

Judicial Crisis in Portugal: The Constitution in relation to the State, Social and Labor Movements¹

Crise judiciária em Portugal: a Constituição em relação ao Estado e aos movimentos sociais e trabalhistas

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Abstract

In Portugal, the Constitutional Court provoked a flurry of debates concerning its role during the peak of the anti-austerity-movements in Portugal, between 2010 and 2014. The accusations culminated in the term 'juridical activism', meaning the 13 judges took an active political role in dealing with highly contested subjects such as cuts in the wages, and the pensions of the Portuguese public sector. In these debates the socio-economic background and the role of other actors such as social movements is often neglected. Portugal has a rich history of social movements, protests and strikes. During the revolution in 1974/75, the working classes could inscribe parts of their interests into the Portuguese Constitution. The Portuguese legal system therefore, was one of the most progressive worldwide. However, casualisation, privatization and the dismantling of the welfare state have undermined the achievements of the social movements during the revolution in the 1970s. Since 2011 Portugal entered severe economic turmoil, new movements against austerity measures emerged and challenge the bailout-program and the constitutional frame. The inter-linkage between a serious economic crisis, the attempted solutions, and the rising social movements contesting these events, culminated in a judicial crisis – a point of conjuncture for different antagonistic actors and their (class) interests – creating several deadlocks and opportunities for political and social change in divergent directions.

Keywords: Portugal, judicial crisis, social and labor movements.

Resumo

Em Portugal, o Tribunal Constitucional provocou uma onda de debates sobre o seu papel no auge dos movimentos anti-austeridade no país entre 2010 e 2014. As acusações culminaram no termo "ativismo jurídico", o que significa que os 13 juízes desempenharam um papel político ativo no tratamento de assuntos altamente controversos, como cortes nos salários e pensões do setor público português. Nesses debates, o contexto socioeconômico e o papel de outros atores, como os movimentos sociais, são muitas vezes negligenciados. Portugal tem uma

rica história de movimentos sociais, protestos e greves. Durante a revolução de 1974/75, as classes trabalhadoras puderam inserir parte de seus interesses na Constituição Portuguesa. O sistema jurídico português é considerado, portanto, um dos mais progressistas do mundo. Contudo, a precarização, a privatização e o desmantelamento do Estado de bem-estar enfraqueceram as conquistas dos movimentos sociais durante a revolução dos anos 1970. Desde 2011, Portugal entrou em grave turbulência econômica; novos movimentos contra medidas de austeridade surgiram, os quais desafiam o programa de ajustamento e a estrutura constitucional. A interligação entre uma grave crise econômica, as tentativas de solução e os movimentos sociais em ascensão, que contestaram esses desenvolvimentos, culminaram com uma crise judicial – um ponto de conjuntura para diferentes atores antagônicos e seus interesses (de classe) – criando vários bloqueios e oportunidades para mudanças políticas sociais em direções divergentes.

Palavras-chave: Portugal, crise judiciária, movimentos sociais e trabalhistas.

1. Introduction

The 'Tribunal Constitucional Português' provoked a flurry of debates concerning its role during the peak of the anti-austerity-movements in Portugal, between 2010 and 2014. The accusations culminated in the term 'juridical activism', (Fasone 2014a) meaning the 13 judges took an active political role in dealing with highly contested subjects such as cuts in the budget, wages, and the pensions of the Portuguese public sector. Concerning the legal yardsticks of equality, proportionality and reliability, the legal institution was accused of having made unpredictable and even unfair judgments (Ribeiro 2013). In some discourses the history of the Portuguese Constitution and several other institutional aspects are highlighted to explain this salient development during the European financial crisis. However, these studies fail to consider the role of anti-austerity movements in that same period and the influence that these protests, as well as the austerity measures in question, had on the judicial institutions. I argue that the inter-linkage between a serious economic crisis, the attempted solutions, and the rising social movements contesting these events, culminated in a judicial crisis – a point of conjuncture for different antagonistic actors and their (class) interests – creating several deadlocks and opportunities for political and social change in divergent directions.

Even critical judicial scholars tend to frame the Portuguese Constitutional Court (in the following quoted after Cisotta and Gallo 2014: PCT; Portuguese Constitutional Tribute) as a faceless institution, somehow political, but yet not affected by the cuts planned by the government or movements challenging new budget laws (see for example Fasone 2014a, Kilpatrick 2014). However, as this paper will show - the opposite is true: Even the judges were directly and indirectly affected by the outcomes of the budget laws and the negotiations with the Memorandum of Understanding (MoU) (Dias 2016). They were also reacting to the mass protests against it. On the other hand, authors whose research is focused on anti-austerity protests of the recent period (see for instance Baumgarten and

Duarte 2015, Estanque 2015, Stoleroff 2013, 2015), neglect the impact that these movements had on state apparatuses and vice versa, thus neglecting the possible impact and (institutional) dynamics which can be generated by mass protests and mass strikes. At the same time, many articles that deal very critically with the role of the PCT, give evidence for links between social movements and the Constitutional Court. Often with a tone of annoyance about the Court being too political and giving in to the “tyranny of the majority” (Ribeiro 2013) or underpinned by the constant denial that social movements had anything to do with the judicial decisions (Dias 2016). Thus, the question is on the table: Is there any link between the anti-austerity protests in Portugal and the ruling of the PCT against certain austerity measures? What evidence exists in terms of the ruling of the Constitutional Court?

To answer these questions, the paper follows three goals: Firstly, to elaborate how and why anti-austerity movements and state apparatuses have to undergo a combined analysis – for this purpose, the materialist state theory of Nicos Poulantzas and its advancements will be introduced, as well as contemporary approaches to analyze social movements. Additionally it will be outlined how the Portuguese constitution was implemented after 1974/75 and how it changed since its installment. Secondly, different arguments about the active behavior of the PCT will be discussed and put in relation to the social-political and economic conditions of that period and the relation between the judicial apparatus, the national and the European state institutions. The term ‘judicial crisis’ will be introduced and discussed as a point of conjuncture in which antagonist political, economic and social interests and crises culminate and create several deadlocks. Finally, the questions of how and why the judges of the PCT became proactive against certain austerity measures, and how this activity is interlinked with mass protests, will be elaborated.

2. The Context of the Debate: Crises, Austerity and Contestation

Portugal has a rich history of social movements, creative forms of protests and strikes. During the revolution from 1974/75, the working classes and social movements were able to inscribe parts of their interests, such as the right to strike, higher wages, universal suffrage, unemployment benefit etc. into the Portuguese Constitution (Sperling 2014). For a long time the Portuguese legal system was one of the most progressive worldwide (Fonseca and Domingos 1998). However, during the past decade, the ruling classes have been turning the wheel of history backwards. Casualization, privatization and the dismantling of the welfare state (Stoleroff 2015) have undermined the achievements of the social movements during the revolutionary period of the 1970s. Since 2011, new social movement networks have emerged, mainly organizing against precarious labor condition, an issue that the main trade union federations tend to neglect (Campos Lima and Artiles 2011). However, as the attacks on labor standards, jobs, and wages intensified during the financial and political crisis of the European Union, trade unions organized five general strikes between 2010 and 2013 and won several trials against the worsening of working conditions. Furthermore, since 2012, some austerity measures implemented by the government and the Troika were declared as unconstitutional by the PCT (Fasone 2014a).

