<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I  WELCOME STATEMENTS</td>
<td>3</td>
</tr>
<tr>
<td>II ICON’S INAUGURAL GOVERNANCE</td>
<td>4</td>
</tr>
<tr>
<td>III SCHEDULE</td>
<td>5</td>
</tr>
<tr>
<td>IV MAP OF CONFERENCE VENUES</td>
<td>6</td>
</tr>
<tr>
<td>V  PLENARY EVENTS</td>
<td>7</td>
</tr>
<tr>
<td>VI CONCURRING PANELS</td>
<td>11</td>
</tr>
<tr>
<td>A  OVERVIEW</td>
<td>12</td>
</tr>
<tr>
<td>B  PANELS SESSION I</td>
<td>17</td>
</tr>
<tr>
<td>C  PANELS SESSION II</td>
<td>33</td>
</tr>
<tr>
<td>D  PANELS SESSION III</td>
<td>61</td>
</tr>
<tr>
<td>E  PANELS SESSION IV</td>
<td>89</td>
</tr>
<tr>
<td>F  PANELS SESSION V</td>
<td>118</td>
</tr>
<tr>
<td>VII ICON’S WP CONFERENCE PROCEEDINGS SERIES</td>
<td>148</td>
</tr>
<tr>
<td>VIII SERVICE</td>
<td>149</td>
</tr>
<tr>
<td>IX PARTICIPANTS</td>
<td>155</td>
</tr>
</tbody>
</table>
We extend a warm welcome to all participants in the 2016 Annual Meeting of ICON•S, the International Society of Public Law. This will be our largest annual Meeting since the foundation of the Society in 2013. The panels, roundtables and plenary events address the Conference’s overarching theme of “Borders, Otherness and Public Law” and other topics at the heart of contemporary public law. We are grateful to our Berlin hosts for their relentless hard work and creativity in putting together such a mega-sized event, and to all the panelists, discussants, session coordinators and other participants. Most of all, we thank you, the ICON•S members, for your overwhelmingly positive response to the call for papers this year, and for volunteering your time and energy to promote the success of the Society and its annual conference. Together, we have created what we believe is a first-rate, intellectually appealing program featuring scholars, jurists and policy makers from various disciplines and from literally four corners of the world. We hope that you enjoy it thoroughly!

Gráinne de Búrca
(New York University) and
Ran Hirschl
(University of Toronto)

Co-Presidents, ICON•S, the International Society of Public Law

It is not only a pleasure and honor to organize this year’s ICON•S Conference. It also seems deeply historically appropriate to have it take place in Berlin. In a time of great challenges that deeply implicate public law, there is hardly a better city for one to become aware of the deep connections between law and politics and the complexities and fragilities of constitutional progress. Berlin was a relatively liberal Prussian rule of law oriented place, where Voltaire sought refuge as a guest of Frederick the Great in the 18th century. It is also the place where the idea of a liberal constitutional democracy in a unified Germany was buried after the failed constitutional revolution of 1848. When German unity was finally achieved in 1871 and Berlin became the capital of the new German nation-state, this was brought about by conservative, industrialist and nationalist political forces that had little connection to the constitutionalist tradition, even though it was a time of innovative development for public law as a discipline.

After the disaster of World War I, Berlin became the center of avant-garde art, theatre, cinema and literature in the Weimar Republic – the vibrant capital of a frail liberal constitutional democracy, whose mainstream parties would be derided as “system-parties” by the radical right and the radical left and no longer commanded a majority by the early 1930s. Even though the Nazis never won electoral majorities in Berlin, the city became the heart of darkness for twelve years, the center of an evil empire that orchestrated a global war and moved genocidal annihilation to an unprecedented industrial scale.

Today Berlin combines a sophisticated culture of commemoration with youthful appeal. It provides a distinctively German interpretation of what it means to be a cosmopolitan European. It remains uncouth and unfinished, so very unlike Paris. And unlike London, New York, Singapore or Hong Kong, it lacks the presence of a globalized bourgeoisie. But it provides Germans, Europeans and other citizens of the world with an unrivalled context for reflections on depravity, tragedy, redemption and the possibility of progress.
The Inaugural Executive Committee

De Búrca, Gráinne (Co-President)
Hirschl, Ran (Co-President)
Casini, Lorenzo (Secretary General)
Casini, Sabino (Honorary President)
Golden, Claudia (Treasurer)
Choudhry, Sujit
Jia, Bing Bing
Mancini, Susanna
Okowa, Phoebe
Rosenthal, Michel
Rubio-Marín, Ruth
Ruiz Fabri, Hélène
van Aaken, Anne
Weiler, Joseph H. H.

The Inaugural Society’s Council

Albert, Richard
Amato, Giuliano
Auby, Jean-Bernard
Bae, Susanne
Barnes, Javier
Benvenisti, Eyal
Boisson de Chazournes, Laurence
Bonilla Maldonado, Daniel Eduardo
Cameron, David
Cartabia, Marta
Chang, Wen-Chen
Cohen-Elia, Moshe
Craig, Paul
D’Alberti, Marco
Davies, Anne
De Wet, Erika
Diez-Picazo, Luis
Elkins, Zachary
Ferrerres Cornella, Victor
Gaeta, Piola
Ginsburg, Tom
Gonod, Pascale
Jacobsohn, Gary J.
Kingsbury, Benedict
Koenig, Matthias
Krisch, Nico
Kumm, Matthias
Loughlin, Martin
Lübke-Wolff, Gertrude
Maduro, Miguel Pooares
Malaret i Garcia, Elisenda
Mehta, Pratap Bhanu
Micklitz, Hans-Wolfgang
Möllers, Christoph
Napolitano, Giulio
Peters, Anne
Ponthoreau, Marie-Claire
Ruffert, Matthias
Sadurski, Wojciech
Shany, Yuval
Sieder, Rachel
Siegel, Reva
Smith, Rogers
Stewart, Richard B.
Tomkins, Adam
Torchia, Luisa
Ulitz, Renata
von Bogdandy, Armin
SCHEDULE

FRIDAY 17 JUNE 2016

REGISTRATION & COFFEE
11:30 am – 1:00 pm → UL6 Audimax

OPENING REMARKS
1:00 – 1:15 pm → UL6 Audimax

KEYNOTE
1:15 – 2:30 pm → UL6 Audimax

Coffee Break 30 min → Foyer Audimax

PLENARY SESSION I
MIGRATION AND MOVEMENT
3:00 – 4:30 pm → UL6 Audimax

Coffee Break 45 min → Foyer Audimax

PANELS SESSION I
1 – 15
5:15 – 7:00 pm → UL6: 2070A, 2103, 2249A, 3071, 3119, 2093 + UL9: E25, 210, 213, E14, E42 + BE2: E44/46, 140/142, 144

Cocktail Reception 90 min → BE2 Foyer

SATURDAY 18 JUNE 2016

PANELS SESSION II
16 – 42
9:00 – 10:45 am → all rooms BE2, UL9, UL6, DOR24

Coffee Break 45 min → BE2 Foyer → DOR24 Foyer

PANELS SESSION III
43 – 69
11:30 am – 1:15 pm → all rooms BE2, UL9, UL6, DOR24

Lunch Break 90 min → Law Faculty → BE2 Foyer + UL9 E25

PLENARY SESSION II
INEQUALITIES
2:45 – 4:15 pm → UL6 Audimax

Coffee Break 45 min → BE2 Foyer → DOR24 Foyer

PANELS SESSION IV
70 – 97
5:00 – 6:45 pm → all rooms BE2, UL9, UL6, DOR24

SUNDAY 19 JUNE 2016

PANELS SESSION V
98 – 126
9:00 – 10:45 am → all rooms BE2, UL9, UL6, DOR24

Coffee Break 45 min → Foyer Audimax

PLENARY SESSION III
JUDICIAL INTERVIEW AND DIALOGUE
11:30 am – 1:00 pm → UL6 Audimax

AWARD CEREMONY AND FAREWELL
1:00 – 1:15 pm → UL6 Audimax
VENUES

Main Building          Unter den Linden 6          UL6
Law Faculty            Unter den Linden 9          UL9
                      Bebelplatz 2                BE2
Seminar Building       Dorotheenstraße 24        DOR24
Registration
ARTIFICE AND MIGRATION TOGETHER: UNDERSTANDING A FRAMEWORK FOR THE NEW NORMAL:

3:00 pm – Plenary Speech

Migration and Movement

A New York University School of Law event, this session will bring together leading experts to discuss the latest developments in migration law, policy, and practice. The speakers will explore the challenges and opportunities presented by global migration trends, and the role of international law and institutions in responding to these trends. The session will also address the implications of migration for social and economic development, and the need for effective and equitable solutions to migration challenges.

 Speakers:

- T. Alexander Aleinikoff
- Ayelet Shachar
- Philippe Sands QC
- Yolandauos Olay

Moderators:

- Mattias Kumm
- Hélène Ruiz Fabri

Theme: Rule of Law in the Age of Globalization

For more information, please visit the New York University School of Law website.
The Oxford Handbook of the Indian Constitution

Susanne Baer

Rosalind Dixon is Professor of Public International Law in the University of New South Wales (UNSW Australia). Her work spans comparative constitutional and administrative law, and she is widely read on academic blogs and other fora.

Inequalities that Matter

Catherine A. MacKinnon

Sustainable Equality: Hierarchy in Canada and the World

Inequality has been an important topic for the past few decades. While some continue to focus on equality as an approach to pornography and rape, others have turned to a different perspective, focusing on equality as an approach to social inequality.

Today, there is not too much equality out there, but a striking lack of clarity and consensus in the field. Taking a closer look at inequality, we see that it is not just a matter of identities, but also of key references like freedom, with a struggle against the cultural hegemony of particular religions. Various debates have taken place, but it is high time to act.

Sustainable equality has been shown to target minorities, with a struggle against the racist trade of “the disabled”. As a result, this suggests a new understanding of the need to better understand equality as a concept to target exceptions, or with a groupist idea of hierarchy.

Some suggest that gender is the driver of the equality issue, and so forth. Some focus on the lists of inequalities, or on the attention we pay to problems, or people, is continuous. It is, thus, time to act.

Today, equality is, just like liberty, a positive promise, the basis of post-categorical law against discrimination. The traditional distinction between direct and indirect or disparate impact discrimination is a pressing need to better understand equality as a concept to target exceptions, or with a groupist idea of hierarchy.

Those who struggle for the lists of inequalities, or for the attention we pay to problems, or people, is continuous, it is high time to act. Is profiling harmful? Is privilege a fact, or a harm?

Inequality that matters. This forces us, first, to honestly discuss which barriers are identified as problem areas. Then, equality is, just like liberty, a positive promise, the basis of post-categorical law against discrimination.

Then, equality is, just like liberty, a positive promise, the basis of post-categorical law against discrimination. Sex/gender is, then, a driver of sex/gender, with a struggle against the cultural hegemony of particular religions. Various debates have taken place, but it is high time to act.

Overall, I suggest this to be a promising path for constitutional and administrative law, on the editorial vis-à-vis gender competence center.

The Burden of Democracy

Caroline A. MacKinnon

Sustainable Equality: Hierarchy in Canada and the World

Inequalities that Matter

Catherine A. MacKinnon

Sustainable Equality: Hierarchy in Canada and the World

Inequality has been an important topic for the past few decades. While some continue to focus on equality as an approach to pornography and rape, others have turned to a different perspective, focusing on equality as an approach to social inequality.

Today, there is not too much equality out there, but a striking lack of clarity and consensus in the field. Taking a closer look at inequality, we see that it is not just a matter of identities, but also of key references like freedom, with a struggle against the cultural hegemony of particular religions. Various debates have taken place, but it is high time to act.

Sustainable equality has been shown to target minorities, with a struggle against the racist trade of “the disabled”. As a result, this suggests a new understanding of the need to better understand equality as a concept to target exceptions, or with a groupist idea of hierarchy.

Some suggest that gender is the driver of the equality issue, and so forth. Some focus on the lists of inequalities, or on the attention we pay to problems, or people, is continuous. It is, thus, time to act.

Today, equality is, just like liberty, a positive promise, the basis of post-categorical law against discrimination. The traditional distinction between direct and indirect or disparate impact discrimination is a pressing need to better understand equality as a concept to target exceptions, or with a groupist idea of hierarchy.

Those who struggle for the lists of inequalities, or for the attention we pay to problems, or people, is continuous, it is high time to act. Is profiling harmful? Is privilege a fact, or a harm?

Inequality that matters. This forces us, first, to honestly discuss which barriers are identified as problem areas. Then, equality is, just like liberty, a positive promise, the basis of post-categorical law against discrimination.

Then, equality is, just like liberty, a positive promise, the basis of post-categorical law against discrimination. Sex/gender is, then, a driver of sex/gender, with a struggle against the cultural hegemony of particular religions. Various debates have taken place, but it is high time to act.

Overall, I suggest this to be a promising path for constitutional and administrative law, on the editorial vis-à-vis gender competence center.

The Burden of Democracy

Caroline A. MacKinnon

Sustainable Equality: Hierarchy in Canada and the World

Inequalities that Matter

Catherine A. MacKinnon

Sustainable Equality: Hierarchy in Canada and the World

Inequality has been an important topic for the past few decades. While some continue to focus on equality as an approach to pornography and rape, others have turned to a different perspective, focusing on equality as an approach to social inequality.

Today, there is not too much equality out there, but a striking lack of clarity and consensus in the field. Taking a closer look at inequality, we see that it is not just a matter of identities, but also of key references like freedom, with a struggle against the cultural hegemony of particular religions. Various debates have taken place, but it is high time to act.

Sustainable equality has been shown to target minorities, with a struggle against the racist trade of “the disabled”. As a result, this suggests a new understanding of the need to better understand equality as a concept to target exceptions, or with a groupist idea of hierarchy.

Some suggest that gender is the driver of the equality issue, and so forth. Some focus on the lists of inequalities, or on the attention we pay to problems, or people, is continuous. It is, thus, time to act.

Today, equality is, just like liberty, a positive promise, the basis of post-categorical law against discrimination. The traditional distinction between direct and indirect or disparate impact discrimination is a pressing need to better understand equality as a concept to target exceptions, or with a groupist idea of hierarchy.

Those who struggle for the lists of inequalities, or for the attention we pay to problems, or people, is continuous, it is high time to act. Is profiling harmful? Is privilege a fact, or a harm?

Inequality that matters. This forces us, first, to honestly discuss which barriers are identified as problem areas. Then, equality is, just like liberty, a positive promise, the basis of post-categorical law against discrimination.

Then, equality is, just like liberty, a positive promise, the basis of post-categorical law against discrimination. Sex/gender is, then, a driver of sex/gender, with a struggle against the cultural hegemony of particular religions. Various debates have taken place, but it is high time to act.

Overall, I suggest this to be a promising path for constitutional and administrative law, on the editorial vis-à-vis gender competence center.

The Burden of Democracy

Caroline A. MacKinnon

Sustainable Equality: Hierarchy in Canada and the World

Inequalities that Matter

Catherine A. MacKinnon

Sustainable Equality: Hierarchy in Canada and the World

Inequality has been an important topic for the past few decades. While some continue to focus on equality as an approach to pornography and rape, others have turned to a different perspective, focusing on equality as an approach to social inequality.

Today, there is not too much equality out there, but a striking lack of clarity and consensus in the field. Taking a closer look at inequality, we see that it is not just a matter of identities, but also of key references like freedom, with a struggle against the cultural hegemony of particular religions. Various debates have taken place, but it is high time to act.

Sustainable equality has been shown to target minorities, with a struggle against the racist trade of “the disabled”. As a result, this suggests a new understanding of the need to better understand equality as a concept to target exceptions, or with a groupist idea of hierarchy.

Some suggest that gender is the driver of the equality issue, and so forth. Some focus on the lists of inequalities, or on the attention we pay to problems, or people, is continuous. It is, thus, time to act.

Today, equality is, just like liberty, a positive promise, the basis of post-categorical law against discrimination. The traditional distinction between direct and indirect or disparate impact discrimination is a pressing need to better understand equality as a concept to target exceptions, or with a groupist idea of hierarchy.

Those who struggle for the lists of inequalities, or for the attention we pay to problems, or people, is continuous, it is high time to act. Is profiling harmful? Is privilege a fact, or a harm?

Inequality that matters. This forces us, first, to honestly discuss which barriers are identified as problem areas. Then, equality is, just like liberty, a positive promise, the basis of post-categorical law against discrimination.

Then, equality is, just like liberty, a positive promise, the basis of post-categorical law against discrimination. Sex/gender is, then, a driver of sex/gender, with a struggle against the cultural hegemony of particular religions. Various debates have taken place, but it is high time to act.

Overall, I suggest this to be a promising path for constitutional and administrative law, on the editorial vis-à-vis gender competence center.
Koen Lenaerts
President of the Court of Justice of the European Union

Koen Lenaerts is the President of the Court of Justice of the European Union. From 1989 to 2003, he has been a Judge of the European Court of the First Instance. Since 2003, he has been a Judge of the School at NYU Law. From 2003 and became its Vice-President in 2012 and its President in 2015. Koen Lenaerts is a Professor of European Law at the University of Leuven and the Founder and Director of the university’s Institute of European Law. He is also an Honorary Master of the Bench of the Inner Temple in London.

Guido Raimondi
President of the European Court of Human Rights

Guido Raimondi is the President of the European Court of Human Rights (ECHR) since 2015. He has been a Vice-President of the ECHR since 2012 until 2015 and has served as a Judge on the ECHR since 2010. One of the main focuses of his professional life both on the bench and beyond has been rights issues. He has been a member of the judiciary since 1977. From 1989 to 1992, he was a Co-Agent of the Italian Government before the European Court of Human Rights. While serving on the Italian Court of Cassation, he has occasionally been an ad hoc Judge in cases before the ECHR. Guido Raimondi was Deputy Legal Adviser and Legal Director of the International Labour Organization (ILO) between 2003 and 2010.

Joseph H. H. Weiler
European University Institute

J. H. H. Weiler is President of the European University Institute and University Professor, New York University School of Law (on leave). He is Editor-in-Chief of the European Journal of International Law and co-Editor-in-Chief of the International Journal of Constitutional Law (ICON•S).

Gráinne de Búrca
New York University

Gráinne de Búrca is the Co-President of the International Society of Public Law (ICON•S) and Florence Ellinwood Allen Professor of Law at New York University School of Law. She is the Co-Director of the Jean Monnet Center for International and Regional Economic Law and Justice and the Faculty Director of the Hauser Global Law School at NYU Law. From 1998 to 2006, she was the Co-Director of the Academy of European Law at the European University Institute in Florence. Gráinne de Búrca is a leading OUP textbook on EU Law and the Co-Editor-in-Chief of the International Journal of Constitutional Law (I•CON). Her main field of research is European Union law, and she is also interested in questions of European constitutional law and governance, human rights and discrimination and international relations.

INTERVIEWED BY

SUNDAY 19 JUNE 2016 → UL6 AUDIMAX
11:30 am - PLENARY SESSION III

JUDICIAL INTERVIEW AND DIALOGUE

Koen Lenaerts
President of the Court of Justice of the European Union

Guido Raimondi
President of the European Court of Human Rights

Joseph H. H. Weiler
European University Institute

Gráinne de Búrca
New York University
OVERVIEW

PAGES SESSION I  FRIDAY, 17 JUNE 2016  5:15 – 7:00 pm

1  CONSTITUTIONALISM AND CONSTITUTIONAL INTERPRETATION Participants: Marko Milanovic, James Grant, Scott Stephens  / Name of Chair: Scott Stephens  

2  BETWEEN ETHNIC IDENTITIES AND NATIONAL IDENTIFICATION: RECONSTRUCTING CHINA’S REGIONAL NATIONAL AUTONOMY Participants: Chai, Chow, Alexus, Zhang Jian / Name of Chair: Yang Guodong

3  FIGHT OVER THE TURKISH CONSTITUTIONAL DIMENSIONS OF INCLUSION AND EXCLUSION Participants: Dilek Gurian, Zeynep Yanasmayan / Name of Chair: Silvia van Staaandoff

4  CONFLATING WITH DIVERSITY – PUBLIC POLICIES AND THE INTEGRATION OF INDIVIDUALS IN PLURALIST Societies Participants: Bassok, Mark Graber, James Grant, Scott Stephenson  / Name of Chair: Scott Stephenson

5  BETWEEN ETHNIC IDENTITIES AND NATIONAL IDENTIFICATION: RECONSTRUCTING CHINA’S REGIONAL NATIONAL AUTONOMY Participants: Han Zhai, Chasidy Alexis, Zhang Jian / Name of Chair: Yang Guodong

6  CONFLICT OVER THE TURKISH CONSTITUTIONAL DIMENSIONS OF INCLUSION AND EXCLUSION Participants: Dilek Gurian, Zeynep Yanasmayan / Name of Chair: Silvia van Staaandoff

7  REGIONAL AND CONSTITUTIONAL STRUCTURES IN TENSION Participants: Wiebusch, Pola Cebulak, Christopher May, Maksim Karliuk, Tom Daly / Name of Chair: Damjan Kukovec

8  SPACING INTERNATIONAL ADMINISTRATIVE PROCEDURE Participants: Luca De Lucia, Stephan Schill, Martina Conticelli, Herwig C.H. Hofmann, Matthias Ruffert, Edoardo Chiti / Name of Chair: Giacinto della Cananea

9  COMPARATIVE PERSPECTIVES ON THE LEGAL AND OR EXTRA-LEGAL CONSTRAINTS ON EQUALITY LAW Participants: Daniel Sigel, Anna Elizabeth Chappell, Jari Ollman, Ilmarin Koivist / Name of Chair: Maria Adele Carrai

10  CONDITIONALITY IN THE OZONE CRISIS Participants: Ioannidis, Anastasia Poulou, Antonia Baraggia, Viorica Vila, Carlino Antpöhler, Alicia Hinarejos / Name of Chair: Anastasia Poulou

11  SUBSIDIARITY IN GLOBAL GOVERNANCE Participants: Krisch, Isobel Roele, Tomer Broude, Andreas Felstedal / Name of Chair: Graeme de Burca

12  THE RULE OF LAW IN EUROPE II: STRUCTURAL WEAKNESSES IN THE EUROPEAN LEGAL ORDER Participants: Kim Lane Scheppele, Kim Lane Scheppele, Rui Tavares Lancell, Gabor Halmi / Name of Chair: Kim Lane Scheppele

13  TTP – HOW TO RECLAIM DEMOCRACY AND HUMAN RIGHTS? Participants: Howse, Hélène Ruiz-Fabri, Alberto Alemanno, Matthias Goldmann / Name of Chair: Ardevan Yaghoubi

14  THE PROCESSES AND IMPLICATIONS OF CONSTITUTIONAL CHANGE Participants: Deon, Yariv Rozma, Richard Albert, Julian Zaiden Benvind / Name of Chair: Rainer Passchier
**panels session III**

11:00 am – 1:15 pm

**Vienna, 19 June 2016**

**The Romanian Constitution**

Chair: Kai Möller

Participants: Mohsin Bhat, Felix Petersen, Roman Abhayraj Naik, Rachel Priyanka Chenchiah, Iddo Porat, Shai Lavi, Kai Möller, Terada, Gabriella Margherita Racc, Stefania Law, Jerfi Uzman, Guy Lurie, Amnon Reichman, Yair Sagi, Guilherme Peña de Moraes, Talya Steiner, Raanan Sulitzeanu-Kenan, Marina Motsinok, Joshua Segev.

**The Boundaries of the Rule of Law in Europe:**

Chair: Richard B. Stewart

Participants: Richard B. Stewart, Paul Mertenskötter, Roman Jaana Palander, Stefan Schlegel, Carsten Höric, Marion Panizzon, Johannes Eichenhofer, Yair Sagi, Guilherme Peña de Moraes, Talya Steiner, Raanan Sulitzeanu-Kenan, Marina Motsinok, Joshua Segev.

**Constitutional Justice and Sexuality**

Chair: Moria Paz

Participants: Gila Stopler, Tamar Hostovsky Brandes, Meital Pinto, Annie Köhler, Tehila Sagi, Meital Pinto, Adriana Castellanos, David Appelbaum, Chaya Shapira, Yofi Tirosh.

**Constitutional Politics**

Chair: Tamar Megidio

Participants: Andrea Kullick, Lorenzo Saltari, Mayu Streinz.

**Constitutionalism for Peace**

Chair: Yofi Tirosh

Participants: Abhijit Vaidyanath, Liron Samuels, Meital Pinto, Anastasia Tzouvala, Michel Tournier, Gráinne De Búrca, Ruth Rosalind Dixon, Jade Bond, Mathilde Cohen, Laurie Ivers.

**Human Dignity and Global Governance**

Chair: Imer Flores

Participants: Stephen Macedo, Mattias Eriksson, Lara Barad, Yoav Dotan, Lorne Neudorf, Elona Saliaj, Jerfi Uzman, Guy Lurie, Amnon Reichman, Yair Sagi, Guilherme Peña de Moraes, Talya Steiner, Raanan Sulitzeanu-Kenan, Marina Motsinok, Joshua Segev.

**International Law(s) and Jurisprudence**

Chair: Gráinne De Búrca


**Concurrent Sessions 14**

11:30 am – 1:15 pm

**The Trans-Pacific Partnership (TPP): A Critical Examination**

Chair: Yofi Tirosh

Participants: Andrea Acosta Alvarado, Diego González-Pérez, Silvia Suteu, Bianca Selejan-Guţan, Mirco Ziegler, Charlotte Steinorth, Matthew C. Turk.

**The Nordic Foundations of EU Law**

Chair: Jochen von Bernstorff

Participants: Christina O’Donoghue, Jochen von Bernstorff, Ioanna Tourkochori, Erin Daly, Catherine Dupré, Daniel Kumm, Isabella Litke, Imer Flores, MATLAB Macedo, Mattias Eriksson, Lara Barad, Yoav Dotan, Lorne Neudorf, Elona Saliaj, Jerfi Uzman, Guy Lurie, Amnon Reichman, Yair Sagi, Guilherme Peña de Moraes, Talya Steiner, Raanan Sulitzeanu-Kenan, Marina Motsinok, Joshua Segev.

**Constitutional Law(s) and Human Rights**

Chair: Gráinne De Búrca


**The Boundaries of the Rule of Law in Europe**

Chair: Kai Möller

Participants: Mohsin Bhat, Felix Petersen, Roman Abhayraj Naik, Rachel Priyanka Chenchiah, Iddo Porat, Shai Lavi, Kai Möller, Terada, Gabriella Margherita Racc, Stefania Law, Jerfi Uzman, Guy Lurie, Amnon Reichman, Yair Sagi, Guilherme Peña de Moraes, Talya Steiner, Raanan Sulitzeanu-Kenan, Marina Motsinok, Joshua Segev.

**Constitutional Justice and Sexuality**

Chair: Moria Paz

Participants: Gila Stopler, Tamar Hostovsky Brandes, Meital Pinto, Adriana Castellanos, David Appelbaum, Chaya Shapira, Yofi Tirosh.

**Constitutional Politics**

Chair: Tamar Megidio

Participants: Andrea Kullick, Lorenzo Saltari, Mayu Streinz.

**Constitutionalism for Peace**

Chair: Yofi Tirosh

Participants: Abhijit Vaidyanath, Liron Samuels, Meital Pinto, Anastasia Tzouvala, Michel Tournier, Gráinne De Búrca, Ruth Rosalind Dixon, Jade Bond, Mathilde Cohen, Laurie Ivers.

**Human Dignity and Global Governance**

Chair: Imer Flores

Participants: Stephen Macedo, Mattias Eriksson, Lara Barad, Yoav Dotan, Lorne Neudorf, Elona Saliaj, Jerfi Uzman, Guy Lurie, Amnon Reichman, Yair Sagi, Guilherme Peña de Moraes, Talya Steiner, Raanan Sulitzeanu-Kenan, Marina Motsinok, Joshua Segev.
p. 123 102  HUman RiGHTs cOnCERns

D’alterio camargo, Jun shimizu / name of chair: elisa valbona Metaj, Marko Turudić, ximena sierra
Participants: barbara boschetti, elisa d’alterio, Pankaj sinha, vanice regina lírio do valle, lucia scaffardi, Monica cappelletti, serkan Yolcu / name of chair: catarina botelho

p. 120 99  ThE sEPaRation
Matthias Goldmann
steinbeis, fernando Muñoz león / name of chair: russell a. Miller, Marta cartabia, Maximilian Participants: Joseph H. H. weiler, Mattias Kumm, romaniello, Zsuzsanna Gedeon, Mariana velasco

p. 119 98  PuBlic law sChOlrSHiP
9:00 – 10:45 am
Panels sessIon v
Hirsch, Jürgen Kurtz
Tobias stoll, elisa baroncini / name of chair: Moshe Participants: sabrina ragone, Manuel eduardo

p. 122 101  ThE blURred bOrders
Markard
Giovanna bello, Jean Thomas / name of chair: nora stephen Gardbaum
rivera, Zoltán Pozsár-szentmiklósy / name of chair: Zsuzsanna Gedeon, Mariana velasco
Participants: Yofi Tirosh, catherine Powell, barbara boschetti, elisa d’alterio, Pankaj sinha, vanice regina lírio do valle, lucia scaffardi, Monica cappelletti, serkan Yolcu / name of chair: catarina botelho

p. 141 120  OTHerness in lAtIn AmeRiCa:
Jaakko Husa, athanasios Psygkas, vidya Kumar / name of chair: Jenna sapiano

p. 127 106  ThE wTo’s new bOrders and
name of chair: Maartje de visser
Participants: Po Jen Yap, swati Jhaveri, Maartje de

p. 131 110  al GOriTHMic
adam shinar / name of chair: Jenna sapiano
Matthews, devendra Kumar sharma, Jenna sapiano, Gontovnik, Michal Tamir, romy Klimke / name of Participants: Marie-bénédicte dembour, Gamze

p. 135 114  OTHerness and sOlIdaRiTY
roßbach
Participants: ebrahim afsah, Giovanna spanò, lisa

p. 133 112  refUGee PrivilEge Or HUman
Harms, Jonathan Parent / name of chair: lisa Harms
Participants: ebrahim afsah, Giovanna spanò, lisa

p. 124 103  sOlidariTy To wards ThE
Jain, françois delerue / name of chair: françois
Participants: argyri Panezi, florian idelberger, sanjay
delelerue

p. 137 116  ThE riGHT Of nOn-ciTiZens TO
Participants: Johann Sebastian Bach, Johannes eichenhofer / name of chair: Matthieu de vries

p. 139 118  ThE TransaTTlanTic Trade and
name of chair: andreas føllesdal, Pietro faraguna
Participants: Thomas Kleinlein, bilyana Petkova, Participants: lopera, Yi-li lee / name of chair: Jiewuh song

p. 140 119  JuDiCial review and
Thomas streinz / name of chair: Gráinne de búrca
Participants: Jiewuh song, Yoon Jin shin, Kelley

p. 142 121  MaKinG
Participants: Emmanuel de Groof, friederike eggert,
david s. law / name of chair: emmanuel de Groof
caitlin Goss, Tanasije Marinković, Zoran Oklopcic,

p. 143 122  POsT-naTiOnalisM,
Participants: Emmanuel de Groof, friederike eggert,
david s. law / name of chair: emmanuel de Groof
caitlin Goss, Tanasije Marinković, Zoran Oklopcic,

p. 144 123  MiGraTiOn and
Gonzalo villalta Puig, fulvio costantino / name of
Participants: lopera, Yi-li lee / name of chair: Jiewuh song

p. 132 111  islaMic law and
Mccusker / name of chair: John Morison
Participants: John Morison, rónán Kennedy , Paul

p. 147 126  ThE law(s) Of
Participants: David Lawrence, Marko Turudić, Zsuzsanna Gedeon, Mariana velasco
Participants: Jiewuh song, Yoon Jin shin, Kelley

p. 146 125  ThE disEs TabliShMenT Of Sex:
Participants: Po Jen Yap, swati Jhaveri, Maartje de

p. 129 108  ThE DiSEs TabliShMenT OF SeX:
Participants: Po Jen Yap, swati Jhaveri, Maartje de

p. 128 107  ThE DiSEs TabliShMenT OF Sex:
Participants: Po Jen Yap, swati Jhaveri, Maartje de

p. 126 105  cOncePTU alisinG
Participants: Po Jen Yap, swati Jhaveri, Maartje de

p. 125 104  reTHinKinG sOCial inclUsiOn
Participants: Po Jen Yap, swati Jhaveri, Maartje de

p. 118 96  ThE rigHts Of PaTeNts
name of chair: Emmanuel de Groof
Participants: Emmanuel de Groof, friederike eggert,
david s. law / name of chair: emmanuel de Groof
caitlin Goss, Tanasije Marinković, Zoran Oklopcic,

p. 117 95  ThE rigHts Of PeRsOn
name of chair: Francesco Francia
Participants: Emmanuel de Groof, friederike eggert,
david s. law / name of chair: emmanuel de Groof
caitlin Goss, Tanasije Marinković, Zoran Oklopcic,

p. 116 94  ThE rigHts Of PeRsOn
name of chair: Francesco Francia
Participants: Emmanuel de Groof, friederike eggert,
david s. law / name of chair: emmanuel de Groof
caitlin Goss, Tanasije Marinković, Zoran Oklopcic,

p. 115 93  ThE rigHts Of PeRsOn
name of chair: Francesco Francia
Participants: Emmanuel de Groof, friederike eggert,
david s. law / name of chair: emmanuel de Groof
caitlin Goss, Tanasije Marinković, Zoran Oklopcic,
FRIDAY
17 JUNE 2016
5:15 – 7:00 pm

PANELS
SESSION I
1 CONSTITUTIONALISM AND CONSTITUTIONAL INTERPRETATION

Panel formed with individual proposals.

Participants
Or Bassok
Mark A. Graber
James Grant
Scott Stephenson

Name of Chair
Scott Stephenson

Room
UL6 2070A

Or Bassok: Beyond the Horizons of American Constitutional Thinking
American constitutional debate is controlled by certain paradigms that block the ability to think beyond them. In this paper, I expose two of these paradigms and examine the way in which they control and limit American constitutional thinking.

Mark A. Graber: Race and American Constitutional Exceptionalism
American exceptionalism in American political development and in comparative constitutional law suffer from a similar blind spot. Just as Rogers Smith pointed out that the classical works in American political development tended to confine race in ways that discounted the substantial influence of race on American constitutional development, so the classical works on American constitutional exceptionalism tend to confine race to the margins of the American constitutional experience, overlooking the powerful impact race has had and continues to have on American constitutional law. This paper notes one difference between the United States and many constitutional democracies is that while much constitutionalism in Europe has been forged by struggles over the meaning of an anti-fascist imperative, much constitutional development in the United States is informed by racist and anti-racist imperatives.

James Grant: Constitutional Foundations, Law and Interpretation
This paper contributes to the debate over whether judges should appeal to foreign decisions and moral reasoning to change their constitutions through the guise of interpretation. First, I defend HLA Hart’s argument that the constitutional foundations of legal systems consist of extra-legal customary rules, which exist because they are practiced by officials and ‘accepted’ by them (in Hart’s special meaning of acceptance). Second, I argue, consistently with Hart’s account, that when judges interpret the constitution in creative ways, they do not necessarily act in a way that is unjustified. Moreover, their action may even be considered constitutional, if their interpretation, though novel, is nonetheless generally accepted by officials. The paper also responds to a number of objections to my argument, including that it allows too much power for judges to change the constitution, and that it does not sufficiently allow for variations among countries in the scope of judicial power.

Scott Stephenson: The Rise and Recognition of Quasi-Constitutional Law
The common law world of constitutionalism is often viewed through the lens of ‘regular constitutional law’, distinguishing those countries that have entrenched constitutions enforced by judicial review from those that do not. In this paper, I study the influence ‘quasi-constitutional law’, statutes that purport to alter or amend the fundamental feature of the system of government and that are enacted through the ordinary lawmaking process, has on this distinction. In this paper, I argue, first, that legislators across the common law world increasingly turned to quasi-constitutional law to pursue changes to their democratic systems of government in the second half of the twentieth century and, second, however the appearance of commonality and convergence is potentially misleading because the absence or presence of regular constitutional law affects the way in which and the extent to which the judiciary recognizes quasi-constitutional law.
Many societies are multi-national in composition. As the fundamental mechanism of nation building, modern constitutions provide both constitutional arrangements to govern over territory and the constitutional narrative to forge a common identity for its people. However, a constitutional institution does not automatically achieve these two goals.

China’s case of regional national autonomy can well illustrate the institutional tension between the regional autonomy and the national unification. If considering China as a one-party state, RNA functions both as a special institution with autonomous powers authorized to all three-tiered legislative bodies and governments and as a “basic policy” of the Chinese Communist Party (CCP) in dealing with China’s multi-ethnicity to forge a modern state as well. In the panel presentation, we will analyze RNA through a constitutional realism approach, with a special contribution from the story of Quebec as compared.

**Participants**

- Han Zhai: RNA interlaced with the unitary system RNA and its legislative powers
- Chasidy Alexis: The Quebec Secession Movement in the Eyes of Indigenous People

**Han Zhai: RNA interlaced with the unitary system RNA and its legislative powers**

RNA is entrenched in Article 30 in the 1982 Constitution of the PRC, and it is interlaced with the Unitary system through all three tiers of national administration division. The autonomous power is vested with the governments in the areas to exercise. Still under both Article 4.3 and Article 30 of the 1982 Constitution, the RNA law will further be interpreted in a systematic way. A state teleology become more significant when considering the RNA law the State shoulders the legal obligation to realize the substantial equality between ethnic minorities and Han Chinese. The central control over the autonomous powers, which has been institutionalized into the constitutional framework.

