IFITIS RESEARCH PROJECT

2016-2021

Senior project supported by

institut universitaire de France
Full Movement beyond Control and the Law

TEMPORARY STATE OF THE RESEARCH

November 2018

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• INTRODUCTION

The law as construction
The law as phenomenon

and

The phenomenon as law
The legal constructions involved by the phenomenon
Which phenomenon?

A former research (Dalloyz, 2013 in French – EE, 2017 in English) on "Law and globalization" with a focus on the phenomenon of "constraint of circulation".

Full Movement beyond Control and the Law
The selected phenomenon:

“Full movement beyond control”
- Movement of goods and persons between territories
- Full : engagement of all the actors
- Beyond control : uncontrollable

Humans have lost control of the traffic themselves have even provoked!
The IFITIS research project:

Full movement beyond control and the law
AIM OF THE RESEARCH

Bring into the law a phenomenon (Comp. R. Lemkin and the Genocide)

The phenomenon is:
- **rare**: uncontrollable and full movement
- **complex**: factual and social dimensions
- **silent**: different stakeholders have their own reasons to avoid the topic of total, uncontrolled flows
TOPICAL NATURE OF THE SUBJECT (1/2)

First example to understand:

Greenhouse gas and total loss of control (or the illusion of control)
TOPICAL NATURE OF THE SUBJECT (2/2)

Modern expressions of an ancient process of circulation
- Full and uncontrollable movement of persons
- Full and uncontrollable movement of datas
- Full and uncontrollable movement of capitals
- Full and uncontrollable movement of waste
THE THREE - PHASE METHOD

Phase 1: Multidisciplinary approach
- Descriptions of the phenomenon
- Sample of concrete situations
- Social sciences and exact sciences

Phase 2: Adoption by the law
- A legal category
- A legal regime

Phase 3: Re-assessment of legal policies
- Quantitative approach
- Pattern of network of movement
- Impact of the law on the society
GEOGRAPHICAL AREAS OF THE RESEARCH

Comparison of:

- European Union

With

- “Continental” countries as... Brazil/Canada
OTHER GEOGRAPHICAL AREAS?

Possible extension of the research to:

- Other continental countries: USA/Australia...
- Island country (like Japan...)
- Smallest but “intensive” (politically and economically speaking) country (like... Israel, Palestine...?)
THEORETICAL PERSPECTIVE (1/2)

Phenomenological approach (1/2)

- An **immanent** (not transcendent) approach (G. Deleuze)
- A (material and social) **fact antecedent** to the law (S. Romano)
Phenomenological approach (2/2)

- A modal approach: abstract model of the reality taken in consideration by the law (an example: F. Carnelutti (Teoria Giuridica della Circolazione - 1933)
THEORETICAL PERSPECTIVE (2/2)

Epistemological approach
- An Inter-trans-disciplinary approach
- A pragmatically jurisprudence
- A praxeological approach (theory of practices)

= Not a new legal discipline = Not an ontology = Not a pure research on the essence of the law!
BASIC SCHEMES OF THE RESEARCH

- **Space** (sphere)
- **Territory** (square/triangle)
- **Flow/movement by consequence** (a point, a spot)
- **Flow/movement in itself** (a trait ; a link)
THE HYPOTHESIS OF SPACE OF FLOWS

- Flow/movement in itself as a new space (yellow)
STATE OF THE LAW (1/2)

Various areas of law and large number of legal techniques on “movement by consequence” with a very basic understanding of the flows

Few specialized legal designs on “movement in itself” with a classification of the flows and the characterization of “space of flows”
STATE OF THE LAW (2/2)

A fortiori:

no explicit legal discourse on “full movement beyond control”
SOME KEY LEGAL ASPECTS (1/2): CLASSIFICATIONS (1/2)

- Flows as an **silent risk** (and very visible crises)

- Deal with the phenomena of mass circulation (metadata, pools of capital, bulk waste, mass of migrants), as a potential distinct entity, **separate from individual flows**
SOME KEY LEGAL ASPECTS (1/2): CLASSIFICATIONS (2/2)

- How flows change or not the legal status and jurisdiction of an object (good/person) in movement?

- How space of flows change or not the legal approach of cross border phenomena?
SOME KEY LEGAL ASPECTS (2/2): RECONSTRUCTION

Three main topics:

- Reconstruction of the discourse on territorial control of circulation as security (Foucault): uncertain space of flows
- Reconstruction of the discourse on the control: law beyond control
- Reconstruction of the discourse on the circulation: law in circulations
TO BE CONTINUED...
THANK YOU FOR YOUR ATTENTION
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