which answers the concept of weakness in all of its dimensions. Several of the law's objectives only give an interpretation of the weakness at a given moment. In most of these cases, the law intends to protect the persons which are perceived as weak, by helping them, informing them, proposing reparation or by making clear efforts to reduce or obliterate the weakness. Yet, some situations of weakness need a collective protection since their evolution would result in a danger for public order or national security. We can finally identify various

[5] Œuvres complètes de Victor Hugo, *Avant l'exil, 1841-1851, Reliquat I – Assemblée Législative, Les caves de Lille*, Tome I, Paris, Albin Michel, 1937, p.447-448.
[6] COMMAILLE (J.), *À quoi nous sert le droit ?* Essais Folio, Paris, Éditions Gallimard, 2015, p.240.

factors worthy of protection, such as a person's autonomy, tolerance, dignity, or even citizenship in order to grasp weakness.

Examples of topics: Does labour law aim to rebalance an unequal power relationship? ; Begging, roaming and public order ; Social care and fight against poverty ; Identification of the weaker party in contract law.

Second approach: The legal measures addressing weakness: implementation and effectiveness

"*Finally! We have separated the goods of the two spouses. - It was high time, the proceedings have driven to a financial destruction of both of them*." This caption, placed under a caricature of Honoré Daumier raises questions concerning the coherence of the law in terms of its application. **If weaknesses create a need for legal norms, doesn't law itself create weaknesses?**

A critical analysis of the law would not be complete without the study of its means of implementation in their form and substance. Indeed, there are as many types of weakness to be found as there are answers to be provided by Law. Given the difficulty in the understanding of the concept of weakness, the appreciation of this customized value will allow the evaluation of the efficiency of the law[7] measured with its coherence.

Normative tools address weakness by a variety of different prescriptions. Thus, the law sanctions and condemns, prohibits or restricts certain legal subjects in order to achieve its goals. Moreover, there are sometimes situations whose scale and gravity or their precedent justify the recourse to exceptional and precise measures, for instance in the context of economic, sanitary or migratory crisis.

Furthermore, legal theory and case law alike have enhanced the creation of numerous measures that have undeniably strengthened the concept of weakness in law. In this context, the role of the judge in grasping weakness can be perceived either from the legal basis of court decisions or from the possible contradictions which make necessary a dialogue between the judges. In addition, the appreciation of the legislative initiatives can also be an object of concern especially in regards to their ineffectiveness.

Finally, the significant evolution of the concept of weakness, in view of the historical, economical, or social realities obliges the law to react or even to anticipate. Does it intervene *a priori* or *a posteriori*, regarding a weak subject? In other words, it is important to examine the mechanisms that allow the prevention or the reactions following the identification of the weakness. In this context the omissions and the shortcomings of the law, unconscious or conscious would complete this analysis.

Examples of topics: The effectiveness of Human Rights as tools to grasp weaknesses ; Disability and accessibility ; The effectiveness of repressive measures against domestic violence ; The legal status of prostitution before 1789 ; Discrimination testing as a prevention method.

[7] LEROY (Y.), « La notion d'effectivité du droit », *Droit et Société* n°79, 2011, p. 715.

PhD candidates and young doctors who are interested in contributing, are invited to submit an abstract (around 8 000 signs Word of PDF + bibliography) along with a curriculum vitae before Friday 1st of June 2018 at the following address: colloque.ed101@gmail.com

The selected candidates will be informed by mail at the end of June.

The final text of the contribution shall be sent to the Scientific committee before 13th December.

Scientific Committee:

Mme Caroline KLEINER, Professor at the University of Strasbourg, Director of the Doctoral School 101

M. Emmanuel CASTELLARIN, Professor at the University of Strasbourg, Director of the Federation of Research

M. Raphaël ECKERT, Professor at the University of Strasbourg, Deputy Director of the Doctoral School 101

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