This debate about the judgments of the Constitutional Court enters a country in which the medium wage is 25 per cent below the European average and where the human development indexes fell “from 29th place in 2007 to 43rd in 2013” (Accornero 2015, 36). The reason for the huge interest in the judgments of the PCT is twofold: On the one hand the conditions stipulated by international and European creditors for the rescue package were much more intense and had a deeper impact on the socio-economic landscape in Portugal, than for instance in Spain or Italy (Fasone 2014b, 3). On the other hand the success of several constitutional challenges had an impact on the negotiations between the Troika and the Portuguese government and thus “was accompanied by intense scholarly

critique” (Kilpatrick 2015, 8). In the wake of the housing crisis in the US which shortly after triggered the Euro crisis in 2008/2009, the economies in countries like Portugal, Spain, Greece and Ireland suffered from a fast melt down (Moury 2014, 7; Esposito 2014, 15). Despite the very different reasons for this development, the populations and governments in these states have been declared guilty of corruption, wrong political and economic decisions and even for allowing too much democracy (Evert and Machold 2012). Faced with a state crisis, the governments in these countries opted for financial aid from the European Union (Esposito 2014, 15–16). Different new institutions emerged on the European level, such as the so-called Troika and the Euro-group. They are all based on alliances that actually have no legal admissibility in the EU-law and they were not elected by the European parliament, and thus cannot be made responsible for their far-reaching decisions about whole state economies (Oberndorfer 2016, 563). Instead, these institutions testify to an enhancement of the executive state apparatuses on a national as well as on a European level (Buckel 2017, 36). Their decisions included the adoption of so-called Memoranda of Understanding with the states in questions; i.e. contracts in which the requirements for the financial supports are recorded. Before asking for conditional aid of 78bn Euro, the Portuguese government tried to solve the economic crisis on its own. From March 2010 until March 2011, it installed three so-called Pacts of Growth and Stability (PEC), which mainly included a higher VAT², cuts in the wages of the public sector, a restructuring of the health- and education sector, the closure of schools, hospitals, social centers and similar austerity measures (Stoleroff 2013).

Even before the European crisis emerged, scholars have been observing an ‘explosion’ of new laws, and governmental restrictions targeting citizens, in and around the Eurozone (Buckel 2016, 293). Along this line, the so-called ‘Economic Governance’ which was set up to standardize budget restrictions of EU member states was not imposed by the European Parliament and thus finds no legal basis in European Law (Buckel 2017, 20). Furthermore, the negotiations to set up

² VAT - The value added tax was 19% in 2010 and was increased to 23% in 2012.

conditional aid for 'crisis' - or so called 'PIIGS – states, embedded in the periphery of the Eurozone, were realized without even consulting the European Parliament (ibid.).

Against this background, the denial of the Portuguese Constitutional Court of several conditions set by the IMF, the EU commission and the European Central Bank, and that they declared these demands as unconstitutional comprehensively stir up uneasiness on the one hand, and a potential to challenge the ongoing de-democratization of national and regional institutions, on the other. Meanwhile, every attempt to dismantle democratic and social rights provoked new movements against austerity and for better democratic and living conditions (ibid.). Next to Spain, Greece and Italy, Portugal gave evidence for this claim (Accornero 2015, 38). The participation in public demonstrations has more than doubled from “2.4% in 2010 to 6.8% in 2012 [...] in Lisbon alone, the number of demonstrations increased from 244 in 2010 to 298 in 2011 and to 579 (an average of one every 15 hours) in 2012” (ibid.). In 2010, especially the affiliated trade unions of the ‘Confederação Geral dos Trabalhadores Portugueses’ (CGTP), the biggest trade union federation, refused to negotiate with the government and decided to organize demonstrations and a national general strike (Stoleroff 2013). In March 2011, especially young and precarious workers who were not organized by trade unions took to the street to mobilize against the fourth Growth and Stability Pact (PEC), set up by the Socialist Party (PS) government. Under the pressure of these mass demonstrations, the opposition voted against the fourth PEC and the PS led government resigned. In May of the same year, the economic crisis in the country reached a new peak and the caretaker government opted to ask for conditional aid and the Memorandum of Understanding (MoU) was signed. The center-right party PSD (Social Democratic Party) won the general elections in June and formed a coalition with the conservative CSD/PP (Peoples Party). Since then, the new government has executed the conditions written down in the MoU. However, from 2012/2013 onwards, the Constitutional Court started to declare several new austerity measures as unconstitutional. Troika officials even claimed

that the actions taken by the Court are “potentially the biggest threat to Lisbon's efforts to meet budget goals and to exit the bailout” (Brugge 2013).

3. Portugal between social movements and ‘Judicial Activism’

Before discussing state apparatuses and thus the behavior of the PCT, a broader concept of social movements will be introduced now, and later linked to the materialist state conception.

The paper argues that social movement research frequently orientates on structures, aims and dynamics of collective action, (see for example Baumgarten 2013, Costa et al. 2014, Estanque 2015, Stoleroff 2013) but lacks a clear paradigm of the main recipient: The state as both an antagonist and battlefield, for movements and ruling classes at the same time. From a Poulantzian perspective, the state apparatuses shape and influence in various ways the frame of social movement activity (Poulantzas 1978). This is reflected by different state apparatuses in various ways: Demands are accepted and implemented, or rejected; activists will be attacked sometimes by police, or occasionally even supported – as the case of the Constitutional Court might show. Conversely, the impact of social movements on state apparatuses is often not adequately examined. Huke et al. (2015, 726) argue that although for instance scholars of Critical Political Economy (CPE) concentrates on emancipation and the role of the state, the focus is mainly one-sided: Concepts of hegemony, hegemonic practices and their (re-)production and/or their impacts are observed, while forms of eruption and challenges to hegemony and the state are neglected.

3.1 Dynamics of anti-austerity-movements

Social movements are a form of sociological and political hybrid: They do not have

a strong structure such as a party or a trade union (Rucht 2002, 2), nor are they spontaneous events such as riots (Giugni 1998, 377).¹ The definition of social movements always depends on a political and/or scientific aim and mood of inquiry. I argue that for instance their form of enactment i.e. to seek for collective and not individual action – depends on power relations in society. Rucht (2002) mentions that due to the lack of other possibilities of (political) influence, people *need* to make use of collective and public action. Craig Calhoun (1993, 405–406) supports this point by stating that “in a movement of people who have few resources” public and especially unconventional activities are one of the most important features social movements can turn to. For these reasons I aim to understand social movements and their dynamics in correlation to power as being part of, and contesting, given power relations at the same time.

The reasons that social movements develop can be traced to various forms of crystallized power relations, mostly in the form of the state, in discourses and normative assumptions (Poulantzas and Martin 2008, 295). Power relations result in the resistance of people on whom power relations are exerted (Rucht 2002). The aim of movements is therefore always to challenge perceived power asymmetries – although it is clear that these asymmetries are diverse and so are the activists who claim to challenge them (Kannankulam 2008). Movements therefore occur as a network of strategies, actors and organizations and are themselves a foundation or source for new formations and dynamics (Diani 2008). I argue that social movements have different effects as their forms of resistance as well as the dynamics that collective actions release are diverse. The evaluation of their possible ‘success’³ is connected to time, space and visibility of political actions. Yet the causality between social movements and their impact is not always easy to establish. Some impacts of movements are the outcome of collective action – even if they are not beneficial for the movement’s aim – some are rather side or synergy effects (Giugni 1998, 373). Thus, it is useful to develop a

³ I generally refrain from talking of 'success' of social movements, as this term is very broad and depends of the political, social but also historical standpoint. Some scholars conceptualize it rather as a mere outcome, others speak of 'impact' or internal and external success (see Tattersall 2010).

pattern of categories which can observe intentional and accidental origins for movements and also intentional and accidental outcomes; influence *on* the movements as well as the impact *of* movements.

Tarrow and McAdam describe in “*Ballots and Barricades*” (2010, 531) three ‘mechanisms’ that I like to employ in this paper. However I have reformulated the term ‘mechanism’ as ‘dynamics’ to do justice to the processuality of this concept. Furthermore, the concept is expanded beyond their use of mechanism. As will be seen in the sections below, dynamics are understood as being dependent on space, time and circumstances as well as being recursive – which means that they are an effect *from* social movements as well as having an impact *on* them.