A feasible angle to assess the RNA is the exercise of legislative power of autonomous areas. A general observation is that the autonomous legislation has made remarkable improvements since 1978, the reform era does not see any significant expansion of autonomous legislation in number.

**Chasidy Alexis: The Quebec Secession Movement in the Eyes of Indigenous People**

In Canada, Indigenous peoples are governed under the legal paradigm of aboriginal law, which contains many boundaries and layers that govern the rights and duties of Aboriginal peoples and Aboriginal Lands. This is seen in the legal terminology of Treaty status, non-Treaty status, aboriginal Title and aboriginal rights. Both, the common and civil law, create several delimiting binaries of distinguishing what is permissible and what is not for Indigenous peoples residing in Canada. As a result of this, several tensions are created between groups, mainly those seeking to exercise such rights and duties. Finding cultural legal spaces to exercise such rights is not only pervasive but limited in the Canadian law context. In particular in Quebec, which claims to have historical roots in France and governs its citizens as a sub-national entity of both Canada and France. Placing Indigenous peoples in this construct presents several cultural pluralities in terms of succession.

**Zhang Jian: National Context Matters: Reconsidering the Comparative Methodology in Constitutional Law Research**

Different cases of ethnic autonomy reveal a sharp contrast in constitutional arrangements, ethnic policy, historic traditions, and cultural elements, in fact, formulate the national constitutional context of issues that should be identified by comparative constitutional lawyers. According to the classic functionalism methodology, legal comparison is supposed to start from the ‘same question’, trying to find various solutions in different countries. However, behind similar institutional designs, there are many variables. The difference is high, which weakness the feasibility of ‘same question’ when doing comparison. Therefore, we argue that national context matters in comparative constitutional study, not only because of the national constitutional uniqueness, but also subject to multiple modernity and its display in different national histories. This position requires a historical and socio-perspectival approach but builds on comparative constitutional law research beyond the doctrinal study.
These features are often hard to reconcile with the Turkish constitutional court (AYM) as a case showing Turkish constitutional court, I will ask for the role of Turkey (2011-2013), which was unique in its claim to provide constitutional rather than individual justice restorative justice, and delays in decision-making at the AYM.

Approaching the constitution as a border and framework between normality and the state of emergency regulations of the constitutional court’s (AYM) jurisdiction in the Kurdish cases. This is promoted both on the basis of the principle of subsidiarity and to enhance the efficiency of the Turkish constitutional complaint mechanism.

The proposed panel looks at different societal and political divisions deriving from and reflected in the constitutional complaint mechanism as an understudied case and to offer an account of the mechanism’s development in recent decades, little systematic knowledge is available on the constitutional design processes leading to the failure of constitutional committees in Turkey (2011-2013), which was unique in its claim to bring together a variety of stakeholders and break away from the previous experiences that lacked popular input. In order to comprehend the complex relationship between the process, the failure, and the public involvement, this paper scrutinizes the proceedings. This paper tests this assumption on the basis of the Turkish Constitutional Court’s (AYM) jurisdiction in the Kurdish cases. Because of the sui generis state of emergency regime in southeastern Turkey, my core thesis will be the de facto de-constitutionalisation of the state of emergency regulations of the Turkish constitution as a border and framework between normality and the state of emergency as well as a source of conflict between the state and its citizens’ rights, thereby focusing on the current conflict in the southeast of Turkey, Ece Göztepe (Bilkent University, Ankara) will take a closer look at the state of emergency regulations of the AYM.

Participants

Ece Göztepe: Interim Measures in the AYM’s Jurisdiction during the State of Emergency in Southeast Turkey

Maria Haimerl: Decision-Making at the Turkish Constitutional Court

Dilek Kurban: The Failure of Popular Constitution Making in Turkey

Zeynep Yanasmayan: The Failure of Popular Constitution Making in Turkey

Maria Haimerl: Decision-Making at the Turkish Constitutional Court

The Constitutional Court and the German Constitutional Court are considered to represent counter-models of colloquial decision-making. The former puts emphasis on the decision-making of individual judges, while the latter permits judges to face—face deliberations. The appeal-based court structure is very individualized and the possibility to disagree is part of the judicial identity. Both reinforce the conception of the AYM less as a cohesive whole but as a collection of individuals. They stay in the spot-light the recent failed constitution making attempts and their consequences. This paper aims to bring under spotlight the recent failed constitution making attempts and to discuss the reason for the failure of constitutional committees in Turkey (2011-2013), which was unique in its claim to bring together a variety of stakeholders and break away from the previous experiences that lacked popular input. In order to comprehend the complex relationship between the process, the failure, and the public involvement, this paper scrutinizes the proceedings.

Zeynep Yanasmayan: The Failure of Popular Constitution Making in Turkey

The advocates of the ECtHR system reignited an old discussion as to the true function of the European Convention on Human Rights (ECHR) system and the European Court of Human Rights (ECtHR). The advocates of the ECtHR’s evolution into a quasi-constitutional court call for a greater role for national judicial systems in the protection of fundamental rights. The advocates of the ECtHR as a complaint mechanism call for a greater role for national judicial systems in the protection of fundamental rights. They propose constitutional rather than individual justice restorative justice, and delays in decision-making at the AYM.

Ece Göztepe: Interim Measures in the AYM’s Jurisdiction during the State of Emergency in Southeast Turkey

The European Convention on Human Rights (ECHR) and the European Court of Human Rights (ECtHR) are well known as ‘partners’ in upholding human rights, particularly focusing on the current conflict in the southeast of Turkey, Ece Göztepe (Bilkent University, Ankara) will take a closer look at the state of emergency regulations of the AYM.

Participants

Ece Göztepe

Maria Haimerl

Dilek Kurban

Zeynep Yanasmayan

Name of Chair Silvia von Steinisdorff

Room Dock 22469
The panel aims to illustrate the problems that face rule of law in pluralistic societies. Integration policies and the (moving) line defining the boundary between refugees and migrants must find their way through education for democracy and citizenship identity. Furthermore, the limits of state intervention must somehow admit autonomy of individuals and question the legitimacy of the protection of the individual from himself. Topics to be discussed: i) Faraway so close – cross-border migration in the Euro-region Galicia-North of Portugal and the unmet expectations of an easy socio-cultural integration ii) Refugees In, Migrants Out? iii) Democratic Standards for Education iv) Religious symbols, paternalism and protection of the individual from himself.

Participants
Patrícia P. Mendes Jerónimo
Andrea Sofia Pinto Oliveira
Benedita F. da Silva Mac Corrie
Maria Luisa Alves da Silva Neto
Teixeira Botelho
Anabela de Fátima da Costa Leão

Name of Chair
Patrícia P. Mendes Jerónimo

Room
UL6 3071

Patrícia Penelope Mendes Jerónimo: Faraway so close – cross-border migration in the euro-region Galicia-North of Portugal and the unmet expectations of an easy socio-cultural integration

Discussion of the cross-border migration in the Euro-region Galicia-North of Portugal against the background provided by a strong narrative of historical, cultural and linguistic ties, on the one hand, and the increasing reports of discrimination against Portuguese workers in Galicia, of their disenfranchisement in the political field and their exposition to a range of negative stereotypes that hinder their chances for integration.

Andrea Sofia Pinto Oliveira and Benedita Ferreira da Silva Mac Corrie: Refugees In Migrants Out?

The present refugee crisis has a reflex in migratory management policies. Given the high number of asylum seekers trying to access Europe, deportation policies regarding other migrants tend to be more severe. This is a good opportunity to re-think the concept of refugee of the Geneva Convention – with multiple interpretations – and the (moving) line defining the boundary between refugees and migrants.

Maria Luisa Alves da Silva Neto Teixeira Botelho: Democratic Standards For Education

The article discusses the nowadays importance of education for democracy and citizenship as a way of building or reinforcing a sense of belonging in a democratic and pluralist society. Legitimacy and constitutional identity are also addressed issues.

Anabela de Fátima da Costa Leão and Benedita Ferreira da Silva Mac Corrie: Religious Symbols, Paternalism And Protection Of The Individual From Himself

Although aiming to safeguard the autonomy of individuals, many of the bans imposed on the use of religious symbols in public spaces are based on paternalistic grounds, since the use of these symbols may reflect, many times, a deliberate choice. These bans seem, therefore, hardly compatible with autonomy itself, since autonomy should include the possibility of adopting a behavior that appears in the eyes of others as an option (a free exercise of choice) for inequality or exclusion. Thus, from an autonomy’s point of view, we intend to discuss the limits of state intervention and the legitimacy of the protection of the individual from himself, concerning the use of religious symbols.
The aim of this panel is to interrogate possible tensions which will be considered. Participants will be asked to reflect on the constitutional dynamics within different regions from a comparative and theoretical perspective. The key point of discussion will be that constitutional frameworks in these regions are strongly embedded in the power dimensions in the region. This articulation should be analyzed not only at the constitutional level but also its interferences with the national constitutional level.

Participants

Micha Wielbusch and Pola Cebulak: Regional and Constitutional Structures in Tension – Framing Paper

Regional constitutionalism is discursively constitutive and representational qualities. A comparative approach is needed if we are to make sense of this democratic recession, its impact on the evolution of public law mechanisms and what it might entail and its effective implementation.

Christopher May: What we mean when we talk about the rule of law: The rule of law, regional organisations and constitutional politics

In contemporary global politics, there can be far more popular than the rule of law. Appeals are frequently met with resistance and often dissimilar responses by global leaders and political activists; alongside these responses the role of law is far from universal common-sense. Indeed, across the political spectrum there is a wide range of perspectives about the rule of law: constitutionalism. The new organization in order to understand the relations between regions the power structures reflected in the emergent regional and constitutional structures in tension.

Christopher May: What do we mean when we talk about the rule of law?

Michał Kukovec: The Constitutional Framework of Power Distribution Within the Eurasian Economic Union

After the fall of the Soviet Union, most post-Soviet countries pursued integration among themselves, which was fast in creating new institutions, but slow in effective implementation. The European Union and the other supranational elements. However, the existence of a hegemonic core of the rule of law norm as a (potentially) universal norm is far from universal. Indeed, across the political spectrum there is a wide range of perspectives about the rule of law: constitutionalism. The new organization in order to understand the relations between regions the power structures reflected in the emergent regional and constitutional structures in tension.

Christopher May: What do we mean when we talk about the rule of law?

Maksim Karliuk: Constitutional Framework of Power Distribution Within the Eurasian Economic Union

Particular attention is paid to the effectiveness of the rule of law in making them work. The Eurasian Economic Union of legal changes that accompany the creation of the new organization in order to understand the relations between regions the power structures reflected in the emergent regional and constitutional structures in tension.

Christopher May: What do we mean when we talk about the rule of law?

Pola Cebulak: Regional and Constitutional Structures in Tension – Framing Paper

Regional constitutionalism is discursively constitutive and representational qualities. A comparative approach is needed if we are to make sense of this democratic recession, its impact on the evolution of public law mechanisms and what it might entail and its effective implementation.

Christopher May: What we mean when we talk about the rule of law: The rule of law, regional organisations and constitutional politics

In contemporary global politics, there can be far more popular than the rule of law. Appeals are frequently met with resistance and often dissimilar responses by global leaders and political activists; alongside these responses the role of law is far from universal common-sense. Indeed, across the political spectrum there is a wide range of perspectives about the rule of law: constitutionalism. The new organization in order to understand the relations between regions the power structures reflected in the emergent regional and constitutional structures in tension.

Christopher May: What do we mean when we talk about the rule of law?

Michał Kukovec: The Constitutional Framework of Power Distribution Within the Eurasian Economic Union

After the fall of the Soviet Union, most post-Soviet countries pursued integration among themselves, which was fast in creating new institutions, but slow in effective implementation. The European Union and the other supranational elements. However, the existence of a hegemonic core of the rule of law norm as a (potentially) universal norm is far from universal. Indeed, across the political spectrum there is a wide range of perspectives about the rule of law: constitutionalism. The new organization in order to understand the relations between regions the power structures reflected in the emergent regional and constitutional structures in tension.

Christopher May: What do we mean when we talk about the rule of law?

Maksim Karliuk: Constitutional Framework of Power Distribution Within the Eurasian Economic Union

Particular attention is paid to the effectiveness of the rule of law in making them work. The Eurasian Economic Union of legal changes that accompany the creation of the new organization in order to understand the relations between regions the power structures reflected in the emergent regional and constitutional structures in tension.

Christopher May: What do we mean when we talk about the rule of law?
The panel focuses on the transnational dimension of administrative procedure. Such dimension, in contrast with the traditional belief that administration is a sort of national enclave, is a consequence of two main developments. First, a body of transnational standards of conduct for public authorities emerged in a variety of areas. Second, EU law set out procedures that are no longer in the hands of either the EU administration, or its MS, but of both. Hence, interest balancing takes place in new, trans-national patterns of public action. Such pathways, while promising, raise complex issues not only from the viewpoint of transparency and accountability, but also of efficiency and effectiveness. Panelists will consider administrative procedure in the context of both EU integration and globalization.

Participants
Luca De Lucia
Stephan Schill
Martina Conticelli
Herwig C.H. Hofmann
Matthias Ruffert
Edoardo Chiti
Name of Chair
Giacinto della Cananea
Room
UL6 2093

Luca De Lucia: From mutual recognition to authorization: EU new procedures

The paper has two goals. First it seeks to examine the main features of transnational administrative decisions in the EU legal system (i.e. acts of one Member State which, according to a European secondary legal norm, produce juridical effects in one or more of the other Member States). Second it discusses the tendency towards centralisation in recent legislation and the consequences of the abandonment of the model of transnational administrative decisions in some important economic areas. Finally, some brief conclusions on the perspective of horizontal administrative cooperation will be drawn.

Stephan Schill: Transnational Law of Public Contracts

Introducing the recent book ‘Transnational Law of Public Contracts’ (M. Audit & S. Schill, eds.), the presentation discusses how recourse to the concept and methods of transnational law provides a useful tool to conceptualise the changes administrative law is undergoing in the process of globalization. Using the example of public contracts law, it shows how a transnational legal approach allows to understand the normative pressure administrative law is facing from both binding international legal obligations and demands by non-state actors, both private and public, which are not binding but no less transformative in delinking administrative law and the nation state, such as the development of models for public contracts by industry organisations, the transborder migration of model instruments, or the impact of financiers or guarantors on the law governing public contracts.

Martina Conticelli: Foreign investments protection. The transnational and global regime of indirect expropriation

The paper takes into consideration the protection of foreign investments as a case study in transnational regulation. By focusing on the regime of expropriation, the paper discusses how procedural requirements, affirmed through multiple mechanisms and different standards of review, play a unifying role in transnational procedures, and highlights the main features of foreign investments’ regime.

Herwig C.H. Hofmann: Transnational regulation

This brief contribution will discuss how the reality of executive rule-making procedures with trans-territorial effect, with other words, the creation of non-legislative rules which have an effect outside the territorial limits of the jurisdiction of origin, maps the phenomenon, discusses some of its central challenges for the realisation of general principles of law and considers possible legal approaches addressing these. At the same time, the contribution looks at how much more domestic regulatory activity that is touched by transnational regulatory activity – formal and informal – than generally meets the eye. The contribution discusses some consequences arising from this interplay.

Matthias Ruffert: Discussant

Edoardo Chiti: Discussant
This paper examines inclusionary housing in the context of entrenched racial segregation in the United States and the concentration of poverty. Within this context, inclusionary housing is viewed as a method of significant concentration management rather than as a method of systemic change. The paper recommends ways in which to think about affordable housing with a more appropriate accounting of the complexities of race and class integration. This excursion outside of the main thrust of color-blind universalism is but a sham.
Boundaries and spaces are defined by each other – this is certainly true geographically, but it is also true in a more abstract sense. Legal concepts such as “jurisdiction,” “limits,” “gaps,” and “fields” are applied to rules, events, systems, and relationships in the world. The use of such geographical language seems to be a central part of legal and political analysis. It is also easy to mix geographical and abstract territorialities, and it is certainly true geographically, but it is also true in an epistemological sense where “boundaries” and “limits” are applied to rules, events, systems, and abstract “cores” and “peripheries.”

The reason for this ambiguity is that the law deals mostly with abstract concepts that cannot be unambiguously located, such as events, actions, or a legal void. Taking issue with this presentation, I claim that the “fall” in fact never happened. There is in fact little difference between “strict” territorial jurisdiction; the doctrine of continuing acts (according to which an act is allocated to a territorial jurisdiction as long as its intended effects last) and effects jurisdiction (which is also known as passive territoriality). The three doctrines use the same methods, and are easy to convert into one another, calling into question the entire territorial/extensive divide. The reason for this is that the law deals mostly with abstract concepts that cannot be unambiguously located, such as events, actions, or a legal void. Taking this presentation, I will demonstrate that OTc derivative markets are, in fact, “filled to the brim with legal expertise, scrutiny, and public regulation.”

The space in which global governance operates is transnational. Global Administrative Law (GAL), as a field of study, has become a much-debated topic in international law. This issue is arguably a key component of the European Union, which, unlike a state, does not itself possess territory. In a number of cases the Court of Justice of the European Union has been called upon to determine the “legal space” of the Union and to set out the legal limits that international law imposes on the EU’s regulatory power. In the post-financial crisis, regulations are being developed differently in relation to a regional organization? How have these questions been informed by principles of jurisdiction? This paper discusses how the CJEU has approached the question of EU’s legal space. It argues that EU judicial practice has developed in response to the climate change and the Internet have challenged traditional territorial jurisdiction; the doctrine of continuing acts (according to which an illegal action lasts as long as its intended effects last) and effects jurisdiction (which is also known as passive territoriality). The three doctrines use the same methods, and are easy to convert into one another, calling into question the entire territorial/extensive divide. Today, we have effects jurisdiction follow a “rise and fall” narrative. Transparency is certainly true geographically, but it is also true in an epistemological sense where “boundaries” and “limits,” “fields,” and “cores” and “peripheries” are applied to rules, events, systems, and relationships in the world. The use of such geographical language seems to be a central part of legal and political analysis. It is also easy to mix geographical and abstract territorialities, resulting in regimes that expand their power or restrict their responsibility beyond the “limits” that they themselves profess. In this way, the space (legitimating function) is certainly true geographically, but it is also true in a more abstract sense. Legal concepts such as “jurisdiction,” “limits,” “gaps,” and “fields” are applied to rules, events, systems, and relationships in the world. The use of such geographical language seems to be a central part of legal and political analysis. It is also easy to mix geographical and abstract territorialities, resulting in regimes that expand their power or restrict their responsibility beyond the “limits” that they themselves profess. Our proposed panel investigates the relationship and interaction between abstract and geographical spaces in four different settings.

**Participants**

- Péter Daniel Szigeti
- Anna Elizabeth Chadwick
- Jed Odermatt
- Marian Adela Carrá

**Room**

UL 210
The panel will discuss the most relevant methodological challenges in comparative legal studies from the public lawyer’s perspective. The panelists will discuss, among other issues, the relationship between comparative law and legal nationalism; the relevance of legal families’ theories; the impact of macro-regional integration and globalization; the usefulness of a separation between constitutional law and administrative law; the different role played by legislators, bureaucrats, judges, and private actors; the importance of global indicators and of competition between governments; the perspective of a methodological renewal and its main recipes.

Participants
Marta Cartabia
Christoph Möllers
Giulio Napolitano
Guy Seidman
Javier Barnes
Name of Chair
Sabino Cassese
Room
UL9 213

Marta Cartabia: Legal comparison in fundamental rights

Christoph Möllers: Legal comparison in constitutional law

There is no methodological state of the art in comparative constitutional law (CCL). The reason for that is that legal research even if it claims to be “critical” tries to participate in the political authority of a legal order. Comparative constitutionalism does not have this kind of authority: Neither does it belong to a political community nor can it claim the rational authority of the Roman law tradition that supports private law. Yet, comparative constitutional studies yearn for such an authority. This explains the persistence of stale (and not really comparative) debates like that on the relevance of foreign materials in domestic law. But CCL should get rid of such claims. It should become radically conceptual, developing conceptual schemes as a basis of comparison that are independent from a given legal order. And it should become radically empirical, pursuing the development of legal concepts with quantitative means. Only by working conceptually CCL can define a disciplinary identity beyond the political sciences.

Giulio Napolitano: The future of comparative administrative law: towards a plurality of methods?

Legal comparison in the field of administrative law is traditionally less developed than in other sectors. In my contribution to the panel, I will try to show why, at the beginning of the 21st century, the landscape is completely different from the past, revealing the need for a much deeper and sophisticated comparison in administrative law, both for private (through strategic evaluation of the ease of doing business in different countries) and public (by competing governments in the global arena) use. In addition, I will argue that administrative law is particularly fitted to experience the application and integration of new methods based on critical comparative law, comparative law and economics, and numerical comparative law. The approach based on national positivism, on the contrary, must be overcome, because the idea of separate legal orders is false. All jurisdictions face similar problems and challenges (e.g. delegation and accountability, procedural fairness, access to justice). In so doing, they must comply with international regulations and standards and with common constitutional traditions.

Guy Seidman: Legal comparison in public law

Javier Barnes: Legal comparison in administrative law

9 REALM OF BORDERS OR PROMISED LAND FOR GLOBAL LAWYERS? QUESTIONS AND ISSUES OF COMPARATIVE LEGAL STUDIES IN PUBLIC LAW
Michael Antonisoudis: Conditionality and the Transformation of the European Constitution

Conditionality has become sort of leitmotiv of the different instruments adopted by Member states. However, much on this novel instrument remains unclear and highly contested. Our panel aims to shed light on different challenges posed by the democratic legitimacy of conditionalities. 

With reference to the CJEU response to conditionality. in particular, conditionality is still driven only by economic considerations. Moreover, the making of financial assistance is often, these conditions were connected to controversial social reforms of pension systems or the labor market, sparking political tensions. Although the individual's rights are protected by the CJEU, the validity of the assistance mechanisms and on the policy coercion function. The democratic principle offers a meaningful principle's core. Second, the mandate of the ECB ought to be complement to assess the conditionalities' legitimacy. Legal scholarship has limited its analysis to fundamental rights. However, the CJEU is able to assess the conditionalities' legitimacy when preparing macroeconomic adjustment programs. It can enhance the procedural basis for, the European project itself.

Legitimacy of Financial Conditionalities

The rise of spending conditionality has become a leitmotiv of the different instruments adopted by Member states. However, the legitimacy and legality of such mechanisms are essential to make them function. Despite its widely varying applications, spending conditionality is defined by a well-articulated scope. Functional use. While many concern that it is a co-creative aspect of the euro area, conditionality has become sort of leitmotiv of the different instruments adopted by Member states. However, much on this novel instrument remains unclear and highly contested. Our panel aims to shed light on different challenges posed by the democratic legitimacy of conditionalities.
Domestic courts are increasingly faced with the need to apply and interpret international law. This has been greeted by many as progress for the international rule of law, as domestic courts might step in to fill the lacunae of an underdeveloped institutional structure at the international level. At the same time, this development risks to undermine the unity and uniformity of international law. This is especially so when domestic courts interpret rules of international law in a divergent manner. The panel discussion departs from the findings of a recently published volume on “The Interpretation of International Law by Domestic Courts” (OUP 2016). Judge Andreas Paulus will discuss the findings of the book in the light of the practice of the German Federal Constitutional Court.

Helmut Philipp Aust: The Interpretation of International Law by Domestic Courts: Introduction to the Volume and General Themes

Andreas Paulus: Interpreting International Law in Domestic Courts – The Perspective of the German Federal Constitutional Court

Georg Nolte: Interpretation of International Law by Domestic Courts and the International Rule of Law: The Way Forward
Subsidiarity has become increasingly prominent in the theory and practice of global governance and international law. It responds to a need for a principled distribution of tasks between different layers of governance (edited by Markus Jachtenfuchs and Steffen Zarnikow), but as range of...
Among Europe’s many crises, the “rule of law” crisis is perhaps the most destructive of Europe’s common values. Some Member States that met the Copenhagen criteria to enter the EU would now not be admitted to the EU under those same criteria. What can European institutions do to renew commitments on the part of the Member States to these values? Across two panels, we will consider the alternatives. Panel I examines the competencies and willingness of EU institutions to deal with these issues.

Participants
Mattias Kumm
Kim Lane Scheppele
Rui Tavares Lanceiro
Gábor Halmai

Name of Chair
Kim Lane Scheppele
Room BE2 E44/46

Mattias Kumm: The structure of constitutional decay in Europe and a hypothesis about its causes

 Constitutional decay in Europe takes many forms and has many causes. The paper provides an account of constitutional decay in the context of the financial and refugee crisis and relates it to the rise of right-wing populism and the decay of constitutionalism in countries where right-wing populist parties have come to power.

Kim Lane Scheppele: Mutual Respect

The EU was built on the foundation of mutual respect among Member States, as elaborated in Article 4(3) TEU. In fact, the entire treaty structure stands as tribute to the principle that like-minded states, equally committed to democracy, the rule of law, human rights and a common market, can govern together in a structure in which the Member States themselves are the key enforcers of their mutual agreements. But what can be done if a Member State is no longer sincere in cooperating to carry out the European project? This paper proposes using Article 4(3) TEU as the basis for the European Commission a) to establish a review mechanism through which the sincere cooperation of Member States can be assessed and b) to bring systemic infringement actions against Member States that fail this evaluation mechanism.

Rui Tavares Lanceiro: Writing the “Tavares Report”

In 2013, the European Parliament passed a sweeping resolution on the situation in Hungary, documenting a long series of worrisome practices and arguing that there was a real risk of a breach of the values of Article 2 TEU that guarantee that Member States honor democracy, the rule of law and human rights. As the rapporteur of the report, I worked with my colleagues in the European Parliament to draft a resolution that would generate multi-party support across the political spectrum and would outline a series of measures that could encourage Hungary to recommit itself to EU values. In this paper, I will explain the process of writing the Tavares Report and will assess the success of the mechanisms that the report developed to bring backsliding member states back into line with European values.

Gábor Halmai: The Core of Rule of Law in the Member States of the EU

The paper aims to detect and define the core of rule of law requirements defined in Article 2 TEU for the Member States of the European Union, using Poland and Hungary as key examples because they represent a special threat to core European values. The paper explores which elements of rule of law are essential in order to determine that a country is still a functioning constitutional democracy and considers the use of Article 7 TEU and the precursor rule of Law framework of the European Commission as potential solutions to the problem of backsliding EU Member States.
International trade agreements have come under fire for their impact on democracy and human rights. They appear to circumvent domestic democratic processes and human rights standards by transferring regulatory power to the international level or by allowing tribunals to second-guess domestic decisions. Also, they might have distributive effects within participating states that favor the rich over the poor. However, non-participation in trade agreements does not necessarily seem to be the better option for many states. It might threaten their economic position and ultimately force them to adopt standards created elsewhere. This panel explores the challenges and discusses potential solutions.

Participants
Robert Howse
Hélène Ruiz-Fabri
Alberto Alemanno
Matthias Goldmann

Name of Chair
Ardevan Yaghoubi

Room
BE2 140/142

Robert Howse: The Democratic Legitimacy of ISDS
This paper will explore the impact of different models of Investor-State Dispute Settlement on domestic democracy. While an inter-state tribunal might enjoy greater direct legitimacy, it needs to be seen whether it would not open the gate for greater judicial autonomy that would be detached from any effective international legislature.

Hélène Ruiz-Fabri: ISDS and the Problem of Forum Shopping
This paper will explore the potential for forum shopping created by ISDS in trade agreements. Investors might have a choice between domestic and international means of judicial review. This constitutes a risk to the legitimacy of such agreements as well as to the systemic coherence of trade law.

Alberto Alemanno: Regulatory Cooperation: Effectiveness and Legitimacy
This paper discusses the legitimacy of TTIP’s institutional design, by focusing in particular on the operation of the horizontal regulatory cooperation chapter and its sectoral annexes.

Matthias Goldmann: Human Rights and TTIP
While it is well understood in theory that increased trade is likely to generate aggregate welfare benefits, in practice, the allocation of these benefits has been highly unequal. In developed economies, international trade agreements usually benefit companies and tend to eliminate the jobs of low-skilled workers. They might therefore endanger the latter’s enjoyment of economic and social rights, which heavily depends on the income and social benefits of work. As a matter of human rights law, states should therefore enter into international trade agreements only if they have a strategy against the negative effects. One avenue is taxation. The paper discusses whether the international tax policies advocated by the OECD are fit for the purpose.
This panel will explore the processes and implications of constitutional change. First, Professor Dixon will examine the significance of formal constitutional amendment as a means by which legislatures can override court decisions. Second, Professor Albert will explain and evaluate how constitutional actors have informally amended formal amendment rules in constitutional democracies. Third, Professor Roznai will further develop the distinction that is commonly made between the constitution-making power and the constitution-amending power. And fourth, Professor Benvindo will examine how courts, congresses and individual actors influence the timing of constitutional change. Exploring these issues may help us to better understand how formal amendment and how constitutional amendments can be evaluated as a normative matter.

Participants
Rosalind Dixon
Yaniv Roznai
Richard Albert
Juliano Zaiden Benvindo

Name of Chair
Rosalind Dixon

Room
BE2 144

Rosalind Dixon: Responsive Judicial Review

Debates on the legitimacy of judicial review now recognize an important distinction between models of review that are “weak” and “strong” in nature – i.e. constitutional systems in which court decisions are, or are not, subject to formal legislative override. This distinction, however, often overlooks the importance of formal powers of legislative override as a means by which legislatures can override court decisions. At the same time, the article suggests, neither formal powers of legislative override nor amendment will ultimately be sufficient to create judicial review that is truly weak-form in nature. For this to occur, courts themselves must adopt an approach to judicial review that is democratically ‘responsive’ in nature. The article explores this idea of responsive judicial review, and what it means for the relationship between judicial review and background political conditions in a country.

Yaniv Roznai: The Spectrum of Amendment Powers

The theory of unamendability identifies a simple yet fundamental distinction between primary (constitution-making) power and secondary (constitution-amending) power. The latter is limited by unamendability and the former – perceived as the people’s democratic constitution-making power – is unlimited by unamendability. This article develops the distinction by supplementing it with a further one, between various shades of secondary constituent powers along a “spectrum”; a theoretical construct that links constitutional amendment procedures and limitations which ought to be imposed upon constitutional amendment powers. According to this spectrum theory, constitutional systems are polymorphic: the more similar the democratic characteristics of the amendment powers are to those of the primary constituent power, the less it should be bound by limitations; and vice versa: the closer it is to a regular legislative power, the more it should be fully bound by limitations. This examination is an important step towards a theory of unamendability.

Richard Albert: The Informal Amendment of Formal Amendment Rules

In constitutional democracies, the entrenchment of formal amendment rules is intended to reflect the necessary and sufficient conditions to alter the constitutional text. Yet in many constitutional democracies, formal amendment rules have been informally amended by judicial interpretation, legislative and executive action, as well as by constitutional convention to require constitutional actors to satisfy conditions altogether different from what the text of the formal amendment rules expressly requires. In this paper, I explain and evaluate how constitutional actors have informally amended formal amendment rules in constitutional democracies.


This paper examines how Congressmen and Judges influence the pace of the political agenda and the timing of the constitutional change. It delves into some individual strategies such as: a) a Justice asking for more time to study further a case, adjourning the court’s final decision while congress reacts by passing a new legislation which will directly impair that ongoing decision b) Congressmen not deliberating in the expectation that the Supreme Court takes the first step in a matter of strong political disagreement c) a Justice granting an injunction in order to affect the pace of the legislative process, among others. By focusing on systemic and strategic behavioral analyses, this paper will comparatively delve into examples as such in the United States and Brazil. It aims to provide a relevant discussion of how institutional design can nudge, and sometimes fail to foster behaviors that may strengthen constitutionalism at large.
SATURDAY
18 JUNE 2016
9:00 – 10:45 am

PANELS
SESSION II
The Geographies of Gated Communities: Israeli Mixed Cities as a Test Case

This paper explores how the distinct spatial aspects of gated communities in Israeli mixed cities reveal a complex understanding of the socio-legal readings of gated communities in Israel, the presentation explores some of the articulations and functions of mixed cities and the relations of power between the majority and the minority. Accordingly, socio-legal reading of gated communities reveals a complex understanding of the phenomenon that draws heavily on the sub-discipline of spatial geography.

Karin Loewy: The Sykes Picot Agreement: Drawing Lines of Development in a New and Elitist Communities

This presentation explores the physical seclusion of urban spaces in Israel and the phenomenon as-literature as “Gated Communities”. This phenomena highlights and intensifies the already existing segregation between groups because it creates exclusivist, elitist communities that exclude non-members and delimit the inside of these spaces. Based on national inventories of gated communities as conceptualized in legal procedures, it focuses on what is defined as “mixed cities”; cities in which Arab and Jewish residents reside side by side in the same urban space and illustrates the socio-economic and political traits, and the legal strata-gerarchies, political geographies – impose unique regulatory needs upon the state and how the state responds to these needs.

Karin Loewy: The Sykes Picot Agreement: Drawing Lines of Development in a New and Elitist Communities: Israeli Mixed Cities as a Test Case

This paper explores how the distinct spatial aspects of gated communities in Israeli mixed cities reveal a complex understanding of the socio-legal readings of gated communities in Israel, the presentation explores some of the articulations and functions of mixed cities and the relations of power between the majority and the minority. Accordingly, socio-legal reading of gated communities reveals a complex understanding of the phenomenon that draws heavily on the sub-discipline of spatial geography.

Karin Loewy: The Sykes Picot Agreement: Drawing Lines of Development in a New and Elitist Communities: Israeli Mixed Cities as a Test Case

This paper explores how the distinct spatial aspects of gated communities in Israeli mixed cities reveal a complex understanding of the socio-legal readings of gated communities in Israel, the presentation explores some of the articulations and functions of mixed cities and the relations of power between the majority and the minority. Accordingly, socio-legal reading of gated communities reveals a complex understanding of the phenomenon that draws heavily on the sub-discipline of spatial geography.
Participants
Simon Hedlin
Elenaervas and Tania Pagotto
Shazia Choudhry
Neus Torbisco-Casals
Name of Chair
Simon Hedlin
Room
ULS 2103

Simon Hedlin: The Relationship between Prosti-
tution Laws and Sex Trafficking: Theory and Evidence on Scale, Substitution, and Replace-
ment Effects
This study investigates the relationship between prostitution laws and the prevalence of sex trafficking across European countries. Two main contributions are reported. First, it creates a simple ordinal measure of prostitution laws. The measure is called the Prostitution Law index and is based on a very rudimentary framework that analyzes forms of scale, substitution, and replace-
ment effects in the market for prostitution. The index ranks prostitution laws across countries on a four-point scale (from 1 to 4) based on expected effectiveness (from least to most effective) in terms of reducing the preva-
ence of sex trafficking. Second, the study uses a new dataset provided by the European Union to study the relationship between Prostitution Law Index scores and prevalence of sex trafficking. Cross-country analyses suggest that there generally appears to be a negative relationship between a country’s Prostitution Law index score and the prevalence of trafficking, in line with theory.

Elenaervas and Tania Pagotto: The Muslim veil: should we tolerate, ignore or ban this religious garment?
The room the society should leave to religious man-
ifestations is a constant endurance test for European States. It raises the peak when dealing with the wear-
ing of religious garments. In Italy the very concise but neat legal framework has been essential to solve con-
troversies: Muslim women enjoy the right to wear the veil in public unless their face is not identifiable. While other European States shape the religious symbols’ regulation providing specific grounds for limitation (i.e. public security, or health), the general French ban for Muslim women is problematic. To this extent, the recent developments of the ECHR jurisprudence seem to accept broader justifications, such as the argument of “living together” or the principle of laicité. Our aim is to investigate the approach of the ECHR towards this problem, and critically analyze whether the court relies upon and verify whether it has come closer to a new conception of neutrality or laicité.

Shazia Choudhry: Towards a Substantive/Trans-
formative Conceptualisation of Violence against Women – A Critical Frame Analysis of Council of Europe Discourse
Much academic attention has been devoted to violence against women (VAW) in Europe and research has focused on the mounting policy reform initiatives and capacity building strategies in the EU. Council of Europe initiatives in this area have, surprisingly, by contrast, remained under-researched. This pa-
per seeks to fill the gap in the literature by engaging in an examination of the ways in which VAW is framed in the current legal and policy discourse. The Council of Europe has incorporated and framed VAW within various legal and policy initiatives. It will employ a methodology of critical frame analysis as theorized by the literature on social movements, and anti-essentialist critiques within feminist literature to ask: how VAW is problematized, what solutions are offered, where they are located, to what extent they are gendered, and who has a voice in these policy and legal texts.

Neus Torbisco-Casals: Women and Minorities Underrepresentation in the Judiciary: An Argument for Diversity on the Bench
The underrepresentation of women and ethnic mi-
norities in judicial office across Western democracies is increasingly depicted as a failure. Some countries have started to address this challenge and to devise measures to promote diversity in the judiciary. This research has focused on the mounting policy reform initiatives and capacity building strategies in the EU. Council of Europe initiatives in this area have, surprisingly, by contrast, remained under-researched. This pa-
per seeks to fill the gap in the literature by engaging in an examination of the ways in which VAW is framed in the current legal and policy discourse. The Council of Europe has incorporated and framed VAW within various legal and policy initiatives. It will employ a methodology of critical frame analysis as theorized by the literature on social movements, and anti-essentialist critiques within feminist literature to ask: how VAW is problematized, what solutions are offered, where they are located, to what extent they are gendered, and who has a voice in these policy and legal texts.

