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978-1-107-15465-0 - Exclusion From Public Space: A Comparative Constitutional Analysis

Daniel Moeckli

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EXCLUSION FROM PUBLIC SPACE

Hardly known twenty years ago, exclusion from public space has today become a standard tool of state intervention. Every year, tens of thousands of homeless, drug addicts, teenagers, protesters and others are banned from parts of public space. The rise of exclusion measures is characteristic of two broader developments that have profoundly transformed public space in recent years: the 'privatisation of public space' and its increased control in the 'security society'. Despite the fundamental problems it raises, exclusion from public space has hardly received any attention from legal scholars. This book addresses this gap and comprehensively explores the implications that this new form of intervention has for the constitutional essentials of liberal democracy: the rule of law, fundamental rights and democracy. To do so, it analyses legal developments in three liberal democracies that have been at the forefront of promoting exclusion measures: the United Kingdom, the United States and Switzerland.

DANIEL MOECKLI is Assistant Professor of Public International Law and Constitutional Law at the University of Zurich and Fellow of the University of Nottingham Human Rights Law Centre. He is the author of *Human Rights and Non-discrimination in the 'War on Terror'* (Oxford University Press, 2008), for which he was awarded the Paul Guggenheim Prize, and co-editor of *International Human Rights Law* (Oxford University Press, 2014). Before joining the University of Zurich, Daniel was a Lecturer at the University of Nottingham and worked for the International Bar Association, Amnesty International and the Supreme Court of the Canton of Berne.

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A Comparative Constitutional Analysis

DANIEL MOECKLI

University of Zurich



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Legal developments have been taken account of, to the best of my knowledge, up to September 2015. All websites were last accessed on 1 October 2015.

ABBREVIATIONS

A.2d	Atlantic Reporter, Second Series
AC	Law Reports, Appeal Cases
ACHR	American Convention on Human Rights
ADHR	American Declaration of the Rights and Duties of Man
All ER	All England Reports
Art.	Article
Arts	Articles
AS	Amtliche Sammlung des Bundesrechts (official collection of federal legislation)
AS	Amtliche Sammlung der Stadt Zürich (collection of the laws of the City of Zurich)
ASBO	Anti-social behaviour order
AuG	Bundesgesetz über die Ausländerinnen und Ausländer (Federal Act on Foreign Nationals)
BBl	Bundesblatt der Schweizerischen Eidgenossenschaft (collection of federal materials of the Swiss Confederation)
BehiG	Bundesgesetz über die Beseitigung von Benachteiligungen von Menschen mit Behinderungen (Federal Act on the Elimination of Discrimination against People with Disabilities)
BGE	Entscheidungen des Schweizerischen Bundesgerichts (decisions of the Swiss Federal Supreme Court)
bGS	Bereinigte systematische Gesetzessammlung des Kantons Appenzell Ausserrhoden (collection of the laws of the Canton of Appenzell Ausserrhoden)
BGS	Bereinigte Gesetzessammlung des Kantons Solothurn (collection of the laws of the Canton of Solothurn)
BGS	Bereinigte Gesetzessammlung des Kantons Zug (collection of the laws of the Canton of Zug)
BGST	Bundesgesetz über die Sicherheitsorgane der Transportunternehmen im öffentlichen Verkehr (Federal Act on the Security Units of Public Transport Companies)
BID	Business Improvement District

BR	Bündner Rechtsbuch (collection of the laws of the Canton of Grisons)
BSG	Bernische Systematische Gesetzessammlung (collection of the laws of the Canton of Berne)
BV	Bundesverfassung der Schweizerischen Eidgenossenschaft (Federal Constitution of the Swiss Confederation)
BVR	Bernische Verwaltungsrechtsprechung (Collection of administrative law decisions of the Canton of Berne)
BWIS	Bundesgesetz über Massnahmen zur Wahrung der inneren Sicherheit (Federal Act on Measures for the Protection of Internal Security)
CA	Court of Appeal
Cal. Rptr. 3d	California Reporter, Third Series
CBO	Criminal Behaviour Order
CCTV	Closed Circuit Television
Ch.	Law Reports, Chancery Division
Ch.	Chapter
Chs	Chapters
Cm	Command papers
col.	column
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
D.C.	District Court
D.C.	District of Columbia
E.	Erwägung (consideration)
EC	European Community
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
EG	Estates Gazette
ETS	European Treaty Series
EU	European Union
EWCA Civ	Court of Appeal of England and Wales, Civil Division
EWCA Crim	Court of Appeal of England and Wales, Criminal Division
EWHC	High Court of England and Wales
F.2d	Federal Reporter, Second Series
F.3d	Federal Reporter, Third Series
F.Supp.	Federal Supplement
GA	UN General Assembly
GDB	Gesetzesdatenbank des Kantons Obwalden (collection of the laws of the Canton of Obwalden)
GS	Gesetzessammlung des Kantons Glarus (collection of the laws of the Canton of Glarus)