3.2. Environmental, cognitive, and organizational dynamics

The first parameter is the environmental dynamic of collective action. This dynamic can be understood as existing *before*, but also *during* and *after* the movement (McAdam and Tarrow 2010, 531). The environmental dynamic encompass threats and opportunities that kick off social unrest, as well as aspects of inspiration from other protests. Opportunities can be for instance political schedules like general elections that movement activists might understand as a possibility to gain special attention for their case (Giugni 1998). Threats summarize rather the fear that a certain socio-political situation might last or even worsen. Beyond threats and opportunities movements can produce environmental dynamics themselves by influencing other social movements. The Arab uprising was a collection of social movements itself; it influenced the ‘Indignados’ in Spain, Greece and Portugal, to occupy places, just like the Egyptian activists occupied the ‘Tahir’ square. Environmental dynamics can be partially to do with the effect of power, which is seen in terms of a growing installation of austerity measures and in the Portuguese case the change of the state apparatuses towards authoritarian

statism. Especially as a country depending on imports and thus interlinked with strong European economies which allowed private and public indebtedness for consumption, Portugal was politically and economically interlinked in the European state apparatuses ensemble (Oberndorfer 2016, 576) and thus when the credit crunch hit Europe could not recover on its own. At the same time, the space available for bargaining and negotiations with the working classes declined dramatically (ibid. 566). Hence, the environmental effect is always connected to the state as the state builds the surrounding, the reason, and often the opponent to which collective actions refer.

To categorize cognitive dynamics, the second parameter, it is necessary to look at the inner and external processes concerning social movement networks. Externally, they affect the societal mediation of a certain demand or issue the collective action is referring to (McAdam, Tarrow 2010, 531). Concerning the internal impact, Rosa Luxemburg insightfully analyzed cognitive dynamics of collective actions when in 1905 she examined the mass protests in Russia:

The most precious, lasting, thing in the rapid ebb and flow of the wave is its mental sediment: the intellectual, cultural growth of the proletariat which proceeds by fits and starts, and which offers an inviolable guarantee of their further irresistible progress in the economic as in the political struggle (Luxemburg 1906).

Interpretations and understanding of certain programs and ideas might change during the process of action and during discussions among activists as well. This again, can have an influence on the strategy and other dynamics such as organizational dynamics – the connection between organizations and networks that shape the amalgam of social movements. The category of the third parameter - ‘organizational dynamics’ - is partially borrowed from Tarrow and McAdam and partially from the power resources approach from Dörre, Schmalz, and Müller (2013). It touches on the relational level of movements. Collective action does not develop on naked ground, but is shaped though already existing protest structures and will shape structures of movements that will follow after them. Social

movements can start as a bundle of friends, and/or activists, networks and organizations that meet to mobilize for resistance, thus social movements develop through new coalitions (Diani 2008). Old alliances might break apart, new groups and links between activists develop in the process. It is also an interesting category, to see how networks are changing, interlinking, how activists are switching their positions inside and through movements.

3.3 State Apparatuses, Neoliberal Statism and Personnel: Towards Institutional Dynamics

These three categories mentioned in the section before, are however not enough, to fully understand the relationship between social movements and the action of the Portuguese Constitutional Court, nor to answer the question of what kind of impact do social movements have on state apparatuses?

Following Poulantzas, the state is a crystallization of the power relations of classes (Poulantzas and Martin 2008, 308; Wöhl and Wissel 2008, 9–10). The state is a 'capitalist' state, because at its 'core' lies the separation between private property and a socialized form of production (Stützle 2004, 9). Thus, it is only relatively autonomous from the economic sphere and from class struggle, unless the 'core' - the mode of (re-) production - does not become a matter of contention. As the contradiction between the capitalist forms of production and private ownership is persistent, classes and fractions of classes are always in struggle. In this struggle the state serves not as an instrument for one class, but is a materialized frame, which is easing, organizing and therefore canalizing class struggles (Demirović 2007, 101). These 'canals' (i.e. laws, institutions, public places etc.) are always contested and due to this are themselves constantly altering. In this way, the capitalist state organizes forms of economic, social and political struggles. At the same time, the state is not a monolithic bloc. Due to the struggles it is a heterogeneous ensemble of apparatuses (Wöhl and Wissel 2008, 9–10) that

have either institutionalized the interests of the hegemonic or subaltern classes. Civil society is also materialized inside different apparatuses (Stützle 2004, 7). There are differences, for instance, between the state apparatus of a trade union and a state apparatus of the police in terms of how class interests have been inscribed in these apparatuses. There are also struggles between apparatuses that reflect in a distorted way the different interests of capitalist classes and fractions, but also the interests of working classes inscribed in the state structures (Poulantzas 1975, 26).

I argue that social movements appear as a response to the effect from various forms of crystallized power relations, and social and economic institutions in the form of laws, repression, discourses, and normative assumptions. Social movements thus encompass groups of society on who power relations are exerted express resistance through collective action. The aim of movements is to contest the effects of asymmetric power relations over a constant period of time.

Without asymmetry – that according to Poulantzas always has class conflict as its core – power could not be observable. 'Power' structures society in capitalist, patriarchal and racist relations, and is produced, reproduced and interwoven through and with human action (Kannankulam and Georgi 2012, 4). Thus, the field of power is “strictly relational” (Poulantzas 1978, 135). All kinds of struggles – and not only class struggles (ibid. 131) – appear inside fields or apparatuses that exist through power relations, and reproduce the effect of it at the same time. The asymmetries of power relations are diverse and so are the activists who claim to ease their effects, reverse, or destroy them. Movements therefore occur as networks of strategies, actors and organizations, and are themselves a foundation or source for new social movements and dynamics. Social movements can have impacts on different state apparatuses, which can be understood as an outcome of their activities. Conversely, state apparatuses react on social movements by implementing some demands, and leaving out others.

After the Second World War, in several states of the Global North a hegemonic class fraction managed to unite contradicting interests on political,

economic, but also ideological levels (ibid. 27). Additionally, subaltern class interests needed to be partially integrated and constantly disorganized (ibid. 28). Albeit, materialist scholars of state theory see the state in a constant modus of class struggle between different fractions; deep economic crisis can sharpen and intensify conflicts and trigger crises in different apparatuses which can be the initial point for the transformation towards authoritarian statism, an attempt to normalize and legitimize a new state of emergency (Buckel 2017, 21). However, such a transformation can only occur by crossing not only interests of the subaltern classes, but also different capitalist interests. Hence, authoritarian statism can strengthen and weaken the state at the same time (Oberndorfer 2016, 576).

Thus, institutional dynamics, that I like to employ here, build a fourth category and are elaborated as changes inside apparatuses that were targeted by the movements, but also state apparatuses that were involved in development of the social movements themselves. The relation between social movements and state apparatuses can be understood also through a concept of dynamics. A most likely scenario during a deepening economic crisis is the development of a political crisis, which is translated inside and between different state apparatuses as “quarrels” (Poulantzas and Martin 2008, 314) of single actors such as ministers and judges, for instance. State personnel who operate inside the different apparatuses hold, on the one hand, a class position and depending on their position in the state, the likelihood that they share political views of the ruling or rather working classes are given (ibid. 313). On the other hand, the staff of the varying apparatuses “constitutes a specific social category, possessing, across its class divisions, its own unity” (ibid.). Along this line, struggles in and between the state apparatuses do frequently occur along the frameworks of their institutions (Oberndorfer 2016). During a political crisis, an apparatus might be initially left leaning, while actually using the activities of social movements and class struggle to defend itself and its personnel against changes caused by the authoritarian transformation (Poulantzas and Martin 2008, 314). Secondly, conflicts, or even a

crisis inside and between the apparatuses, can also be understood as a window of opportunity for social movements to reverse certain cuts or attempts to de-democratize their framework of activity. Also the personnel of these apparatuses belong to different classes and different asymmetric structures, thus they are inevitably affected by social unrest (Poulantzas 1978a, 143). Hence, state apparatuses can be understood as cogs which are turning in favor or against the interests of the subaltern classes, depending on the impact of economic crisis and the dynamics of social movements. They also might turn against each other and create deadlocks and internal state crises. For instance, in 2012, Portugal saw demonstrations by the police and the army against austerity and clashes between police – as both activists and those police on duty. Thus, the state apparatuses are shaped by the movements, by class struggle and also by the demands of their own staff (Poulantzas 1975, 25).

As the focus of this paper lies on the Constitutional Court, I will only employ the fourth category fully, but give hints and examples for the other three dynamics as they are interlinked and influence the impact of one another.