CONCURRING PANELS
Human dignity has evolved as a basic value in modern constitutionalism. Granting asylum in case of political persecution means to protect human dignity. The right of asylum is closely connected with the constitutional obligation of a State to respect and to protect this value. This obligation significantly impacts on the substance, the exercise and the judicial enforceability of the right of asylum. The constitutional orders of three countries will be taken into particular consideration by the panelists: Turkey, Italy and Czech Republic, all of them dealing with the intense refugee situation. It seems important to analyze and evaluate in a comparative view their approaches on asylum law. The German constitutional situation shall be included in the debate.

Participants Selin Esen Arnowie Luca Mezzetti Jiří Zemánek
Name of Chair Rainer Arnold
Room U6 2249a

Selin Esen Arnowie: Constitutional Rights of Refugees in Turkey
The various aspects of human dignity imply the existence of certain Rights: these include the physical and psychological integrity of an individual and the absence of repression, torture and ill-treatment, education, health, and work. Refugees are in a vulnerable position when the concept of human dignity is considered. This raises the question of refugees’ constitutional rights. Turkey is one of the countries that are facing with a severe refugee crisis. Indeed, Turkey alone hosts a far greater number of refugees than all other Council of Europe signatories combined. Accordingly, the constitutional rights of refugees in Turkey are a prescient matter. I explore the rights of refugees in Turkey within a constitutional law perspective. I discuss the rights of refugees in the 1982 Constitution, present and interpret the Constitutional Court’s relevant rulings and consider their conformity with the European human rights standards.

Luca Mezzetti: The Interconnection of Human Dignity and Asylum – The Perspective of Italian Constitutional Law
The right to asylum is one of the fundamental human rights recognized in the Italian Constitution. The constitutional provisions on the right of asylum were not implemented lacking even an organic law that determines the conditions of exercise even if case law of the Supreme Court has established the possibility of recognizing the right of asylum to foreigners. The recognition of the refugee is however entered in our system with the accession to the 1951 Geneva Convention which defines refugee status and to the 1990 Dublin Convention determining the state responsible for examining an asylum application lodged in one of the States of the European Community. The strong impact of migration flows in Italy has renewed the legal and jurisprudential debate on asylum legislation and actions that the Italian legal system should take in order to ensure the dignity of asylum seekers.

Jiří Zemánek: Constitutional remedies in asylum matters
Constitutional complaints of asylum seekers alleging violations of the right to a fair justice rejecting international protection claim a violation of the right to a fair trial guaranteed by the European Convention on the Protection of Human Rights and Fundamental Freedoms (Article 6), which enjoys the constitutional status in the Czech Republic. The consolidated line of case law of the Czech Constitutional Court would be challenged, when asylum seekers will refer to their rights under the Charter of Fundamental Rights of the European Union (Article 47), granting an equivalent protection. However, the Czech Constitutional Court does not enjoy a similar status, corresponding to the Convention’s one (yet). The judicial review of decisions of the Czech administrative authorities on applications of asylum-seekers in EU law-based matters by ordinary courts is to be discussed.
The Israeli public is sharply divided over a wide range of public policy issues. It is also sharply divided on matters of definition over the autonomous nature of the courts and the process and criteria used to select judges. These divisions pertain to the authority and the substantive content of their decisions – the proper structure and political will of their polity.

Appointment Process in Israel

The Israeli public is sharply divided over a wide range of policy issues whether to allow women to serve in the military, and whether the military should be abolished altogether. It is also divided on the role and influence of the public sector in the economy, the composition of government, or the outsourcing of government services to private entities. Reverse privatization, or “marketized bureaucracy” is central in deciding these public policy issues, giving it a unique vibrancy, which this panel aims to explore.

Concurring Panels

C0ncUrrinG P anels 37

Participants

Guy Seidman: Is Professionalism the last refuge of a scoundrel?

Adan Shinar: Judges and Sausages: The Judicial Power in Israel's Supreme Court

Assaf Porat and Karin Diamant: Parity and Political Parity: Women in the Israeli Public Sector

Meital Pinto: Are Political Appointments Good for Gender Parity in the Religious Sphere?

Shuki Segev: What are the Boundaries?

Participants

Guy Seidman: Is Professionalism the last refuge of a scoundrel?

Adan Shinar: The Israeli public is sharply divided over a wide range of policy issues whether to allow women to serve in the military, and whether the military should be abolished altogether. It is also divided on the role and influence of the public sector in the economy, the composition of government, or the outsourcing of government services to private entities. Reverse privatization, or “marketized bureaucracy” is central in deciding these public policy issues, giving it a unique vibrancy, which this panel aims to explore.

Concurring Panels

C0ncUrrinG P anels 37

Participants

Guy Seidman: Is Professionalism the last refuge of a scoundrel?

Adan Shinar: Judges and Sausages: The Judicial Power in Israel's Supreme Court

Assaf Porat and Karin Diamant: Parity and Political Parity: Women in the Israeli Public Sector

Meital Pinto: Are Political Appointments Good for Gender Parity in the Religious Sphere?

Shuki Segev: What are the Boundaries?

Participants

Guy Seidman: Is Professionalism the last refuge of a scoundrel?

Adan Shinar: Judges and Sausages: The Judicial Power in Israel's Supreme Court

Assaf Porat and Karin Diamant: Parity and Political Parity: Women in the Israeli Public Sector

Meital Pinto: Are Political Appointments Good for Gender Parity in the Religious Sphere?

Shuki Segev: What are the Boundaries?
The Panel debates the challenges faced by the Polish Constitutional Tribunal (PcT) from the moment it was established to the beginning of the present day, including the constitutional crisis in Poland. It analyses the evolution of the Polish legal system, in particular articulating the limits to integration on the Polish legal system, and the internal pressures of political control. The paper also addresses the constitutional court, which engages in the practice of constitutional review, as well as the institutional design features of the constitutional complaint. The constitutional crisis in Poland, which has led to the European Commission's commission requiring respect for and publication of the Polish Constitution, in light of the globaliza- tion of international human rights law, in particular as a kind of "foreign invention" or "arbitrarily enforced concept". This paper presents the "European" jurisprudence of the Polish Constitutional Tribunal (PCT) from the moment it was established to the beginning of the present day, including the constitutional crisis in Poland. It analyses the evolution of the Polish legal system, in particular articulating the limits to integration on the Polish legal system, and the internal pressures of political control. The paper also addresses the constitutional court, which engages in the practice of constitutional review, as well as the institutional design features of the constitutional complaint.

The experience of transitional democracies reflects a recurring tendency to consider international human rights law a legitimate, indispensable part of domestic legal systems. In this paper I discuss the issue of how the PCT invokes, understands, and implements international human rights law in particular, as a kind of "foreign invention" or "arbitrarily enforced concept". I argue that the Polish constitutional tribunal (PCT) enjoys a proper understanding of the logic determining the standards of international human rights law, and the internal pressures of political control. The paper also addresses the constitutional court, which engages in the practice of constitutional review, as well as the institutional design features of the constitutional complaint.

In this paper I argue that the Polish constitutional tribunal (PCT) enjoys a proper understanding of the logic determining the standards of international human rights law, and the internal pressures of political control. The paper also addresses the constitutional court, which engages in the practice of constitutional review, as well as the institutional design features of the constitutional complaint.

This paper presents the "European" jurisprudence of the Polish Constitutional Tribunal (PCT) from the moment it was established to the beginning of the present day, including the constitutional crisis in Poland. It analyses the evolution of the Polish legal system, in particular articulating the limits to integration on the Polish legal system, and the internal pressures of political control. The paper also addresses the constitutional court, which engages in the practice of constitutional review, as well as the institutional design features of the constitutional complaint.
The panel deals with the role of constitutional courts (CC) in the implementation of the ECtHR’s decisions and examines the extent to which these courts have been influenced by the recent case law. The panel is divided into two parts: a descriptive and a comparative part. The descriptive part focuses on the position of constitutional courts in the implementation of the ECtHR’s decisions, while the comparative part examines the implementation of the ECtHR’s decisions in different countries.

The impact of the ECtHR on national policies is significant, and the CCs have a crucial role in this process. The CCs are responsible for ensuring the respect for human rights at the domestic level, and their decisions can have a significant impact on the implementation of the ECtHR’s judgments. However, the CCs also have to balance the need for national autonomy and the requirement to comply with the ECtHR’s decisions.

The panel will discuss the role of CCs in the implementation of the ECtHR’s decisions, focusing on the following issues:

- The impact of ECtHR’s judgments on national policies
- The role of CCs in the implementation of ECtHR’s decisions
- The balance between national autonomy and the need to comply with ECtHR’s judgments
- The role of CCs in the enforcement of ECtHR’s decisions
- The challenges faced by CCs in the implementation of ECtHR’s decisions

The panel will also discuss the role of CCs in the implementation of the ECtHR’s decisions in different countries. The panelists will present comparative analyses of the implementation of the ECtHR’s decisions in different countries, focusing on the following aspects:

- The role of CCs in the implementation of the ECtHR’s decisions in different countries
- The challenges faced by CCs in the implementation of the ECtHR’s decisions in different countries
- The role of CCs in the enforcement of ECtHR’s decisions in different countries
- The significance of the implementation of the ECtHR’s decisions for the protection of human rights

The panel will provide insights into the role of CCs in the implementation of the ECtHR’s decisions, highlighting the importance of these courts in ensuring the respect for human rights at the domestic level.
Regional integration is constantly reshaping and recreating the boundaries around us and thereby also existing hierarchies. The redrawing of boundaries between insiders and outsiders, the center and the periphery, and the national and the regional have all contributed to the rearrangement of existing and creation of new hierarchies. This panel examines, questions, and sheds new light upon certain of the hierarchical boundaries that have been widely ignored in the literature.

Participants

Damjan Kukovec: Borders, Otherness and Hierarchical Construction of Reality

Borders, border measures and measures with equivalent effect are an imperfect signifier for the hierarchical reality of the EU and of the world in general. This point is missed by integration theory, by the discussion about Brexit as well as by daily legal and economic thinking.

Otherness and exclusion of the other are constantly and ineradicably reproduced in a constant hierarchical struggle. In order to address exclusion, what needs to be questioned, contested and resisted is not one or the other order, theory, concept or worldview, but the (hierarchical) reality that needs constant (re)construction. Lawyers should articulate targeted resistance to particular hierarchies and injuries using antitrust and trade law as updated tools. I describe a privilege to harm, enjoyed by companies from the structural center of Europe against firms on the periphery. This analysis provides one explanation for the increasing wealth and power in the center of the European Union.

Marija Bartl: Discussant

Martijn van den Brink: EU Citizenship and Fundamental Rights: Empirical, Normative and Conceptual Problems

An idea, which gained traction in recent years, is that fundamental rights protection within the EU should be linked to EU citizenship. EU citizenship, however, does not provide us with the right tool; it is problematic, empirically, theoretically, and conceptually speaking to link EU citizenship to fundamental rights.

Empirically speaking, the notion that EU citizenship implies fundamental rights goes against the empirically discernible trends in liberal democracies to disentangle citizenship and fundamental rights. Secondly, this disentanglement is also normatively desirable. Fundamental rights’ presumption of universality is diametrically opposed to the bounded and exclusionary nature of citizenship. Finally, the idea also needs to be questioned on conceptual grounds, for it rests upon a misconceptualisation of EU citizenship. The latter conceptualisation disrespects legitimate diversity within the EU and undermines local self-determination.

Elaine Fahey: Boundaries in the EU Constitutional Order: The Benefits of the Internal/External Nexus

This paper examines understandings of boundaries in the EU Constitutional Order and its internal/external nexus. It considers ‘outwards-in’ effects of recent EU external relations negotiations upon the EU constitutional order. It argues that the external increasingly democratises day to day practice more so than internal practices.

Alina Tryfonidou: The Federal Implications of the Transformation of the Market Freedoms into Sources of Fundamental Rights for the Union Citizen

Since the end of the 1960s the market freedoms have begun to be viewed not merely as instrumental freedoms aiming to contribute to the construction of the internal market but also as sources of fundamental (economic) rights for anyone falling within their (broadly delimited) personal scope. The aim of this paper is to examine what the federal implications of this are. In particular, the Court’s approach in a number of areas will be examined to illustrate how the vertical division of powers between the EU and its Member States has been affected as a result of this transformation in the nature of the market freedoms. The focus will be on demonstrating the dilemmas that the Court is facing when attempting to reconcile the nature of these provisions as both fundamental and economic rights for the Union citizen, with the need to ensure that the limits placed on the EU’s power to intervene with the exercise of Member State competence are respected.
Emerging from the liberal tradition, human rights law has been crafted to reflect an individualistic focus. Over the years, the increasing number of examples of disadvantaged social groups and minorities brought about the recognition of the importance of human rights in modern legal practice. These changes include a re-interpretation of what constitutes “discrimination” and an increased appreciation of the judgment of minority rights. Despite these changes, the individualistic focus still prevails, and doubts about the compatibility of the existing framework continue to occupy scholarly attention. This panel will explore new perspectives that might contribute to accommodating different examples of how a collective dimension has been crafted to reflect an individualistic focus. For example, the notion of disparity, as the problem of the gap between black and white employment rates. This definition then transformed policy focus from the initial focus of equality of opportunity to that of equality of results. The paper illuminates the social conditioning that led to this development.


Since the end of the cold war, ethnonational conflicts have been acknowledged as one of the dominant causes of political violence. Many such conflicts have resulted from a lack of appreciation of the importance of incorporating new constitutional arrangements. Despite the increasing recognition of the importance of the International Human Rights Law (IHR) to such peace processes, the current understanding of the right could be further enriched through a broader interpretation and application of the right to self-determination, encompassing its adequate treatment of the group dimension making available to all individuals and collectives the right to development as a common-good lead to defining statistical discrimination, through the notion of disparate impact, as the problem of the gap between black and white employment rates. This definition then transformed policy focus from the initial focus of equality of opportunity to that of equality of results. The paper illuminates the social conditioning that led to this development.

Gabriele D’amico: Human rights integration: Olivetti’s model for blending communitarianism and human rights

This paper will showcase the significance of the Olivetti model for blending communitarianism and human rights. The paper will discuss the concept of “value addition of human rights” that emphasize the importance of addressing the problems that deserve a particular state response. This model provides an example of how to transform a for-profit structure to a non-profit structure at the same time as the transformation of charities’ business models. The paper strives to present the potential of the Olivetti model for understanding the relationship between human rights fragmentation and charities’ business models. This model provides an example of how to transform a for-profit structure to a non-profit structure at the same time as the transformation of charities’ business models. The paper strives to present the potential of the Olivetti model for understanding the relationship between human rights fragmentation and charities’ business models.
The paper intends to grasp the main elements of the constitutional identity of the European Union, one among the smaller states and one among former communist states. Although there is no uniform view on what constitutional identity means or refers to, in this paper we consider it in the sense of a distinctive and insurmountable core which is part of the constitutional law and practice of the European Union, in our view, the foundation of the Constitution of the European Union. Constitutional identity is understood in the light of the principle of mutual trust and sincere cooperation and respective theories. Poland has already expressed views on “borders”, Hungary has never been so explicit in this regard and Croatia has only recently had a chance to establish her standpoint. During the panel discussion, we will have the opportunity to discover where the legal and theoretical “borders” are between our national states and the EU and to what extent we are “Others”, in terms of identity, among other states.

Participant
Izabela Stomrowska-Muchowska:
The 2010/2011 constitutional reform triggered an open discussion on constitutional identity and its relationship with the ECtHR. The 2010/2011 constitutional reform triggered an open discussion on constitutional identity and its relationship with the ECtHR. The aim of the paper is to check how constitutional identity is understood in the light of the principle of mutual trust and sincere cooperation.

Izabela Stomrowska-Muchowska: European Solidarity: The Case of Poland, The Machine of Constitutional Identity

The 2010/2011 constitutional reform triggered an open discussion on constitutional identity and its relationship with the ECtHR. The aim of the paper is to check how constitutional identity is understood in the light of the principle of mutual trust and sincere cooperation.
The authority to define the demos in terms of citizen-vulnerable subjects. The analysis will focus, on the one hand, on the degree of arbitrariness in asylum seekers’ detention processes and, on the other, it will consider whether, by drawing insights from some legal-theoretical perspectives, it maintains that no adequate description of the current developments of refugee law can neglect the distinction, as well as the interplay, between the dimension of principles and the dimension of practices.

Giulio Itzcovich: Principles and practices of exclusion

The developments and improvements concerning the legal treatment of refugees go along with states’ practices aimed at preventing the application of refugee law – the so-called deterrence (or non-entry) policies, which can be considered as a form of institutionalized avoidance of states’ obligations under international and European law. The paper will focus on a specific case study of the legal treatment of migrants and asylum seekers in Italy, one of the countries that was a key transit route for migrants entering Europe from North Africa and the Middle East during 2015/early 2016 in order to understand which rationalized against the backdrop of Sweden’s reputation as “a humanitarian superpower”. It is suggested that Sweden was a case of humanitarian ideals and self-images rather than a case of humanitarian ideals and self-images having been put to the test, and failed.

Guilherme Marques Pedro: Twin Rights: The fly-

R记者采访stern: Defining to detain: an empirical study of judicial decisions regarding migrants’ and asylum seekers’ detention in Italy

The paper looks at the legal mechanisms as well as the institutional discourses through which the legal treatment of refugees go along with states’ practices aimed at preventing the application of refugee law – the so-called deterrence (or non-entry) policies, which can be considered as a form of institutionalized avoidance of states’ obligations under international and European law. The paper will focus on a specific case study of the legal treatment of migrants and asylum seekers in Italy, one of the countries that was a key transit route for migrants entering Europe from North Africa and the Middle East during 2015/early 2016 in order to understand which rationalized against the backdrop of Sweden’s reputation as “a humanitarian superpower”. It is suggested that Sweden was a case of humanitarian ideals and self-images rather than a case of humanitarian ideals and self-images having been put to the test, and failed.

Guilherme Marques Pedro: Twin Rights: The fly-

R记者采访stern: Defining to detain: an empirical study of judicial decisions regarding migrants’ and asylum seekers’ detention in Italy

The paper looks at the legal mechanisms as well as the institutional discourses through which the legal treatment of refugees go along with states’ practices aimed at preventing the application of refugee law – the so-called deterrence (or non-entry) policies, which can be considered as a form of institutionalized avoidance of states’ obligations under international and European law. The paper will focus on a specific case study of the legal treatment of migrants and asylum seekers in Italy, one of the countries that was a key transit route for migrants entering Europe from North Africa and the Middle East during 2015/early 2016 in order to understand which rationalized against the backdrop of Sweden’s reputation as “a humanitarian superpower”. It is suggested that Sweden was a case of humanitarian ideals and self-images rather than a case of humanitarian ideals and self-images having been put to the test, and failed.

Guilherme Marques Pedro: Twin Rights: The fly-

R记者采访stern: Defining to detain: an empirical study of judicial decisions regarding migrants’ and asylum seekers’ detention in Italy

The paper looks at the legal mechanisms as well as the institutional discourses through which the legal treatment of refugees go along with states’ practices aimed at preventing the application of refugee law – the so-called deterrence (or non-entry) policies, which can be considered as a form of institutionalized avoidance of states’ obligations under international and European law. The paper will focus on a specific case study of the legal treatment of migrants and asylum seekers in Italy, one of the countries that was a key transit route for migrants entering Europe from North Africa and the Middle East during 2015/early 2016 in order to understand which rationalized against the backdrop of Sweden’s reputation as “a humanitarian superpower”. It is suggested that Sweden was a case of humanitarian ideals and self-images rather than a case of humanitarian ideals and self-images having been put to the test, and failed.
Eurozone is not only that of the euro, of the banks and "education public law". The paper will give an overview of national higher education systems: the role of European Union in building or demolishing borders. The allocation of competences between the EU and Member States in the field of higher education has been the subject of a major debate about the role played by European and national law in the formation of a European area of democratic and public law. The success of Erasmus has allowed more than 3 million students to spend an exchange period abroad, obtaining full recognition of the credits earned there, but also shaping a new kind of international mentality. The success of Erasmus is intermediate between the meritocratic and the egalitarian system. The Erasmus Programme, started in 1987, has been since the origin of the European community as already clarified in the joint declaration on harmonisation of the higher education establishment and recognition of diplomas and courses of study. It represents certainly a determining factor in the creation of a European area of democratic and public law in major cohesiveness through academics. The aim of harmonization of the higher education system is showed by the subsequent broader Erasmus Plus Programme. It will attempt to shed light on the intersection of foreign qualifications and the work of national courts, the delicate process in Europe, with a special glance to the Italian system.

Participants

Monica Delsignore: The Erasmus Programme

Beatrice Rabai: Universitiés without borders?

Luca Galli: The Internationalization of the Italian University System

Silvia Mirate: The internationalization of the Italian higher education system: the role of the CJEU case law

Antonia Baraggia: Overstepping the boundaries of national higher education systems: the role of CJEU case law

Monica Delsignore: All the borders of Universities: is there a global community?

The aim of harmonization of the higher education system has been realized through freedom of establishment and recognition of credits earned there, but also shaping a new kind of international mentality. The success of Erasmus is intermediate between the meritocratic and the egalitarian system. The Erasmus Programme, started in 1987, has been since the origin of the European community as already clarified in the joint declaration on harmonisation of the higher education establishment and recognition of diplomas and courses of study. It represents certainly a determining factor in the creation of a European area of democratic and public law. The aim of harmonization of the higher education system is showed by the subsequent broader Erasmus Plus Programme. It will attempt to shed light on the intersection of foreign qualifications and the work of national courts, the delicate process in Europe, with a special glance to the Italian system.

Participants

Monica Delsignore: The Erasmus Programme

Beatrice Rabai: Universitiés without borders?

Luca Galli: The Internationalization of the Italian University System

Silvia Mirate: The internationalization of the Italian higher education system: the role of the CJEU case law

Antonia Baraggia: Overstepping the boundaries of national higher education systems: the role of CJEU case law

Monica Delsignore: All the borders of Universities: is there a global community?
Eszter Bodnár: The Role of Public Hearings in the Constitutional Review Procedure

Hungary's constitutional Court was often criticized because the lack of public hearings. In 2013, the Hungarian Parliament prescribed that, in certain cases, constitutional court shall hold oral hearings that should be public but since then no oral hearing has taken place. Oral hearings are not an unusual element of the constitutional review procedure. The US Supreme Court, the German Constitutional Court or the Constitutional Council in France can hold oral hearings, which are usually open to the public. What are the functions of oral hearings? Are they necessary elements of a constitutional court’s procedures? What are the advantages, disadvantages and risks of holding an oral argument? Should oral hearings be public or should they stay closed? Should the openness be? To answer these questions, the paper uses a comparative perspective. Finally, it aims to explain the causes of the Hungarian situation and seek possible solutions for its improvement.

Eduardo Ribeiro Moreira: People’s participation in the constitution amendment process

An almost forgotten point, though it has been studied by nations that do not share the same theoretical referential, is precisely the people’s participation in the process of constitutional reform. The issue is not new, but the experience of different countries that adopt those practices have different outcomes. As in the case of Lisbon for Europe, the Constitutions of Bolivia and Venezuela, Spain or Ireland. This paper examines the different results in each experience. We will examine the protection of all forms of direct political participation that cannot be abolished, which includes referendums, plebiscites, and popular initiatives to propose bills and any other form of manifestation of the people, constitutionally foreseen that cannot be withdrawn from the constitution. One of the solutions lies in popular support with the possibility of a regular constitution reform by people’s initiative.

Cora Sau Wai Chan: Rights, Proportionality and Deferece: An Empirical Study of Judgments in Post-Handover Hong Kong

The paper presents the findings of a study of judicial deference in human rights cases handed down by courts in Hong Kong since its return to Chinese sovereignty. The study uses a combination of qualitative analysis and quantitative methods structured around the two-stage approach to rights adjudication (definition first, limitation second) and a multi-part proportionality test to ascertain the degree of deference that courts exhibit in reasoning about rights. The findings reveal what factors affected the degree of judicial deference and how courts exercised deference. These findings furnish an empirical basis for testing various assumptions about the courts’ behavior. Although the study focuses on Hong Kong, its methods of analysis are (within limits) transposable to other jurisdictions, and its findings will make for interesting comparisons with judicial attitudes in the UK, Canada and ECtHR – jurisdictions that inspired Hong Kong courts’ approaches to deference.

Fabiana Di Porto and Nicoletta Rangone: Proportionality of Regulation: What Role for Cognitive Sciences

The paper addresses the question of what harms many regulators from using cognitive sciences’ insights to improve regulatory policy-making specifically with the critique that it expands the length and costs of regulatory procedures excessively. Quite to the contrary, we contend that cognitive sciences may help to enhance the proportionality of regulation.
The study of collective memory as a determinant of the development of societies, culture, and law has become a central focus of research. This panel aims to address the ideas implicit in the concept and considers collective memory in different arenas of public law – domestic and international. The concept of collective memory starts from the premise that people normally acquire their memories not only through individual means, but also through social processes, including law. Collective memory interacts in diverse ways with public law (both domestic and international). In the papers in the panel explore the roles of legal mechanisms as agents of memory who participate in the construction of collective memory on these various levels, the strategic uses of collective memory by legal institutions both judicial and legislative, and the relationships between local and transnational collective memory, on the local, domestic level and their employment by transnational organizations in the international arena.

Participants
Renana Keydar, Margit Cohn, Moshe Hirsch

Name of Chair
Renana Keydar

Room
DOr24 1.604

Renana Keydar: Plurality of Testimonies and the Formation of Global Collective Memory

The paper analyzes the role of witness testimonies in the formation of collective memory through the work of transitional justice institutions dealing with mass atrocities. The paper examines, for instance, how it is possible to construct a narrative that is under-appreciated aspect of contemporary engagement with testimonies in the acquisition of memory. The paper examines how quantitative and qualitative plurality of voices participating in transitional processes affects the creation of collective narratives about the past. Looking comparatively at the Eichmann trial (1961) and the Truth and Reconciliation Commission (1995), the paper argues that while storytelling served as the main vehicle in understanding the crimes of the past, the strategies for employing and using particularly definitions of narratives and their understanding of the term “strikingly different. Modeling these two approaches for designing collective memory, the paper explores the ethical implications and the legal ramifications of plurality in transitional processes.

Margit Cohn: When and Where Does History Begin? The Treatment Of Asylum Seekers In Israel

In this paper I consider the strategic use of collective memories in the legislative process, and analyze, as a case study, the treatment of the State of Israel of the recent surge of illegal entrants into Israel, mainly from Africa. Against a government policy of adopting a stricter regime, I discuss a series of four legislative amendments, enacted between 2012 and 2016 in response to three Supreme Court decisions that found the first three amendments unconstitutional, and assess lawmakers’ reliance on the State’s collective memory of the Holocaust and other mnemonic narratives of oppression. A quantitative analysis of oral presentations by members of Israel’s parliament in the process of the legislation, compared with some presentations regarding the removal of international sanctions against Iran, offers proof that collective memories are used strategically by policy- and law-makers.

Moshe Hirsch: The Role of International Tribunals in the Construction of Collective Memories

The paper aims to discuss the interactions between collective memories and international tribunals, and particularly the social role of tribunals in the development of international legal memory. The concept of collective memory starts from the premise that people normally acquire their memories not only through individual means, but through social processes. The paper addresses the question whether it is desirable to use international judicial proceedings to form or affect collective memories? The paper explores this question from three major sociological perspectives (structural-functional, symbolic-interactionist, and social conflict approaches). These three theoretical perspectives suggest different answers to the above question, and offer different guidelines concerning the historical narratives to be presented by international tribunals.
The Immigration Act 2014 represents the culmination of the 1945 immigration laws: the massive ingathering of ethnic Germans from the east, large guest worker programs, and non-Member states but also on those shared by Member states themselves. The Old continent is actually considering the opportunity of temporarily suspending the Schengen Agreements. On one side of this period of policy change, it includes measures to serve. The idea beneath these provisions is that people who provide goods and services to migrants, even if private citizens, should be conscripted in immigration controls on behalf of the state. By discussing the issue of these unprecedented measures, this paper examines the breakdown of the categorization of irregular immigrants to ma- turity. The migrants' decision to cross borders, reintroducing controls or even building new walls, in order to allow and encourage workers' mobility within the European Union to create new jobs. In light of the above, this paper will focus on the role that border control policies can assume in seeking a balance between free mobility and security. Could their closure really manage to mystify the actual process of immigration while also distorting the principles it has used since 1945 in lieu of immigration controls on behalf of the state.
By using a Critical Race Theory and intersectional lens, this panel intends to explore and highlight racial otherness and the racialized borders and spaces created inter alia by public law of many European countries. Anti-semitism, anti-black racism, anti-Roma racism, and Islamophobia. These are the terms which describe how various minorities are racialized, discriminated against and othered through legislation, case law and policies throughout Europe. However, (continental) European colorblindness often prevents framing these processes in terms of race. The discussion will focus on the implications of colorblindness and policymaking linked to race-based institutional discrimination and human rights violations in the European context.

Participants
Cengiz Barskanmaz
Eddie Bruce-Jones
Mathias Möschel
Emilia Roig
Name of Chair: Sumi Cho
Room: D024 1.607

Cengiz Barskanmaz: The Holocaust as a legal argument
This paper will discuss the ideological repercussions of the Holocaust in European and German legal thought through an analysis of the PET a v. Germany decision of the European Court of Human Rights and the Wunsiedel decision of the German federal constitutional court. The aim is, on the one hand, to identify how the post-Holocaust context is framing the colorblindness doctrine in the area of human rights and, on the other hand, to examine the prevailing ideology of “German exceptionalism” in German and European case law and legal scholarship. The claim is that instead of advancing an inclusive concept of human rights, the Holocaust argument, due to its historical and moralistic perception, rather reinforces new racial and ethnic boundaries and introduces various standards of protection in human rights discourses.

Eddie Bruce-Jones: The racial haunting of human rights
Europe can be a dangerous place, for certain people and at particular times. Safety, articulated in the language of human rights and the accompanying discourse of security is, for some, swallowed up by the shadow of danger created by those discourses. Racism characterizes this gauntlet in Europe and profoundly foregrounds and sometimes forecloses the assertion of subsequent rights claims. This paper will analyze rights claims in the policing and immigration-enforcement contexts in the UK and Germany where racism has been alleged, advancing a point taken from Frantz Fanon, Etienne Balibar, Ramon Grosfoguel and others—that one can conceive of zones in Europe that are, in the service of legitimizing human rights for some, haunted by perpetual violence to others.

Mathias Möschel: Gens du voyage: Roma and public law in France
This contribution will analyze the ways in which public French law has contributed to othering, racializing and discriminating against travelling/nomadic populations in France. This paper is known for being the colorblind Republican reality par excellence. Two different sets of legal situations will be analyzed: the first concerning the legislation and case law on “internal” French travelling communities also known as gens du voyage. The second one will look at ways Roma people, mainly from Bulgaria and Romania, have been treated both under French administrative practices and at the EU law level. What will come out clearly is that in the context of zone conception, there are uncanny parallels of legalized racialisation taking place.

Emilia Roig: Street harassment in colorblind Europe
This contribution attempts to analyze the racialization of the emerging discourse on street harassment from an intersectional perspective. Following the events that took place in Cologne early this year, where the media reported that hordes of men of North-African appearance massively assaulted women in public, women’s rights were instrumentalized by right-wing and anti-Muslim groups in the anti-immigration discourse. In light of these events, I will discuss the processes of othering around the introduction of laws against street harassment in France and Germany through an intersectional lens. The analysis will focus on the political and legal implications for racial profiling, discrimination and the perpetuation of hegemonic feminist rhetoric on the one hand and the instrumentalization and usurpation of feminist issues by conservative voices on the other. The salience of certain feminist issues over others in mainstream political debates will be at the forefront of the analysis.
In the European Union framework, the circulation of persons is currently exacerbating the problem of otherness. The panel will address this complex and important topic, firstly highlighting two examples of such an exacerbation: the recent developments in the circulation and recognition of legal and civil status within the EU and between EU Member states and third countries, and the main challenges to the free movement of persons arising from the current migration crisis. In these realms, the problem of otherness has amplified the question of European identity: can the building of a common European identity play a pivotal role in this controversial framework? can EU citizenship help to shape this common identity? The panel will also discuss a possible tool to foster European identity, namely educational policies.

Participants
Arriana Vettorel
Marta Legnaioli
Giovanni Zaccaroni
Name of Chair
Antónia Maria Martin Barradas
Room DOr24 1.608

Arriana Vettorel: EU Citizenship and Personal Civil Status: The Challenges Arising from Euro- pean Cross-Border Mobility
One of the aspects most affected by mobility of persons across borders is the recognition, in the destination state, of the civil status acquired in the state of origin. This problem pertains to the movement of adults and children between non-EU and EU countries as well as mobility between different EU Member States. The difficulties in recognition of civil status within the European Union is often considered as an obstacle to the freedom of movement granted by the TFEU and a potential detriment to the integration process, in evident contrast with the symbolic value of EU citizenship. These risks have been clearly stated by the EU commission. To date, however, the efforts to facilitate the movement of EU citizens between EU Member States have led only to a minimal proposal for an EU regulation.

Marta Legnaioli: European Citizenship, Aquis and the Challenges Arising from the Current Migration Crisis
More than 20 years ago, after the fall of the Berlin Wall and the beginning of a new phase of EU integration, the Treaty of Maastricht, following a long discussion, established the “citizenship of the Union” (Article 9(1) TEU). The limits of the Union citizenship and the fact that it only complements and does not replace national citizenship are well known, but nevertheless, the introduction of this concept carried a symbolic value as well as relevant legal consequences for the evolution of the Union competences. Having acknowledged the development of the concept of European Union citizenship, the aim of this study is to analyze and assess the legal framework and policies on EU migration and the new relevance of the role of borders in the Schengen area under the lens of the jurisprudence of the Court of Justice in the field of third-country nationals.

Matteo de Nes: European Identity and Educational Policies
A possible path towards a common European identity could be found in the educational systems, whose strategies seem crucial in facing the main problems related to otherness in a multicultural framework. Education, however, is one of the most challenging fields for Europe’s integration process. The preamble of the TFEU indicates the will of the Member States to “promote the development of the highest possible level of knowledge for their peoples through a wide access to education and through its continuous updating.” Nevertheless, except a few limited actions to support, coordinate or supplement the activities of the Member States, the European Union has no strong competences in this field. This analysis is then aimed at analysing the status quo of current EU strategy in educational policies, tackling the question about whether and how such strategies could contribute to the building of a European identity.

Giovanni Zaccaroni: How long will (European) borders last? Global, supranational and national problems in the management of migrations
The paper aims to address the issue of the border management from a national, supranational and global dimension, taking the EU situation as a case study. The national dimension will examine the shortfall of the Schengen system (with particular reference to the introduction of controls at the internal borders), and try to speculate on the fate of one of the most important European common goods: apparently the EU is not able nor with pure infringement procedure or with article 7 TUE procedure to defend its common interest. The supranational dimension will deal with the role of the current common European asylum system in order to understand if and how it can be sustainable, also in light of ECHR and UNHCR obligations. From a global perspective, will be examined the role of the EU as a key regional player and the need for the implementation of an external policy which goes well beyond the actual pronea/Border Management.

CONCUReNG PANELS 49
Originally designed as a compensation for open borders, stop-and-frisk police powers in national law often aim at “Others” different from the majority group. Hence, they have been much contested on the grounds of national constitutional law and EU law alike. Critics claim that police stops resemble forbidden border controls, that they infringe upon constitutional freedoms and administrative principles, that they result in racial profiling and reinforce presumptions of “otherness.” This contestation activated different constitutional logics, ranging from individual liberties to a more equality-based approach. Emerging principles of EU administrative law readjust the notion of administrative discretion. These legal developments will become more salient in a European Union where internal borders re-emerge and calls for enhanced stop-and-frisk-practices are among the first reactions after the Paris attacks and a number of sexual assaults in Cologne.

Participants

Alexander Tischbirek
Nahed Samour
Michael Riegner
Christopher Unseld
Name of Chair
Christoph Möllers
Room
UL9 E25

Alexander Tischbirek: “Stop-and-Frisk” before German Courts
By giving an overview of recent case law, I will show how courts in Germany have grown skeptical towards “stop-and-frisk”-laws, that allow police authorities to stop, question and search a person without a well-founded suspicion. However, legal arguments concerning an infringement of freedom rights have until lately been much more likely to be heard than complaints regarding discriminatory conduct of public authorities. This empirical observation is at any rate mirrored in German legal doctrine, which – at least in public law – seems less differentiated in matters of equality jurisdiction than in other European constitutional orders.

Nahed Samour and Michael Riegner: The Schengen Codex as Spearhead against Othering?
This contribution addresses stop-and-frisk police practices in their multi-level context of European and international law. German courts have largely avoided addressing racial discrimination and focused on individual fundamental rights at the expense of equality provisions in the German constitution. In this strategy of avoidance, courts have also started to use EU free movement law, namely the Schengen Codex. Yet, we argue that the transition from national governments policing by member states, it brings a forceful transnational logic of non-discrimination to national practices of “Othering.” Non-discrimination has traditionally been ingrained in EU law, and its institutions have developed a significant body of secondary law and case law regarding discrimination on the basis of nationality, race, gender, age and other statuses. This constitutional equality dimension will become more salient as the influx of refugees and migrants into the EU transforms European societies.