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HRLR	Human Rights Law Reports – UK cases
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ Statute	Statute of the International Court of Justice
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
IPNA	Injunction to Prevent Nuisance and Annoyance
Ir CLR	Irish Common Law Reports
IRLR	Industrial Relations Law Reports
JStG	Bundesgesetz über das Jugendstrafrecht (Juvenile Criminal Code)
KB	Law Reports, King’s Bench
LAPD	Los Angeles Police Department
LGR	Local Government Reports
LS	Loseblattsammlung (systematische Gesetzessammlung des Kantons Zürich) (collection of the laws of the Canton of Zurich)
Mass.	Massachusetts Reports
MG	Bundesgesetz über die Armee und die Militärverwaltung (Military Act)
MStG	Militärstrafgesetz (Military Criminal Code)
N.E.2d	North Eastern Reporter, Second Series
N.W.2d	North Western Reporter, Second Series
NYPD	New York City Police Department
OAS	Organization of American States
OJ	Official Journal of the European Communities
PSPO	Public Spaces Protection Order
P.2d	Pacific Reporter, Second Series
QB	Law Reports, Queen’s Bench Division
RB	Rechtsbuch Kanton Thurgau (collection of the laws of the Canton of Thurgau)
RB	Urner Rechtsbuch (collection of the laws of the Canton of Uri)
RSg	Recueil systématique de la législation genevoise (collection of the laws of the Canton of Geneva)
RSN	Recueil systématique de la législation neuchâteloise (collection of the laws of the Canton of Neuchâtel)
SAR	Systematische Sammlung des Aargauischen Rechts (collection of the laws of the Canton of Aargau)
S.E.	South Eastern Reporter
S.E.2d	South Eastern Reporter, Second Series
SG	Systematische Gesetzessammlung des Kantons Basel-Stadt (collection of the laws of the Canton of Basel-Stadt)

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SGF	Systematische Gesetzessammlung des Kantons Freiburg (collection of the laws of the Canton of Fribourg)
SGS	Systematische Gesetzessammlung des Kantons Basel-Landschaft (collection of the laws of the Canton of Basel-Landschaft)
sGS	Systematische Gesetzessammlung des Kantons St. Gallen (collection of the laws of the Canton of St. Gallen)
SHPO	Sexual harm prevention order
SHR	Schaffhauser Rechtsbuch (collection of the laws of the Canton of Schaffhausen)
So.2d	Southern Reporter, Second Series
SOCPA	Serious Organised Crime and Police Act
SR	Systematische Sammlung des Bundesrechts (systematic collection of federal legislation)
SRL	Systematische Rechtssammlung des Kantons Luzern (collection of the laws of the Canton of Lucerne)
SRSZ	Systematische Gesetzessammlung des Kantons Schwyz (collection of the laws of the Canton of Schwyz)
StGB	Schweizerisches Strafgesetzbuch (Swiss Criminal Code)
StPO	Schweizerische Strafprozessordnung (Swiss Criminal Procedure Code)
TFEU	Treaty on the Functioning of the European Union
TPIM	Terrorism Prevention and Investigation Measure
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UKHL	UK House of Lords
UN	United Nations
UN Charter	Charter of the United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UN-HABITAT	United Nations Human Settlements Programme
UNTS	United Nations Treaty Series
US	United States
U.S.	United States Supreme Court Reports
U.S.C.	Code of Laws of the United States of America
VPB	Verwaltungspraxis der Bundesbehörden (decisions and opinions of the federal administrative authorities)
WEF	World Economic Forum
WLR	Weekly Law Reports
WTO	World Trade Organization
ZGB	Schweizerisches Zivilgesetzbuch (Swiss Civil Code)
ZR	Blätter für Zürcherische Rechtsprechung