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Editors' Introduction: Indignation, Socio-economic Inequality and the Role of Law

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Abstract

This volume of the *Oñati Socio-legal Series* consists of revised versions of 15 of the 20 papers presented at a workshop hosted by the Oñati International Institute for the Sociology of Law (IISL) in May 2013. The workshop took its theme from Stéphane Hessel's cri de coeur, *Indignez-vous!* and the protest movements it inspired, which we saw as protests against the social inequality that necessarily follows from economic inequality and other power imbalances. This message continues to resonate. In 2015, for example, Oxfam International's research paper entitled "Wealth: Having it all and wanting more" concludes that by 2016, the world's richest 1% will have more of the world's wealth than all of the remaining 99% of people. And a Canadian observer decries the effect of this – which he labels "trickle-down meanness" – on the socio-political fabric of a country.

Because of the breadth of the workshop theme and the diversity of its participants – which included a critical mass of doctrinal legal scholars in the mix – participants were asked to choose topics which 1) raised their indignation, 2) reflected economic inequality, 3) led to a violation of socio-economic rights, and 4) involved a possible role for the law (or public policy) either in causing the violation or in providing a solution to it (or both). The papers in this volume show that the participants responded enthusiastically to this request.

Article resulting from the paper presented at the workshop *Title of the workshop* held in the International Institute for the Sociology of Law, Oñati, Spain, 2-4 February 2012, and coordinated by Name Surname (Affiliation) and Name Surname (Affiliation).

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Key words

Indignation; Hessel; protest movements; socio-economic inequality; trickle-down-meanness; pluralistic dialogue

Resumen

Este número de la revista *Oñati Socio-legal Series* recoge las versiones revisadas de 15 de las 20 ponencias que se presentaron en el workshop celebrado en el Instituto Internacional de Sociología Jurídica de Oñati (IISJ), en mayo de 2013. El tema del workshop giró alrededor del lema de Stéphane Hessel, *Indignez-vous!* y los movimientos de protesta que inspiró, que percibimos como protestas contra la desigualdad social que resulta inevitablemente de la desigualdad económica y otros desequilibrios de poder. Este mensaje sigue resonando. En 2015, por ejemplo, una investigación de Oxfam Internacional titulada "Wealth: Having it all and wanting more" (Riqueza: Tenerlo todo y querer más), concluye que en 2016, el 1% de la población mundial poseerá más riqueza que el 99% restante. Y un observador canadiense condena sus consecuencias -que él denomina "goteo de mezquindad"- en el tejido socio-político de un país.

Debido a la amplitud del tema del workshop y la diversidad de sus participantes - que incluía una masa crítica de expertos en doctrinas legales- se pidió a los participantes que eligieran temas que 1) les indignaran, 2) reflejasen desigualdad económica, 3), diesen lugar a una violación de los derechos socioeconómicos, y 4) que implicasen un posible papel del derecho (o políticas públicas) tanto por causar el daño u ofrecer una solución al problema (o ambos). Los artículos de este volumen demuestran que los participantes respondieron con entusiasmo a esta solicitud.

Palabras clave

Indignados; Hessel; movimientos de protesta; goteo de mezquindad; desigualdad socioeconómica; goteo de avaricia; diálogo plural

In 2010, 93-year-old Stéphane Hessel published a pamphlet, or tract, entitled *Indignez-vous!*, in which he called for a return to the principles and values set out in a programme of the French Resistance adopted in 1944, which included: social security, public ownership of the major natural resources and financial institutions, economic and social democracy promoting the interests of all and not just of the few, a free press, and access to education. For Hessel, these values are under threat today.

Il nous appartient de veiller tous ensemble à ce que notre société reste une société dont nous soyons fiers: pas cette société des sans-papiers, des expulsions, des soupçons à l'égard des immigrés, pas cette société où l'on remet en cause les retraités, les acquis de la Sécurité sociale, pas cette société où les médias sont entre les mains des nantis.

His pamphlet was an "*appel à s'indigner*", and this call was heard round the world.