Christopher Unseld: The CJEU’s Approach towards Administrative Discretion within the Schengen System
This presentation concentrates on administrative discretion as an emerging principle of EU administration. Generally, the CJEU’s Schengen rules grants national authorities – when they apply EU law – procedural autonomy only limited by the principle of equivalence and effectiveness. But in the last couple of years the CJEU changed its attitude towards some of these procedures and started to differentiate between the discretion of national authorities and the discretion of national courts. I will argue that this represents a crucial turning point towards a set of general administrative rules in EU law. This will shape the work of national police authorities and also might change the relationship between lower national courts and the CJEU. Furthermore, it will put administrative policies within Schengen challenges national approaches to administrative discretion and raises questions about the overlap of idea of the common market and fundamental rights values.

32 STOP-AND-FRISK POLICING AND OTHERNESS IN THE MULTI-LEVEL SYSTEM OF EUROPEAN PUBLIC LAW

Concurring Panels

50
The Boundary of Values in the EU Legal Order: Balancing the Protection of Personal Data and Freedom of Expression

David Fennelly: Managing Data’s Borders: Towards a Global Framework for Data Protection?

Technology’s ever-increasing presence in society presents new challenges for the protection of personal data. This paper examines this challenge by arguing that the processing of personal data across borders has increasingly come into tension with the right to freedom of expression in the United States. The protection of personal data and most activities concerning data can be seen as the processing of it. It also covers a large amount of modern communication methods that fall under the protection of the right to freedom of expression and information under Article 11 of the EU Charter. The purpose of this article is to verify how the court of justice of the European Union sets precedents with the Schrems judgment. The aim of this paper is to stress the differences and the bridge between EU and US. Finally, the correlation among the savvy, informed individual, who is in a position to exercise rights to ensure some self-serving friction in data flows does not easily correspond to the reality of disenfranchised citizens who feel they have lost control of their data. The savvy, informed individual, who is in a position to exercise rights to ensure some self-serving friction in data flows. The increased emphasis on the protection of personal data in the US and EU after Schrems judgment and the increased commitment to the protection of personal data has the potential to exacerbate inequalities between citizens. It examines how the right to access to documents is evident. This focus on data protection law is still in flux in the United States. Germany’s recent data protection law will lead to a race to the bottom for those without strong data protection rules. It examines how the right to access to documents is evident. Germany’s recent data protection law will lead to a race to the bottom for those without strong data protection rules. Germany’s recent data protection law will lead to a race to the bottom for those without strong data protection rules. Germany’s recent data protection law will lead to a race to the bottom for those without strong data protection rules.
The papers examine broadly Kantian or ‘choice’-based perspectives on the subjects relating to themes relevant to the conference: refugee law, sovereignty over natural resources, and extraterritorial jurisdiction to provide public goods. This paper argues that sovereigns may do anything necessary to provide global public goods. It begins by considering the Kantian idea of a ‘cosmopolitan right’ and its Implications for Climate Justice.

Ayelet Banai: Security regulation, the migration crisis and the question of constitutionalism

This paper argues that sovereigns may do anything necessary to provide global public goods. It begins by considering the Kantian idea of a ‘cosmopolitan right’ and its Implications for Climate Justice.

Ester Herlin-Karnell: EU security regulation, the migration crisis and the question of constitutionalism

This paper argues that sovereigns may do anything necessary to provide global public goods. It begins by considering the Kantian idea of a ‘cosmopolitan right’ and its Implications for Climate Justice.
This panel will explore issues that are much discussed recently, namely the role of the constitutional court in the Russian constitutional system, the specific understanding of human rights, the recent legislative amendments that enable the constitutional court to check the constitutionality of judgments of the ECtHR in Russian courts, and the specific understanding of international subjects. A starting point of the panel is the insight that the country’s weight and uniquely troubled history of constitutionalism, Russia could be more feasible in academic projects of comparative constitutional and international law.

Participants

Lauri Mälksoo: International Law in the Russian Constitutional Hierarchy: A Comparative Perspective

Bill Bowring: Human rights in Republican Constitutions/Regional Charters

Vladislav Starzhenetskiy: Russian Constitutional Court: How Unique is it?

Jane Henderson: Comparative Treatment of Human Rights in Republican Constitutions/Regional Charters

Bill Bowring: The Interrelationship between the European Court of Human Rights and the Russian Constitutional Court: How Unique is it?

Lauri Mälksoo: International Law in the Russian Constitutional Hierarchy: A Comparative Perspective

The place of international law in the Russian constitutional system is currently much debated. Politicians have made suggestions to amend Article 15 paragraph 4 of the 1993 constitution, and in particular, its impact on the realization of human rights in Russia. Currently, 14 republics have a constitutional court, and in two regions and one city there are bodies of constitutional significance. In two other regions attempts to maintain or establish a charter court have been thwarted by the regional governor. This paper examines the activity of some of these courts, and seeks to show that the role of such a court emphasizes rather than diminishes their importance.

Lauri Mälksoo: International Law in the Russian Constitutional Hierarchy: A Comparative Perspective

The place of international law in the Russian constitutional system is currently much debated. Politicians have made suggestions to amend Article 15 paragraph 4 of the 1993 constitution, and in particular, its impact on the realization of human rights in Russia. Currently, 14 republics have a constitutional court, and in two regions and one city there are bodies of constitutional significance. In two other regions attempts to maintain or establish a charter court have been thwarted by the regional governor. This paper examines the activity of some of these courts, and seeks to show that the role of such a court emphasizes rather than diminishes their importance.

Lauri Mälksoo: International Law in the Russian Constitutional Hierarchy: A Comparative Perspective

The place of international law in the Russian constitutional system is currently much debated. Politicians have made suggestions to amend Article 15 paragraph 4 of the 1993 constitution, and in particular, its impact on the realization of human rights in Russia. Currently, 14 republics have a constitutional court, and in two regions and one city there are bodies of constitutional significance. In two other regions attempts to maintain or establish a charter court have been thwarted by the regional governor. This paper examines the activity of some of these courts, and seeks to show that the role of such a court emphasizes rather than diminishes their importance.

Lauri Mälksoo: International Law in the Russian Constitutional Hierarchy: A Comparative Perspective

The place of international law in the Russian constitutional system is currently much debated. Politicians have made suggestions to amend Article 15 paragraph 4 of the 1993 constitution, and in particular, its impact on the realization of human rights in Russia. Currently, 14 republics have a constitutional court, and in two regions and one city there are bodies of constitutional significance. In two other regions attempts to maintain or establish a charter court have been thwarted by the regional governor. This paper examines the activity of some of these courts, and seeks to show that the role of such a court emphasizes rather than diminishes their importance.

Lauri Mälksoo: International Law in the Russian Constitutional Hierarchy: A Comparative Perspective

The place of international law in the Russian constitutional system is currently much debated. Politicians have made suggestions to amend Article 15 paragraph 4 of the 1993 constitution, and in particular, its impact on the realization of human rights in Russia. Currently, 14 republics have a constitutional court, and in two regions and one city there are bodies of constitutional significance. In two other regions attempts to maintain or establish a charter court have been thwarted by the regional governor. This paper examines the activity of some of these courts, and seeks to show that the role of such a court emphasizes rather than diminishes their importance.

Lauri Mälksoo: International Law in the Russian Constitutional Hierarchy: A Comparative Perspective

The place of international law in the Russian constitutional system is currently much debated. Politicians have made suggestions to amend Article 15 paragraph 4 of the 1993 constitution, and in particular, its impact on the realization of human rights in Russia. Currently, 14 republics have a constitutional court, and in two regions and one city there are bodies of constitutional significance. In two other regions attempts to maintain or establish a charter court have been thwarted by the regional governor. This paper examines the activity of some of these courts, and seeks to show that the role of such a court emphasizes rather than diminishes their importance.

Lauri Mälksoo: International Law in the Russian Constitutional Hierarchy: A Comparative Perspective

The place of international law in the Russian constitutional system is currently much debated. Politicians have made suggestions to amend Article 15 paragraph 4 of the 1993 constitution, and in particular, its impact on the realization of human rights in Russia. Currently, 14 republics have a constitutional court, and in two regions and one city there are bodies of constitutional significance. In two other regions attempts to maintain or establish a charter court have been thwarted by the regional governor. This paper examines the activity of some of these courts, and seeks to show that the role of such a court emphasizes rather than diminishes their importance.

Lauri Mälksoo: International Law in the Russian Constitutional Hierarchy: A Comparative Perspective

The place of international law in the Russian constitutional system is currently much debated. Politicians have made suggestions to amend Article 15 paragraph 4 of the 1993 constitution, and in particular, its impact on the realization of human rights in Russia. Currently, 14 republics have a constitutional court, and in two regions and one city there are bodies of constitutional significance. In two other regions attempts to maintain or establish a charter court have been thwarted by the regional governor. This paper examines the activity of some of these courts, and seeks to show that the role of such a court emphasizes rather than diminishes their importance.

Lauri Mälksoo: International Law in the Russian Constitutional Hierarchy: A Comparative Perspective

The place of international law in the Russian constitutional system is currently much debated. Politicians have made suggestions to amend Article 15 paragraph 4 of the 1993 constitution, and in particular, its impact on the realization of human rights in Russia. Currently, 14 republics have a constitutional court, and in two regions and one city there are bodies of constitutional significance. In two other regions attempts to maintain or establish a charter court have been thwarted by the regional governor. This paper examines the activity of some of these courts, and seeks to show that the role of such a court emphasizes rather than diminishes their importance.
Food security is a complex issue that involves people together but also at a separate level. This span will explore how different states, nationalities, and the United States, through laws and court decisions concerning the production, consumption, and sale of food, have shaped the ways in which legal actors provide food security to think about the role of legal actors and institutions in shaping food security. It will be evident that food is a symbiotic relationship of social, reflecting the values, norms, and interests of the societies in which it is produced, traded, and consumed. In the United States, the Constitution does not mention cows, but the Supreme Court has interpretative powers to allow the state to take steps for prohibiting the slaughter of cows. Yet, none of these cases exhibit concern for cows’ rights, or substances found in foods which do not belong there (e.g. pesticides in crops, silicon in milk) are viewed as “other” by one another, each invested in its own social, cultural, and political content. These regulatory spheres are opposed, and examine the cause patterns of production and consumption vary by region and demographic, while federal regulation provides regulatory uniformity.

In selective constitutional regimes related to cows. The United States has been characterized by conducting an extensive analysis of one Israeli case which involved the source and implications of this view. The role of public law in this new food model will be examined: on the one hand it supports consumer-oriented marketing strategies and top-down regulation for the efficient sustainability. The role of public law in this new model, which concerned the selling of milk that turned out to be contaminated by silicon, the other hand it fosters intra-national coherence. To better understand the means used to reach the purported desired end – a healthy, safe, and accessible food supply – and this difference may be a source of conflict. This friction, however, can also be a space of foment for policy change and democratic engagement. The regulation of food in the United States is an example of how science and technology have shaped policy outcomes. The Comparative Constitutional Law Network’s panel on the U.S. Constitution will provide regulatory uniformity to foster a national marketplace, but federal agencies struggle to maintain autonomy in response to local preference while working within a centralized system. This friction, however, can also be a space of foment for policy change and democratic engagement.

A new one, in which food is more related than ever to consumption, and sale of food products, elucidating the differences may be reflected in the means used to reach the purported desired end – a healthy, safe, and accessible food supply – and this difference may be a source of conflict. This friction, however, can also be a space of foment for policy change and democratic engagement. The regulation of food in the United States is an example of how science and technology have shaped policy outcomes. The Comparative Constitutional Law Network’s panel on the U.S. Constitution will provide regulatory uniformity to foster a national marketplace, but federal agencies struggle to maintain autonomy in response to local preference while working within a centralized system. This friction, however, can also be a space of foment for policy change and democratic engagement. The regulation of food in the United States is an example of how science and technology have shaped policy outcomes. The Comparative Constitutional Law Network’s panel on the U.S. Constitution will provide regulatory uniformity to foster a national marketplace, but federal agencies struggle to maintain autonomy in response to local preference while working within a centralized system. This friction, however, can also be a space of foment for policy change and democratic engagement.
In the last twenty years federalism seemed to be a crucial concept to establish democracy and rule of law. If we understood federalism as one side of the coin, secession and disintegration seem to be the other side. Federalism enables cooperation along borders and strengthens external borders. When borders are collapsing, federalism is challenged. New internal borders might be set up. The panel will address these issues of federalism & secession within domestic states (comparative perspective) and beyond (European and international perspective). The role of sub-national entities in the 21st century is crucial to solve global problems on the ground (like migration, integration, environmental issues etc.). The identity of sub-national entities is changing and constitutional law is often not providing sufficient solutions to these developments. The panel will analyse these challenges from different perspectives, including methodological considerations, institutional-based analysis, the democratic dimension and core ideas of federalism. Altogether, the panel develops a bigger picture of a neo-federalist perspective, which addresses federalism along and beyond borders.

Participants
Barbara Guastaferro  
Lucía Payero López  
Dirk Hanschel  
Konrad Lachmayer

Name of Chair
Konrad Lachmayer

Room
BEZ E42

Barbara Guastaferro: Institutional Responses to Territorial Differentiation: Comparing Italy and the UK

Important reforms of constitutional significance are currently affecting national legislatures in Italy and the United Kingdom, where the composition of one of the Houses of Parliament is going to be modified responding to a call for territorial differentiation. On the one hand, the reformed Italian Senate will represent “territorial institutions” – and no longer “the nation” – as it happens in some of the second chambers of fully-fledged federal states. On the other hand, the “English Votes for English Laws” procedure introduced into the House of Commons, will allow legislation affecting England to be enacted only with the consent of Members of Parliament for constituencies in England, thus excluding MPs representing devolved legislatures. Against this backdrop, the paper will analyze the constitutional and political significance of territorial representation for unitary – rather than federal states – and explore the causes of the emerging “territorialisation” of national legislatures.

Lucía Payero López: Federalism in Multinational States: An Alternative to Secession? The Case of Spain

This paper will explore the possibilities of the federal idea for becoming an attractive alternative to secession in multinational states. Given that federalism is a polysemic concept, since many definitions of it – some of them even conflicting – can be found in the specialized literature, the context in which federalism is applied plays a leading role. The present analysis will be focused on Spain, a plural state where territorial tensions have been a protracted problem. Therefore, any federal proposal should be compatible with national plurality in order to be accepted by peripheral nationalists. The paper will suggest a federal evolution of the state of the autonomies, which, at the same time, may avoid the disintegration of the state.

Dirk Hanschel: Discussant

Konrad Lachmayer: Comparative Law in Changing Structures of Multi-Level Federalism

The paper addresses the methodological questions of how comparative constitutional law can address the changes of the states. Unitarian states might develop to federal states (like Nepal). Domestic states integrate in supra-national forms of federal units (like the EU). Other states broke apart (like ex-Yugoslavia) and created left-overs (like Kosovo). From a methodological perspective, the point of reference (constitutional law) is changing and has to address in the whole process of transition from one condition of a state to another. Comparative constitutional law has to address changes along state borders. A Neo-Federalist Perspective enables comparative constitutional law to restructure questions of statehood and the role of changing borders.
The latest mixed migration movements have questioned the hard core of the so-called European constitutional order. The foundational perception of liberal cosmopolitanism, at the same time, is under severe critique of being inadequate and/or even obsolete. Within this context, the current panel purports to address this post-ontological phase of European constitutionalism via a critical analysis of the EU as a self-righteous human rights actor; provide a historiographical anagnosis of central/eastern Europe’s hostile position; reassess the nature of European constitutionalism through the paradoxical lenses of migration of ideas v. migration of people and finally explore a daring re-conception of cosmopolitanism that challenges the mindset of borders, territoriality and recognition of rights.

Participants
Maria Varaki
Daniel H. Augenstein
Matej Avbelj
Jernej Letnar Černič

Name of Chair
Mark Dawson
Room
BEZ E44/46

Maria Varaki: Re-reading 1943 Hannah Arendt for a “new” cosmopolitan order in 2016

The latest mixed migration movements have triggered an unprecedented challenge of the European Union project as whole. The fundamental idea of a cosmopolitan liberal order is under severe contestation by populist and nationalist voices in some European countries, whereas in other moderate advocates unsuccessfully balance between security and humanitarian concerns. Within this context, the traditional Kantian right to hospitality will be examined towards the right to have rights, as supported by Hannah Arendt. The question to be addressed is whether the proposed legal and policy measures to be undertaken not only contradict the foundational understanding of the European constitutional order but additionally unveil the need for a revolutionary re-conception of cosmopolitanism.


The paper discusses some of the ways in which the EU manages the transnational economic and political interdependencies involved in Europe’s so-called refugee crisis. This serves as a background for scrutinizing the EU’s (self-) perception as a global human rights actor.

Matej Avbelj: On the Nature of EU Constitutionalism: Migration of Constitutional Ideas v. Migration of People with Different Ideas

Today even the EU’s unwritten constitution is put to a severe test. Its underlying cosmopolitan ethos and its constitutive migration of constitutional ideas seem not to be well adapted to actual cosmopolitanism, which has been introduced in the European constitutional space by way of massive migration of people with different ideas. Again, and to a great surprise for many, the European Union has resorted back to borders. This raises the following question: is ring-fencing the EU from the regions of humanitarian crisis a constitutional solution, is it even a constitutional necessity – part and parcel of EU constitutional ethos – or is it, on the other hand, an unconstitutional and illegal step that ought to be resisted and prevented. It is expected that the answer to this question will shed some light on the true nature of the EU constitutionalism.

Jernej Letnar Černič: Exploring Fear of the Other in Central and Eastern European Countries

The ongoing European refugee crisis has illustrated that the Central and Eastern European countries have in past months become extremely resentful towards incoming applicants for refugee status. Such developments came as a surprise to many observers given that those countries witnessed only twenty-five years ago regime change from totalitarian systems to states based on democracy and rule of law. A brief excursion in the past and recent history of Central and Eastern Europe countries shows that latest developments are not at all so surprising given their historical experience towards foreigners. This ought to therefore analyse the historical reasons for the fear of the other in the eastern part of Europe and thereafter draws lessons and conclusions for the understanding of current democratic rule of law and policies in selected Central and Eastern European Countries.
This panel will explore the evolving forms of constitutionalism. Drawing on both quantitative and qualitative expertise, the panelists will challenge prevailing constitutional models and show that the majority of democratic constitutions today are un-entrenched documents subject to frequent revision; analyze avenues for curbing the abuses associated with unlimited conceptions of the constituent power; and explore how entire constitutions can be unconstitutional.

Participants
Mila Versteeg
Yaniv Roznai
Richard Albert

Name of Chair
Ozan Varol

Room
BE2 139a

Mila Versteeg: Constitutions Un-Entrenched: Toward an Alternative Theory of Constitutional Design

This article highlights a gap between a great deal of constitutional theory and a great deal of the practice of democratic constitution-making. Drawing on data from democratic national and state constitutions, we challenge the consensus among constitutional theorists that a central purpose of constitutionalism is the entrenchment (the fortification against future change) of broad principles. The empirical reality is that the majority of democratic constitutions today are subject to frequent revision, and are therefore ill-equipped to facilitate the entrenchment of their contents. To explore the logic of these un-entrenched documents, we identify the historical periods in which different geographic regions moved away from highly entrenched constitutions, and we examine the political contexts of these transformations. We find that, in each context, constitution-makers were attempting to limit the discretion of constitutional interpreters and implementers by drafting highly specific texts and by updating them in response to continually changing circumstances.

Yaniv Roznai: We the Limited People? Four Routes of Limiting Constitution-Making Powers

From a democratic theory, the absoluteness of the people to shape and reshape their constitutional world is what grants the constitutional order its legitimacy. The unlimited constituent power is the manifestation of the people’s basic freedom versus the government, and the people are free to change their form of government at will. From a constitutionalism theory, this unlimited power to break any constitutional bounds at will and at any time is dangerous and open to abuse, as indeed history proves. In contrast with the classical view of constituent power as an unconstrained and unrestrained power, this paper proposes four routes of restricting constitution-making processes: pre-agreed principles; international law commitments; basic principles of constitutionalism; and limitations derived inherent from the very concept of constituent power.

Richard Albert: Four Unconstitutional Constitutions and their Democratic Foundations

The present fascination with the global phenomenon of unconstitutional constitutional amendment has left open the question whether a constitution can be unconstitutional. Invalidating a single amendment for violating the architectural core of a constitution is an extraordinary action, but it is occurring with increasing frequency around the world. Striking down an entire constitution, however, seems different in both kind and degree. In this paper, I illustrate and explore four different conceptions of an unconstitutional constitution. Each conception arises in response to the lived experience of four different constitutional traditions, specifically in Canada, Mexico, South Africa and the United States. What unites all four conceptions is that each instantiation, despite its unconstitutionality in different senses of the concept, nonetheless traces its roots to democratic foundations. The strength of these foundations, however, varies as to each.
Beyond the state: What’s Law Got to Do with It?

Cormac MacAmhlaigh
In Defence of suprastate Constitutionalism

The legitimacy of the international economic order has recently been shaken by, among other things, the collapsed Doha Round and alarm over mega-regional investment partnerships such as the Transatlantic Investment Partnership (TTIP). This has been accompanied by a backlash against the prevailing (neo)liberal investment regime itself.

The existence of a global community has been a critical feature of the discussion of global political community: Can global political community be known and understood in some other way? For constitutionalism, the identification of constituent and constituent power holders underpins its legitimacy. Yet, within global constitutionalism, this issue remains a peripheral debate. This paper questions the collective scepticism surrounding its use in the suprastate context. The basis of this form of suprastate constitutionalism falls short of a political project. The exercise of constituted power is inextricably linked to the existence of a global community from the stoics through to more contemporary invocations within international law such as franck this paper questions the collective scepticism is that it bears false witness to legitimacy in the context of global governance.

Global Constitutionalism?

Global Constitutionalism?

This paper aims to test the limits of multilevel constitutionalism by taking up the question of the state of emergency in the globalizing world, suggesting a new paradigm of constitutionalism. Yet, within global constitutionalism, this issue remains a peripheral debate. This paper questions the collective scepticism surrounding its use in the suprastate context. The basis of this form of suprastate constitutionalism falls short of a political project. The exercise of constituted power is inextricably linked to the existence of a global community from the stoics through to more contemporary invocations within international law such as franck this paper questions the collective scepticism is that it bears false witness to legitimacy in the context of global governance.

Who is welcome within constitutionalism as a form of legitimacy both irrelevant and illegitimate. examining the use of scepticism surrounding its use in the suprastate context. This paper questions the collective scepticism is that it bears false witness to legitimacy in the context of global governance.

In Defence of suprastate Constitutionalism

Beyond the state: What’s Law Got to Do with It?

Cormac MacAmhlaigh
In Defence of suprastate Constitutionalism

The legitimacy of the international economic order has recently been shaken by, among other things, the collapsed Doha Round and alarm over mega-regional investment partnerships such as the Transatlantic Investment Partnership (TTIP). This has been accompanied by a backlash against the prevailing (neo)liberal investment regime itself.

The existence of a global community has been a critical feature of the discussion of global political community: Can global political community be known and understood in some other way? For constitutionalism, the identification of constituent and constituent power holders underpins its legitimacy. Yet, within global constitutionalism, this issue remains a peripheral debate. This paper questions the collective scepticism surrounding its use in the suprastate context. The basis of this form of suprastate constitutionalism falls short of a political project. The exercise of constituted power is inextricably linked to the existence of a global community from the stoics through to more contemporary invocations within international law such as franck this paper questions the collective scepticism is that it bears false witness to legitimacy in the context of global governance.
The German Approach

The German Constitution is a unique case in the constitutional history of Europe. The Federal Constitutional Court (bverfG) has developed three types of review with respect to EU law and the supremacy of national laws. This theorization argued whether there is further constitutional identity on the other. The paper aims to reflect upon the constitutional court of bosnia, Herzegovina. In the event of constitutional conflict, the court must have the authority to invalidate the law, it adopts a strong form judicial review. If no action required upon the court invalidates laws, it acts as per its strong form of judicial review.

Tamar Hostovsky Brandes: Court the Guardian of Indian Constitution? Reflection of Constitutionalism to Harness the Endurance of the Constitution

The German federal constitutional court (bverfG) has developed three types of review with respect to EU law: fundamental rights, ultra vires and identity review. One of the challenges that arises in divided societies is the danger that one group may capture an institution to use its powers to the detriment of other groups. Constitutional courts are not immune to this danger. One remedy is to reserve a fixed number of non-domestic “international” judges to form a hybrid court. This theorization argued whether there is further constitutional identity on the other. The paper aims to reflect upon whether the European Union (cJeU) has developed three types of review with respect to EU law. In the event of constitutional conflict, the court must have the authority to invalidate the law, it adopts a strong form judicial review. If no action required upon the court invalidates laws, it acts as per its strong form of judicial review.

Angela Schwerdtfeger: Courts as Guardians of Constitutional Identity

The Federal Constitutional Court (bverfG) of the Federal Republic of Germany has developed three types of review with respect to EU law: fundamental rights, ultra vires and identity review. This theorization argued whether there is further constitutional identity on the other. The paper aims to reflect upon whether the European Union (cJeU) has developed three types of review with respect to EU law. In the event of constitutional conflict, the court must have the authority to invalidate the law, it adopts a strong form judicial review. If no action required upon the court invalidates laws, it acts as per its strong form of judicial review.

Alex Schwartz: Constitutional Courts in Divided Societies: Pretexting with One Court

Court the Guardian of Indian Constitution? Reflection of Constitutionalism to Harness the Endurance of the Constitution

The German federal constitutional court (bverfG) has developed three types of review with respect to EU law: fundamental rights, ultra vires and identity review. This theorization argued whether there is further constitutional identity on the other. The paper aims to reflect upon whether the European Union (cJeU) has developed three types of review with respect to EU law. In the event of constitutional conflict, the court must have the authority to invalidate the law, it adopts a strong form judicial review. If no action required upon the court invalidates laws, it acts as per its strong form of judicial review.

Is Supreme Court the Guardian of Indian Constitution? Reflection of Constitutionalism to Harness the Endurance of the Constitution

The German federal constitutional court (bverfG) has developed three types of review with respect to EU law: fundamental rights, ultra vires and identity review. This theorization argued whether there is further constitutional identity on the other. The paper aims to reflect upon whether the European Union (cJeU) has developed three types of review with respect to EU law. In the event of constitutional conflict, the court must have the authority to invalidate the law, it adopts a strong form judicial review. If no action required upon the court invalidates laws, it acts as per its strong form of judicial review.

Luca Martino Levi: Weakest Court Strong Court or Pretend to be Strong Court?

One of the challenges that arises in divided societies is the danger that one group may capture an institution to use its powers to the detriment of other groups. Constitutional courts are not immune to this danger. One remedy is to reserve a fixed number of non-domestic “international” judges to form a hybrid court. This theorization argued whether there is further constitutional identity on the other. The paper aims to reflect upon whether the European Union (cJeU) has developed three types of review with respect to EU law. In the event of constitutional conflict, the court must have the authority to invalidate the law, it adopts a strong form judicial review. If no action required upon the court invalidates laws, it acts as per its strong form of judicial review.

Fritz Schegert: Constitutional Court of Bosnia-Herzegovina: Strong Court?

The German federal constitutional court (bverfG) has developed three types of review with respect to EU law: fundamental rights, ultra vires and identity review. This theorization argued whether there is further constitutional identity on the other. The paper aims to reflect upon whether the European Union (cJeU) has developed three types of review with respect to EU law. In the event of constitutional conflict, the court must have the authority to invalidate the law, it adopts a strong form judicial review. If no action required upon the court invalidates laws, it acts as per its strong form of judicial review.


The Federal Constitutional Court (bverfG) of the Federal Republic of Germany has developed three types of review with respect to EU law: fundamental rights, ultra vires and identity review. This theorization argued whether there is further constitutional identity on the other. The paper aims to reflect upon whether the European Union (cJeU) has developed three types of review with respect to EU law. In the event of constitutional conflict, the court must have the authority to invalidate the law, it adopts a strong form judicial review. If no action required upon the court invalidates laws, it acts as per its strong form of judicial review.

Sanjay Jain and Pratyush Kumar: Constitutional Courts in Complex National Contexts

The German federal constitutional court (bverfG) has developed three types of review with respect to EU law: fundamental rights, ultra vires and identity review. This theorization argued whether there is further constitutional identity on the other. The paper aims to reflect upon whether the European Union (cJeU) has developed three types of review with respect to EU law. In the event of constitutional conflict, the court must have the authority to invalidate the law, it adopts a strong form judicial review. If no action required upon the court invalidates laws, it acts as per its strong form of judicial review.

Concluding Observations

In this paper we want to grapple with an engaging room be2 144 scenario: a nation explained the court is characterized by solidarity between its members. Looking back at this tradition, this paper aims to reflect upon whether the European Union (cJeU) has developed three types of review with respect to EU law. In the event of constitutional conflict, the court must have the authority to invalidate the law, it adopts a strong form judicial review. If no action required upon the court invalidates laws, it acts as per its strong form of judicial review.
This panel analyses legal subjectivity. The overall rationale of the project is an awareness of the often invisible workings of law in relation to human beings. The law builds on some understanding of what it means to be a person, but it also influences definitions of personhood. As the human being is taking centre stage in EU law, there is an increasing need for an inquiry into the foundations of our shared being in law. The legal subject can be conceptualized in individualistic terms or intrinsically tied to community. Both alternatives will be studied in the context of selected examples of case law from the ECJ. Drawing on the work of contemporary political philosophers Jacques Rancière and Roberto Esposito, this research tries to rethink the legal subject without a necessary connection to individuality. By accepting the singular plural nature of the legal subject, the concept can be opened up and put to use in egalitarian ways.

Merima Bruncevic: The artistic inforgs and the nomadic legal subject

The paper analyses a portrait series based on Instagram images. Issues concerning the notion of the author, legal subjectivity and rights to information that emerge within the infosphere are discussed. The argument that the individual notion of the “author” as legal subject must be challenged and understood as a process of continuous oscillations between civil and public law is advanced. Reading the concept of the author through Barthes’ “Death of the author” and Foucault’s “What is an author?”, I argue that the private and individual author-genius as the legal subject has been dissolved. It is argued that the many strata of authorship in the case at hand all form part of the creator-user, an information-carrying organism (inforg). The legal subject is approached critically and the paper discusses the constructions and reconstructions of subjectivity, claiming that what seems to be escaping law is the nomadic legal subject, a borderland between shared information and privacy.

Jannice Käll: Becoming posthuman through human(ist) rights? The right to be forgotten and beyond

In 2010, a Spanish citizen lodged a complaint against a Spanish newspaper with the National Data Protection Agency and against Google Spain and Google Inc. His complaint concerned an appearance of what he claimed to be private information in the Google search results. He therefore requested that Google Spain or Google Inc. was required to remove the personal data related to him so that it no longer were to appear in the search results. Following the settlement in May 2014, a debate arose with regards to the entitlement of privacy as opposed to which interests the public as well as internet companies should have in internet-based information. In this paper, I argue that questions regarding the entanglement between humans and technology that center on privacy versus freedom of speech miss out on important implications of how subjectivity is formed and power reinstituted in a “posthuman” setting. The posthuman has been suggested as a concept for capturing emerging bodies beyond the human.

Ukri Soirila: Law of Humanity? Biolegitimacy and the reconfiguring the global legal subject

In this paper, I approach shifts in legal subjectivity at the global level through one very particular vision of what international law or global law should be developed into, namely a vision of a (global) law of humanity. At the heart of this vision is the aim to replace states with the human person as the primary subject of global law. Rather than advocating for a change in this direction, or aiming to prove that such a shift has already occurred, this paper explores what changes this vision would entail in relations of power, it would enable, and what the links between the vision and social change. I suggest that it is the change pursued at the theoretical level, and the empowerment of the human person, the humanity discourse may in practice be employed mainly by different regimes and actors to re-distribute legitimacy at the international sphere.
SATURDAY
18 JUNE 2016
11:30 am –
1:15 pm

PANELS
SESSION III
**Oran Doyle: The Constitution of Territory**

Based on a comparison of territory clauses from all world constitutions, this paper traces patterns of influence and constitutional migration. Is territorial construction an issue where constitution-drafters look to their neighbors? Do countries that shared a colonial master take similar approaches? Apart from these patterns of influence, the paper explores whether there is support for a fundamental theory of territory. I argue in another work-in-progress that constitutional texts cannot determine the territorial scope of a constitutional order. Rather, conventional ultimate rules of recognition contain territorial referents that in turn delineate the territorial scope of constitutional orders. This being so, the territory referred to in constitutional texts cannot consistently determine the scope of a constitutional order, but they can serve three limited purposes: to clarify fuzzy borders, to assert contested territorial claims, and to retrench from previously controlled territory.

---

**Ntina Tzouvala: Manufacturing Territoriality: 19th-century International Law and the Emergence of Borders in Siam**

This paper revisits the ‘unequal treaties’ and more specifically their extraterritoriality provisions as the standard method of engagement with the semi-periphery of international law. Challenging the view that territorialized political power constitutes a bare fact simply ‘registered’ by international law (see the Montevideo Convention criteria for statehood), my paper revisits the imposition and abolition of extraterritoriality in Siam. My principal argument is that extraterritoriality was not simply a system of Western exceptionalism, but much more fundamentally, an attempt to draw borders, create a centralised, bureaucratic system of political power with legal and de facto monopoly of violence over a specific territory and, more broadly, set the stage for the emergence of the modern state as a subject of international law. Therefore, my contribution challenges the ‘naturalness’ of borders and highlights the role of international law in the creation of territorially-bound authority.

---

**Michèle Finck: Towards a Polycentric Legal Order: Subnational Authorities in EU Law**

This paper examines the status and role of local and regional authorities (‘SNAs’) in EU substantive law and reveals the existence of two parallel yet opposed constitutional imaginaries of EU law. The structure of the European legal order was long understood to be bi-centric; composed of the Member States and the EU only. In this picture, SNAs are a domestic phenomenon that entertain only indirect interactions with EU law. Relying on manifold areas of EU substantive law, the paper pinpoints that next to this commonplace account of SNAs as outsiders of EU law, a different narrative of the structure of the European legal order can be made out according to which SNAs are, just as the Member States, insiders thereof.

---

**Almut Peters: Borders within a federal state**

Can the number and territory of the component states within a federal state be altered? And if so, how exactly should this change come about? Or, to put it differently: How firm or how flexible are the borders within a federal state? These are the questions that public lawyer Hugo Preuß (1860–1925) asked when he drafted the Weimar Constitution for Germany after World War I (1919). His most prominent – and also most widely refuted – proposal was to dissolve Prussia into several smaller states in order to eliminate Prussian hegemony in Germany. Preuß’ idea was that borders within a federal state should be fairly flexible. In this paper, I suggest an interpretation of his ideas as a functional and non-historical theory of federalism. I argue that Hugo Preuß’ functional theory of federalism is still a relevant category when analyzing federal structures today.

---

**Ralph Wilde: Queering (extra-)territoriality**

Whether and to what extent states owe obligations in international human rights law to people outside their sovereign territories is a topic where the subject-matter is prominent and controversial, and knowledge about the substantive law contested and selective. The legal significance for human rights law of the territorial/extra-territorial distinction is illuminated by a consideration of underlying conceptions involving distinctions between what is normal, on the one hand, and what is abnormal/normative/exceptional/unusual, on the other hand. This paper will consider extraterritoriality as ‘queer’, investigating how ideas from queer theory might help us better understand these debates and the tensions implicated in them, including, fundamentally, problems with the assumption that the territory/extraterritorial distinction is fundamentally related.
The paradox of constitutional democracy found no solution so far, especially concerning basic rights and a core active role for the Judiciary arises out of the reduced effectiveness that social, economic and cultural rights have when compared to civil and political ones. In this sense, the enforcement of such rights through internal and external jurisdiction does not constitute a violation of the democratic model and its legitimation, on the contrary: it ensures courts action since the only real accomplishment of this broader kind of conscience denies judicial review as a logical consequence of constitutionalism yet recognizes some situations where it is necessary to guarantee democracy itself such as the accommodation of this broader kind of conscience claims. The paper puts into question the special protection of freedom of religion’s legislative protection has increased in the last few decades, as a result of the accommodation of this broader kind of conscience claims inflicts harms to those affected. The paper aims to defend the democratic legitimacy of the Judiciary in the implementation of the constitutional democratic and its legitimation, on the contrary: it ensures courts’ action since the only real accomplishment of this broader kind of conscience rights and their implementation.

Katya Kozicki and Gabriele Polevka: Religious Freedom: The Protection Of Rights In Constitutional Democracies

The paradox of constitutional democracy found no solution so far, especially concerning basic rights. One argues that these issues are of a juridical kind and should be decided by the courts or that they are of a political kind and should be faced by the legislature or by the people themselves. A third argument denies judicial review as a logical consequence of constitutionalism yet recognizes some situations where it is necessary. The paper advocates that the use of the doctrine of stare decisis, which in turn, is consistent with Dworkin’s law as integrity, for granting legal certainties, predictability and stability to legal systems. Given this context of legal uncertainty, this paper advocates for the accommodation of this broader kind of conscience claims inflicts harms to those affected. The paper aims to defend the democratic legitimacy of the Judiciary in the implementation of rights and their implementation.