4. The Constitutional Court and the European Level: Struggle, Assimilation, and Judicial Crisis

4.1 The Emergence of the Portuguese Constitution

The relation between the Constitutional Court and social movements did not start in 2011 but can be traced back to the Revolution of 25 April 1974 as it “had a strong impact on justice in Portugal” (Dias 2016, 24). Sonja Buckel states that law does not only stem from the movement inside the legal framework, instead its development has to be embedded in the context of strong social movements which transform political, social and cultural practices (Buckel 2016, 290). Thus, legal frameworks are not only written by lawyers and judges, but are often

emerging from actual class conflicts and struggles around attempts to challenge power relations. The Portuguese Revolution is an example of such a context in which new practices of class struggles were crystallized in new (state) institutions and laws (Dias 2016, 26). As Esposito describes: *“In an effort to turn away from its past dictatorship, the Portuguese Constitution of 1976 (...) is one of the strongest constitutions in Europe in regards to the protection of social rights”* (Esposito 2014, 17).

Eighteen months of intense activism, including the occupation of land, industries and shops, led to the achievement of fundamental rights, such as unemployment benefits and a minimum wage for all civil servants (Accornero 2015, 35). The first drafts of the Constitution were developed in 1975, by the constitutional assembly, when the outcome of the revolution was still uncertain. Environmental dynamics such as the anti-colonial wars provided inspiration for the movements as well as the opportunity to use the pressure of these wars to seek better social conditions in the mainland. Organizational dynamics were visible in the connections between the emerging trade unions, the communist party (PCP) and left leaning parts of the military forces. New parties, such as the PS developed, over 140 regional and sector based trade unions were established, and movements for women’s rights, education and free culture occurred. *“In this context juridical trade union activity began to ‘simmer’, in particular in the Union of Public Prosecutors and the two organizations representing the judges”* (Dias 2016, 27). For instance, in part because the previous dictatorship had rejected any form of a minimum wage for the garbage collectors and street cleaners, the ‘principle of equality’ especially concerning wages but also the burden of planned cuts in public sector salaries is able to be strongly defended today due to the constitution. ‘One sided’ cuts for instance for only one sector are legally almost impossible. However, at the same time, when cuts are uniform across the sector such as the measure to decrease wages of 10 per cent, which were introduced by the Troika and challenged before the Court, were not rejected.

As long as the cuts in social entitlements were linear or the increase in taxation uniform, the Court upheld the validity of the measure, taking into consideration the exceptional circumstances of the financial crisis and the urgency of the legislative reaction (Fasone 2014a, 24).

Thus, austerity measures concerning the public sector are a burden on all state employees at the same time. However, the attempt to divide public sector employees and their labor rights into different camps has been ongoing since 2001 (Stoleroff 2015). This has weakened their collective forces, by breaking out the more militant parts, such as school teachers and nurses. However, the public sector is still one of the biggest labor markets after substantially increasing after the revolution, as the first provisional governments nationalized “the central banks, (...) the insurance groups, electric supply industry, basic sector of industry, capital market, etc.” (Fonseca and Domingos 1998, 129). Furthermore, the first draft of the constitution from 1976 “safeguarded the nationalisations accomplished, and forbade privatisations” (ibid.). Most far reaching in terms of inscribing the interests of the subaltern classes and their movements into the constitution, was article two, which claims to secure a ‘transition to socialism’ “through the ‘collective appropriation of the main means of production, lands and natural resources, and the exercise of the democratic power by the working class (art. 80)” (Accornero 2015, 35).

Even though the transformation towards socialism has not been completely erased, most of the principles written down in the constitution concerning privatization were altered in reforms in 1982 and 1989 and put “in line with the liberal-democratic models present in other European countries” (ibid. 36), to secure the hegemonic class interests of that period who were aiming to “join the European Economic Community in 1986” (ibid.). In the 1980s, as the economic situation did not improve after the revolution, the only solution brought forward by neoliberal fractions, was to seek investments from the European community, which were only guaranteed in exchange for installing public private enterprises allowed to work with the investments (Fonseca and Domingos 1998, 129). Hence, for Portugal, the experience of ‘conditioned aid’ is far from new and was used

before to delete parts of the working class interests from the constitution. As Catherine Moury (2014, 129) argues, also today, the bailout programs and the conditions set by the Troika are “a window of opportunity to pursue reforms that would have met tremendous opposition otherwise”. The emergence and changes of the constitution is therefore a fitting example for how the state is on the one hand a crystallization of power relations and on the other hand in a constant state of flux through antagonistic interests, depending on economic challenges and social movements alike. However, it is also an example for institutional dynamics as the constitution itself and the struggle around its frames would have been impossible without the constant activities of social movements and its antagonists inside and mediated through the state apparatuses.

4. Economic, Political and Judicial Crises in Portugal between 2011 and 2013

The point of departure for the judicial crisis is the economic crisis. It started in 2007 and especially affected states in the Global North; however, it is not just an economic and financial crisis, but it also triggered crises on multiple levels such as ecological, cultural, gender relations and inside and between states (Buckel 2016, 299). Portugal as a relatively weak economic nation got into the whirlwind of “Euro-crisis law, and (...) the threat of bankruptcy” (Fasone 2014a, 4). While it is true that the European state apparatuses integrates the member states on the economic and political level, I argue that the judicial level has been far from integrated and thus institutional challenges have emerged (Esposito 2014, 1). The reason why Portugal’s constitutional decisions received so much attention was a symptom of this lack of integration. The PCT initially supported austerity measures and also the signing of the Memorandum of Understanding by a caretaker government, which has actually only limited authorities, on the “basis of emergency economic circumstances” (Esposito 2014, 2-3). However, these emergency permissions do not have any legal base in European law (Oberndorfer

2016, 562). Nevertheless, the PCT, until 2012 supported the bailout programs dictated by the government and the Troika. It also supported the restructuring measures in the public sector, but changed its policy at the end of 2012 (Esposito 2014, 2).

4.1 The Judicial Crisis in Portugal

Despite various discourses about the crisis and the influence on, and by, other multiple crises, the judicial field in countries which were deeply affected by the economic proceedings, experiencing various forms of austerity programs and saw mass movements that challenged the worsening of their living conditions, is hardly discussed or only touched upon briefly (Dias 2016). Especially when it comes to different discourses about the behavior of the 13 judges in the PCT and their actions towards the Memorandum of Understanding in Portugal, topics like (un)fairness, judicial activism and institutional complications are raised, but the closest and maybe also a bit more complex explanation for these rulings – a judicial crisis – seem having not be considered.

As already outlined in the previous section about state apparatuses, due to their structure and the crystallization of power relations, apparatuses can turn like cogs – pushed a) by economic crises, b) by other apparatuses due to political turmoil and c) by social movements. In such circumstances, apparatuses and their personnel are supporting one or the other class interest, depending on their own interests of upholding their own institutional influence as apparatuses, but also as individuals. When we imagine all state apparatuses as such cogs, moving around, the likelihood that different deadlocks are created increases, especially in periods of turmoil. By comparing several studies about the behavior of the PCT, I could single out four deadlocks, which created a judicial crisis in Portugal and opened the way for the anti-austerity movements to nearly topple the government and create a space for political change in 2013. However, this window of opportunity

was not and could not be fully exploited by the movements. Nevertheless, some small concessions could be inscribed in the current power relations of the Portuguese state and might sow the seeds for coming class struggles from below.