Indignation was and is still expressed on all continents, in many forms, both publicly and privately. The most visible expressions were the various social protest movements on several continents: beginning with the Arab Spring movement in the Middle East at the beginning of 2011, followed by the indignation movement in Europe – *Los indignados* (Spain, Italy) or *Les indignés* (France, Quebec) – and then by the Occupy movement in North America, Australia and so forth. These movements were interlinked, with the European protests being influenced by the Middle Eastern ones and the Occupy movement drawing its inspiration from the European protests, particularly the Spanish *15 de Mayo* movement.

The catalyst for the various movements differed from region to region: autocratic governance in the Middle East,¹ austerity cuts in Europe, and financial meltdown in North America. Their targets therefore also differed, with the Middle East and European protests being directed mainly against the public sector (particularly national governments) and the North American protests targeting mainly the private sector (notably financial institutions), as symbolised by the spatial nature of the protests (Wall Street, or its functional equivalent in other cities).

But the focus of our workshop was not on the movements themselves, but rather on what they were protesting about – on the substance of the movements (the what), not on their form or procedure (the how). And whatever they were called and whatever their nominal targets, we see the substance of the movements as a protest against the social inequality that necessarily follows from economic inequality and other power imbalances. The Occupy movement captured the stark economic inequality evocatively in its 1% to 99% ratio: "We are the 99%."²

In our view, the protest movements, each in its own way, brought to the fore issues of socio-economic rights. This is of particular interest to us, and it was also of interest to Hessel, who was involved in the drafting of the Universal Declaration of Human Rights: in his discussion of rights in his pamphlet, he cites proudly – "Je ne résiste pas à l'envie de citer ..." (Hessel 2010, p. 7) – article 22 of the Declaration, which entitles each person to "realization of ... the economic, social and cultural rights indispensable for his dignity and the free development of his personality". Although historically, most if not all protest movements (or rebellions, revolutions, etc.) were motivated in large part by socio-economic inequality, they saw changes in civil and political rights as their solution, with the result that discussion about them has centred on this. A good example is the American civil rights movement, which had the focussed objective of voter registration (a political right) as the solution to socio-economic discrimination. Another example might be the Arab Spring, where discussion increasingly focussed on political rights. But the

¹ Although the specific catalyst in Tunisia was the self-immolation of a street vendor in protest against socio-economic harassment by municipal officials (Day 2011).

² This phrase was inspired by an article by economist Joseph E. Stiglitz published in *Vanity Fair* (Stiglitz 2011).

European and North American movements did not propose solutions (and were criticized by some for this). This meant that the protests remained focussed on the socio-economic rights that underpinned them rather than on issues of civil and political rights proposed as solutions to them. And going deeper, behind the substance of the protests, we are interested in the reason, the motivation, that drove the choice to protest. For this reason, we chose to use the European language of "indignation" rather than the North American choice of "occupation" for our workshop, as it put the emphasis on the reasons for action (the why) rather than on the action itself (the what). And we preferred the word "indignation" rather than "outrage" – which had been chosen for the translation of Hessel's pamphlet [*Time for Outrage*] – because we see "indignation" as having a moral quality ("righteous indignation") that simple "outrage" lacks.

The camp-ins have now been ended (by promises, by the police, by time and the weather, etc.), but the indignation remains – in the Middle East, North America, Europe, and elsewhere. The protest movements' message of indignation continues to resonate strongly in a variety of ways. A recent research paper by Oxfam International entitled "Wealth: Having it all and wanting more" highlights the increasing concentration of global wealth in the hands of a small wealthy elite since 2010³: by 2014, the richest 1% owned 48% of global wealth, leaving just 52% to be shared by the remaining 99%;⁴ and if this trend continues, "the top 1% will have more wealth than the remaining 99% of people in just two years ... [i.e.] the wealth share of the top 1% exceeding 50% by 2016]" (Oxfam International 2015, p. 2). Oxfam's Executive Director describes the scale of global inequality as "quite simply staggering" (Byanyima 2015). And a recent study for the Canadian Centre for Policy Alternatives, documenting "the persistence of outrageous CEO pay" (Mackenzie 2015, p. 5), provides a country-specific illustration of this global trend: the average reported compensation for the top 100 Canadian chief executive officers (CEOs) increased by 25% from 2008 (\$7.35 million on average) to 2013 (\$9.21 million), whereas the average compensation for Canadian workers increased by 12.3% (to \$47,358 in 2013) and the average compensation for minimum wage workers increased by 13% (to \$21,216 in 2013); to illustrate this differential, the study notes that "by 11:41 on January 2, 2013 – the second paid day and first working day of the year – the average CEO had earned as much money as the average Canadian would make all year" (Mackenzie 2015, pp 5-7). Finally, Alex Himelfarb, a former Clerk of the Privy Council (i.e. Canada's top civil servant), points out how such economic inequality affects the socio-political fabric of a country, a process he labels "trickle-down meanness" (Kahane 2014):