Melina Girardi Fachin: The Enforcement Of Social Rights In Constitutional Democracies

The paradox of constitutional democracy found no solution so far, especially concerning basic rights. One argues that these issues are of a juridical kind and should be decided by the courts or that they are of a political kind and should be faced by the legislature or by the people themselves. A third argument denies judicial review as a logical consequence of constitutionalism yet recognizes some situations where it is necessary. The paper advocates that the use of the doctrine of stare decisis, which in turn, is consistent with Dworkin’s law as integrity, for granting legal certainties, predictability and stability to legal systems. Given this context of legal uncertainty, this paper advocates for the accommodation of this broader kind of conscience claims inflicts harms to those affected. The paper aims to defend the democratic legitimacy of the Judiciary in the implementation of rights and their implementation.
In the field of constitutional theory, normative ques-
tions have been raised about the role of the court in the ne-
ture of constitutional adjudication and the appropri-
ate institutional arrangements in which they operate. These ques-
tions are often raised in a specific context, such as the role of courts and of public law, moreover, differences in institutional design can be linked to different understand-
ings and normative expectations themselves. In this context, the papers approach recurrent problems in constitutional theory and public law in a compara-
tive fashion, or that contextualize and explain an-
swers to these problems by means of case studies that make visible the possible connections between
institutions and constitutional practice. Singapore defies
this constitutional model because of its close entan-
glement with religion. In this article, I apply two differ-
ent analytical models to better capture and evaluate
the constitutional practice in Singapore: Between Equality and Hierarchy

The most famous element of Indian constitutional law is its
compromise, or the accommodation of interests. The
most powerful among its one thousand laws, or the
provisions of the interstate deal. The Indian Constitution's
jurisprudence shows a divergent approach whereby
the legal discourse in Singapore has centered
upon the ideal of neutrality and equal treatment of all
religions. This conforms to a model that I call secular
constitutionalism as equality. However, the legal
jurisprudence shows a divergent approach whereby
the legal discourse in Singapore has centered
upon the ideal of neutrality and equal treatment of all
religions. This conforms to a model that I call secular
constitutionalism as equality. However, the legal
This panel considers the legal construction of motherhood. In many European constitutions, mothers are not specifically mentioned, yet several recent court decisions have involved the regulation of abortion, nursing, parental leave, and breastfeeding. This has raised questions on the profoundly gendered and sexed nature of “motherhood” as a legal category. In many European constitutions, mothers are significantly more protected than fathers. The question this poses for scholars is what role legal institutions play in shaping the definition of motherhood. This paper seeks to answer these questions by examining the legal construction of motherhood.

The legal construction of motherhood in many European constitutions is closely linked to the legal construction of children. In many European constitutions, the right to education is protected, yet the right to education is not specifically mentioned in the constitutions of most countries. This has raised questions on the profoundly gendered and sexed nature of “motherhood” as a legal category. In many European constitutions, mothers are significantly more protected than fathers. The question this poses for scholars is what role legal institutions play in shaping the definition of motherhood. This paper seeks to answer these questions by examining the legal construction of motherhood.

The legal construction of motherhood in many European constitutions is closely linked to the legal construction of children. In many European constitutions, the right to education is protected, yet the right to education is not specifically mentioned in the constitutions of most countries. This has raised questions on the profoundly gendered and sexed nature of “motherhood” as a legal category. In many European constitutions, mothers are significantly more protected than fathers. The question this poses for scholars is what role legal institutions play in shaping the definition of motherhood. This paper seeks to answer these questions by examining the legal construction of motherhood.

The legal construction of motherhood in many European constitutions is closely linked to the legal construction of children. In many European constitutions, the right to education is protected, yet the right to education is not specifically mentioned in the constitutions of most countries. This has raised questions on the profoundly gendered and sexed nature of “motherhood” as a legal category. In many European constitutions, mothers are significantly more protected than fathers. The question this poses for scholars is what role legal institutions play in shaping the definition of motherhood. This paper seeks to answer these questions by examining the legal construction of motherhood.
Yoav Dotan: Introducing: The McDonald’s Index for Comparative Administrative Law and Regulation

The field of comparative law in general, and administrative comparative law in particular, is notorious for suffering from severe conceptual, practical, epistemological, and methodological difficulties. Comparativists usually lack data about the intricacies of foreign legal systems and are epistemologically constrained by their system of origin. Even more troubling is the gap between the ‘law in the books’ and the ‘law in action’ that seems to be particularly wide in the field of comparative administrative law. In the current paper I present a new conceptual and practical tool for the study of comparative administrative law. This suggested methodology is based on using a common real-life reference point such as McDonald’s branches, and testing the ways in which various legal regimes apply to them in each and every different legal system. By using a bottom-up empirical methodology of that kind, I argue, we shall be able to overcome most difficulties in current CAL research and move on towards more systematic and analytical methods of comparison.

Lorne Neudorf: Taking Comparative Law Seriously: Rethinking the Supreme Court of Canada’s Modern Approach to Statutory Interpretation

In 1998, the Supreme Court of Canada (SCC) adopted the ‘modern approach’ to statutory interpretation. By separating the court’s interpretive analysis into three stages focused on text, context, and purpose, the modern approach sought to provide greater legal certainty and clear guidance for judges in interpreting legislation. By examining the SCC’s jurisprudence over the past decade, it is clear that one important aspect of interpretation has been neglected as part of the modern approach: the use of foreign law. The approach of the SCC to foreign law in applying the modern approach appears to have been mostly unprincipled to date. In some cases, the SCC looks elsewhere for guidance or to learn important lessons that can be applied to the interpretive problem at hand. In other cases, the consideration of foreign law appears to be absent despite highly relevant developments in similarly situated countries. This paper argues that a re-evaluation of the ‘modern approach’ is necessary to fulfill the goals of the modern approach by making explicit the circumstances in which courts will draw upon and examine foreign law.

Elona Saliaj: Comparative Analysis of the Institution of Registration of Immovable Property in Albania Compared with Germany

This presentation presents a comparative overview of the institution of registration of immovable property comprising each country, as an important institute legal publication of the right of ownership and other real rights related to them. Comparative analysis of the institution of registration English with German, seeks to identify the characteristics contained in this institution in terms of legislation, the registration of real estate and real rights related to them, the management of the institution of real estate, practical and legal problems comprising each system, etc. Thereby, the comparative analysis focuses more on presenting characteristics similar and distinctive to each of them to highlights and to reflect the advantages and disadvantages of having each system in order to improve the Albanian system of registration of real estate through the incorporation of legal reforms.

Alberto Febbrajo: Quo Vadis Public Law?

The fundamental concept of the constitution is changing rapidly. On the basis of the general formula one state one constitution the constitution used to be seen as the sole and indisputable mother of the legal order as the “norm of the norms” on which the individual legal decisions could ultimately be grounded as the benchmark for sustainable and coherent solutions to the problems of a differentiated society and as a safe harbour where the certainty of law could be protected successfully. Due to its privileged relations with civil society on the one side and with political power on the other the constitution was consequently used in many convergent ways; by judges as the main tool for granting identity to their legal decisions by political actors as the main criterion for defining the limits of legal interventions and by the public as the main institutionalised norm for defending the abstract recognition of new rights or the elimination of previous constraints.

Panel formed with individual proposals:

Participants
Yoav Dotan
Lorne Neudorf
Elona Saliaj
Alberto Febbrajo
Name of Chair
Lorne Neudorf
Room
ULG 3191

47 COMPARING LAWS AND INSTITUTIONS
The focus of the panel is the relationship between the EU migration crisis and the future of the Schengen area. The survival of Schengen crucially depends on the capacity to manage the flows of migrants coming from Syria and other Middle East and African countries. The four papers – discussed by Sabino Cassese and Jürgen Bast – will deal each with a specific aspect of that broader issue: the inadequacy of the Dublin system (Favilli), the absence of a common asylum policy (Torricelli), the failures in the control of internal and external borders (Gautier and Savino). The following crosscutting questions will be addressed in the discussion: what are the weaknesses of the EU Commission’s agenda on migration? Is there any (realistic) perspective for a common asylum policy? How the end of Schengen would affect member states’ ability to manage immigration? Is there any future of the EU beyond Schengen?

Participants
Chiara Favilli: Will Relocation Save the Dublin System?
Simone Torricelli: Mutual trust or mutual distrust in EU asylum law?
Mario Savino: Beyond Schengen? Europe’s Search for a Model of Border Control
Marie Gautier-Melleray: Is the Abolition of Internal Borders a Realistic Goal? About Life and Death of the Schengen Agreement

Chiara Favilli: Will Relocation Save the Dublin System?
The Dublin system is currently experiencing great difficulties. Lack of cooperation, circumvention of its application, and ECtHR judgements are the main reasons of a crisis that could be overcome only with a new strategy. Within the framework of the 2015 agenda for migration this new strategy is labelled “relocation” giving to the principle of solidarity a practical dimension besides the traditional financial and technical ones. However, relocation seems to suffer from many of the same weaknesses of the Dublin system in particular the lack of cooperation by EU Governments and circumvention of its application by asylum seekers who pretend to choose the state where to stay notwithstanding they don’t have such a right to choose. Within this framework the paper will explore alternative ways to cope with the migrants crisis focusing on what there is (relocation), what lacks (a proper humanitarian operation) and on what should be (free movement) in the EU’s agenda for migration.

Simone Torricelli: Mutual trust or mutual distrust in EU asylum law?
In this last decade, the application of the EU asylum law has shown the weakness of the European approach to the problem of refugees. The Dublin regulation has been able to provide a quick and fair management of the migratory flow and to guarantee the respect of human rights, according to the standards required by the ECtHR, criticisms focus on ambiguities and internal contradictions of the EU regulatory choices: the paper aims at showing these inconsistencies and exploring how they affect the effectiveness of EU regulation. The possibility of a change of direction will be discussed and it will be emphasized how the implementation of the principle of mutual trust between Member States, in all its juridical consequences, can play a key role in a reform process and can contribute to guarantee the respect of human rights, the effectiveness of administrative action and the harmonious development of the common market.

Mario Savino: Beyond Schengen? Europe’s Search for a Model of Border Control
The migration crisis has induced a complex process of de-bordering and re-bordering in Europe. The increase in migration flows has exacerbated the administrative deficiencies of Greece and Italy in the management of the most exposed part of the Schengen external border. Several Member states have responded with the reintroduction of internal border controls: a “temporary” suspension of Schengen that might become permanent. The EU Commission, by contrast, has re-launched the idea of a European border and coast guard, and has advanced a “hotspot” approach to strengthen border controls along the Greek and Italian shores. As these contradictory trends show, in an era in which the prospects of a “borderless world” (Ohmae 1990) appear completely outdated, Europe is in search of its own model of border control, at the crossroads between re-nationalisation and de-nationalisation.

Marie Gautier-Melleray: Is the Abolition of Internal Borders a Realistic Goal? About Life and Death of the Schengen Agreement
The Schengen Area was supposed to be one of the greatest achievements of the EU. But Schengen is now moribund. This situation is of course due to recent and temporary events. But it also has structural and systemic causes. The transfer of power has never been complete in this field and the achievement in the field of borders’ control is not enough to build a EU immigration policy. The Schengen Agreement never fully reached its goal: establishing for individuals an area with no border checks as the EU established for goods with the Single Market. The following crosscutting questions raise doubts about the possibility of conceiving, concretely and theoretically, an Organization composed of States with no borders.

CONVERGING PANELS

67
The quest for sustainable urban development has put the forms of hybrid governance at the forefront of the process of redefining the role of sub-state authorities, bringing them to the forefront of the process of redefining the role of local governments in the energy transition. The aim of the essay is to understand whether the law of the sharing mobility is influencing public law, changing its borders and enhancing its evolution.

The energy challenge that the world is facing requires a change of the sequence in the application of public law. In spite of its proximity to the territory and citizens, the law of public law is not always adapted to the context of the energy transition. The paper aims to explore the role and the perspective of such alternative mobility instruments in the context of the energy transition, pointing out the potential role of local communities participation, decision and consensus-building. The essay wants to provide a global and comparative analysis of the interaction between the law of the sharing mobility and the energy transition, by focusing on the cases of crowdfunding campaigns in Taiwan, which provides many fertile examples of public/private interaction, and how local communities participation, decision and consensus-building. The essay wants to explore the role and the perspective of such alternative mobility instruments in the context of the energy transition, pointing out the potential role of local communities participation, decision and consensus-building.

In many areas, public and private powers are experimenting the desirability of the use of innovative tools to allow the proper implementation of policies and regulations. Urban business model, driverless cars, bike sharing, etc. are the new ways of interaction. I name them hybrid governance and I argue that the sharing economy is a significant example of the role of a new concept of urbanism driven by massive data, that the sharing economy is a significant example of the role of a new concept of urbanism driven by massive data, and enhancing its evolution.

The energy challenge that the world is facing requires a change of the sequence in the application of public law. In spite of its proximity to the territory and citizens, the law of public law is not always adapted to the context of the energy transition. The paper aims to explore the role and the perspective of such alternative mobility instruments in the context of the energy transition, pointing out the potential role of local communities participation, decision and consensus-building. The essay wants to provide a global and comparative analysis of the interaction between the law of the sharing mobility and the energy transition, by focusing on the cases of crowdfunding campaigns in Taiwan, which provides many fertile examples of public/private interaction, and how local communities participation, decision and consensus-building.

In many areas, public and private powers are experimenting the desirability of the use of innovative tools to allow the proper implementation of policies and regulations. Urban business model, driverless cars, bike sharing, etc. are the new ways of interaction. I name them hybrid governance and I argue that the sharing economy is a significant example of the role of a new concept of urbanism driven by massive data, and enhancing its evolution.
The panel addresses the exceptionalism of migration as compared to other subjects of regulation in public law. The Theory of Property Rights describes the law as a system that allocates property rights over goods. For each good in a society, the law has to determine who should have control over this good? 1.) by what rule should it be allowed to transfer this property right from one agent to another? and 2.) who should have control over somebody's migration? The right to decide over somebody's migration is a core aspect of democratic governance. For each good in a society, the law has to take two fundamental decisions. 1.) which person should have control over this good? 2.) by what rule should it be allowed to transfer this right, immigration law becomes a tool of public law in the regulation of migration. The Theory of Property Rights describes the law as a system that allocates property rights over goods. For each good in a society, the law has to determine who should have control over this good? 1.) by what rule should it be allowed to transfer this property right from one agent to another? and 2.) who should have control over somebody's migration? The right to decide over somebody's migration is a core aspect of democratic governance. For each good in a society, the law has to take two fundamental decisions. 1.) which person should have control over this good? 2.) by what rule should it be allowed to transfer this right, immigration law becomes a tool of public law in the regulation of migration.

The study compares the approach and especially the proportionality assessment in national immigration laws and EC law. This is of particular interest because of the core aspect of migration as a property right: who should have control over somebody's migration? The right to decide over somebody's migration is a core aspect of democratic governance. For each good in a society, the law has to take two fundamental decisions. 1.) which person should have control over this good? 2.) by what rule should it be allowed to transfer this right, immigration law becomes a tool of public law in the regulation of migration.

This study compares the approach and especially the proportionality assessment in national immigration laws and EC law. This is of particular interest because of the core aspect of migration as a property right: who should have control over somebody's migration? The right to decide over somebody's migration is a core aspect of democratic governance. For each good in a society, the law has to take two fundamental decisions. 1.) which person should have control over this good? 2.) by what rule should it be allowed to transfer this right, immigration law becomes a tool of public law in the regulation of migration.

Migration as a property right: A legal framework that becomes obvious when it is used as a way to show exceptionalism in immigration law compared to other fields of public law. Exceptional logic familiar to European human rights law, the exceptional logic familiar to European human rights law, the exceptional logic familiar to European human rights law, the exceptional logic familiar to European human rights law, the exceptional logic familiar to European human rights law, the exceptional logic familiar to European human rights law.
fighting corruption in the eU: meeting business and public interest needs

Andreas Kulick: Neither here nor there – CJEU’s Boundary-breaking Jurisprudence

51 Borders and Boundaries In European Law. The CJEU, in a line of preliminary references in European legislation, however, gives a power without territorial or sectorial undertakings. It has come to encompass part of the interlegality of the CJEU’s exercise of its jurisdiction and expansion of its jurisdiction. The CJEU’s power to delineate the political economy of the monopoly state and to affect the protection of the foreign investor from an ideological and institutional realm. The institutional framework of the CJEU’s exercise of its jurisdiction and expansion of its jurisdiction can be seen as a step towards the deconstruction of the boundaries between private and public sectors.

Systemic trust in public powers. The paper highlights to what extent corruption erodes the pillars of democracy, the pursuit of public good, and the protection of the environment. This set of institutions, treaties, and theories has the power to delineate the political economy of the monopoly state, depriving them in several cases of the basic welfare of the population, and protection of the environment. Corruption exasperates inequalities and often stakes at the core of the protection of the population. The institutional framework of the CJEU’s exercise of its jurisdiction and expansion of its jurisdiction can be seen as a step towards the deconstruction of the boundaries between private and public sectors.

Gabriella Margherita Racca: Trans-border Cooperation for Integrity, Equality and Trust in Public Governance

The Constitutionalisation of European Union Law. The Constitutionalisation of European Union Law is an ongoing process of legal change that has been taking place in recent years. The Constitutionalisation of European Union Law is an ongoing process of legal change that has been taking place in recent years. The Constitutionalisation of European Union Law is an ongoing process of legal change that has been taking place in recent years. The Constitutionalisation of European Union Law is an ongoing process of legal change that has been taking place in recent years.

The deconstruction of the boundaries between private and public sectors is a key aspect of the Constitutionalisation of European Union Law. The Constitutionalisation of European Union Law is an ongoing process of legal change that has been taking place in recent years. The Constitutionalisation of European Union Law is an ongoing process of legal change that has been taking place in recent years. The Constitutionalisation of European Union Law is an ongoing process of legal change that has been taking place in recent years.

The Constitutionalisation of European Union Law is an ongoing process of legal change that has been taking place in recent years. The Constitutionalisation of European Union Law is an ongoing process of legal change that has been taking place in recent years. The Constitutionalisation of European Union Law is an ongoing process of legal change that has been taking place in recent years. The Constitutionalisation of European Union Law is an ongoing process of legal change that has been taking place in recent years. The Constitutionalisation of European Union Law is an ongoing process of legal change that has been taking place in recent years. The Constitutionalisation of European Union Law is an ongoing process of legal change that has been taking place in recent years. The Constitutionalisation of European Union Law is an ongoing process of legal change that has been taking place in recent years.

The Constitutionalisation of European Union Law is an ongoing process of legal change that has been taking place in recent years. The Constitutionalisation of European Union Law is an ongoing process of legal change that has been taking place in recent years. The Constitutionalisation of European Union Law is an ongoing process of legal change that has been taking place in recent years. The Constitutionalisation of European Union Law is an ongoing process of legal change that has been taking place in recent years. The Constitutionalisation of European Union Law is an ongoing process of legal change that has been taking place in recent years. The Constitutionalisation of European Union Law is an ongoing process of legal change that has been taking place in recent years. The Constitutionalisation of European Union Law is an ongoing process of legal change that has been taking place in recent years. The Constitutionalisation of European Union Law is an ongoing process of legal change that has been taking place in recent years. The Constitutionalisation of European Union Law is an ongoing process of legal change that has been taking place in recent years. The Constitutionalisation of European Union Law is an ongoing process of legal change that has been taking place in recent years. The Constitutionalisation of European Union Law is an ongoing process of legal change that has been taking place in recent years. The Constitutionalisation of European Union Law is an ongoing process of legal change that has been taking place in recent years. The Constitutionalisation of European Union Law is an ongoing process of legal change that has been taking place in recent years. The Constitutionalisation of European Union Law is an ongoing process of legal change that has been taking place in recent years. The Constitutionalisation of European Union Law is an ongoing process of legal change that has been taking place in recent years.
Panel formed with individual proposals.

Ligia Fabris Campos: Trans* rights in Brazil and Germany: Legal interpretations of Harm to self?

The objective of my proposal is to analyse transgenders rights in Brazil and Germany in light of the concept of "harm to self". I believe that the use of this concept combined with the perspective from gender studies could be a mechanism to understand the contradictions, setbacks and advancements as well as the questions upon state intervention in the private sphere of trans* people in both countries. In Brazil, until 1997, the sex reassignment surgery used to be considered a crime. Although there has been no change in criminal rules, today this surgery is allowed and performed free of charge in public hospitals. Germany has also a vivid debate on the theme. In 2011 the German Constitutional Court has declared unconstitutional the requirement of the surgery and sterilisation as prerequisites for changing the registered gender. I maintain that in both countries those changes were based on legal interpretations of the concept of 'harm to self'.

Joseph Corkin: Who, then, in [transnational constitutional] law, is my neighbour? Limiting the argument from external effects

Constitutional pluralism, conflicts-law-constitutionalism and integration as democracity are all used to justify the EU as ensuring states consider their external effect on neighbours, but also that there are limits to this duty to maintain the idea of the state as a self-governing political community. Determining our duties to non-constituents raises moral philosophy because the ethical ideal of pure impartiality (that everyone has an equal claim to our attention and the ultimate relevant constituency is infinite) encounters a reality in which we only seem capable of transcending pursuit of self-interest within communities whose members share our (constructed) histories/cultures; their boundedness essential to developing bonds of mutual trust and respect. This makes a degree of partiality neither a human weakness nor a psychological limitation, but a morally justifiable part of living among those with whom we share special connections and through which we fulfill our social potential.

Fernando Muñoz León: Social Infrastructure and legal knowledge: On The Difficult Reception of Antidiscrimination Law in Chile

In Latin America, legal professionals tend to consider the object of their attention, the law, as a form of knowledge. This results in an abstract view of the law that obliterates the role that concrete subjects, with their personal stories and collective aspirations play in shaping the law. Most of the time, both, they and the political authorities issuing norms remain oblivious to the fact that, for its success, the rule of law requires the existence of what I would describe as an adequate social infrastructure, which comprises ordinary citizens and social movements engaged in struggles for the legal recognition of their needs and interests, legal professionals with an expertise in the relevant areas of law, various kinds of state officials that participate in the enforcing of norms, and political authorities endowed with the power to draft the letter of the law and to assign various resources to its enforcement. In this essay, I will elaborate on the role played by these social forces.
There exists considerable controversy with regard to the Jewish and Islamic practices of ritual male circumcision and ritual animal slaughter. While those that engage in them claim that their behavior is protected by religious freedom (and, in the case of circumcision, parental rights), critics argue that there are legitimate state interests in the protection of animals and children that justify their regulation or prohibition. The panel will approach these and related issues from different angles which include constitutional law and culture, moral philosophy, and human rights.

Participants

Iddo Porat  
Shai Lavi  
Kai Möller  
Abhayraj Naik  
Rachel Priyanka Chenchiah

Iddo Porat: Proportionality and the Constitutionality of Ritual Animal Slaughter and Male Circumcision

Ritual animal slaughter and male circumcision are two religious practices of Jews and Muslims that, since the 19th century, have conflicted with the interests, the morals and the laws of modern Christian societies. In the past few decades both practices were challenged in European courts; two recent examples are the Co-Logne Regional Court’s decision regarding the legality of male circumcision (2012) and the Polish Constitutional Tribunal’s decision regarding the legality of ritual Jewish slaughter (2014). The counter claims in all such cases were that a restriction on these practices conflicts with the right to religious freedom. In Europe, as well as in many other countries, interpreting the scope of this right inevitably boils down to the test of proportionality, which has become the locus of constitutional review in most European jurisdictions as well as many other countries. The aim of my presentation will be to analyze and criticize the use of the test of proportionality in the context of these two religious practices, and also to place the use of proportionality in the context of the European constitutional culture more generally.

Shai Lavi: Unequal Rites: Jews, Muslims and Religious Freedom in Germany

Religious practices of animal slaughter and male circumcision, shared by Jews and Muslims, have become a source of legal and public debate in contemporary Europe. Some European jurisdictions restrict (and even ban) these practices, while other jurisdictions offer an expansive protection of religious rights. Given the similarities between the practices and the liberal commitment to equality under the law, it would seem unlikely to find differences between the legal regulation of Jewish and Muslim practices. The paper will suggest, quite to the contrary, that the practices are, in fact, treated differently. Furthermore, I will suggest that the regulation of these practices is best understood not as a two way relationship between the secular state and a religious minority, but a three-way relationship between the (post-Christian) state, its Jewish, and Muslim members.

Kai Möller: What’s Wrong About Ritual Male Circumcision?

A recent judgment by a lower court in Germany brought the problem of ritual male circumcision to the consciousness of the wider public. My presentation argues that ritual male circumcision is not covered by parental authority. It first considers the best interest test of parental authority and argues that this test fails to take the boy’s human rights sufficiently seriously. Instead, I propose the autonomy conception of parental authority, according to which parental authority must be exercised such as to ensure that the child will become an autonomous adult. While parents may raise their child in line with their religious convictions, respect for his autonomy requires that this be done in a way that allows the child to later distance himself from these values. Physical changes and irreversible physical changes are impermissible. Thus, ritual male circumcision is wrong because it usurps the child’s right and responsibility to become the author of his own life.

Abhayraj Naik and Rachel Priyanka Chenchiah: Law, Violence and the Animal

In this paper, we attempt to map out the complex, paradoxical relationship between law and violence in and through the figure of the animal. We anchor our musings in the terrain of the legal archive in India – a multicultural, federal, pluralistic, and democratic polity where a number of religions, traditions, and cultures articulate complex and contradictory conceptions of the human-animal relationship – and thus imagine and engage with the limits and possibilities of a truly post-colonial and post-human justice. Our enquiry addresses both the systemic violence that the body of the animal encounters in the contemporary socio-economic order, and the epistemological and ontological violence uncovered and/or generated through a philosophical engagement with the notion of the animal.
The Colombian armed conflict has conditions that make it unique. Since the beginning, it has involved people from many different places and has been marked by various and distinct challenges faced in other transition processes crossed by other states. Specifically, there is a need to think about the answers that can be offered to the legal system in order to consolidate the success of a process of transition from armed conflict to peace. In response to these challenges, we present this panel related to the topic “Constitutionalism for peace in Colombia”, which focuses on the legal and political aspects of transitional constitutionalism. The panel reflects a transition process that takes place under the rule of law but with some unusual features. It will cover the transformation of constitutionalism in order to ensure that legal and political institutions are tailored to the needs involved in ending the armed conflict. Ultimately, this panel will be about the way in which constitutionalism is adapted to achieve the overall goals of a political transition.

Participants
Gonzalo Andrés Ramírez-Cleves
Paola Andrea Acosta Alvarado
Diego González-Medina
Alexandra Castro Franco

Name of Chair: David E. Landau
Room: OR24 1.601

Gonzalo Andrés Ramírez-Cleves: Constitutional amendments and the peace process in Colombia

The paper will discuss the constitutional judgments that have been given by the Constitutional Court in the analysis of so-called “legal framework for Peace”. It also analyzes the “legislative act for peace” which proposes an expedited amendment process to reach agreements with the partial participation of Congress and the strengthening of the powers of the President in order to develop these agreements through statutory laws. The paper will focus on problems related to the judicial review of constitutional amendments. It examines the law that regulates the process of constitutional amendments, taking into account that the Colombian Constitutional Court has developed the power to declare the unconstitutionality of the proposed constitutional amendments through the substitution of the constitution doctrine. This review is based on the inherent principles of the constitution and those arising from international human rights treaties, in this case especially those related with the rights of the victims to truth, justice, comprehensive reparations.

Paola Andrea Acosta Alvarado: Constitutionalism for Peace and International Law

International law has become an essential tool for achieving constitutional objectives, including peace. However, the close relationship between international law and constitutional law during peace processes and transitions to democracy has some drawbacks. In this paper we intend to address two fundamental issues. First, we want to emphasize the fundamental role of international law within the so-called “constitutionalism for Peace” and, from this point of view, the advantages of having international support during peace processes. Second, we want to further draw attention to the challenges of this close relationship, as well as possible solutions to the dilemmas it poses.

Diego González-Medina: Public Participation in the Constitution Building Process: a paradoxical matter

This paper will examine the role of public participation in constitution-building processes, particularly within post-conflict societies. This paper analyzes the pros and cons of public participation and public referendum in constitution-building processes through studying lessons learned from various experiences around the world. Additionally, this paper analyses the current Colombian debate concerning public participation in public referendum, constitutional amendment and the new set of rules for constitutional law.

Alexandra Castro Franco: Welcoming migrants back home: the lessons from Colombia in post conflict scenarios

One of the most dramatic consequences of armed conflicts all over the world is the flow of refugees and internally displaced persons. This paper analyzes the pros and cons of public participation and public referendum in constitution-building processes through studying lessons learned from various experiences around the world. Additionally, this paper analyses the current Colombian debate concerning public participation in constitutional amendment and the new set of rules for constitutional law. This leads us to say that the country has more or less 10% of its population immersed in a population movement. Within this panorama, we intend to analyze the root causes, consequences and responses to the mass migration in Colombia. We will try to point out, first, the structural conditions that need to be made possible the return of Colombians.
This panel critically examines the evolution of Romania's constitution in the 25 years since its adoption. It does so through the lens of three of its 'others': national minorities, women, and citizens as empowered actors in the constitutional reform process. The papers discuss the exclusionary nature of part of the constitution's eternity clause, gender equality guarantees, and the rise of citizen participation as three axes along which to trace the maturing of one of the most understudied post-communist constitutions.

Participants
Silvia Suteu
Elena Brodeala
Paul Blokker
Bianca Selejan-Guţan

Name of Chair
Silvia Suteu
Room
DOR24.1.604

Silvia Suteu: The Multinational State That Wasn't: Romania as a "Unitary and Indivisible National State"
This paper critically examines the Romanian constitution’s unamendable commitments to the “national” and “unitary and indivisible” character of the state (Articles 1 and 153). The paper analyses the origins of these provisions, their interpretation in case law and their significance in Romanian constitutional discourse today. The paper traces the genealogy of the idea of the “national state” and explains the links between an ethnic-based definition of the constituent people and the exclusion of alternative, multinational, foundational narratives. Comparisons are drawn to other Eastern European countries seeking to enshrine, including via unamendable provisions, ethnic-majoritarian visions of the state in their constitutions. The paper argues that the 1991 drafters’ swift adoption of this “national state” model haunts Romania’s constitutional development to this day, including recognition of minorities, administrative territorial reorganization, and aspects of European integration.

Elena Brodeala: Women as Others: The Changing Status of Women in the Romanian Constitution
This paper investigates to which extent the Romanian constitution provided for adequate means to enhance women’s equal citizenship in the last twenty-five years. By starting from Simone de Beauvoir’s thought encompassed in the idea that gender inequality derives from defining women as “the Others”, or as the totally opposite to men, the paper shows that since its adoption, the Romanian Constitution started to depart from the stereotypical and antagonist understanding of women and men’s roles in society that Romania had inherited from its socialist past. Yet, this paper argues that the developments that took place in the last twenty-five years are not progressive enough and that further improvements are still needed.

Paul Blokker: The Romanian Constitution and Civic Engagement
The paper engages with the status of citizens and civil society in the Romanian Constitution of 1991 as well as their role in on-going constitutional politics and reform. It interacts with both theoretical discussion of the relation between citizens and constitutional change and second, formal constitutional institutional and participatory elements. Romania will be discussed in terms of available democratic instruments, related to representative and direct democracy, and in particular to possibilities of civic engagement in constitutional reform. Third, the usage of participatory instruments in the 1990-2015 period will be briefly addressed, with a focus on direct democracy and constitutional revision. Fourth, the paper will study the process of constitution-making and constitutional reform from the perspective of civic influence.

Bianca Selejan-Guţan: 25 Years After: The Constitutional Court and Others in the Romanian Constitutionalism
The Romanian current constitutional system has undergone numerous developments since its establishment in 1991. The Constitutional Court appeared as one of the central elements of the rule of law guarantee in Romania. The paper intends to present a critical overview of how the Constitutional Court in the Romanian constitutionalism, in the different contexts that link the Court with “others”: with the state powers as well as with the individuals, with the judicial system. The emphasis in context will be placed on the relationship between the Constitutional Court and the political powers, as well as on the relationship with the judicial system and with the social context: inspiration sources; how the court itself was seen as ‘the Other’ in its early years; the changing relationship with the legislature; the intriguing relationship with the executive, especially with the President; the sinuous relationship with the highest court of the judiciary.

CONCURRING PANELS
The panel will present three models of social change by means of unexpected redesigning constitutional structure and institutions. The first paper (on liberty) will show how an international religious court may help women to gain their freedom from religious marriage. The second paper (on equality) will suggest civic education and naturalization should be designed on equal ideological grounds and hence claim civic education exceeds its liberal mandate. The third paper (on fraternity) will demonstrate why socio-economic rights should be regulated via values of fraternity rather than the market exchange. Thus, the panel will deal with the challenges of public life and governance, combining elements in the very heart of public and comparative law, as well as social sciences and political theory.

Participants
Mohsin Bhat
Felix Petersen
Roman Zinigrad

Name of Chair
Roman Zinigrad
Room
DOR24 1.606

Mohsin Bhat: Fraternity and Regulation: Socio-economic Rights as a Social Practice
Socio-economic rights have strained the classical picture of rights, property and the State. A controversial area is their impact on private rights and the regulation of property to make it accessible to the public. This paper contends that balancing – predominantly adopted by the courts and scholars – is inadequate to deal with such cases. By only stressing on rights, this method fails to focus on what values are at stake in such cases and identify the intellectual resources for resolving such conflicts. I argue that we should pay attention to the values democratic politics inscribes to social practices that are recognized as socio-economic rights. Focusing on the right to education cases in India and South Africa, I will show that social practices that come to be regarded as socio-economic rights are better understood as governed by the values of fraternity rather than market exchange. Fraternity provides a stronger and more appealing normative basis of resolving such conflicts.

Felix Petersen: Judicial Review and Social Construction: The Case of the Turkish Constitutional Court
The Turkish constitutional court, Anayasa Mahkemesi (AYM), is often described as an agent of the regime. In this study critical appraisals of the AYM will not be refuted. Quite contrary, the aim is to make explicit what it means that a judicial review body becomes political by promoting problematic social constructions. The article focuses on judgments that deal with subjects relevant for understanding the relation of individual and society, and it shows how the AYM, as one constitutive element of the Turkish state, contributes to social construction. However, the study inquires a less piquant, yet illustrative topic – constitutional review of surname legislation. In this endeavor I go beyond the fixation on judgments as results of a judicial decision-making process, and, instead, investigate the reasoning. Drawing on social constructionist literature I will show that in the opposing reasoning of majority and minority opinion we can see competing constructions of Turkish society at work.

Roman Zinigrad: Parallels between Civil Education and Citizenship
The number of citizens in a state may grow in two ways: birth and immigration. The process of acquiring citizenship in both cases is usually presented in very different manners: birthright citizenship is thought to be technical while the naturalization of immigrants is understood to be of a more substantive nature. Questioning the above axioms my paper will present two interdependent arguments, both stemming from liberal theory and applicable to (more or less) liberal-democratic regimes. I will claim that the above viewpoint is in fact reverse. Not only that children are also subjected to substantive requirements as a precondition to de facto citizenship, but these substantive requirements are much more profound and intrusive than in the case of naturalization. Given the validity of the first argument the normative claim of the article will then be that these substantive requirements for “birthright citizenship” cannot be imposed on children of parents who objection to this policy.
This panel examines the treatment of irregular migrants, and addresses questions of borders, movement and displacement. The United States is one of many countries that build walls to control the physical structure of the border. This construction of a wall is an administrative technique that captures the normative force of the border once established, and has often been used to regulate the physical structure of the wall. The very existence of immigration barriers presupposes both exclusionary and inclusionary border rules and also their incompleteness thus a matter of human rights. In another view, the construction of a porous border is thus required by the very concept of immigration detention facilities across the United States guarantee individuals that have established legal socialization that produces widespread legal recognition, among others. This legal cynicism among detainees. This legal cynicism is characterized by the belief that the legal system is punitive despite its purported administrative function, legal out- comes are arbitrary. These findings have significant policy implications because detainees, as individuals embedded in family and transnational networks, have the potential to widely disseminate deference and trust, or cynicism and delegitimizing beliefs, about the U.S. legal system and authorities.

Leti Volpp: Welcome Refugees?

This paper will examine the transnational migration of a particular sign, originally posted in 1990 along a federal highway in California, “Refugees Welcome.” This paper will discuss how we should read this sign and its movements. The migration and trans- portation of irregular migrants across the United States raises a jurisdictional challenge. Human rights enforcement bodies avoid taking a stand by deeming the potential to widely disseminate deference and trust, or cynicism and delegitimizing beliefs, about the U.S. legal system and authorities.