4.1.1 Deadlock One: The Euro-Crisis Law and the PCT

As mentioned before, due to the installation of the Eurozone, a political and financial integration of different European state apparatuses in asymmetric power structures emerged. Furthermore, a judicial integration and assimilation of laws especially in terms of dealing with financial instabilities and economic turmoil has become one of the new projects of the European capitalist core countries. The strategy of the current European crisis-politics attempts to assimilate the national budget laws and to create a uniformed framework of rules (Guth 2013, 33). Fundamental differences exist between the European member states especially in terms of dealing with the question of an economic 'emergency' (Kilpatrick 2015, 10). In the case of Portugal, the possibility to act as a gatekeeper securing some social and economic rights especially for the public servants is rooted in the special legal framework of the Portuguese constitution (Fasone 2014a, 34). The special feature of this Constitution is that it does not include a balanced budget clause which normally equates financial and social stability with one another based on the argument that financial stability will eventually lead to social stabilization and equality. The Portuguese Court does not have "this 'burden' in the Constitution, although being a (bailout) Eurozone country it cannot completely neglect the obligations of fiscal stability imposed by the EU and international norms" (Fasone 2014a, 14). However, the PCT can rule against 'financial stability', and challenge the imposed Memorandum of Understanding, a possibility that other 'bailout countries' like Ireland, Spain, Italy and Greece did not possess (Fasone 2014a, 10). Translated into Poulantzian state theory the *juridical* state apparatuses cannot be restricted by the *financial* state apparatuses, while the reverse is indeed

possible. Despite the economic and political asymmetric structures, the PCT ruling exhibited the judicial symmetry, or even power structures that still exist and work somehow in the interests of the Portuguese Court (Kilpatrick 2015, 12). Thus it is even likely that the decision of the Portuguese government, to leave the conditioned aid program early and the denial of an extension in May 2014 might be the result of the deadlock between Portuguese and European crisis law. As this deadlock eventually led to a situation where over 1.5 billion Euro could not be cut and the government was unable to find a different pathway to meet the requirements of the Troika and the MoU (ibid. 18).

However: “The threat of financial crisis and of the bailouts has promoted a climate of permanent urgency” (Fasone 2015, 9). Even though an assimilation of law could yet not be created, the new plans and synchronized agendas of the governments led to increased pressure for governments to hand in their budgets at a certain time, and meet standards on all levels of the state and the EU "defined by the six-pack and the two-pack" (ibid.). This pressure to assimilate and synchronize political and financial activities may eventually put even more pressure on the states to standardize all legal frameworks.

4.1.2 Deadlock Two: The PCT - a tool for everyone

The regulatory space created by the non-existence of a budget clause can be – and has been – used by the parliamentary opposition “to overturn the austerity reforms” (Fasone 2014a, 9). However, the reason for the amount of activities of the PCT is many-sided. First of all, in some of the bailout countries and also in Portugal the parliaments did not have the possibility to examine and discuss the content of the MoUs, neither before their installation, nor afterwards. In Portugal the Assembleia da República debated the MoU from 2011, one year after it was signed (Fasone 2015, 12). In 2013, the parliament agreed to a new law by which it was able to force the government to inform the parliament every month or every

three months – depending on the document – and to send an overview, which has to include “the financial flow between Portugal and the EU” (ibid. 17). As the EU-crisis law triggered a variety of judicial analysis and interpretations concerning its compatibility, the opposition were not the only actors interested in how the PCT would interpret it: For instance, the President of the Republic who was a member of the PSD, the ruling party which had carried out most of the austerity measures, raised judgments about several planned measures himself (ibid.). Between 2013 and 2014, he requested to look over austerity measures and budget laws four times (Fasone 2014a, 10). The ombudsman and other parliamentary institutions complained as well, however, that even the President who in this way did not even hesitate to act against his own party in government raised concerns about the constitutionality of these measures, “concerns that were later endorsed by the Court – were widespread at the institutional level and did not only regard one faction in the political spectrum” (Fasone 2014a, 9). Thus, the PCT was approached by the opposition in parliament, by the president, the trade unions and by other state apparatuses. The PCT did not act individually and for its own purpose, but frequently when it was asked to do so, which explains why “the Portuguese Court has so far been more active” than other states which received conditional aid, such as Spain, Greece and Italy (Fasone 2014a, 10). In the beginning, the Court only warned about the disproportionality of certain measures, such as the abolition of the 13th and 14th wage for public workers. The Court justified such measures in exceptional circumstances, “time-constrained, within certain limits, and anything beyond would be unjustified and therefore unconstitutional” (Esposito 2014, 18).

Thus, the second deadlock was created due to an exhaustion of the PCT considering the amount of approaches by different apparatuses, which created a mass of activity and thus opportunities to even rule against certain measures.

4.1.3 Deadlock Three: between two party majorities

An even stronger case concerning a deadlock between state apparatuses derives from the election of members for the PCT and their political background. The ruling of the PCT cannot be examined separately from the activities of the government (Cisotta and Gallo 2014, 4).

From the 13 judges of the PCT (seven male, six female) ten are elected by the parliamentary majority, thus normally two thirds in the Court represent the government, the three remaining are co-opted from their positions and also chosen by party members often linked to the majority (Kilpatrick 2015, 17; Fasone 2014a, 7). In this constellation, the PCT should actually act in common with the interests of the governmental apparatuses, however, the judges are not elected for a legislative period, but for nine years and, as Portugal often saw minority governments in office, the accordance between the two state apparatuses is not necessarily a given. In 2011, when the PS minority government had to resign due to the protest, and the conservative opposition took power, the PS elected judges still held the majority of seats in the PCT (Fasone 2015, 7). The six new members that entered office between 2012 and 2014 were thus elected by the conservative party, but still encompassed a minority in the Court (ibid.). Thus, most of the decisions declaring austerity measures as unconstitutional were decided by a "7-to-6 majority" (Fasone 2014a, 7). As such, since 2012 the Court has been constantly divided when judging on Euro-crisis law, i.e. on "austerity measures adopted during the bailout" (Fasone 2015, 7). This happened in the same period when the anti-austerity protests reached its peak and the government fell into a political crisis. As will be discussed later, the PCT majority also used the mass protests on the streets as a legitimating factor against the majority in the parliament.

Despite this crisis period, the tensions between the Court and (often PS lead) government can be already traced back to 2000 and the constant attempts to change the judicial system (Dias 2016, 32), in terms of its power relation

towards the other apparatuses, hence minimize its influence in the state. However, this time, the Court reacted several times against the government and even forced it to seek for other ways of financial aid, beyond more austerity measures and cuts (Fasone 2014a, 26).

4.1.4 Deadlock Four: Austerity measures and restructuring

However, one of the strongest deadlocks was created through the austerity measures inside the state apparatuses, which also affected the courts in general. In this section, I argue that the PCT was not just used by different parties and their concerns, but that their personnel also acted on behalf of their own interests. In 2005, the PS led government already cut judicial leave to act against the huge amount of pending cases (Dias 2016, 32). In 2011, the PS government extended the retirement date for judges, which led to a wave of earlier retirement of senior judges who were not willing to wait for the law to become valid, and created a new shortage of personnel (ibid. 33). This already stirred controversy between both institutions and in return, the courts revealed cases of child assault and corruption that included a range of public political figures. In 2014, even the former PS Prime Minister José Socrates who initially called for conditioned aid and who signed the MoU in a caretaker government position, was arrested (ibid.). With the Memorandum of Understanding the judicial crisis of the PCT became completely obvious:

[T]he judicial system was [...] forced to carry out reforms without any financial resources and to cut costs, reducing its capacity to respond to an unprecedented low level. The main target was now the efficient functioning of the courts in this area of enforcement, associated with economic market needs. [...] In addition to reforming enforcement law in the area of debt collection, its main task was to set up the new judicial organisation which would reduce the number of courts and human resources. (Dias 2016, 34)

Along this line, from 311 first instance courts, only 23 main courts remained, more than 1,500 clerks lost their jobs due to the re-structuring, and the new buildings and the new software that the institutions were forced to move on to, led to further chaos, as computers crashed, new software did not work etc. (ibid. 35-36). Even if these cuts did not directly have an impact on the 13 judges in the PCT, it would affect them when returning to their former jobs, as they cannot be re-elected after the nine years; and it affected colleagues and affiliated institutions.

From this background, that most of the cuts implemented by the MoU and the conservative government had a severe impact on the public sector and a part of them being judges who at the same time had to work more and were put into new buildings and systems (Kilpatrick 2015, 8), it is hardly surprising that most of the laws declared as unconstitutional dealt with either cuts in personnel, pensions, un-employment benefit or union rights, such as "Article 21 and 25, of the 2012 Budget Law", which encompassed wage cuts and cuts in the annual Christmas and holiday subsidies for public workers and pensioners, alike (Fasone 2014a, 19). These laws were challenged especially by workers themselves (ibid.). Furthermore, the new planned Labour Code, which was directly demanded by the institutions of the Troika, making the possibility to dismiss workers much easier and violating collective bargaining agreements, was overruled (ibid. 21). The budget legislation Acórdão no. 187/2013 which saw striking cuts in the pensions for public employees was completely rejected by the Constitutional Court (Fasone 2014a, 27). This eventually had a huge impact on the financial stability agreements with the Troika: The government was forced to re-negotiate the bailout program and had to re-organize the government (ibid.). Due to several scandals the minister and vice-premier minister Miguel Relvas had to resign and, additionally, the coalition between the PSD and PP-CDS was on the brink to break up (ibid.).