When people at the top are so rich that they can decide they no longer need public services, they effectively secede from society. When the gap is extreme, they also seem increasingly to believe they somehow deserve all they have. Hence trickle-down meanness. If they don't need the services and deserve their wealth, why pay taxes?⁵

It is therefore no surprise that United States President Obama stressed the need for "middle-class economics" in his most recent State of the Union address (Obama 2015).

³ A year described as marking an "inflection point" in the share of global wealth going to the richest 1% (Oxfam International 2015, p. 2).

⁴ And of that 52%, almost all of it is owned by "the richest 20%, leaving just 5.5% for the remaining 80% of the world" (Oxfam International 2015, p. 2).

⁵ He continues, "People at the bottom start to think that the game is fixed, and there's nothing in it for them. They don't want to vote and they, too, don't want to pay taxes. Why pay or play when the game is rigged?" (Kahane 2014; for a fuller version of his argument, see Himelfarb 2015). In a similar vein, Armine Yalnizyan, a senior economist with the Canadian Centre for Policy Alternatives, describes Canada as becoming "a corporatocracy, a state that serves the interests of corporations first and foremost" and describes this as "the biggest test democracy faces today": "There is the beginning of a pushback, an awakening that began with the Occupy movement. It is not very effective yet, but I don't think it's going away" (Pohmann 2014).

In our view, the protest movements' message is well worth re-iterating and re-emphasizing. Many think that the conversation on socio-economic inequality, and poverty in particular, has just begun, and we decided that a workshop at the Oñati International Institute for the Sociology of Law (IISL) would be a good place to continue it. The workshop brought together some 21 scholars from different countries, in different disciplines and with different approaches to law. This diversity promoted a kind of pluralistic dialogue – a dialogue all the more pluralistic, we believe, because of the presence of a critical mass of doctrinal legal scholars in the mix. The doctrinal scholars obviously enjoyed their introduction to socio-legal studies and, conversely, the socio-legal scholars appreciated the more technical approach of the doctrinal scholars – as Annelise Riles (professor of both law and anthropology at Cornell University) suggests would happen: “I want to suggest that the *technical aesthetics of law*, is a rich and exciting subject, and one that deserves to be at the forefront of humanistic legal studies as a subject in its own right.” (Riles 2005, p. 976 [emphasis in original]).

Because of the breadth of the workshop theme and the diversity of its participants, we suggested that participants choose topics which: 1) raise their indignation; 2) reflect economic inequality; 3) lead to a violation of socio-economic rights; and 4) involve a possible role for the law (or public policy) either in causing the violation or in providing a solution to it (or both). The participants seemed to relish the opportunity to identify and analyse the targets of their academic indignation: one participant described it as “tapping into an undercurrent theme of socio-legal studies that is rarely⁶ brought out into the open”; another observed that “naming our indignation and being transparent about might not be a typical academic exercise, but it’s a truly liberating one!”

Our conversations at Oñati were thus wide-ranging, lively and interesting. But they did not stop with the end of the workshop, but rather continued by e-mail or in person since then. We are very pleased to be able to publish the fruits of this ongoing dialogue in this volume of *Oñati Socio-Legal Series*.

We are most grateful to the IISL, and Malen Gordo Medizabal in particular, for providing such convivial surrounding in which to initiate this conversation. We also very much appreciate Cristina Ruiz’s care and patience in guiding us through the publication process. We wish to thank the participants for their thoughtful contributions, and hope that the wide-ranging and varied papers in this volume will be read with profit and pleasure. Finally, we are very grateful to the Social Sciences and Humanities Council of Canada, McGill University, the University of Windsor and the University of California Irvine for their generous financial support.

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