Participants

Linda S. Bosniak
Emily Ryo
Moria Paz
Name of Chair
Moria Paz
Room
107

Linda S. Bosniak: Wrong, Rights and Regularization

Assuming one supports programs of legalization or regularization for irregular immigrants in some circumstances, how is such support to be justified? There are a variety of normative rationales out there on this question, from liberal legal idealism to human rights. This paper will examine the treatment of irregular migrants, and addresses questions of borders, movement and displacement. The United States is one of many countries that build walls to control the physical structure of the border. This construction of a wall is an administrative technique that captures the normative force of the border once established, and has often been used to regulate the physical structure of the wall. The very existence of immigration barriers presupposes both exclusionary and inclusionary border rules and also their incompleteness thus a matter of human rights. In another view, the construction of a porous border is thus required by the very concept of immigration detention facilities across the United States guarantee individuals that have established legal socialization that produces widespread legal recognition, among others. This legal cynicism among detainees. This legal cynicism is characterized by the belief that the legal system is punitive despite its purported administrative function, legal out- comes are arbitrary. These findings have significant policy implications because detainees, as individuals embedded in family and transnational networks, have the potential to widely disseminate deference and trust, or cynicism and delegitimizing beliefs, about the U.S. legal system and authorities.

Emily Ryo: Developing Legal Cynicism through Immigration Detention

Every year, tens of thousands of noncitizens are held and processed through an expanding web of immigration detention. This paper will examine the transnational migration of a particular sign, originally posted in 1990 along a federal highway in California, “Refugees Welcome.” This paper will discuss how we should read this sign and its movements. The migration and transportaton of irregular migrants across the United States raises a jurisdictional challenge. Human rights enforcement bodies avoid taking a stand by deeming the potential to widely disseminate deference and trust, or cynicism and delegitimizing beliefs, about the U.S. legal system and authorities.

Moria Paz: The Law of Walls

Walls have become a predictable strategic solution for states that seek to retain control over immigration. This policy illustrates that walls are a strategy of immigration control that has escaped the attention of policy- makers, scholars, and the public alike. Using extensive original data on long-term immigrant detainees, I show that immigration detention facilities across the United States guarantee individuals that have established legal socialization that produces widespread legal recognition, among others. This legal cynicism among detainees. This legal cynicism is characterized by the belief that the legal system is punitive despite its purported administrative function, legal out- comes are arbitrary. These findings have significant policy implications because detainees, as individuals embedded in family and transnational networks, have the potential to widely disseminate deference and trust, or cynicism and delegitimizing beliefs, about the U.S. legal system and authorities.

Leti Volpp: Welcome Refugees?

This paper will examine the transnational migration of a particular sign, originally posted in 1990 along a federal highway in California, “Refugees Welcome.” This paper will discuss how we should read this sign and its movements. The migration and transportaton of irregular migrants across the United States raises a jurisdictional challenge. Human rights enforcement bodies avoid taking a stand by deeming the potential to widely disseminate deference and trust, or cynicism and delegitimizing beliefs, about the U.S. legal system and authorities.
Our panel examines progress toward the legal recognition of same-sex marriage and considers which other reforms may or should follow from it. We consider the arguments advanced for and against same-sex marriage and ask whether civil marriage equality for gay and lesbian couples is an unstable stopping point on the road to more radical reform. If marriage is no longer “one man and one woman” united in a union oriented to procreation, what is the status of monogamy after same-sex marriage? While polygamy has generally been patriarchal in the past – as polygyny, or one husband with multiple wives – is there good reason to suppose this is likely to be true in the future? Should marriage itself be abolished in favor of the legal recognition of a wider variety of caring relationships? Do principles of sexual freedom and diversity require the acceptance of a wider variety of partnership types? And if adult siblings wish to have sexual relations – and they take care not to have children – how can we continue to justify criminal prohibitions? The format of our panel invites audience participation.

Participants
Imer Flores
Stephen Macedo
Mattias Kumm
Isabella Litke

Name of Chair
Imer Flores

Room
DOR24 1.608

Imer Flores: The Constitutionalization of Family Law and the Recognition of Same-Sex Marriage in Mexico and Elsewhere: A Comparative Overview

Although the past 50 years have been characterized by the struggle for the recognition of the rights of and for the LGTBTT community it is beyond discussion that the year 2015 was decisive in this process. Actually, the Mexican Supreme Court, in early June – and a couple of weeks before of the United States Supreme Court analogous ruling – declared the unconstitutionality of any general norm, including local constitutions, that DOMA like, define civil marriages as the “union of one man and one woman” and that reduced its end to the “procreation and perpetuation of the human species”. Hence, I intend not only to revise the debate regarding the recognition of same-sex marriage as a civil institution or as another form of contractual relationship but also to revisit its recognition in the Mexican case and elsewhere to provide a comparative overview.

Stephen Macedo: What’s Next?: Sexual Freedom and Diversity After Same-Sex Marriage, Holding Line on Incest and Polygamy

New challenges to monogamous marriage and legal limits on sexual freedom have also arisen in many jurisdictions. Is there a principle case for confining marriage to two adults after the acceptance of same-sex marriage? And what about consensual sexual relations among adult siblings? Would legal prohibitions on adult incest be justified when there is no intent to procreate? These challenges revive old controversies concerning polygamy and new (or apparently new) questions in the form of “polyamory” or “polyfidelity”: egalitarian forms of group intimate relations.

I argue that legal recognition of plural marriage is not currently warranted and general criminalization of adult incest should be preserved (recognizing the need for exceptions in extremely unusual cases). I draw on court decisions concerning polygamy in Canada and the US and controversies about the criminalization of adult incest in Germany and elsewhere. Monogamous marriage and prohibitions on incest help secure the foundations of equal liberty and fair opportunity, and so reflect (rather than merely the core values of liberal democratic constitutionalism properly conceived.

Mattias Kumm: Commentator
Isabella Litke: Commentator

CONCURRING PANELS 58 FAMILY REGULATION AND SEXUAL FREEDOM: COMPARATIVE PERSPECTIVES ON MARRIAGE EQUALITY, MONOGAMY, AND ADULT INTIMACY
This panel will explore how the concept of human dignity is used to protect ‘otherness’ in the EU in the context of a crisis that Europe is facing. Erinn Daly will focus on the dip- ngy as an expressive norm in UK Law and will discuss various understandings of the concept of human dignity in the European context. Catherine Dupré will discuss how the ‘expressive’ element in philo-osophical conceptions of human dignity can propose an understanding of the concept as unconditional respect that regulates positive obligations to the states, which dictates positive obligations to the states.

Tarunabh Khaitan will discuss how the ‘expressive’ element in philo-osophical conceptions of human dignity to propose an understanding of the concept as unconditional respect that regulates positive obligations to the states.

Daniel Bedford: Including the Other and Chal- lenging the Norm: The Role of Human Dignity in UK Law

Drawing on examples from UK law, this paper ex- plores the ways in which human dignity is used to pro- tect ‘otherness’ in the UK. The paper examines the role of law (in reproducing a particular sense of excluding the Other) in the framework of the Lisbon Treaty 2009, which has acquired exceptional normative strength as be- ing ‘inviolable’ (Article 1 EU Charter). The paper exam- ines the role of law in (re)producing a particular sense of excluding the Other and brings to the fore the core rights that give human dignity a clear substantive definition and make it the strongest normative basis for protecting ‘otherness’ in European constitution.

Catherine Dupré: The inviolability of dignity

Human dignity is one of the most controversial and elusive concepts. It is at the same time one of the most important and concepts-matrix that forms the basis of the positive obligation. It has acquired exceptional normative strength as being ‘inviolable’ (Article 1 EU Charter). The paper examines the role of law in (re)producing a particular sense of excluding the Other and brings to the fore the core rights that give human dignity a clear substantive definition and make it the strongest normative basis for protecting ‘otherness’ in European constitution.

Daniel Bedford: Including the Other and Chal- lenging the Norm: The Role of Human Dignity in UK Law

Drawing on examples from UK law, this paper ex- plores the ways in which human dignity is used to pro- tect ‘otherness’ in the UK. The paper examines the role of law (in reproducing a particular sense of excluding the Other) in the framework of the Lisbon Treaty 2009, which has acquired exceptional normative strength as be- ing ‘inviolable’ (Article 1 EU Charter). The paper exam- ines the role of law in (re)producing a particular sense of excluding the Other and brings to the fore the core rights that give human dignity a clear substantive definition and make it the strongest normative basis for protecting ‘otherness’ in European constitution.

Ioanna Tourkochoriti: Dignity as an expressive norm

Proponents of dignity see it as a useful tool, which solves the most important of the practical and theo- retical problems in human rights law. arguing against the sympathetic position are the sceptics, who have raised troubling questions about dignity’s alleged in- firmities that the critics have pointed out. if there is no dignity, there is no human value. but the notion of dignity is so all the more vague, but at the same time, the reference to the concept seems indispensable to denote the sense of Otherness. it highlights how the privileging of the sovereign legal subject has been central to the establishment of the Other as a category of exclusion. it is at the same time one of the most important and concepts-matrix that forms the basis of the positive obligation. It has acquired exceptional normative strength as being ‘inviolable’ (Article 1 EU Charter). The paper examines the role of law in (re)producing a particular sense of excluding the Other and brings to the fore the core rights that give human dignity a clear substantive definition and make it the strongest normative basis for protecting ‘otherness’ in European constitution.

Ioanna Tourkochoriti: Dignity as an Unconditional

Dignity as an Unconditional Respect

In light of the Lisbon Treaty of 2009, which grants the European Union the power to enact laws on the protection of human dignity, the concept of dignity as an unconditional respect is increasingly being discussed. This paper will examine the potential implications of placing the sovereign legal subject beyond the reach of the law, and its role in shaping community values. Catherine Dupré will focus on the role of law in (re)producing a particular sense of excluding the Other and brings to the fore the core rights that give human dignity a clear substantive definition and make it the strongest normative basis for protecting ‘otherness’ in European constitution.

Daniel Bedford: Including the Other and Chal- lenging the Norm: The Role of Human Dignity in UK Law

Drawing on examples from UK law, this paper ex- plores the ways in which human dignity is used to pro- tect ‘otherness’ in the UK. The paper examines the role of law (in reproducing a particular sense of excluding the Other) in the framework of the Lisbon Treaty 2009, which has acquired exceptional normative strength as being ‘inviolable’ (Article 1 EU Charter). The paper exam- ines the role of law in (re)producing a particular sense of excluding the Other and brings to the fore the core rights that give human dignity a clear substantive definition and make it the strongest normative basis for protecting ‘otherness’ in European constitution.
The surveillance of the European Union’s external borders has been considered to be one of the core tools of “compensatory” measures for the removal of the internal border controls between the Member States within the Schengen Area. Since then, issues have arisen regarding the cooperation of the Member States and the EU in regard to the task of border surveillance, the importance of surveillance in the era of the new Member states, and the “effectiveness” of border surveillance and how it can become even more vital in the wake of the recent “Schengen crisis.”

Given this, the paper will deal with these two main challenges: (1) do terrorism and migrants/trafficking require to be coped with by the EU and Member States, and (2) how the Member States can deepen their cooperation and solidarity underlying the European integration project. Questioning not only legitimacy, but also legality of EU measures, new Member States seem unwilling to accept responsibility and burden-sharing in the context of security and public order.

The presentation seeks to analyse the causes and consequences of such reactions threatening a deeper division in the EU into the core and periphery. Yet, while the future may revert this tendency, the current situation begs the question why new Member States are not even perceived by incoming migrants and refugees as a safe haven, or the core of Europe, but merely a transit zone.

Nicola Selvaggi: Beyond Schengen? Migration and Criminal Law

Everyone is familiar with the Lithuan Treaty the problem of criminal law in Europe (be it a European criminal law or a harmonized law or a system based on mutual recognition) is still a crucial and unsolved problem in the EU. At the same time new and major challenges emerged that the EU will have to cope with: terrorism and migrants. Both of these challenges do require to be coped with by the EU and Member States, but also legality of EU measures, new Member States seem unwilling to accept responsibility and burden-sharing in the context of security and public order.

The response of the new Member States to the refugee crisis, as well as to the recent proposals concerning EU border surveillance, the principle of sincere cooperation and solidarity underlying the European integration project. Questioning not only legitimacy, but also legality of EU measures, new Member States seem unwilling to accept responsibility and burden-sharing in the context of security and public order.

The presentation seeks to analyse the causes and consequences of such reactions threatening a deeper division in the EU into the core and periphery. Yet, while the future may revert this tendency, the current situation begs the question why new Member States are not even perceived by incoming migrants and refugees as a safe haven, or the core of Europe, but merely a transit zone.
Richard B. Stewart: Liberal Economic Ordering through Megaregional Agreements: The Trans-Pacific
Partnership (TPP)

The TPP is an attempt to balance liberal economic ordering while addressing non-tariff regulatory trade impediments. It seeks to advance innovation in areas of trade in services, global value chains (GVCs), and the digital economy. It expands the space in which cross-border provision of services can take place, ensuring a level-playing field while combating protectionist practices. It also includes wide-ranging provisions to reform, reorient and modernize inter-state trade to a growing focus on Global Value Chains (GVCs) as organizational form of contemporary production. The regional differentiation of trade in services, global value chains (GVCs), and regulatory regimes is both a reaction to the existing fragmentation of production networks and a vital factor in expanding this trend. While GVCs remain highly sensitive to their regulatory environment, they are also a proper source of governance patterns which reflect the systemic nature of chain-wide coordination. This paper discusses how the novel administrative law architecture created by the TPP further blurs regulatory boundaries to create a space for third parties alike. Taken together, these provisions provide a significant impact on countries and people across the globe, not just those within the Treaty area. The paper concludes that the TPP seeks to push for similar rules in the Transatlantic Trade and Investment Partnership (TTIP) with the EU to combat protectionism.

Klaas Hendrik Eller: The Transatlantic Partnership Agreement Through the Lens of Global Value Chains

The TPP shifts the conventional paradigm of inter-state trade towards a growing focus on Global Value Chains (GVCs) as organizational form of contemporary production. The regional differentiation of trade in services, global value chains (GVCs), and regulatory regimes is both a reaction to the existing fragmentation of production networks and a vital factor in expanding this trend. While GVCs remain highly sensitive to their regulatory environment, they are also a proper source of governance patterns which reflect the systemic nature of chain-wide coordination. This paper discusses how the novel administrative law architecture created by the TPP further blurs regulatory boundaries to create a space for third parties alike. Taken together, these provisions provide a significant impact on countries and people across the globe, not just those within the Treaty area. The paper concludes that the TPP seeks to push for similar rules in the Transatlantic Trade and Investment Partnership (TTIP) with the EU to combat protectionism.

Hein Churchman: The Limitations of Regulatory Convergence within Free Trade Agreements (FTAs)

This paper explores whether megareregional free trade agreements (FTAs) are a legitimate vehicle to achieve regulatory convergence or whether targeted multilateralism is the only way to achieve a successful or even well-balanced outcome. I argue that this mechanism prevents stakeholders from substantially influencing the products of the new standards and regulations that will have a significant impact on countries and people across the globe, not just those within the Treaty area. The paper concludes that the TPP seeks to push for similar rules in the Transatlantic Trade and Investment Partnership (TTIP) with the EU to combat protectionism.

Paul Mertenskötter: Strategic Uses of Administrative Law in the Trans-Pacific Trade

The Limitations of Regulatory Convergence within Free Trade Agreements (FTAs)

This paper explores whether megareregional free trade agreements (FTAs) are a legitimate vehicle to achieve regulatory convergence or whether targeted multilateralism is the only way to achieve a successful or even well-balanced outcome. I argue that this mechanism prevents stakeholders from substantially influencing the products of the new standards and regulations that will have a significant impact on countries and people across the globe, not just those within the Treaty area. The paper concludes that the TPP seeks to push for similar rules in the Transatlantic Trade and Investment Partnership (TTIP) with the EU to combat protectionism.
In Europe

Panel formed with individual proposals.

Participants
Hent Kalmo
Siina Raskulla
Reuven Ziegler
Charlotte Steinorth
Matthew C. Turk

Name of Chair: Reuven Ziegler
Room: UL9 E14

Hent Kalmo: Nostalgia for the Future: Eurocrisis and the End of Self-fulfilling Europe

Much of the criticism leveled against policymakers in the wake of the eurocrisis has centered around two claims: that the adoption of a common currency was premature and that the project courted disaster by decoupling financial from political integration. I will argue that, contrary to what is often claimed, both of the decried features were rooted in the idea of the primacy of economics. The integration process has been guided by what might be called the assumption of self-fulfilling Europe: the idea that economic integration, once set in motion, can sidestep political barriers by creating its own pre-conditions. The eurocrisis has been so intellectually devastating because it has discredited the notion that closer economic ties necessarily lead to factual solidarity, which can then be channeled into constitutional unification. The effects of economic interdependence are much more ambivalent than has been assumed.

Siina Raskulla: The Constitutional Law of the European Union - a cross-cutting legal dogma of societal governance or a policy tool for a pragmatic management?

While studying the impact of the economic and financial crisis on the EU-legislation a pattern of pragmatism seemed to emerge. The latest emerging crises related to immigration and terrorism seems to have initiated similar response a swift adoption of measures taken to respond to challenges deviating from previous patterns of legislative coordination and management of relevant issues. This research papers studies the measures taken to respond to challenges of security and immigration in order to find out if these measures deviate from the constitutional and legal dogma of the EU.

Reuven Ziegler: The "Brexit" referendum franchise: delinking membership right of residence and eligibility for participation?

The paper critically reflects on the franchise for the 23rd June 2016 referendum on the United Kingdom's EU membership. The franchise invites us to consider the perceived link between membership in a polity, right of residence therein, and eligibility for participation in its electoral processes.

Charlotte Steinorth: What We Owe to Not So Distant Strangers?: The ECtHR and the Removal of Foreigners to Countries without Sufficient Medical Care

The ECtHR has firmly established that the expulsion of a non-citizen to a country where the individual runs a risk of ill treatment may engage a state Party's convention responsibility. The Court's approach in expulsion cases where there is no access to medical care in the destination country, however, suggests a more limited scope of protection. In n v UK the Court made reference to the idea of a fair balance between the interests of the host community and the protection of the individual's rights. The paper aims to critically engage with the Court's policy concerns and proposes a human dignity threshold to identify those aliens whose removal would be in breach of the Convention.

Matthew C. Turk: The Two Waves of European Disintegration: A Club Theoretic Analysis

This article argues that – despite differences in legal form, policy domain, and historical development – the Eurozone and Schengen Area can both be understood as legal-political clubs through the lens of the economic theory of clubs. Moreover, the two waves of disintegration that those regimes are experiencing have common foundations. Both are a result of the fact that, as structured, the two institutions violate constraints on membership size and composition that are specified by the theory of clubs. Club theory also provides tools for identifying the feasible set of policy options for reversing the waves of disintegration. Both the Eurozone and Schengen Area must either shrink in size or establish robust internal redistributive mechanisms, such as a workable banking union or increased burden-sharing for the administration of border controls. This article examines the considerable legal and political obstacles to each such alternative, and charts the likely path forward.
The Israeli Government, a leading and unprecedented

The deliberative model of the Rule of Law and the

Joshua Segev:

This article argues that, notwithstanding shedding light

63 the Boundaries of Judging

Constitutionalism: persuasive use of foreign

Regulation of Judges: Institutional Realism and

and succeeded by an epilogue. The most important

action. Some even advocate this as a tool of judicial

approach. This approach is based on the idea that

al courts and the ECtHR have adopted a procedural

ition of criteria of legitimacy or justification, as well as

israeli supreme court constitutional cases, decided

explores the ways by which it resolves disagreements

itors than non-experts. Moreover, legal experts were

the plaintiffs requested judicial nullification of legis-

three cases were constitutional petitions, in which

the delineation of usage standards of foreign juris-

tions of the persuasive activity of constitutional justice

to impose limits. Indeed, the work focuses on the area

the rational justification for the internationalization of

results will undoubtedly revolve around the presenta-

Expertise and Motivated

enal role, which puts into question its attractiveness in

ties judges possess and the nature of the judicial office

theory of judging – able to account for the responsibili-

eties judges in order to assert its possibility, without, however, fail

by national law courts, with views to the perception of the

Scientific investigation is geared to establish the assump-

tions. Our study is designed in order to access its possibilties, however, fail

imposed limits. Indeed, the work focuses on the area of

the line of recent work on the rational justification of the
current legal systems and, more particularly, in the line

the rule of law requires justification for legislative

the differences between legal and political forms of

the Hidden Importance of Agencification

The most important results were that regulatory

likely to be effective mechanisms for justification. But what

enforcement mechanisms for justification. But what

enforcement mechanisms for justification. But what

Courts in Israel, by applying and developing the con-

ing on the globalization of the constitutional

or concentration of the judicial review in contempo-

able explanation for the motivational effects on

found to generally be less susceptible to the effects of

contradiction to the basic laws. The initial findings

experts in this type of a case.

one significant exception to this rule, in which experts

were equally affected by motivated reasoning: Eitan v.

we offer a one significant exception to this rule, in which experts

were equally affected by motivated reasoning: Eitan v.

the rational justification for the internationalization of

of research on the globalization of the constitutional

of concentration of the judicial review in contempo-

by national courts, with views to the persuasion of the

israeli supreme court constitutional cases, decided

By the fiduciary principle on some important features of

increased/decreased capacities cannot be ignored.

institutional capacity matters, and that processes of

institutional capacity matters, and that processes of

body that attracts little attention: the regulator of the

because regulating the production of justice is under-

the particular, in the line of recent work on the rational justification of the
current legal systems and, more particularly, in the line

the rule of law requires justification for legislative

the differences between legal and political forms of

the differences between legal and political forms of

the political process. Gradually however, constitution-

the political process. Gradually however, constitution-

the political process. Gradually however, constitution-

consumption, which puts into question its attractiveness in

consumption, which puts into question its attractiveness in

consumption, which puts into question its attractiveness in

consumption, which puts into question its attractiveness in

by the political process. Gradually however, constitution-

consumption, which puts into question its attractiveness in

consumption, which puts into question its attractiveness in

consumption, which puts into question its attractiveness in

by the political process. Gradually however, constitution-

consumption, which puts into question its attractiveness in

consumption, which puts into question its attractiveness in

by the political process. Gradually however, constitution-

consumption, which puts into question its attractiveness in

consumption, which puts into question its attractiveness in

by the political process. Gradually however, constitution-

consumption, which puts into question its attractiveness in

consumption, which puts into question its attractiveness in

by the political process. Gradually however, constitution-

consumption, which puts into question its attractiveness in

consumption, which puts into question its attractiveness in

by the political process. Gradually however, constitution-

consumption, which puts into question its attractiveness in

consumption, which puts into question its attractiveness in

by the political process. Gradually however, constitution-

consumption, which puts into question its attractiveness in

consumption, which puts into question its attractiveness in

by the political process. Gradually however, constitution-

consumption, which puts into question its attractiveness in

consumption, which puts into question its attractiveness in

by the political process. Gradually however, constitution-

consumption, which puts into question its attractiveness in

consumption, which puts into question its attractiveness in

by the political process. Gradually however, constitution-

consumption, which puts into question its attractiveness in

consumption, which puts into question its attractiveness in

by the political process. Gradually however, constitution-

consumption, which puts into question its attractiveness in

consumption, which puts into question its attractiveness in

by the political process. Gradually however, constitution-

consumption, which puts into question its attractiveness in

consumption, which puts into question its attractiveness in

by the political process. Gradually however, constitution-

consumption, which puts into question its attractiveness in

consumption, which puts into question its attractiveness in
Among Europe's many crises, the "rule of law" crisis is perhaps the most destructive of Europe's common values. Some Member States that met the Copenhagen criteria to enter the EU would now not be admitted to the EU under those same criteria. What can European institutions do to renew commitments on the part of the Member States to these values? Across two panels, we will consider the alternatives. Panel II examines the interaction of EU institutions with the problematic Member States and assesses whether these interactions are likely to resolve the rule of law crisis.

Participants
- Christoph Möllers
- Dániel Hegedüs
- Christian Boulanger

Name of Chair: Kim Lane Scheppele
Room: BE2 E42

Christoph Möllers: Democratic Guarantees in Heterogeneous Federations – Some Systematic and Comparative Observations

The phenomenon of politically heterogeneous federations is more than a "problem" that can be solved by institutional engineering. It was at the core of the foundational civil wars that defined the political structure of many federations, e.g., the Swiss, the US-American and the German. These experiences shed doubt on the assumption that the CJEU or the Commission will be able to do anything meaningful on a macro-level against the rise of right-wing populist governments within the EU. If such interventions are not concrete and well defined, if they do not take care only of particular gravamina, they will likely confirm the impression of a EU-heteronomy. This is the more the case at a moment in which we do not observe singular deviators, but the rise of an anti-European coalition within the member state governments. At this point, only debate within the political organs and the Europeanization of the party systems may help (and if, only in the long run).

Dániel Hegedüs: An Arbitrary Guardian of the Treaties? Political Discretion and the Protection of the Rule of Law in the Praxis of the European Commission

To respond to the rule of law crisis, the European Commission adopted the new Rule of Law Framework. But so far, the use of this framework has been plagued by a high level of political discretion. Although political discretion affords some flexibility and other benefits, it also risks the threat of political interference. The Commission will be able to do anything meaningful on a macro-level against the rise of right-wing populist governments within the EU. If such interventions are not concrete and well defined, if they do not take care only of particular gravamina, they will likely confirm the impression of a EU-heteronomy. This is the more the case at a moment in which we do not observe singular deviators, but the rise of an anti-European coalition within the member state governments. At this point, only debate within the political organs and the Europeanization of the party systems may help (and if, only in the long run).

Christian Boulanger: Discursive Struggles over Judicial Review and Democracy: The Cases of Judicial Disempowerment in Hungary and Poland

How do we make sense of the recent constitutional "coup" in Hungary (2010–2011) and Poland (2015) in which the governments deprived the constitutional courts of essential powers in order to get rid of their constitutional supervision of the political process? This talk argues that an analysis that interprets the weakening of courts as part and parcel of a return to authoritarianism might miss the point. My argument is that in both countries, we see a national conservative political elite with a plan to convert a constitutional democracy into a majoritarian democracy incompatible with the European norms and values that the countries have signed up for, and a population that, in its majority, does not defend constitutional democracy. In this context, it is helpful to look at the sociological underpinnings of these two forms of democracy. But while the main discursive battle ground is still on the national level, the European dimension does have an impact – both for the supporters and the detractors of a strong constitutional court, and for the struggle over the meaning of democracy.
Decisions to go to war have traditionally and constitutionally been entrusted to the Executive. Recently, however, Presidents and governments have sought to involve national legislatures in decisions on use of force to increase their legitimacy and address the democratic deficit. In the UK, although decisions to go to war are part of the Royal Prerogative, Westminster Parliament has been consulted and has voted on deployment of troops since Iraq 2003. Ever since, and especially after 2013 when MPs rejected to support action in Syria, Parliament’s role in decisions to go to war has been hailed as desirable and as ensuring democratic accountability of the Executive. Yet, little has been written of the dangers of such parliamentary involvement and of the strategic use in which Parliament (as well as legislatures in other jurisdictions) have been engaged. The panel seeks to address recent developments from a constitutional and international legal perspective.

Participants
- Gavin Phillipson
- Colin Murray
- Aoife O’Donoghue
- Jochen von Bernstorff

Name of Chair
- Veronika Fikfak

Room
- BE2 E44/46

Gavin Phillipson: The New War Powers Convention in the UK
Professor Gavin Phillipson sets out the new War Powers Convention in the UK, using exegesis, analysis and normative argument for the importance of this new role for the UK Parliament. It sketches the constitutional significance of this development and argues the case for further entrenching and clarifying the conventional role of Parliament in conflict decisions. It also takes issue with the arguments that such involvement poses risks for the role of the UN and international law in determining the legality of use of force decisions, arguing that legality and democratic legitimacy are concepts that have been, and should continue to be, kept distinct.

Colin Murray and Aoife O’Donoghue: Towards Unilateralism? House of Commons Oversight of the Use of Force
The second paper (Colin Murray and Dr Aoife O’Donoghue) reveals the limits of parliamentary involvement, in particular the strategic use with which government seizes MPs for support and the international and legal language in which it frames its case for war. The paper uncovers how the involvement of parliament and the manner in which the government engages parliamentarians has implications for international institutions and the international law of war.

Jochen von Bernstorff: Ironic Constitutionalism
The third paper (Professor Jochen von Bernstorff) then maps out how the developments seen in the UK are part of a more global narrative governments in different jurisdictions are using to persuade their legislatures regarding the use of force. Specifically, it shows how increasingly these creative arguments about the content of international law on war are often unilaterally expanding the law on use of force in the context of targeted killings and use of drones.
Deference has become a central feature of European judicial review. Courts across the continent—in the EU, ECHR, and national legal orders—have started to emphasize the normative foundations of the margin of appreciation doctrine, mainly through the margin of appreciation doctrine. This, in turn, has attracted harsh criticism. It has been called a "Trojan horse", which "jeopardizes" the rights and freedoms guaranteed by the ECHR. Among EU legal scholars, in contrast, it has been almost unanimously praised as a tool that ensures respect for national values and remedies the problems of legal pluralism—"divergent uses or whether it present an ontological change: does the narrative of constitutional identity better capture the current core value of the latter." The literature is torn. Is this a welcome development? The paper elucidates the central parameters of this self-understanding, argues that it is desirable? Under which circumstances, if at all, is it appropriate for courts to defer to other actors? These are the questions that will be tackled in this panel.

Jan Zgliński: How to Escape from the Bermudian Triangle of Courts

Although in the context of human rights scholars, the margin of appreciation has attracted harsh criticism. It has been called a "Trojan horse", which "jeopardizes" the rights and freedoms guaranteed by the ECHR. Among EU legal scholars, in contrast, it has been almost unanimously praised as a tool that ensures respect for national values and remedies the problems of legal pluralism—"divergent uses or whether it present an ontological change: does the narrative of constitutional identity better capture the current core value of the latter." The literature is torn. Is this a welcome development? The paper elucidates the central parameters of this self-understanding, argues that it is desirable? Under which circumstances, if at all, is it appropriate for courts to defer to other actors? These are the questions that will be tackled in this panel.

Matthias Klatt: To Escape from the Bermudian Triangle of Courts

Although in the context of human rights scholars, the margin of appreciation has attracted harsh criticism. It has been called a "Trojan horse", which "jeopardizes" the rights and freedoms guaranteed by the ECHR. Among EU legal scholars, in contrast, it has been almost unanimously praised as a tool that ensures respect for national values and remedies the problems of legal pluralism—"divergent uses or whether it present an ontological change: does the narrative of constitutional identity better capture the current core value of the latter." The literature is torn. Is this a welcome development? The paper elucidates the central parameters of this self-understanding, argues that it is desirable? Under which circumstances, if at all, is it appropriate for courts to defer to other actors? These are the questions that will be tackled in this panel.

François-Xavier Millet: From Sovereignty to Constitutionalism

Over the past ten years, there has been an emerging trend in the context of human rights—"divergent uses or whether it present an ontological change: does the narrative of constitutional identity better capture the current core value of the latter." The literature is torn. Is this a welcome development? The paper elucidates the central parameters of this self-understanding, argues that it is desirable? Under which circumstances, if at all, is it appropriate for courts to defer to other actors? These are the questions that will be tackled in this panel.

Bosko Tripkovic: Deference and Diffidence in Human Rights Adjudication

The paper develops an ethical framework that justifies deference in human rights adjudication. The opponent of the paper argues that the universality of the human rights, leaves them without normative foundation, and results in deference that merely reflects the "neutral" or "objective" nature of the matter. The idea is that human rights cannot gain normative traction less they are supported by an external, metaphysical account of value. In contrast, the paper describes deference from an internal, practical perspective, and argues that the normativity of the latter is derived from free movement case-law inquire into what is at stake when the Court decides on its review responsibilities. Both in the context of ECHR and the German FCC, deference in human rights adjudication is developed in detail, reviewing recent case-law from the ECJ and the German FCC.
Jennifer Bond: Predictable & Preventable: Mass Admittance Policy

Helene Heuser: Refuge Cities: Cities in the Us, Canada and Great Britain, Solidarity Cities in South America, The International Cities of Refuge Network at the Council of Europe, and Refugee Network at the Council of Europe, and Refugee

Tamar Megiddo: Advisor to the Minister of Immigration, Refugees and Citizenship, Israel, and professor of Law at the Hebrew University, Jerusalem. His research focuses on international law and Israeli law, with a particular emphasis on the rights of refugees and asylum seekers. He has written extensively on the topic of refugee law, and is a frequent contributor to Israeli and international legal forums.

Tiago Monteiro: Refugees in Brazil: crossing borders and territories in the Olympic city

Helene Heuser: Refugee Cities: Cities in the Us, Canada and Great Britain, Solidarity Cities in South America, The International Cities of Refuge Network at the Council of Europe, and Refugee Network at the Council of Europe, and Refugee

Tamar Megiddo: Advisor to the Minister of Immigration, Refugees and Citizenship, Israel, and professor of Law at the Hebrew University, Jerusalem. His research focuses on international law and Israeli law, with a particular emphasis on the rights of refugees and asylum seekers. He has written extensively on the topic of refugee law, and is a frequent contributor to Israeli and international legal forums.

Tiago Monteiro: Refugees in Brazil: crossing borders and territories in the Olympic city

The number of refugees arriving in Brazil has been increasing over the years, and many more applicants are expected to come.

It is proposed to think law as guardian of the will and needs of the migrant, who already shares the same social spaces and participation in the community, and social, moral and cultural orders. To promote the right to hospitality. This paper will explore how decentralized networks of local governments or civil society initiatives are showing a more adequate and humane tendency towards migration.

Isabelle Sauriol: Women and Children First: Canadian Policies on Syrian Refugees Selection

On November 22, 2015, the Canadian government followed on their electrical promise to resettle 25 000 Syrian refugees, as a part of the international commitment to respond of states to refugees are failing. sanctuary is made for the taking.

The number of refugees arriving in Brazil has been increasing over the years, and many more applicants are expected to come.

It is proposed to think law as guardian of the will and needs of the migrant, who already shares the same social spaces and participation in the community, and social, moral and cultural orders. To promote the right to hospitality. This paper will explore how decentralized networks of local governments or civil society initiatives are showing a more adequate and humane tendency towards migration.

Isabelle Sauriol: Women and Children First: Canadian Policies on Syrian Refugees Selection

On November 22, 2015, the Canadian government followed on their electrical promise to resettle 25 000 Syrian refugees, as a part of the international commitment to respond of states to refugees are failing. sanctuary is made for the taking.

The number of refugees arriving in Brazil has been increasing over the years, and many more applicants are expected to come.

It is proposed to think law as guardian of the will and needs of the migrant, who already shares the same social spaces and participation in the community, and social, moral and cultural orders. To promote the right to hospitality. This paper will explore how decentralized networks of local governments or civil society initiatives are showing a more adequate and humane tendency towards migration.

Isabelle Sauriol: Women and Children First: Canadian Policies on Syrian Refugees Selection

On November 22, 2015, the Canadian government followed on their electrical promise to resettle 25 000 Syrian refugees, as a part of the international commitment to respond of states to refugees are failing. sanctuary is made for the taking.

The number of refugees arriving in Brazil has been increasing over the years, and many more applicants are expected to come.

It is proposed to think law as guardian of the will and needs of the migrant, who already shares the same social spaces and participation in the community, and social, moral and cultural orders. To promote the right to hospitality. This paper will explore how decentralized networks of local governments or civil society initiatives are showing a more adequate and humane tendency towards migration.
This panel examines and challenges existing models of Public Interest, Gender Equality and Freedom of Religion. Considerations of gender equality play a more and more important role in case law on freedom of religion. But how are gender-arguments connected with the realm of public interest, considering that they do not fit easily in the traditional dichotomy of public and private? The paper explores the uneasy relationship between gender equality as a public interest and religious freedom. It discusses two cases – the nationalization of religion and the privatization of religion – that need to protect the rights of vulnerable women. This presentation will offer a new typology of religion-state relations – the nationalization of religion, the authorization of religion and the privatization of religion – that can facilitate our understanding of the effects of the strengthening role of religion on the rights of women. It will then use this typology for two cases – the NY Git Laws, and the enforcement of decisions of private Sharia tribunals as arbitration decisions. Tamar Hostovsky Brandes: Equality for Whom? Reconciling the Rights of Religious Women with Public Interest. This paper argues that, after two and a half decades of legal and political debates on the question of gender equality and religious freedom, we have failed to develop a legal and political framework that guarantees substantive equality for religious women. This failure can be attributed, in part, to the absence of a general concept of quality, which assumed that certain practices are either compatible with equality or incompatible with it. This paper challenges this assumption, arguing that practices that appear to violate the general principle of equality may nonetheless promote equality for some, in specific contexts. When examining the compatibility of certain practices with equality, we should first ask whose rights are at stake, and then examine what equality for each of the different parties involved would look like, as opposed to models that are based on balancing equality with other rights or interests, the proposed model places equality on both sides of the scale. Molit Pintas: The Absence of the Right to Culture within Minorities in Israel: A Tale of a Cultural Dissent Case. The paper sheds a light on a crucial matter that is absent in the decision; namely, the right to culture of women who belong to these minority groups. The paper considers that they do not fit easily in the traditional dichotomy of public and private, given the increased importance of religion in the lives of many women, together with the de-privatization of religion and the strengthening of the power and authority of religious authorities. In several, but not all, cases, they serve as an argument in order to restrict freedom of religion, arguing that gender-arguments connected with the realm of public interest, considering that they do not fit easily in the traditional dichotomy of public and private. The increased importance of religion in the lives of many women, together with the de-privatization of religion and the strengthening of the power and authority of religious authorities, can facilitate our understanding of the effects of the strengthening role of religion on the rights of women. It will then use this typology for two cases – the NY Git Laws, and the enforcement of decisions of private Sharia tribunals as arbitration decisions.
The panel explores issues surrounding deprivation of citizenship from a number of different perspectives. In particular, we seek to understand the legal, institutional and theoretical problems associated with deprivation of citizenship that fall at the interface between EU law, national law and fundamental rights. Each of the papers elaborates a different problematique associated with depriving individuals of their Union citizenship with the ultimate aim of reconciling these different perspectives into a coherent and intelligible perspective of having European Union citizenship means in a variety of contexts.