Christina Fasone concludes that the Portuguese Constitutional Court "even in contrast with international and European obligations [...] acted as the only counter-power to European institutions and to national political institutions (ibid.

31). However, going back to the first deadlock, the attempt to restructure the judicial system and synchronize its structures with the European level did not only create turmoil and "judicial austerity" (Dias 2016, 38), but also a deadlock to further programs and the early exit of Portugal from the Troika.

4.2 Social Movements and the cog of the judicial state apparatus

Concerning the resistance of the working classes, three different actors can be singled out to be analyzed as relevant parts of the anti-austerity struggle: The traditional trade unions especially the CGTP ('Confederação Geral dos Trabalhadores Portugueses'), the social movement networks, and the social movement unionists. The social movement networks emerged in February 2011, first encompassing groups of friends and unemployed or precarious workers some of whom held degrees of higher education. These groups were able to mobilize for huge demonstrations against austerity, casualization and the Troika via social media activity, networking, fly-postering, socializing and active solidarity with strikes and trade unionists. Later, rank and file members of the Left Bloc (BE) and the Communist Party (PCP) joined these networks and also members of smaller left political groups. These networks, or also called 'platforms' were concentrating rather on actions than on programs or long term aims such as the building of a new party, or trade union, which might have led to a certain weakness dealing with the political crisis of 2013. The term Social Movement Unionism is used to describe union activism beyond labor and bargaining issues (See also Engeman 2015, and Turner and Hurd 2001). In Portugal, for instance, the dock workers of the Lisbon harbor support topics such as social housing and also protested against austerity, despite being on a strike for their own bargaining issues. The staff council in the public radio and television studio (RTP) also practiced Social Movement Unionism, by supporting non-traditional labor movement structures and mobilizing for demonstrations which were not supported by the main trade

union federations and were not directly linked with their own labor struggle. Despite of this, the trade union landscape of Portugal is rather weak, but strong among the public services, compared to the private sector (Stoleroff 2013, 316). The political division and tensions between the two main trade union federations the UGT⁴ (União Geral de Trabalhadores – General Union of Workers) and the CGTP declined in 2013 and they organized a comparably strong general strike together. During this period, the UGT stopped negotiating with the right-wing government. The cleavages remain persistent nevertheless and divide the trade union landscape. The five general strikes of whom three were organized by both of the trade union federations did not only reveal the weaknesses of the Portuguese working classes, but much more the lack of strategy and program especially of the CGTP leadership. In 2013 the CGTP had the most influence in tackling the asymmetric power structures in the country. However, as union density was low, the labor movement, despite having a long tradition of struggles were learning many new aspects and somehow started from a power base close to zero.

This is also true for the social movement networks which appeared the first time in 2011 and played a crucial role in mobilizing huge groups of society that have not taken part in protests for a long time or never in their lives. The social movement networks encompass a relatively small group of people that are at the same time organized in many different organizations, which are somehow politically divided in strategies aiming to overcome austerity. Nevertheless, it was possible to bring these groups together in different protest platforms. The activists of the social movement networks 'Geração à Rasca' (generation at the edge), 150 (a protest on 15 October 2011) and 'Que se lixe a Troika' (To hell with the Troika) were not only mobilizing for big demonstrations, but supported strikes on different levels and thus were able to bring the social movements and the labor movement together. Moreover, they were able to put the CGTP under pressure to

⁴ The UGT is the second biggest trade union federation, mainly influenced and supported by the social democratic PS and the center-right wing party PSD. It often tends to 'social partnership', but partially refrained from that strategy, being faced with severe wage cuts and worsening of labor conditions of their members.

join their demonstrations and link forces, even if this only happened for a small period of time.

In 2012, the social movement unionists such as the dockworkers in Lisbon and the staff council members in RTP, the state owned television and radio station, which was under the threat to be privatized, started to develop from regular trade unions towards activists that acted in solidarity with different struggles against casualization and for decent housing. Both of these social movement unionist groups were able to achieve important gains in their struggle, but did continue to link up with social movement networks and other trade unions nationally and internationally (Mariano 2013).

In terms of environmental dynamics, the anti-austerity movement between 2010 and 2015 was inspired by Spain, Greece and the Arab Revolts. Fear and anger due to austerity measures brought thousands of new people towards different forms of activism. They saw their opportunities in bringing people together as well as to use the schedules of political institutions such as elections. It currently looks as if all the activists have vanished and left the stage of struggle in favor of these classical trade union structures (Duarte and Baumgarten 2015, 72). Instead, social movement activists as well as social movement unionists are rather attempting to organize struggles over the housing question. It is very likely that this issue might become one of the most important environmental dynamics for social movements in Portugal in the near future.

Concerning the organizational dynamics, the actors and organizations involved in the anti-austerity protests in Portugal involved a range of very different groups. Although the struggle against austerity and casualization is actually the main battlefield of the trade union federations many different groups affected by austerity were not presented or supported by the CGTP, or by the UGT. Thus, especially social movement networks supported, as much as contested, the old representatives of labor struggles, when they entered the stage of resistance (Stoleroff 2015).

In relation to the cognitive dynamics, a change in the consciousness was

mostly observed on the level of learning processes inside the movements. On an electoral level, the cognitive dynamic developed very slowly. Although the right-wing coalition was able to win most of the votes it could not achieve a parliamentary majority and moreover, its minority government was brought down by the center-left opposition, only eleven days after the general election in 2015. After that, the PS has formed a government. It is a minority government, tolerated by the votes of BE (Bloco Esquerda - Left Bloc) and PCP (Partido Comunista Português - Communist Party of Portugal). The interesting point about the general election was the huge abstention and the PS was still remembered as a party that brought in austerity measures and the Memorandum of Understanding, when building a caretaker government. The BE therefore increased their support.

In terms of institutional dynamics, the following can be observed:

The first defeat against austerity measures already occurred in March 2011, when the pressure of the demonstration organized by precarious young workers and the network 'Geração à Rasca', was so strong that the fourth 'Package of Growth and Stability' (PEG) could not be implemented and the PS government had to resign and call for new general elections. Thus, the Constitutional Court was yet not involved, however the movement was already strong enough, to challenge the government and austerity measures on its own.

This also counts for the second achievement of the anti-austerity movement which was the rejection of the new 'Taxa Social Única' (TSÚ) reform that was brought down due to the mass demonstrations and protests on September 15, in 2012. The reform would have meant a severe increase in social insurance costs for workers, while employers would have had to pay less. In March 2013 the 'Grandoladas', a flashmob of activists that sang the anthem of the Portuguese revolution 'Grandôla Vila Morena' during the budget debate in parliament and at different public appearances of members of the government (Amaral and Lopes 2013); and the mass demonstration on March 2 were organized against the pension reform in the public sector. This was the time, when the Constitutional Court as a state apparatuses was not just used by different other

apparatuses, but appeared as an actor itself. Hence the pension reform was eventually declared as unconstitutional. In the same period, the government had to stop the privatization of the radio and television station 'RTP' due to the protests that were organized by the staff council and the employees. In April 2013, Miguel Relvas the vice-prime minister who also became a target by the Grandoladas and who was originally planning to privatize RTP had to resign due to fraud scandals about his academic graduation. It appeared as a small scandal and a sort of 'quarrel' as Poulantzas called it, but was already a signal of a looming political crisis of the state.

On 27 June 2013 a comparably strong general strike was organized by both of the trade union federations that closed the transport system completely down (Roberts 2013). Three days later the finance minister Vítor Gaspar resigned after the TSÚ was ultimately rejected (Crisóstomo 2013). Moreover, the activities of the Constitutional Court lead to a renegotiation of the financial aid with the institutions of the Troika (Borja-Santos 2013). One day later, Paulo Portas the head of the junior coalition partner CDS-PP stepped down (Roberts 2013). From the background of a peak of mass protests, the judicial apparatuses had a legitimate basis to rule against certain measures which also intensely impacted their own interests and the ones of their own personnel. It can be analyzed that the anti-austerity protests indeed increased institutional dynamics, especially by opening a space for at least seven of the 13 judges in the Constitutional Court, to use the articles of the Portuguese Constitution which was achieved during mass movements and a social revolution, to rule against several austerity measures. However, looking at the unemployment figures, the poverty, the tax rates, the increasing domestic violence and the housing crisis, many problems for the working classes remain.

5. Lost Opportunities and Partial Impacts

In 2013, after the last general strike on June 27, the political crisis was on the edge. In this period two ministers resigned as the PCT declared more and more measures unconstitutional and the anti-austerity movements led to huge strikes and brought masses into the streets. The 21 days of political crisis were a classical window of opportunity for the trade unions and social movements to organize mass protests and a further strike to bring the government down. Instead, the Portuguese President Cavalho da Silva used the silence from parts of the movement to reunite the government. He rejected the resignations and re-negotiated the conditions for a stable center-right government that eventually lasted until the regular general elections in October 2015 (Stoleroff 2015, 6).

In conclusion, the anti-austerity protests indeed increased institutional dynamics, but were unfortunately, not using them to push their aim – to stop and reverse austerity measures – further, which might have been linked to a lack of program and perspective. In some cases the achievements of the anti-austerity struggles became visible only much later. The newly installed center-left government plans to increase the minimum wage over a period of four years to 600 Euro and to decrease the working hours for the public sector from 40 hours back to 35 hours – the amount it had been before the Memorandum of Understanding. They re-installed four holidays that have been erased by the previous government and announced to amend and improve the laws concerning the right for impoverished families to own a house. That a left parliamentary majority was elected and aims to reverse several cut backs was achieved due to the massive pressure of the labor and social movements – together during a period of political and judicial crises.

Due to the elections in October 2015 much of the attention has shifted towards the parliamentary level. As President Passos Coelho from the center-right PSD initially refused to appoint the PS to form a new government a new political crisis was looming. When the left parliamentary majority in this period voted for

same sex adoption and the dismantling of the abortion law, Passos Coelho denied signing these bills. Thus, they had to be brought up in parliament again. There was a new tension between the left parliamentary majority and the right-wing President emerging. This is also true for the tensions between the European Union and the PS government that in February 2016 had to submit its budget plans to Brussels. The European Commission has nearly rejected the budget and moreover, forced the government to alter its plans. The new developments on this level as well as on the level of resistance should be followed up further.

6. Conclusion

In this text, the activities of the Portuguese Constitutional Court and its ruling against austerity measures were discussed in relation to the role of the European Union, state apparatuses and social movements. Instead of the claim of judicial activism, the term 'judicial crisis' was introduced as a point of conjuncture for several deadlocks in and between state apparatuses which were provoked due to the financial and political crisis, the attempt of EU capitalist fractions to assimilate political, financial and judicial agendas and structures and due to the strong response of anti-austerity movements aiming to stop and reverse austerity measures.

It was explained that an analysis of social movements which include a materialist state theory can help to understand current conjunctures and processes which due to the deep economic crisis from 2007 onwards have been developed in a small EU bailout-country like Portugal. Four analytical tools have been outlined (environmental, organizational, cognitive and institutional dynamics), to bring processes in and between the state as a battlefield, and as an antagonist of social movements, together with analysis and impacts of collective action. An example for these processes has been the emergence of the Portuguese Constitution in a period of mass protests and a social revolution which includes

several progressive articles, but not the burden of a 'budget clause'. This finally was one of the main reasons why a majority of the PCT could rule against the European crisis-law and the conditions of the rescue credits. The PCT was thus not necessarily acting in favor of the mass protests, but also due to their own interests and due to the judicial crisis that developed out of increasing austerity. Austerity that had emerged because of the restructuring processes of the judicial system as a whole, different party majorities in the parliament and the Court, and an increasing amount of cases from oppositional parties and other state institutions.

It became clear that despite "the very long and rich list of social rights entrenched in the Portuguese Constitution, the judicial enforcement of them, even by the Constitutional Court, has been extremely weak" (Fasone 2014a, 24). Despite declaring several austerity measures as unconstitutional, the Constitutional Court did not prevent a growing casualization of the working classes and a growing impoverishment especially of young employees. From the point of view of the social movement activists, it is stated that the movements at least opened a political space for the judges to be able to read properly the constitution. The Constitutional Court did challenge the austerity measures and was at least at some points moderating the attempt of the PSD-CDS/PP government to dismantle the Portuguese labor and social apparatuses (Stoleroff 2015). Moreover, the abolition of several austerity measures lead to a political crisis of the government that could have been an important moment for the trade unions to join their forces with social movements and social movement unionists to push their targets further. However, as the tensions on the world market and also in Europe remain, these situations might reemerge sooner or later and might meet a working class that is even more prepared to resist.

References

Accornero, Guya. 2015. "Back to the Revolution: The 1974 Portuguese Spring and Its 'austere Anniversary.'" *Historiein* 15 (1): 32–48. doi:10.12681/historiein.275.

Amaral, J., Lopes, M. 2013. "Grandolada", "swap", "irrevogável" ou "pós-troika" candidatas à Palavra do Ano de 2013. Público. Accessed 2.20.16: <http://www.publico.pt/politica/noticia/grandolada-swap-irrevogavel-ou-postroika-candidatas-a-palavra-do-ano-de-2013-1614728>.

Baumgarten, Britta. 2013. "Geracao a Rasca and beyond: Mobilizations in Portugal after 12 March 2011." *Current Sociology*, 1–17.

Borja-Santos, R. 2013. Imprensa internacional: Portugal é um país a "deslizar para o desconhecido" e ajustamento está a "entrar em colapso". Público. Accessed 2.26.16: <https://www.publico.pt/politica/noticia/imprensa-internacional-anteve-crise-politica-com-saida-de-pesos-pesados-do-governo-1599098>.

Brugge, Axel. 2013. "Portugal Budget Vote to Trigger Challenges to Austerity." *Reuters*. Accessed: 17.1.2017: <http://www.reuters.com/article/us-portugal-bailout-idUSBRE9A00HW20131125>.

Buckel, Sonja. 2016. "Rechtskritik." *Kritische Justiz* 49 (3): 289–304. doi:10.5771/0023-4834-2016-3-289.

Buckel, Sonja. 2017. "Dialektik von Kapitalismus und Demokratie heute." In *Perspektiven sozialer Demokratie in der Postdemokratie*, edited by Oliver Eberl and David Salomon, 19–41. Wiesbaden: Springer Fachmedien Wiesbaden. doi:10.1007/978-3-658-02724-7_2.

Burawoy, Michael. 2014. "Facing an Unequal World." *Current Sociology* 63 (1): 5–34.

Calhoun, Craig. 1993. "'New Social Movements' of the Early Nineteenth Century." *Social Science History* 17 (3): 385–427.

Campos Lima, Maria da Paz and Antonio Martín Artiles. 2011. "Crisis and Trade Union Challenges in Portugal and Spain: Between General Strikes and Social Pacts." *Transfer: European Review of Labour and Research* 17 (3): 387–402. doi:10.1177/1024258911410806.

Cisotta, Roberto and Daniele Gallo. 2014. "The Portuguese Constitutional Court Case Law on Austerity Measures: A Reappraisal." Working paper n. 04-.2014.

Costa, Hermes Augusto, Hugo Dias and José Soeiro. 2014. "As greves e a austeridade em Portugal: Olhares, expressões e recomposições." *Revista Crítica de Ciências Sociais*, no. 103: 173–202. doi:10.4000/rccs.5584.

Crisótomo, Pedro. 2013. "Vitor Gaspar sai e queixa-se de falta de coesão do Governo". Público. Accessed 2.26.16: <http://www.publico.pt/politica/noticia/vitor-gaspar-de-saida-do-governo-1598899>.