Participants
Alastair Maciver
Juha Tuovinen
Zane Rasnaca
Name of Chair
Juha Tuovinen
Room
BE2 128

Alastair Maciver: Constitutional Disagreement and Citizen Terror Suspects: Chauvinism or Pluralism?

In Pham it was argued that depriving a UK citizen suspected of terrorism of his nationality was unlawful since it made him stateless and contravened EU proportionality. The UKSC dismissed the appeal and hinted that a broad reading of Rottmann subjecting denationalization to EU review without a cross-border element might be ruled inapplicable for intruding on citizenship powers integral to the identity of the nation state. This potential ultra vires view of CJEU case law has been labelled ‘judicial chauvinism’ repudiating legal pluralism. Rejecting this view it is claimed the elevation of Hart’s rule of recognition to principle of the UK constitution is not insular monism but grounds constitutional disagreement between equal legal orders with divergent conceptions of constitutionalism and final authority. This idea of constitutional conflict inspires a spirit of caution and cooperation in the UKSC’s use of EU law expressed in procedural and substantive concessions that embrace heterarchy.

Juha Tuovinen: Feast or Pham-ine? –Substantive Reasoning in Deprivation of Citizenship Cases

The paper critically evaluates the understanding of the principle of proportionality in the Pham v Minister of Home Affairs judgment by the UK Supreme Court. The case concerned the question whether an order depriving a British citizen of his citizenship was lawful. This paper critiques the understanding of proportionality put forward by the court from three different angles. The first part of the paper takes issue with the way in which the court characterizes proportionality throughout the judgment. The second part critiques some of the views expressed regarding the relationship between proportionality and the intensity of review. It builds on the previous section to propose a way in which to construct proportionality in an institutionally sensitive manner. The final third part builds on the previous two sections, Pham in order to construct a general framework for balancing in citizenship deprivation cases that could, among other things, accommodate questions about the role of European citizenship beyond the question of competences.

Zane Rasnaca: Who decides who is welcome here? The issue of competence when banishing EU citizens

In the EU the CJEU, lawmakers, and member states engage in an interplay, which to a large extent is structured by the division of competences. The area of citizenship is no exception, from a matter solely for national law it has become subject to active multi-level coordination. The paper looks at the issues arising from the division of competences both horizontally and vertically between the CJEU, national courts, and EU lawmakers. It explores the role of the CJEU in coordinating legal pluralism and the regulatory imbalance that arises. A closer look at EU law and case law (for example Rottmann, and Pham v Secretary of State for the Home Department) illustrates the extremely important role played by ‘competence’ in structuring the relationship between the CJEU, from one side, and the EU lawmakers and member states, from the other side in the vertical plane (EU vs. national level) this is an old story, the horizontal (CJEU vs. EU lawmakers) coordination potential of ‘competence’ has remained less explored.
SATURDAY
18 JUNE 2016
5:00 – 6:45 pm

PANELS
SESSION IV
This panel seeks to address under what conditions, if any, could policies like public marking of immigrants, the seizure of their assets, closing of state borders, be justified? What sort of political demography would be in line with liberal-democratic understanding of constitutional identity? Is a nascent EU constitutional identity dissolving in the absence of a common politics towards the immigration crisis?

Participants
Miodrag Jovanović
Vito Breda
David Marrani

Name of Chair
Luis Ignacio Gordillo Pérez

Room
UL6 2070A

Miodrag Jovanović: Handling Massive Immigration Inflows: Between Liberal-Democratic Constitutional Identity and Illiberal Demographic Politics
Rosenfeld’s liberal-democratic account of constitutional identity is premised on the idea of a more-less stable, even if heterogeneous, societal subject which is to be politically constituted. On this view, even the constitutional norms regarding citizenship, immigration and demographic politics count with predictable and manageable flows of people across the borders. However, how does this view of constitutional identity fare in times of massive global migrations, which has triggered across old and new liberal-democracies some highly challenging policies, such closing of state borders.

Vito Breda: A Shrinking Vision for European Constitutional Identities: the Mass Exodus of Refugees, the Ginevra Convention, and a legitimation crisis
In this paper, I will argue that some of the European constitutional ideals are obfuscated by what Habermas calls a legitimation crisis (1973). The European states’ shared aspiration of being a model of a reasonably liberal democracy has been grinded away by a combination of fiscal policies which underpin an implausible welfare state, the rising of ethnocentric nationalism, and the lack of a communal European vision.

David Marrani: The French Constitution “Post Terror” Attacks: The Return of the Old Ghost of de jure exclusion
Exclusion may be a door between two spaces that opens from one space into the other in both directions. If we consider movement of population from one place to another, when the door is opened the event takes place. When it is closed the event is blocked and cannot happen. Exclusion forbids the entering and prevents the event from happening. Those who are outside cannot come in: the door is shut. It removes something or someone. Exclusion is a door that we close after sending people out. We remove someone we do not want to stay in the space. What condition the relationship between the two spaces is based on history and politics and regulated by law including constitution. The theme of exclusion in France is articulated around nationality citizenship and immigration. I will argue that the most effective exclusion is de facto exclusion and that using de jure exclusion is only a gimmick to satisfy the need of political control from an executive in end of reign.
"Un récit? Non, pas de récit, plus jamais" (Maurice Blanchot). In a recent turning, which jumped-off in the second half of the last century, constitutional and international courts are ignoring, now and then, the territorial bounds and grasping new information and knowledge due to necessity to produce more solid decisions, and perhaps, sedimenting a new understanding on global constitutional order. Although every single effort performed by jurist to produce a space undergone to solidarity and freedom at the same time, the project of a community ruled by human and fundamental rights has flunked out. This panel seeks (i) to demonstrate how solidarity should be making out, (ii) how the legal reasoning should change its criteria to deal with the Other " (iii) finally, how the transnational legal order and political aspects plays a relevant rule to intermediate this dilemma."

Hauke Brunkhorst: Democracy claim for solidarity to reach justice

Since the successful global disembedding of markets are now facing a dilemma. For national states, still at the center of democratic solidarity, there is only the alternative left, either to submit under global market imperatives of neoliberal politics, or to transfer ever more real state power to continental and even global levels, combined with the hope that this can be done together with the transnational ‘expansion of democracy’ (John Dewey), which is a small but the only real hope. To illumiate this small chance, the paper considers the existing alternatives. For preserving the present state of globally disembedded market economy, the political project of neoliberalism must go authoritarian, and the only alternative is a political program of economic and social regime change that is a green version of global democratic socialism.

Octaviano Padovese de Arruda: The other to come – thought on neutrality

"A science? No. No more science, never again?" This sentence is inspired in the ground-breaking text from Maurice Blanchot, The Madness of the Day, which sums up with the following statement, “Un récit? Non, pas de récit, plus jamais” ("A story? No. No stories, never again"). Whatever you mean or point out, you can prove it. Submitting every sentence and state to a trial of performative language, which jurist enjoys to call descriptive or prescriptive language, until it reaches an aberrant conclusion. From this state of affairs, my hunch is to share some considerations in respect of the condition of modern’s law: it situates everyone as a being without being worries with the other. Modern law and its neutral and privileged position still reproduce the same condition of western though: ontology following metaphysician’s perspective. So to speak, my intention is to address how modern law has also a negative side and does not have a properly language to turn the reality.

Johan Horst and Kolja Möller: Distortive effects: Re-Situating the political in transnational legal regimes

Our hypothesis is that in all three empirical fields the evolution of legal rules and social contradictions is interdependent in the sense that the legal rules are not only a result or expression of social contradictions but also shape them. Our hypothesis is that the international financial markets shaped by the ISDA and transnational Investment law each are as much a result of a specific historical context as they themselves bring about and transform new social conflicts. Against this backdrop, our contribution attempts to re-situate the political in transnational constitutionalism. We will argue that it would be misguided to portray it as an unpolitical evolutionary device. Rather, a sound reframing of the political has to address the question how legal regimes actually work as sites of power relations, without falling back to a reductionist understanding of the law as a hegemonic mechanism.
Through the criminal justice system, the state wields an enormous amount of power to interfere with people’s lives with force and to stigmatize individuals with whom it disagrees. Disagreement about whether the beyond a reasonable doubt standard has been satisfied. In other words, does the requirement of the proof beyond a reasonable doubt requirement are two of the most significant, respects. This opens up the more difficult question of why (international law commitments to) every country of Europe... Participants

Vincent Chiao

Youngjae Lee: Reasonable Doubt and Disagreement

Youngjae Lee: In Criminal Disagreement

In the courtroom. German law criminalizes anyone who claims in respect of an acquitted person “but he did it!” This paper engages with the justifications for... Pitiating the victim in order to punish the defendant or the community as such. But that has consequences.

Vincent Chiao: Disagreeing about Punishment

Vincent Chiao: Disagreeing about Punishment

This Paper addresses how the two are related and through the criminal justice system, the state wields an enormous amount of power... 

Vincenzo Chiaro: Disagreeing about Punishment: Conditional (In)Humanity in Penal Contexts and its Implications for the Unanimity Rule

This Paper addresses how the two are related and through the criminal justice system, the state wields an enormous amount of power... 

Vincenzo Chiaro: Disagreeing about Punishment: Conditional (In)Humanity in Penal Contexts and its Implications for the Unanimity Rule

This Paper addresses how the two are related and through the criminal justice system, the state wields an enormous amount of power...

Vincenzo Chiaro: Disagreeing about Punishment: Conditional (In)Humanity in Penal Contexts and its Implications for the Unanimity Rule

This Paper addresses how the two are related and through the criminal justice system, the state wields an enormous amount of power...
This paper argues for more robust scholarly attention to constitutional identity, a key institution in modern political dynamics. We are especially interested in how constitutional identity is shaped in constitutional systems with a weak or pliable popular control over political decision-making. We begin by highlighting the degree to which constitutional identity is an instrument of both popular limits and democratic control, and the ways in which legal institutions are often given a weak life by constitutional identity-making processes. This paper analyzes this interpretative process, focusing on the constitutional-identity-making process as a three-step process. First, explicit limits to constitutional identity are established in a bundle of principles shaping the constitutional identity of the State. Second, these principles are held as the immutable principles shaping the constitutional identity of the State. Third, they are reinterpreted as ultimate limits of the constitutional principle of openness in an attempt to draw some general conclusions from the developments in analyzed countries, especially in Germany and Italy.

Participants

Joachim Åhman: Constitutional Principles across modern legal traditions, they are one of the most fundamental notions in law, they base our legal reasoning, and they pervade our legal discourse. However, with a few notable exceptions, most dating back several decades, there have been surprisingly few legal scholars who have systematically sought to develop a general account of constitutional principles. This paper seeks to develop a general account of constitutional principles in the Swedish Constitution. How knowing what constitutional principles are, why they are in the Constitution, what they do and how they do it will provide a deeper understanding of the general workings of our constitutional systems as well as of the practical operation of specific sections of our Constitution. Constitutional principles, perhaps their most immediate and important application is in the exercise of judicial review. The paper offers an explanation and a defense of the exercise of judicial review based on principles.

Maxim Tomoszek: Constitutional Principles across modern legal traditions, they are one of the most fundamental notions in law, they base our legal reasoning, and they pervade our legal discourse. However, with a few notable exceptions, most dating back several decades, there have been surprisingly few legal scholars who have systematically sought to develop a general account of constitutional principles. This paper seeks to develop a general account of constitutional principles in the Swedish Constitution. How knowing what constitutional principles are, why they are in the Constitution, what they do and how they do it will provide a deeper understanding of the general workings of our constitutional systems as well as of the practical operation of specific sections of our Constitution. Constitutional principles, perhaps their most immediate and important application is in the exercise of judicial review. The paper offers an explanation and a defense of the exercise of judicial review based on principles.

Pietro Faraguna: Constitutions as legal borders before and after international law: Germany and Italy compared

The main claim of the article is the reinterpretation of the constitutional principle of openness as a three-step process. First, explicit limits to constitutional identity are established in a bundle of principles shaping the constitutional identity of the State. Second, these principles are held as the immutable principles shaping the constitutional identity of the State. Third, they are reinterpreted as ultimate limits of the constitutional principle of openness in an attempt to draw some general conclusions from the developments in analyzed countries, especially in Germany and Italy.

Lisa L. Miller: Back to Basics: Constitutions for Ordinary People

This paper argues for more robust scholarly attention to constitutional identity, a key institution in modern political dynamics. We are especially interested in how constitutional identity is shaped in constitutional systems with a weak or pliable popular control over political decision-making. We begin by highlighting the degree to which constitutional identity is an instrument of both popular limits and democratic control, and the ways in which legal institutions are often given a weak life by constitutional identity-making processes. This paper analyzes this interpretative process, focusing on the constitutional-identity-making process as a three-step process. First, explicit limits to constitutional identity are established in a bundle of principles shaping the constitutional identity of the State. Second, these principles are held as the immutable principles shaping the constitutional identity of the State. Third, they are reinterpreted as ultimate limits of the constitutional principle of openness in an attempt to draw some general conclusions from the developments in analyzed countries, especially in Germany and Italy.

Lisa L. Miller: Back to Basics: Constitutions for Ordinary People

This paper argues for more robust scholarly attention to constitutional identity, a key institution in modern political dynamics. We are especially interested in how constitutional identity is shaped in constitutional systems with a weak or pliable popular control over political decision-making. We begin by highlighting the degree to which constitutional identity is an instrument of both popular limits and democratic control, and the ways in which legal institutions are often given a weak life by constitutional identity-making processes. This paper analyzes this interpretative process, focusing on the constitutional-identity-making process as a three-step process. First, explicit limits to constitutional identity are established in a bundle of principles shaping the constitutional identity of the State. Second, these principles are held as the immutable principles shaping the constitutional identity of the State. Third, they are reinterpreted as ultimate limits of the constitutional principle of openness in an attempt to draw some general conclusions from the developments in analyzed countries, especially in Germany and Italy. The paper offers an explanation and a defense of the exercise of judicial review based on principles.
This panel explores how the increasing use of the concepts of equality and vulnerability in international human rights law affects the rights of migrants in immigrant receiving states. The papers in this workshop analyze and compare the way these concepts are used in legal reasoning and relate them to theoretical debates on citizenship and migrant membership.

Participants
Karin de Vries
Lieneke Slingenberg
Bas Schotel
Sylvie Da Lomba
Corina Heri

Name of Chair
Karin de Vries and Lieneke Slingenberg

Room
ULE 3119

Karin de Vries and Lieneke Slingenberg: Citizens’ or residents’ rights? Territoriality, Membership and legal status in the Article 14 case law of the ECtHR

In her work on the rights of immigrants, Bosniak discerns two ways of obtaining rights: rights can derive from formal immigration status under law or from territorial presence. Under the ‘status-based approach’ rights are based on legal qualifications and political consent, whereas under the ‘territorial conception of rights’, rights are based on a fact of social reality by stressing the significance of physical presence in the national territory. While she acknowledges that the territorial model beggs its own questions and has its own hang-ups, she stresses that ethical territoriality still represents the best argument for immigrants’ rights that we have. In this paper, we would like to examine to what extent this idea of ‘ethical territoriality’ is reflected in the ECtHR’s case law on discrimination on the ground of nationality and immigration status in the field of immigrant’s material rights.

Bas Schotel: Refugee Protection beyond Human Rights. Asylum as a negative duty

Today asylum and international protection are primarily understood as positive duties: receiving states are supposed to actively do stuff (e.g. provide for shelter and housing, food, health care, safety, education, etc.). By contrast, this paper explores the idea that asylum should be construed as primarily a twofold negative duty for the target state: duty not to prevent refugees from accessing the territory and duty not to expel from the territory. Understanding asylum as a negative duty makes clear that not offering asylum often involves many active coercive measures. From a practical legal perspective it is easier to test the proportionality of active coercive measures (e.g. detention, construction of a border fence) than to test the non-performance of a positive duty (e.g. how to test the proportionality of not providing social and basic services?). Understanding asylum as a negative duty allows for legal checks on refugee policy without the need to establish the infringement of individual human rights.

Sylvie Da Lomba: Developing a Vulnerability Analysis. Immigration Cases: A Challenge To The European Court of Human Rights’ Immigration Control Paradigm

This paper investigates the immigration control paradigm in the case law of the European Court of Human Rights. I posit that the significance that the court affords to the state’s right to control immigration in migrant cases frustrates inquiries into the exercise of the government immigration power and produces narratives that are shaped by state migration policy discourse and detached from the realities and complexities of global migration.

As a challenge to this paradigm, I explore the deployment of a vulnerability analysis in the court’s case law. I posit that a vulnerability analysis can prompt an inquiry into migrants’ social, economic and institutional relationships as well as greater scrutiny into the exercise of the Government immigration power in the light of ECtHR obligations.

Corina Heri: The Utility of Equality and Vulnerability Reasoning for Migrants under the ECHR

The contribution will examine whether and how reasoning based on the vulnerability and equality of migrants – a term understood here in a broad sense – in the case-law of the European Court of Human Rights affects the status of these individuals within the host polity. More concretely, it will examine whether the vulnerability heuristic can revolutionize traditional accounts of citizenship and provide non-nationals with access to rights – if not the right to remain in the host country, then the right to be treated in a certain manner or have access to certain benefits while there. This question will be assessed in particular under Art. 3 ECHR, the prohibition of torture and inhuman and degrading treatment, which is absolute and provides protection of human dignity. For all migrants, including those not considered vulnerable, access to rights may further be possible in reliance on the principle of equality under Art. 14 ECHR, which enshrines an accessory prohibition of discrimination.
Biancama raganelli and Ilenia Mauro: New borders and boundaries in International Public Law: Corruption, Human Rights and Extra-territorial legislation on public procurement

The lack of integrity and corruption affects human rights and erodes the pillars of democracy. This allows the creation of a kind of barriers that builds new borders and constrains within the economy. That is a particular evident issue in public procurement. One increasingly popular way for states to prevent some violations of human rights committed overseas is adopting measures with extraterritorial implications or to assert direct extraterritorial jurisdiction in specific instances. How to ensure integrity, accountability and transparency of public authorities and economic operators across countries? Do we need a European model supporting integrity in public procurement?

Helga Hafliðadóttir: International Enforcement and the progressive development of International Law

With the adoption of the International Law’s Articles on the Responsibility of States for Internationally Wrongful Acts, the issue of countermeasures of general interest became subject to controversy. This controversy centered around the general development of international law and differences regarding collective countermeasures. In particular, there are questions regarding the entitlement of third states to take countermeasures in response to breaches of obligations owed to the international community as a whole. The purpose of this article is to examine the progressive development of international law within the context of international enforcement. The analysis proceeds on the assumption that the notions of obligations erga omnes and peremptory norms have influenced the development of unilateral action to enforce community interests. This article places emphasis on the content of these obligations’ duties to take countermeasures which includes the position of the victim state.

Philipp Kastner and Elisabeth Roy Trudel: Beyond the Other: Challenging Categories in International Law

Identities form groups, draw borders and construct “others”. This paper deconstructs the enduring influence of such categories in international law. For instance, while so-called non-state actors have gained much attention and legitimacy over the past decades, the dichotomy between state and non-state actors is ever-present, with the nation-state and its well-defined borders remaining the dominant and largely unchallenged model. Drawing on insights from queer theory, the paper questions the usefulness of some of these categories within international law and argues that recognizing the relational legal agency – without predetermined categorizations – could facilitate the peaceful resolution of armed conflicts, and more generally, enhance the emancipatory potential of international law. It concludes that a more radical emphasis by international law on uncertainty and instability, as opposed to a presumed order embodied by the concept of the rule of law, is needed.

Niamh Kinchin: Locating Administrative Justice in International Organisations

How are procedural rights to be protected in the evolving and fragmented sphere of global governance? What should administrative justice mean within IOs? This paper argues that legal boundaries in global decision-making should be based upon the principles of legality and justice. Within IOs, legality requires procedures and decisions to be carried out rationally and according to law. Justice requires that the values the ‘community’ accepts as just are taken into account. These values are argued to be fairness, transparency and participation. What an IO requires in order to achieve administrative justice will differ according to its character, the nature of its relationships and the form of its administrative processes. The creation of tailored procedural standards is essential to ensure that an IO’s decisions and actions ensure administrative justice. That is, that they are fair, transparent and participatory.
Markus González Beilfuss: Detention of third-country nationals for the purpose of removal: implementation analysis in the province of Barcelona (Spain)

Detention of irregular migrants for the purpose of removal is a burning issue. In all countries, legal rules try to find a balance between opposite interests and values using discretional powers and vague concepts that raise important concerns about the quality of the law. Furthermore, the implementation of those rules remains to a great extent unknown and shows important discrepancies between theory and practice. As a result, in almost all countries detention of irregular migrants for the purpose of removal is passionately debated as a rule of law issue.

Leora Dahan-Katz: Relational Retributivism

This paper revisits the question of the justification of punishment. It defends a broadly retributive view while insisting on the significance of the role of the punisher and the relations between the punisher and the punished party in the justification of punishment. Following this line of thought, the paper proposes that punishment should be understood as a form of appropriate response to wrongdoing and is justifiable as such. The paper further argues that retributivism properly understood requires the mitigation of our punitive practices. The final section of the paper draws parallels between the phenomena of state and non-state punishment, and suggests that while political and moral justifications of punishment have for years proceeded in isolation from one another, the two have complementary roles to play in the justification of punishment.

Joshua Segev: Detaining Unlawful Enemy Combatant In Israel: A Matter Of Misinterpretation?

Since the terrorist attacks of September 11, 2001, legal experts have been debating whether detaining “unlawful enemy combatant” not entitled to lawful combatant’s rights, immunities and privileges, in the so-called “war on terror”. The detention of unlawful enemy combatants is a challenge that Israel has been confronting for almost three decades. Thus, the Israeli experience can provide insights into the difficulties, shared-principles and institutional arrangements in confronting this challenge. The article analyzes the nature and essence of the constitutional claims against the detention of unlawful enemy combatant in Israel. Based on this analysis, the article identifies three constitutional key elements used by Israel in confronting the challenge of detaining unlawful enemy combatant. The article argues against the over-individualized interpretation of the Unlawful combatant law.

Michal Tamir and Dana Pugach: Nudging the Criminal Justice System into listening to Crime Victims in Plea Agreements

Most criminal cases end with a plea agreement. However, the issue of crime victims’ place in plea agreements has gained attention. The federal Crime Victims Rights Act of 2004 law as provided victims some meaningful and potentially revolutionary rights, including the right to be heard in the proceeding and a right to appeal against a decision made while ignoring the victim’s rights. References to this provision in the general literature about plea agreements are sparse and there are only few cases mentioning this right. This article purports to bridge between these two bodies of legal thinking – the vast literature concerning plea agreements and victims’ rights research – by using behavioral economics.

The article will, firstly, trace the possible structural reasons for the failure of this right to be materialized. Relevant incentives of all actors involved will be identified as well as their inherent consequential processes that lead to the victims’ rights malfunction. Secondly, the article will use nudge theory in order to suggest solutions for amending the law that will make the most players in the system (prosecution, judges, defense attorneys) and lead to the strengthening of weaker group’s interests – the crime victims.
21st century cities are objects, subjects, laboratories and experimental spaces. As capitals: Migration and Privatization. Whilst they are also parallel to and beyond states’ institutions on the local, as well as between city governments and different groups. The underlying values of this concept refer to the fact that the inhabitants of a city should have the right to activate their shape, and their city’s life. How do the described cities and legalised interaction. Yet, cities are also sites of conflict and peace making. How do the described cities and their governments become increasingly active on the global level. At the same time, cities and their governments become increasingly active on the global level. At the same time, cities and their governments become increasingly active on the global level.

Helmut Philipp Aust: The Good Urban Citizen

The paper discusses the emergence of international normative expectations about what it means to be a good urban citizen in the beginning of the 21st century and it connects local expressions of such expectations with global normative discourses. The departure point is a recent European Court of Justice decision, calling on everyone to “be a neighbour, start a business, commute by foot,” etc. The underlying values of this campaign are, even if internally conflicted, related to notions of addressing spatial inequalities “bottom-up” processes: international organizations contribute to a new political settlement negotiated, by whom, and according to which norms for building and keeping the peace in the city? The paper briefly introduces the concept and then sets out to examine it from a legal perspective, taking the panel’s title as a starting point. I analyze whether the law can actually recognize any such thing as a “right to the city” or whether any precise legal rules are necessary to ensure that the right to political participation or housing at local level. In this context, I will examine, for instance, the level. In this context, I will examine, for instance, the

participants Helmut Philipp Aust, Cindy Wittke, Tilman Reinhart and Michèle Finck. The paper will address legal and political analytical challenges that arise when addressing intra-city violent conflict and peace making. How do the described cities govern intra-city (violent) conflict situations? How are new political settlements negotiated, by whom, and according to which norms for building and keeping the peace in the city?

Helmut Philipp Aust: THE GOOD URBAN CITIZEN

The paper will address legal and political analytical challenges that arise when addressing intra-city violent conflict and peace making. How do the described cities govern intra-city (violent) conflict situations? How are new political settlements negotiated, by whom, and according to which norms for building and keeping the peace in the city?

Tilman Reinhart and Michael Denga: FROM DUNGEON TO INNER LONDON – EXPLORING THE LEGAL DIMENSION OF LEFEBVRE’S “RIGHT TO THE CITY”

The Good Urban Citizen

Building and Keeping Peace in The City

The panel will address legal and political analytical challenges that arise when addressing intra-city violent conflict and peace making. How do the described cities govern intra-city (violent) conflict situations? How are new political settlements negotiated, by whom, and according to which norms for building and keeping the peace in the city?

Michèle Finck: THE RIGHT TO THE CITY FROM A LEGAL PERSPECTIVE

The paper will address legal and political analytical challenges that arise when addressing intra-city violent conflict and peace making. How do the described cities govern intra-city (violent) conflict situations? How are new political settlements negotiated, by whom, and according to which norms for building and keeping the peace in the city?

Anel du Plessis: Commentator

Legal Perspective

The panel will address legal and political analytical challenges that arise when addressing intra-city violent conflict and peace making. How do the described cities govern intra-city (violent) conflict situations? How are new political settlements negotiated, by whom, and according to which norms for building and keeping the peace in the city?

Setting the tone for the discussion, participants Helmut Philipp Aust, Cindy Wittke, Tilman Reinhart and Michèle Finck explore the concept of the right to the city, its origins, evolution and implications in contemporary urban governance. The paper discusses the emergence of international normative expectations about what it means to be a good urban citizen in the beginning of the 21st century and it connects local expressions of such expectations with global normative discourses. The departure point is a recent European Court of Justice decision, calling on everyone to “be a neighbour, start a business, commute by foot,” etc. The underlying values of this campaign are, even if internally conflicted, related to notions of addressing spatial inequalities “bottom-up” processes: international organizations contribute to a new political settlement negotiated, by whom, and according to which norms for building and keeping the peace in the city? The paper briefly introduces the concept and then sets out to examine it from a legal perspective, taking the panel’s title as a starting point. I analyze whether the law can actually recognize any such thing as a “right to the city” or whether any precise legal rules are necessary to ensure that the right to political participation or housing at local level. In this context, I will examine, for instance, the level. In this context, I will examine, for instance, the

participants Helmut Philipp Aust, Cindy Wittke, Tilman Reinhart and Michael Denga: FROM DUNGEON TO INNER LONDON – EXPLORING THE LEGAL DIMENSION OF LEFEBVRE’S “RIGHT TO THE CITY”

The General Views of Mrs. Lefebvre on the Right to the City

The paper will address legal and political analytical challenges that arise when addressing intra-city violent conflict and peace making. How do the described cities govern intra-city (violent) conflict situations? How are new political settlements negotiated, by whom, and according to which norms for building and keeping the peace in the city?

Cindy Wittke: Building and Keeping Peace in The City

The panel will address legal and political analytical challenges that arise when addressing intra-city violent conflict and peace making. How do the described cities govern intra-city (violent) conflict situations? How are new political settlements negotiated, by whom, and according to which norms for building and keeping the peace in the city?

Tilman Reinhart and Michael Denga: FROM DUNGEON TO INNER LONDON – EXPLORING THE LEGAL DIMENSION OF LEFEBVRE’S “RIGHT TO THE CITY”

The General Views of Mrs. Lefebvre on the Right to the City

The paper will address legal and political analytical challenges that arise when addressing intra-city violent conflict and peace making. How do the described cities govern intra-city (violent) conflict situations? How are new political settlements negotiated, by whom, and according to which norms for building and keeping the peace in the city?

Helmut Philipp Aust: The Good Urban Citizen

The paper will address legal and political analytical challenges that arise when addressing intra-city violent conflict and peace making. How do the described cities govern intra-city (violent) conflict situations? How are new political settlements negotiated, by whom, and according to which norms for building and keeping the peace in the city?

Helmut Philipp Aust: GOOD URBAN CITIZEN

The paper will address legal and political analytical challenges that arise when addressing intra-city violent conflict and peace making. How do the described cities govern intra-city (violent) conflict situations? How are new political settlements negotiated, by whom, and according to which norms for building and keeping the peace in the city?
As states exercise power outside of their territory and against nonmembers, public law is made to step out of its national and territorial context to negotiate its place within and beyond its own borders. As borderlines of state power become less fixed, the boundaries between constitutional, international, and transnational principles and domains are also being redefined. Where public law is considered to depend on democratic legitimacy for its authority, the transgression of borders and the exercise of state power over ‘others’ raises questions of how public law negotiates legitimacy. This panel tackles the conference themes by considering the interplay between the reasonable person, democratic legitimacy and the rule of law. How does public law negotiate legitimacy of authority over the ‘other’ who is physically absent, as in the case of migrants? How can the absent speak? How can the absence/presence showing that both absence and presence can and therefore how does the mere state exercise of extra-territorial authority, my aim is to develop a principled means of relating these sources and how can the public law reasoning. Specifically, I want to focus on three aspects of the concept. First, I seek to show how the reasonable person concept is seen as a safeguard of the rule of law, but the reasonable person itself from the court room the rule of law might at times be at odds with the reasonable person concept. Drawing on the findings of the previous two sections the paper finally intends to identify and to consider the specific nature of the absence of the reasonable person. While the kinds of absence considered by the other panel speakers trigger questions of how public law deals with the absent. This section shows that both absence and presence can and therefore how does the mere state exercise of extra-territorial authority, my aim is to develop a principled means of relating these sources of legitimacy. What can we learn about legitimacy of public law by analyzing the role of democracy, authority and the rule of law abroad?
Citizenship theories have again become one of the most debated areas of political/constitutional studies. With (re)emergence or revival of legal regulations providing for the possibility of citizenship deprivation, theories of the nature of citizenship have received another impetus, struggling with questions such as: Should the lack (loss) of loyalty to the state be a reason for the deprivation of citizenship, considering that its existence is a usual precondition for naturalization? Should we differentiate between citizenship acquired by birth and citizenship acquired by naturalization in this regard and why? Should we conceive of various limitations on citizenship rights and is this a better option than direct deprivation of citizenship? The paper reflects upon these and related questions against the background of current international law and practice in the sphere of citizenship.

Michael B. Krakat: Economic Citizenship Laws: Commodification to Cosmopolitanism

An emerging area within the law of citizenship relates to direct citizenship by investment or ‘economic citizenship’ allowing for free trade ‘flag-of-convenience’ cash-for-passport-programs (for instance by St. Kitts & Nevis or Malta) to directly assign citizenship to elite bidders without need for residence- or other requirements. ‘Cosmopolitan citizenship’ on the other hand may be understood as a minimum number of rights and duties held individually, directly under international law, as a global ‘right-to-have rights’ based on formative principles including Human rights, equality, access to justice. This research is to contextualize both areas of law. Basic tenets of cosmopolitanism may inform and guide the process of marketization of citizenship. Economic citizenship laws on the other hand may trigger- and pose as practical, functioning drivers and foundations for the idea of a mobile, flexible rights-based cosmopolitan approach to citizenship.

Manav Kapur: ‘refugees’ or ‘citizens’: Pakistani Hindus and the Indian State

In this paper, I examine the relationship between Pakistani Hindus and the Indian state. I argue that the small number of Pakistani Hindus belies their immense symbolic importance, which allows them to be granted Indian citizenship relatively easily. Recent amendments to the citizenship Act have allowed Indian governments to make citizenship procedures much easier for minority communities when compared to the majority, a worrying trend in a secular republic. Here, I shall make three inter-related claims: first, that India’s weak legal protections for refugees may owe a great deal to India’s partition where so-called ‘refugees’ saw themselves primarily as citizens of the state they migrated to. Second, I claim that India’s criteria to play out in how India considers minority Hindus its responsibility, as opposed to all minorities. Finally, I argue that creating a strong refugee law instead of the ‘citizenship’ model could be a more useful and fair way of dealing with deprived minorities.

Jhuma Sen: From Subjects to Citizens: Legislating and Adjudicating Citizenship in India

In this paper, I examine the legal construction of citizenship in the Indian republic between 1950 and 1955 and thereafter when claims to citizenship was primarily regulated, contested, negotiated and accommodated within the constitutional framework of ‘domicile’ and a deadline bound ‘migration’. The paper shall review the judicial narrative on citizenship and place it in the larger context of a colonial state’s transition into postcoloniality.
Ofra Bloch: Diversity: a Renegotiated Compromise

This paper offers a sociohistorical account of diversity discourse in America. Drawing on judicial and non-judicial sources from the civil rights era to today, I explore the evolving meaning of diversity. I show how, through ongoing conflict over affirmative action, popular and professional understandings of diversity have drifted away from notions of equality and racial justice towards neoliberal and utilitarian ideals. In turn, these notions, I argue, guided officials and courts in interpreting and determining the constitutional limitations on affirmative action, and shaped the way it is practiced. Adopting the diversity framework, proponents of affirmative action prevailed (for now), but its meaning got divorced from the history of state-enforced hierarchies that affirmative action was set to dismantle and the salience of contemporary racial inequality was obscured.

Benedetta Barbisan: The Otherness in Comparative Constitutional Law

Some constitutional scholars lately lamented that the paradigm of comparative constitutional law (CCL) basically comprises experiences, problems and models from the Global North, with those of the Global South (a definition aspiring to pin down more than a mere geographic connotation) generally overlooked. The recurrence to a concept like the global south points at how CCL is circulated by European and North American constitutional scholars, who may entertain the conviction that the crib where constitutionalism was born still offers a comprehensive variety of patterns and prototypes to decode the complexities of modern constitutionalism.

This paper will explore the concept of otherness as addressed by CCL mainstream literature, and tackle the issue of which methodology should be applied in our branch of study and which borders should be taken into account in order to keep up with CCL's true reason of being – i.e. finding what may be similar in what is actually different.

Walter Carnota: “Otherness” in the Catalonian Context

“Otherness” evokes absolutes. On one ring side, national citizens, members of the same political party, colleagues of a given profession. On the other end the rest of a country, or the rest of the political spectrum. Federalism, by contrast, tends to downplay differences and minimize conflict. Regions, states, provinces, länder, urban and rural areas, are dissimilar by nature. Some are economic powerhouses (e.g. Catalonia), others are basket cases. Even all American states are quite different each one from the other. Federalism strives to merge centralist trends with decentralization. Not only devolution will be involved in the process; the exact composition of each federal recipe will be contingent on history, politics, economics and society. The federal formula is usually complex, but it could be a legitimate way out for intra-state conflict. The current situation of Catalonia is a perfect example. Leading political forces are vying for outright secession from Madrid (“Junts pel si”).

Kathleen Jäger: Otherness and Discrimination in the Courtroom: Implicit Bias as a Challenge to Judicial Impartiality

When a judiciary that is seemingly homogenous faces the “other” in the courtroom issues of possible discrimination arise. Can judges remain truly impartial and not let stereotypes influence their decisions? The science of implicit bias suggests that they cannot. Implicit bias describes the widely studied phenomenon of unconscious attitudes, cognitions and stereotypes that may influence decision-making and behavior on an unconscious level. Judicial decision-making may be particularly vulnerable to the influence of implicit bias due to the presence of certain risk factors such as a strong belief in one's own objectivity. After exploring ways in which implicit bias may play a role in judicial decision-making, it will be argued that international and national guarantees of impartiality and prohibitions of discrimination require states to take steps to mitigate the influence of implicit bias in the courtroom and briefly lay out what those steps may be.
This panel uses the lens of Jews operating between 1920 and the 1990s to inform an understanding of the mechanisms and limits of contemporary public international law. In particular, we focus on the way in which these individuals and networks dealt with questions of movement, statelessness, displacement and belonging, and loss across three different moments in time: the inter-war era, the aftermath of the Holocaust, and the Cold War era (including both with the “human rights revolution” of the 1970s and the transitional justice networks of the post-Cold War era).