Demirović, Alex. 2007. "*Nicos Poulantzas - Aktualität und Probleme materialistischer Staatstheorie*". 2nd edition. Münster: Westfälisches Dampfboot.

Diani, Mario. 2008. "Social Movement Theory and Grassroots Coalitions in the Middle-East." Paper for the 2008 ASA Annual Meeting, Boston, August 1-4.

Dias, João Paulo. 2016. "The Transition to a Democratic Portuguese Judicial System: (Delaying) Changes in the Legal Culture." *International Journal of Law in*

Context 12 (01): 24–41. doi:10.1017/S1744552315000373.

Dörre, Klaus, Stefan Schmalz and Marcel Müller, eds. 2013. *Comeback der Gewerkschaften? Machtressourcen, innovative Praktiken, internationale Perspektiven*. International labour studies 5. Frankfurt am Main: Campus Verlag.

Duarte, Mariana Carmo, Baumgarten, B. 2015. Portugal: The crisis and new actors against austerity, in: *Connecting the Struggles. Green European Journal*, 69–72.

Engeman, Cassandra. 2015. Social movement unionism in practice: organizational dimensions of union mobilization in the Los Angeles immigrant rights marches, in: *Work, Employment & Society* 25 (3), 444-461.

Esposito, Vincent L. 2014. "Constitutions through the lens of the global financial crisis: Considering the experience of the United States, Portugal, and Greece." Law School Student Scholarship. Paper 461. http://scholarship.shu.edu/student_scholarship/461.

Estanque, Elísio. 2015. "Middle-Class Rebellions? Precarious Employment and Social Movements in Portugal and Brazil (2011-2013)*." *RCCS Annual Review*, no. 7. doi:10.4000/rccsar.592.

Evert, Hans, and Ulrich Machold. 2012. Accessed: 26.1.17 "Ist es an der Zeit, weniger Demokratie zu wagen?" *Die Welt*. <https://www.welt.de/debatte/kommentare/article106605498/Ist-es-an-der-Zeit-weniger-Demokratie-zu-wagen.html>.

Fasone, Christina. 2014a. "Constitutional Courts Facing the Euro Crisis. Italy, Portugal and Spain in a Comparative Perspective." EUI Working Paper MWP 2014/25.

Fasone, Christina. 2014b. "Eurozone, Non-Eurozone And 'troubled Asymmetries' among National Parliaments in the EU. Why and to what extent this is of concern." *Perspectives on Federalism* 6 (3): 1–41.

Fasone, Christina. 2015. National Parliaments in the Eurozone Crisis: Challenges and Opportunities." *Toruńskie Studia Polsko-Włoskie*: 7–27. 10.12775/TSP-W.2015.001.

Fonseca, Guilherme Da, and Inês Domingos. 1998. "Constitutional Limitations on Privatisation. The Constitution of the Portuguese Republic and the Constitutional Case-Law — a Few Notes —." *Documentação E Direito Comparado* 73/74: 129–140.

Giugni, Marco G. 1998. "Was It Worth the Effort? The Outcomes and Consequences of Social Movements." *Annual Review of Sociology* 24 (1): 371–393. doi:10.1146/annurev.soc.24.1.371.

Huke, Nikolai, Mònica Clua-Losada, and David J. Bailey. 2015. "Disrupting the European Crisis: A Critical Political Economy of Contestation, Subversion and Escape." *New Political Economy* 20 (4): 725–751.

Kannankulam, John. 2008. *Autoritärer Etatismus im Neoliberalismus*. In *Staatstheorie vor Neuen Herausforderungen: Analyse Und Kritik*, edited by Jens Wissel and Stefanie Wöhl, 145–165. Münster: Westfälisches Dampfboot.

Kannankulam, John, and Fabian Georgi. 2012. *Die Europäische Integration als materielle Verdichtung von Kräfteverhältnissen*. Arbeitspapier 30. Marburg.

Kilpatrick, Claire. 2015. "Constitutions, Social Rights and Sovereign Debt States in

Europe: A Challenging New Area of Constitutional Inquiry.” EUI Working Paper LAW 2015/34 Department of Law.

Luxemburg, Rosa. 1906. “Rosa Luxemburg: The Mass Strike.” Accessed 14.2.14: <https://www.marxists.org/archive/luxemburg/1906/mass-strike/ch03.htm>.

McAdam, Doug and Sidney Tarrow. 2010. “Ballots and Barricades: On the Reciprocal Relationship between Elections and Social Movements.” *Perspectives on Politics* 8 (02): 529–542. doi:10.1017/S1537592710001234.

Mariano, António. 2013. *Estivadores: história de uma luta*. Esquerda. Accessed 2.21.16: <http://www.esquerda.net/artigo/estivadores-hist%C3%B3ria-de-uma-luta/29929>.

Moury, Catherine. 2014. “The New Politics of Austerity: How the Bailout Enabled the Portuguese Ministers to Pass Reforms They Wanted All Along.” Paper for the 2014 MPSA conference, April 3 - 6, Historic Palmer House Hilton Hotel, Chicago.

Oberndorfer, Lukas. 2016. “Europa und Frankreich im Ausnahmezustand? Die autoritäre Durchsetzung des Wettbewerbs.” *PROKLA. Westfälisches Dampfboot* 185 (46): 561–581.

Poulantzas, Nicos. 1975. *Klassen im Kapitalismus heute*. Studien zur Klassenanalyse. 5. Berlin: VSA-Verlag.

Poulantzas, Nicos. 1978. *Political Power and Social Classes*. 3rd ed. London: Verso.

Poulantzas, Nicos and James Martin. 2008. *The Poulantzas Reader: Marxism, Law, and the State*. London: Verso.

Ribeiro, Gonçalo de Almeida. 2013. "Judicial Activism Against Austerity in Portugal." *Iconnectblog.com*. Accessed 11.11.16: <http://www.icconnectblog.com/2013/12/judicial-activism-against-austerity-in-portugal/>.

Roberts, Alison. 2013. Key minister quits as crisis grips Portugal coalition. BBC News. Accessed 2.26.16: <http://www.bbc.com/news/world-europe-23146635>.

Rucht, Dieter. 2002. "Anstöße für den Wandel -Soziale Bewegung im 21. Jahrhundert." Vortrag im Rahmen der Gründerversammlung für "Die Bewegungsstiftung - Anstöße für soziale Bewegungen", Berlin.

Sperling, Urte. 2014. *Die Nelkenrevolution in Portugal*. Basiswissen : Politik / Geschichte / Ökonomie. Köln: PapyRossa-Verlag.

Stoleroff, Alan. 2013. "Employment Relations and Unions in Public Administration in Portugal and Spain: From Reform to Austerity." *European Journal of Industrial Relations* 19 (4): 309–323. doi:10.1177/0959680113505033.

Stoleroff, Alan. 2015. "The Portuguese Labor Movement and Industrial Democracy: From Workplace Revolution to the Precarious Quest for Economic Justice." *Transfer: European Review of Labour and Research*, 1–26.

Stützle, Ingo. 2004. "Von Stellungs- und Bewegungskriegen - Kämpfe in und um den Staat. Eine Einführung in die Materialistische Staatstheorie." www.stuetzle.cc/wp-content/uploads/fantomas_05_langfassung.pdf.

Tattersall, Amanda. 2010. *Power in Coalition: Strategies for Strong Unions and Social Change*. Cornell Paperbacks. Ithaca: ILR Press/Cornell University Press.

Turner, Lowell and Richard W. Hurd. 2001. *Building Social Movement Unionism:*

The Transformation of the American Labor Movement, in: *Rekindling the movement: Labor's quest for relevance in the twenty-first century*, edited by: Turner, Lowell, Richard W. Hurd and C. H. Katz. Cornell University Press, Ithaca, New York, 9-26.

Wöhl, Stefanie and Jens Wissel. 2008. "Staatstheorie vor neuen Herausforderungen Einleitung," in: "Staatstheorie vor neuen Herausforderungen: Analyse und Kritik", edited by Jens Wissel and Stefanie Wöhl, 7–22. Münster: Westfälisches Dampfboot.

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