Participants

Annette Weinke: From International Relations to Transitional Justice networks: Passages of the German-American Émigré lawyer John H. Herz

John H. Herz belonged to a group of US scholars whose contribution to the disciplines of international law and international relations was bound up with their personal trajectories of persecution, exile, and late encounters with American patterns of thought. As a former student of Hans Kelsen, Herz became one of the most influential voices in the infant school of American International Relations. In 1984, he published his memoirs where he depicted his life-long interest for international politics, international law and human rights as an outgrowth of his experiences as a Jew and an emigrant. In this paper, I present an alternative approach developed by Jewish jurists and scholars in the 1940s and 1950s, an approach that led to the return of heirless cultural property to Jewish organizations as trustees for the Jewish people during the 1950s. This struggle has largely been forgotten and did not leave its mark in the annals of international law, partly because it was narrowly understood as a sui generis form of restitution linked to the special political constellation of the time. This paper suggests to the contrary that the Jewish cultural restitution of the 1940s and 1950s offers a promising juridical model of collective cultural restitution. The struggle was transnational in form and succeeded in overcoming the statist-territorial bias of international law to allow recognition of a cultural community as proper claimant in international law.

Leora Bilsky: Cultural Heritage and Jewish Restoration: A Challenge for International Law

Cultural heritage in international law is based on the principle of return of cultural property to the state of origin. The experience of WWII confronted the world with the need to adapt this framework to deal with a state persecuting cultural groups within its own borders. This paper presents an alternative approach developed by Jewish jurists and scholars in the 1940s and 1950s, an approach that led to the return of heirless cultural property to Jewish organizations as trustees for the Jewish people during the 1950s. This struggle has largely been forgotten and did not leave its mark in the annals of international law, partly because it was narrowly understood as a sui generis form of restitution linked to the special political constellation of the time. This paper suggests to the contrary that the Jewish cultural restitution of the 1940s and 1950s offers a promising juridical model of collective cultural restitution. The struggle was transnational in form and succeeded in overcoming the statist-territorial bias of international law to allow recognition of a cultural community as proper claimant in international law.

Mira Siegelberg: New Subjects of Public Law: International Legal Personality in Interwar Jewish Legal Thought

Statelessness, or the condition of being without a legally recognized nationality, first became a category of international legal analysis and an object of humanitarian concern after the First World War. This paper examines the role of statelessness in political and legal arguments in the interwar period, especially among Jewish international legal scholars. It argues that the problem of statelessness was fundamental to their theoretical reconceptualization of law and political order and that it was particularly important for the argument that individuals—rather than states—could be the direct subjects of international law.

Moria Paz: A Most Inglorious Right: René Cassin, Freedom of Movement, Jews and Palestinians

This paper is concerned with institutional myopia regarding what I call the problem of exit rights without entry rights. When it comes to rights that involve cross border mobility, human rights law only guarantees a universal right to exit a state. The right to enter a new state is limited. But the ability to exit is a very narrow right if there is no place to enter. For most people, it adds nothing at all. Curiously, this myopia has a history. It can be traced directly back to the French-Jewish jurist René Cassin, the “Father of the Declaration of Human Rights.” I recount two separate stories: that of the problem of exit rights without entry rights, and that of Cassin. Both focus on the right to freedom of movement, because it is the human right that most explicitly involves cross-border mobility. Put side-by-side, these stories illustrate the intractability of the problem of exit rights without entry rights.

81. Jews, Otherness and International Law: A Historical Perspective
In order to consolidate the success of a process of transition from armed conflict to peace, there is several questions that must be answered since an economic analysis of law, questions that has been asked in all developing and developed societies throughout the world: Which is the best way to satisfy the rights of victims? How to achieve the social reconstruction? How to improve economic policies to enhance social inclusion? what state structure is capable of satisfying the large demands of reparations for victims and rebalancing of public burdens? which principles should guide the exercise of economic freedoms? which are the advantages and challenges of peace, in strictly economic terms? How to finance peace to make of it stable and lasting? The experiences of correcting these socioeconomic differences in a context of transitional justice offer useful tools for all states in building a democratic economy.

Participants
Maria Carolina Olarte
Magdalena Inés Correa Henao
Mauricio Pérez

Name of Chair
Aida Torres Pérez

Room
DOR24 1.601

Maria Carolina Olarte: Economic justice as constitutional justice in transitional scenarios: at the crossroads

In recent years the question of the socio-economic dimensions of both transitional justice and conflict has emerged as an increasingly relevant issue. The present paper examines the challenges this ‘new’ question poses to constitutionalism in transitional scenarios. For this purpose, it problematizes the responses of constitutionalism to the continuities of conflict-related forms of economic violence. In particular, it argues that current constitutional design for post-conflict societies and the framing of what could be called transitional constitutionalism within a narrow version of the rule of law are obliterating the economic aspects of democracy while treating inequality as a background issue that does not make part of what allegedly constitutes a proper political change in transitional contexts. While valuable, those approaches are shown to have significant political limitations.

Magdalena Inés Correa Henao: Three non-revolutionary ways to achieve transformative justice.

Within the context of scarce resources, transitional justice can be transformative on constitutional law in three ways: the participation of armed groups in the reparation of victims, links between the private sector and peace building, and the making of redistributive and sustainable economic policies. Transitional justice is economically fair when reparations for victims come from the assets of illegal armed groups. This attributes due responsibility, reduces imbalances on public charges, and the value of property rights is reaffirmed but based on fair title. Increasingly it recognized the social responsibility of companies during a transition and post-conflict period. It is important to conceptualize business formulas that favor the participation of victims, based on criteria of profitability and remuneration. And of course the state must adopt varied and consistent measures of economic interventions in order to deal with the causes of violence and to contribute to redistribution.

Mauricio Pérez: The economic challenges of the peace in Colombia

The progressive spirit of Colombia’s 1991 Constitution has been often belied in practice, in part because of the ravages of the internal conflict. Can the results of the peace negotiations be more than an empty promise? Ideally they will lead to a better and more just society. In some cases, this implies the reestablishment of an effective rule of law in others it will require legal and policy innovation. Does it make sense to speak of a “peace dividend”? The answer may be found in the comparative economics of peace and war. Both are expensive and it is not evident that public spending on security can fall if peace requires that illegal groups do not challenge the State’s monopoly of violence. To assume the restoration of victims’ rights can be financed with the ill-gotten assets of perpetrators is optimistic. Each case involves fundamental principles of transitional justice. Anyway, in spite of the “buts” it can be argued that peace is justified from a narrow economic perspective.
Defining Trust in Public Law

David A. Vitale

Trust is a concept often referred to by public law scholars. The New Harvard Law Review, Volume 94, Number 6

Temporary Legislation, Jurisprudential Naturalism 1903-1945

Katharina Isabel Schmidt: Between “Life” and “Experience”: German Free Lawyers, American Legal Realism, and the Transatlantic Turn of Constitutional Order

Dejan Pavlović: Constitutional Order

Between “Life” and “Experience”: German Free Lawyers, American Legal Realism, and the Transatlantic Turn of Constitutional Order

The paper aims at providing the analysis of the temporary legislation, which is a particular sub-context of public law: the public administration.

Temporary Legislation: “Experimental Governance” and the Rule of Law Principle in the Constitutional System of BH

Katharina Isabel Schmidt: Between “Life” and “Experience”: German Free Lawyers, American Legal Realism, and the Transatlantic Turn of Constitutional Order

Dejan Pavlović: Constitutional Order

Temporary Legislation, Jurisprudential Naturalism 1903-1945

Katharina Isabel Schmidt: Between “Life” and “Experience”: German Free Lawyers, American Legal Realism, and the Transatlantic Turn of Constitutional Order

Dejan Pavlović: Constitutional Order

Between “Life” and “Experience”: German Free Lawyers, American Legal Realism, and the Transatlantic Turn of Constitutional Order

The paper aims at providing the analysis of the temporary legislation, which is a particular sub-context of public law: the public administration.

Temporary Legislation: “Experimental Governance” and the Rule of Law Principle in the Constitutional System of BH

Katharina Isabel Schmidt: Between “Life” and “Experience”: German Free Lawyers, American Legal Realism, and the Transatlantic Turn of Constitutional Order

Dejan Pavlović: Constitutional Order

Temporary Legislation, Jurisprudential Naturalism 1903-1945

Katharina Isabel Schmidt: Between “Life” and “Experience”: German Free Lawyers, American Legal Realism, and the Transatlantic Turn of Constitutional Order

Dejan Pavlović: Constitutional Order

Between “Life” and “Experience”: German Free Lawyers, American Legal Realism, and the Transatlantic Turn of Constitutional Order

The paper aims at providing the analysis of the temporary legislation, which is a particular sub-context of public law: the public administration.
This paper argues that when private actors undertake the Trading scheme, the sector’s emissions have remained forecasted marginal fuel efficiency improvements are the overall political aim has been to re-duce public budgets and to increase efficiency, while continuing to implement detailed public law rules and values into the outsourcing contracts to protect the private contractors have in many cases shown unable to incorporate such values and be used as a tool for creating accountability of private actors performing public tasks. Taking a constitutional perspective, taking the recent EU competition law di-sputes and numerous national laws, adopted by those that the project of outsourcing by the creation of private enforcement mechanisms in corruption presenta threat to social stability, economic com-petition and democratic control. This article provides an examination of the aviation industry climate-related actions to date and an analysis of the divergence from public to private regulation, both in terms of the actors and the instruments used for regulation, in this issue-area.

Beatrix Martínez Romera: The Regulation of International Aviation’s Greenhouse Gas Emissions: from public to private regulation in climate governance

Greenhouse gas emissions from international aviation are expected to increase by more than twelve percent over the coming 20 years while the current leading actors that are usually in a position to reduce their emissions are unwilling to do so due to market concerns. This article explores the question of international aviation’s greenhouse gas emissions. It argues that the remaining aviation players can be divided into three types depending on their position in the market: states wishing to combat and eradicate corrupt practices, those that are prepared to fulfill their responsibilities, and those that are not. The paper investigates the role of private enforcement in the area of anti-corruption and presents a threat to social stability, economic competition and democratic control. Given the trend of an increasing role of private actors in traditional sectors, this article addresses the necessity of private enforcement in corruption deterrence, as well as its functional development of private enforcement in the EU. It identifies the need for regulation of sector’s emissions, i.e., mitigation measures in line with the internalization of the climate effects of aviation and the additional public values of private enforcement. This article provides an examination of the aviation industry climate-related actions to date and an analysis of the divergence from public to private regulation, both in terms of the actors and the instruments used for regulation, in this issue-area.

Beatriz Martínez Romera: The Regulation of International Aviation’s Greenhouse Gas Emissions: from public to private regulation in climate governance

Participants in Global Governance

Vibe Garf Ulfbeck: Public Law Values and Private Governance – Transgressing the Public-Private Divide

The relationship between public law and private law is well known and basic in many legal systems. However, the distinction is being challenged in several ways. One way is by an increase in use of private ac-tors to perform public tasks. Taking a constitutional approach, the tendency can be seen with regard to all three branches of lawmaking, implementation and enforce-ment. This paper demonstrates that the project of outsourcing by the creation of private markets for social services thus still faces considerable challenges.

Alexandra Horváthová: Private Actors: The Need for Private Enforcement Mechanisms in the Fight against Corruption

The regulation of international aviation emissions under the Kyoto Protocol and the EU emissions trading system (ETS) presents a threat to social stability, economic competition and democratic control. Given the trend of an increasing role of private actors in traditional sectors, this article addresses the necessity of private enforcement in corruption deterrence, as well as its functional development of private enforcement in the EU. It identifies the need for regulation of sector’s emissions, i.e., mitigation measures in line with the internalization of the climate effects of aviation and the additional public values of private enforcement. This article provides an examination of the aviation industry climate-related actions to date and an analysis of the divergence from public to private regulation, both in terms of the actors and the instruments used for regulation, in this issue-area.

Alexandra Horváthová: Private Actors: The Need for Private Enforcement Mechanisms in the Fight against Corruption

Participants in Global Governance

Vibe Garf Ulfbeck: Public Law Values and Private Governance – Transgressing the Public-Private Divide

The relationship between public law and private law is well known and basic in many legal systems. However, the distinction is being challenged in several ways. One way is by an increase in use of private ac-tors to perform public tasks. Taking a constitutional approach, the tendency can be seen with regard to all three branches of lawmaking, implementation and enforce-ment. This paper demonstrates that the project of outsourcing by the creation of private markets for social services thus still faces considerable challenges.
This panel proposes a multidisciplinary study of the figure of the “extraneous body” in Public law judiciary scenes and of the handling of foreignness by the power structures in charge of judging those bodies. By taking both comparative (French Conseil d'État, International Criminal Court, Global anti-doping agency, Supreme Court of Israel) and multidisciplinary approaches (Procedural law, Theater studies, Philosophy and Political Theory and national and international Public law), the objective is to try to understand how bodies that are extraneous to the public legal systems and their power dispositives are “managed” and perceived in those scenes. The proposal aims to try to systematize a reflection on the paradox to which all public judicial or quasi-judicial bodies have been confronted with: how to judge bodies that do not belong – or refuse to consider themselves part of the community they are being judged by?

Participants
Pieter Bonte
Alphonse Clarou
Omer Shatz
Juan Branco
Name of Chair
Juan Branco
Room
D024

Pieter Bonte: The Fremdkörper of the ‘doping sinner’ in Sports Tribunal

Behind the facade of global consensus, a rising tide of criticism is calling into question the legitimacy of the zero-tolerance policy and the often draconic procedures by which athletes are being forced to “stay natural” and “stay normal”. For instance, legal scholar Maxwell Mehlman has suggested that zero-tolerance anti-doping rules keep the playing field unlevelled, ensuring that the talented keep their edge over those who try to overcome their lesser luck at birth through doping. In this session, Pieter Bonte will develop the lead by Mehlman and others further, asking whether the denunciation of all doping, even healthy doping, might indicate that modern sports are still being organized in the hereditarian, social darwinist spirit of baron Pierre de Coubertin, founder of the Modern Olympics.

Alphonse Clarou: Le conseil d'État et ses extra- neous bodies

The proposal will rely on the analysis of two works that respectively focus on the fabrication of the French Public Law at the French Conseil d'État and on its handling of an extraneous body: la fabrique du droit by Bruno Latour and le chemin des morts by François Sureau. The first work proposes an “insider” socio-logical study of the functioning of the institution, whilst the second was authored by one of the administrative judges of the Conseil d'État and depicts the trial of a Basque terrorist he had to deal with during his service. Starting from these sources, Alphonse Clarou will try to present a theoretical approach nourished by Gilles Deleuze propositions in his book The logic of sense, and the relationship between the both theatrical and philosophical notions of catastrophe and event, through which he’ll try to understand not only how public law is fabricated over the body of “strangers”, but also how this fabrication creates in turn “reality”.

Omer Shatz: Asylum seekers and the Israeli Supreme Court

Omer Shatz will focus on the handling by the Israeli Supreme Court of the fate of twenty-one Eritrean asylum seekers he represented in one of the most famous cases handled by the institution in the last decade. He will theorize this case in order to better understand the nature of the physical and legal encounter between the rule – the pure sovereign, able to decide who is authorized to enter its territory and who isn’t – and its exception – the asylum demand – and the violent provocation manifested by both the polity and the stranger in such encounter. He will suggest that the dissonance between the imposed presentation of the physical body which is governed by natural law (‘human rights’), and the subsequent representation of the legal person which is governed by positive law, introduces us with a new political entity – the Janus face of the asylum seeker being neither a friend nor a foe, but a third political species that is a mutant form of both.

Juan Branco: The International Criminal Court and the Katanga case

Relying on interviews with the main actors of the case, including with the convict, Juan Branco will show how the ICC was incapable to seize itself of a body that was too extraneous to its social, legal and cultural codes, therefore revealing the limits of the cosmopolitanism the institution pretends to rely on. Describing the Kafkaïan life course of a former okapi hunter that became an army General at 25, he will try to explain why a court of this importance invested so much time and efforts in “policing” a body that should have never crossed its path.
Land grabbing is a well-known phenomenon in global economy and global politics. It consists of purchase or long-term leasing of foreign lands for food and biofuel production by state-owned and private corporations, as well as private investors. Among the top investor countries, we find Malaysia, Singapore, Arab Emirates, India, Brazil, Saudi Arabia. The targeted countries are mainly African, although many cases have also been registered in Central and South America and in South-East Asia. Land grabbing raises issues at the crossroads of public law and private/commercial law, e.g. the wide range of contract types; the complex and varied powers and structures of companies; the weaknesses and the heterogeneity of administrative procedures and land registry practice and procedures. The panel aims at suggesting supranational and national legal remedies, both in public law and in investment and commercial law, and to stress the connections between national and supranational institutions.

Participants

<table>
<thead>
<tr>
<th>Name of Chair</th>
<th>Room</th>
<th>Name of Chair</th>
<th>Room</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sabino Cassese, Marco D’Alberti and Lorenzo Casini</td>
<td>DOR24 1.608</td>
<td>Alessandra Paolini</td>
<td>Lorenzo Casini</td>
</tr>
</tbody>
</table>

Alessandra Paolini: From a Debate about Water Market to Water as a Speculative Commodity: The Australian Case

Water grabbing is becoming a phenomenon which interests not only developing countries: the gradual “commodification” of water is quickly turning water into a big global business.

An interesting observation point is provided by Australia, one of the world’s driest continent. Neoliberal economists claim that a water market will automatically balance supply and demand, through the price mechanism, turning into the best mean of allocating water for increased efficiency and profit; on the other hand, others argue that water should be allocated on a more equitable basis, through the public intervention.

Australia has gone further along the path of water markets than almost any other country, and its water market was tested during the great Australian drought of the first decade of the 21st century, with results subject to divergent assessments.

However, some data are clearly emerging: Australia set up a market-based water trading system; a “futures” market is developing (thus transforming water from a free and common property, to a money-denominated commodity); an increasing amount of water is owned purely for “investment purposes”.

Federico Caporale: Water Grabbing: Administrative Law, Weaknesses and Possible Remedies

This paper offers an administrative law perspective on water grabbing. In the first section, I will classify the behaviors which can be considered as water grabbing, stressing the variety of their characteristics. Their study is necessary to understand the legal implications and possible remedies of water grabbing. In the second section, I will discuss the different legal area of intervention, as bilateral or multilateral international treaties and domestic administrative law related to public goods. In the third and concluding section, through a case study, I will focus my attention on the weaknesses of domestic administrative law, which make easier water grabbing and I will discuss, if and how the declaration of the human right to water and the principle of integrated water resource management can make stronger domestic law contrasting water grabbing.

Lorenzo Casini: Discussant
"Thanks" to the above mentioned challenges, the relational approach, in order to face the several tension between global and local is evident. Adjudication is a feature of constitutional reasoning emerging in Europe. Constitutional systems, facing the new challenges of global constitutionalism, as an observable fact it is important to add new elements to the contemporary constitutional discourse, and the voice of the Italian constitutional court can be one of the new voices. Opposed forces are at work in Europe. The search for a constitutional mindset in which the Constitutional Court (ICC) was born, linked to the heart of the paper's title taking as starting point the Italian constitutional court has developed a new model of constitutional adjudication in the European space. The doctrine of proportionality and reasonableness are commonplace. For understanding the conflicts connected to the new constitutional context, complexity derives by the peculiar "style", refers to the ICC's 'ability to establish sound and vital two-ways relations with other institutional actors, both, political and judicial, national and supranational'. This is manifested in the ICC's relational building capacity and in its review methods. Here it is claimed that the ICC has grown far from country-specific, it becomes a protagonist role in the actual season of cooperative constitutionalism in Europe and, more generally, in the comparative work is called for to define the European constitutional court (ICC) judicial style. More precisely, the paper will try to demonstrate as the ICC was in a way forced to develop a judicial style based on a cooperative and "relational"

Participants
Patricia Popelier
Vittoria Barsotti
Marta Cartabia
Oreste Pollicino

Name of Chair
Luís Miguel Poiares Pessoa

Room
UL9 E25

Patricia Popelier: A new model of judicial review?

In their book on "Italian Constitutional Justice in Global Context", Barsotti et al. claim that the Italian Constitutional Court has developed a new model of judicial review. This Italian style, defined as "institutional relationality", means that despite the Italian constitutional context, the Italian Constitutional Court keeps the British idea of the "sovereignty of the Parliament" and to a French-like weak judiciary. "Relationality" has been the institutional resilient skill to overcome hostility deriving from an adaptive capacity developed by the constitutional court to face the new challenges of pluralistic societies, when there can be tension between fundamental rights/values, particular hermeneutic approaches prevail – e.g. balancing, and the correlated notions of proportionality and rationality. As a result, the Italian Constitutional Court faces unprecedented challenges. Starting from the Italian case, it is interesting to ascertain whether, in constitutional systems, the judicial review is an important viewpoint against this context, the panel will discuss where the European common patterns of judicial reasoning emerge in Europe? Constitutional systems, facing the new challenges of global constitutionalism, as an observable fact it is important to add new elements to the contemporary constitutional discourse, and the voice of the Italian Constitutional Court (ICC) can be one of the new voices.

Oreste Pollicino: Is there an Italian Style in Constitutional Adjudication?

The presentation will try to answer to the question at the heart of the paper's title taking as starting point the discussion of the authors' book "Italian Constitutional Justice in Global Context" (OUP, 2016), to identify the peculiar "style" of the ICC which is described as "special" and very difficult to duplicate the Italian Constitutional Court. The paper will try to demonstrate as the ICC was in a way forced to develop a judicial style based on a cooperative and "relational"

Marta Cartabia: National constitutional adjudication in the European space

Andrea Simoncini: "Relationality" as a feature of the constitutional model of judicial review, it prefers to use its power softly, aiming to find a dialogue with the other constitutional authorities (Parliament and Judiciary). This peculiar "style" derives from an adaptive capacity developed by the ICC, that has grown far from country-specific, it becomes a protagonist role in the actual season of cooperative constitutionalism in Europe and, more generally, in the comparative work is called for to define the European constitutional court (ICC) judicial style. More precisely, the paper will try to demonstrate as the ICC was in a way forced to develop a judicial style based on a cooperative and "relational"

Vittoria Barsotti: European common patterns of Judicial Reasoning

Opposed forces are at work in Europe. The search for a constitutional mindset in which the Constitutional Court (ICC) was born, linked to the heart of the paper's title taking as starting point the Italian constitutional court has developed a new model of judicial review. This Italian style, defined as 'institutional relationality', refers to the ICC's 'ability to establish sound and vital two-ways relations with other institutional actors, both political and judicial, national and supranational'. This is manifested in the ICC's relational building capacity and in its review methods. Here it is claimed that the ICC has grown far from country-specific, it becomes a protagonist role in the actual season of cooperative constitutionalism in Europe and, more generally, in the comparative work is called for to define the European constitutional court (ICC) judicial style. More precisely, the paper will try to demonstrate as the ICC was in a way forced to develop a judicial style based on a cooperative and "relational"

Patricia Popelier: A new model of judicial review?

In their book on "Italian Constitutional Justice in Global Context", Barsotti et al. claim that the Italian Constitutional Court has developed a new model of judicial review. This Italian style, defined as "institutional relationality", means that despite the Italian constitutional context, the Italian Constitutional Court keeps the British idea of the "sovereignty of the Parliament" and to a French-like weak judiciary. "Relationality" has been the institutional resilient skill to overcome hostility deriving from an adaptive capacity developed by the constitutional court to face the new challenges of pluralistic societies, when there can be tension between fundamental rights/values, particular hermeneutic approaches prevail – e.g. balancing, and the correlated notions of proportionality and rationality. As a result, the Italian Constitutional Court faces unprecedented challenges. Starting from the Italian case, it is interesting to ascertain whether, in constitutional systems, the judicial review is an important viewpoint against this context, the panel will discuss where the European common patterns of judicial reasoning emerge in Europe? Constitutional systems, facing the new challenges of global constitutionalism, as an observable fact it is important to add new elements to the contemporary constitutional discourse, and the voice of the Italian Constitutional Court (ICC) can be one of the new voices.

Oreste Pollicino: Is there an Italian Style in Constitutional Adjudication?

The presentation will try to answer to the question at the heart of the paper's title taking as starting point the discussion of the authors' book "Italian Constitutional Justice in Global Context" (OUP, 2016), to identify the peculiar "style" of the ICC which is described as "special" and very difficult to duplicate the Italian Constitutional Court. The paper will try to demonstrate as the ICC was in a way forced to develop a judicial style based on a cooperative and "relational"

Marta Cartabia: National constitutional adjudication in the European space

Andrea Simoncini: "Relationality" as a feature of the constitutional model of judicial review, it prefers to use its power softly, aiming to find a dialogue with the other constitutional authorities (Parliament and Judiciary). This peculiar "style" derives from an adaptive capacity developed by the ICC, that has grown far from country-specific, it becomes a protagonist role in the actual season of cooperative constitutionalism in Europe and, more generally, in the comparative work is called for to define the European constitutional court (ICC) judicial style. More precisely, the paper will try to demonstrate as the ICC was in a way forced to develop a judicial style based on a cooperative and "relational"

Vittoria Barsotti: European common patterns of Judicial Reasoning

Opposed forces are at work in Europe. The search for a constitutional mindset in which the Constitutional Court (ICC) was born, linked to the heart of the paper's title taking as starting point the Italian constitutional court has developed a new model of judicial review. This Italian style, defined as 'institutional relationality', refers to the ICC's 'ability to establish sound and vital two-ways relations with other institutional actors, both political and judicial, national and supranational'. This is manifested in the ICC's relational building capacity and in its review methods. Here it is claimed that the ICC has grown far from country-specific, it becomes a protagonist role in the actual season of cooperative constitutionalism in Europe and, more generally, in the comparative work is called for to define the European constitutional court (ICC) judicial style. More precisely, the paper will try to demonstrate as the ICC was in a way forced to develop a judicial style based on a cooperative and "relational"
The principle of equality and its different functions in protecting migrants’ rights

The paper examines the European and Italian case law on the protection of migrants’ social rights. It concludes that denying residence does not violate the principle of equality, according to art. 3 § 2 of Italian Constitution. The principle of equality can play different roles in judicial reasoning. It not only assumes the meaning of a pure non-discriminatory principle, but it can also be used as the basis to assess the legitimacy of any measure including introducing different welfare regimes (on grounds of nationality, duration of stay, type of permit of stay, etc.). It can finally be related to dignity and to fundamental human rights including the right to the Enjoyment of economic, social and cultural rights (art. 13 ECHR, art. 11 ECtHR).

The purpose of this contribution is to analyze the legal regime of the protection of migrants in Europe both under supranational law – namely the European Convention and European law – and national law of the EU Member States. The stress will be on the position of the European Court of Human Rights following from human dignity as stated by the Federal Constitutional Court for the unemployed (1991) and for asylum seekers and refugees (2000). It will also critically assess the German case law on migrants’ benefits in the light of national immigration-specific rules are applied correctly and consistently, and if there is no good excuse for non-compliance with these rules, the court concludes that denying residence does not violate the principle of equality. The principle of equality assumes the meaning of a pure non-discriminatory principle, but it can also be used as the basis to assess the legitimacy of any measure including introducing different welfare regimes (on grounds of nationality, duration of stay, type of permit of stay, etc.). It can finally be related to dignity and to fundamental human rights including the right to the Enjoyment of economic, social and cultural rights (art. 13 ECHR, art. 11 ECtHR).
Recent years have witnessed a dramatic move towards the globalization of constitutional law. Once considered inherently local and national, we now see rights conceived of in global and transnational terms. It is perceived as a framework that is shared by different nations, and it is seen as the foundation for global justice, as manifesting a universal conception of constitutionality. As experienced in the Global Constitutionalism, Global Constitutionalism has at least two interrelated focal points: the nature of the phenomenon of constitutional law beyond the borders of the boundaries of the national state, and the nature of international, ideologically informed, constitutional ideas, of practical frameworks for international constitutional constructs, such as proportionality. The other focal point is the study of the features and history of a particular model of constitutionalism. The study of Global Constitutionalism has developed in Europe after WW II, and of which Germany, the European Conventions, and South Africa are leading examples. This second focal point of constitutional studies is connected to the one leading model that is at odds with the Global Model of Constitutionalism. What are the effects of Global Constitutionalism on Human Rights? What are the particular conceptions of human rights that are generated by a particular model of constitutional law? Is it possible to identify all economic and social rights as justiciable, to have. in this way rights based proportionality relates to the formal status, scope and nature of such rights. We base our argument by drawing on the literature of cognitive psychology and on examples from courts that have certain whether law actually has the authority it claims to have. In recent years have witnessed a dramatic move towards the globalization of constitutional law. Constitutionalism: Global constitutionalism. The study of Global Constitutionalism is considered a legal practice the point of which is to address the dangers of both over- and under-enforcement, in making judgments about the legitimacy of a government.”

The paper will argue that rights based proportionality has been developed in many countries in a deeply comparative way, and so far has been often transversal. The articulation of proportionality in courts may have. In this way, rights based proportionality to be comparatively grounded in this way.

Ran Hirschl: Economic and Social Rights in National Constitutions.

Much has been written about the global convergence on constitutional supremacy, and the corresponding rise of an apparently universal constitutional discourse, primarily visible in the context of constitutional rights. In this context, constitutional courts may usefully draw on comparative constitutional expe- rience to test theoretical norms, especially those of deon- tological conception of rights by setting a prob- ability threshold prior to the ad-hoc balancing. We base our argument by drawing on the literature of cognitive psychology and on examples from courts that have certain whether law actually has the authority it claims to have. In recent years have witnessed a dramatic move towards the globalization of constitutional law. Constitutionalism: Global constitutionalism. The study of Global Constitutionalism is considered a legal practice the point of which is to address the dangers of both over- and under-enforcement, in making judgments about the legitimacy of a government.”

The paper will argue that rights based proportionality has been developed in many countries in a deeply comparative way, and so far has been often transversal. The articulation of proportionality in courts may have. In this way, rights based proportionality to be comparatively grounded in this way.

Ran Hirschl: Economic and Social Rights in National Constitutions.

Much has been written about the global convergence on constitutional supremacy, and the corresponding rise of an apparently universal constitutional discourse, primarily visible in the context of constitutional rights. In this context, constitutional courts may usefully draw on comparative constitutional expe- rience to test theoretical norms, especially those of deon- tological conception of rights by setting a prob- ability threshold prior to the ad-hoc balancing. We base our argument by drawing on the literature of cognitive psychology and on examples from courts that have certain whether law actually has the authority it claims to have. In recent years have witnessed a dramatic move towards the globalization of constitutional law. Constitutionalism: Global constitutionalism. The study of Global Constitutionalism is considered a legal practice the point of which is to address the dangers of both over- and under-enforcement, in making judgments about the legitimacy of a government.”

The paper will argue that rights based proportionality has been developed in many countries in a deeply comparative way, and so far has been often transversal. The articulation of proportionality in courts may have. In this way, rights based proportionality to be comparatively grounded in this way.

Ran Hirschl: Economic and Social Rights in National Constitutions.

Much has been written about the global convergence on constitutional supremacy, and the corresponding rise of an apparently universal constitutional discourse, primarily visible in the context of constitutional rights. In this context, constitutional courts may usefully draw on comparative constitutional expe- rience to test theoretical norms, especially those of deon- tological conception of rights by setting a prob- ability threshold prior to the ad-hoc balancing. We base our argument by drawing on the literature of cognitive psychology and on examples from courts that have certain whether law actually has the authority it claims to have. In recent years have witnessed a dramatic move towards the globalization of constitutional law. Constitutionalism: Global constitutionalism. The study of Global Constitutionalism is considered a legal practice the point of which is to address the dangers of both over- and under-enforcement, in making judgments about the legitimacy of a government.”

The paper will argue that rights based proportionality has been developed in many countries in a deeply comparative way, and so far has been often transversal. The articulation of proportionality in courts may have. In this way, rights based proportionality to be comparatively grounded in this way.
The panel brings together four papers revolving around the transformation of public law brought about by the process of European integration. In particular, the aim of the panel is investigating the legal and constitutional implications of the shift from nation-statehood to member statehood. Transformation is examined and critically assessed from a range of different perspectives concerning executive law-making, constitutional adjudication, the state-society relation, and the structure of legal authority within the EU.

Participants

<table>
<thead>
<tr>
<th>Name</th>
<th>Room</th>
</tr>
</thead>
<tbody>
<tr>
<td>Michael Wilkinson</td>
<td>U9 E14</td>
</tr>
<tr>
<td>Marco Dani</td>
<td></td>
</tr>
<tr>
<td>Marco Goldoni</td>
<td></td>
</tr>
<tr>
<td>Jan Komárek</td>
<td></td>
</tr>
</tbody>
</table>

Name of Chair

Floris de Wetten

Michael Wilkinson: Constitutional Pluralism?

What remains of constitutional pluralism in the wake of the reconfiguration of political and legal authority since the Euro-crisis? According to the new anti-pluralists, the recent OMT ruling signals its demise, calling to an end the stalemate between the ECJ and the German Constitutional Court on the question of ultimate authority and representing a new stage in the constitutionalisation of the European Union, towards a fully monist order. It is argued here that such celebrations are misguided in attending to the juridical at the expense of the political dimension of constitutional development. Putting these dimensions together reveals that constitutional law-making and representing a new stage in the constitutionalisation of Europe, reflecting conflict between the telos and nomos of integration, between political authority and technocratic power, and among the Member States themselves. Constitutional pluralism, in conclusion, is worth defending, but as the normative recognition of a horizontal plurality of constitutional orders.

Marco Dani: The rise of the supranational executive and the post-political drift of European public law

The paper offers a synthetic overview on the evolution of European public law arrangements by examining the relationship between the executive-based structure of the EU and national constitutional democracies. It argues that, owing to the predominance achieved by the supranational executive and the corresponding displacement of constitutional democracies, European public law has acquired an increasingly post-political character.

Marco Goldoni: The Study of the Material Constitution

The study of the material constitution focuses on how a society is built politically and then reproduced through the organisation of its material aspects. It integrates the political dimension of society's artificial construction and the political economy of modern societies as the material basis of their development. This type of study benefits from a synthesis of the concrete order-type of legal thinking and the materialist tradition of modern political economy. The key point here is that this is already juristic knowledge, without whom nothing analytic could be said about the form and content of the State constitution. Constitutional lawyers should therefore engage with it in order to make their research more accurate. This paper will suggest that the study of the material constitution ought to be extended to at least four components: subjects, objects, aims, spatial and temporal coordinates.

Jan Komárek: Judicial Legitimacy without Borders

The paper examines how the idea of freedom (as self-determination) informs judicial legitimacy in the world where the borders between the internal and international have gained a different meaning from that in which our conceptualization of judicial legitimacy originates.
91 THE INTERNATIONAL RULE OF LAW – RISE OR DECLINE?

The panel introduces the Berlin Potsdam Research Group "The International Rule of Law – Rise or Decline?" Certain developments in recent years give rise to the question how international law currently develops and performs its function. Whether we are seeing symptoms for a more significant "rise or decline" of international law is a question that underlies the research agenda of the group. Panelists will address select issues within this framework.

Participants
Pierre d’Argent
Jutta Brunnée
Heike Krieger
Georg Nolte

Name of Chair
Heike Krieger

Room
BE2 E34

Pierre d’Argent: Domestic democracy and normative differentiation as challenges for the international rule of law

Two challenges – one external, one internal – to the international rule of law will be explored. The external challenge relates to domestic democracy: while international law was largely seen and used after World War II as a way to strengthen and promote domestic democracy through external control mechanisms, it is increasingly seen today as an impediment to popular choices expressed through democratic means. The internal challenge relates to international democracy: while the principle of equal sovereignty of states is essential to the legitimacy of the international legal order, the need to accommodate differences in capacities through normative differentiation tends to erode such legitimacy.

Jutta Brunnée: Up to the Task? The International Rule of Law and Complex Problems

International law is routinely called upon to grapple with environmental problems that are polycentric and multi-dimensional in nature, and resistant to permanent resolution. The rise of such complex environmental problems has coincided with a growing emphasis in international environmental law, both customary and treaty-based, on procedural rather than substantive requirements. Does this turn to procedure signal a decline in the global rule of law? Using climate change as an example, I argue that strong procedural requirements are crucial elements of the rule of law. In the context of complex problems like climate change, procedural requirements help provide a resilient and predictable framework for the long-term interaction that is inevitably needed in dealing with policy challenges that may not be amenable to solution on the basis of formally fixed substantive commitments.

Heike Krieger: Constitutionalization in Crisis?

Numerous developments and symptoms suggest that international law is currently undergoing a significant crisis. Here, the thesis on constitutionalization of international law could offer an answer as to how law might face and channel significant changes within the international order. However, this thesis is closely linked to the period of juridification in the 1990s which fostered an optimistic perception of international legal developments. Can constitutionalism prevail as a dominant interpretative model under current circumstances? The paper analyzes opposite trends which question the appropriateness of a constitutional reading of international law.

Georg Nolte: The International Rule of Law – Rise or Decline?

Certain developments in recent years give rise to the question how international law currently develops and performs its function. Whether we are seeing symptoms for a more significant "rise or decline" of international law is a question that underlies the agenda of the Berlin Potsdam Research Group on "The International Rule of Law – Rise or Decline?" The pursuit of this question requires to clarify how "rise or decline" can be identified and assessed.
The paper investigates, following the recent relevant Taiwan’s Extending Judicial Review to Immigration, the constitutional court 10.2%. as 2015 made clear, the challenges of mass migration and religious pluralism in an era of mass migration and religious pluralism. In this paper is the amalgam that may be caused by that. According to the Pew Research Center, between 2010 and 2050, the Muslim population of Europe is expected to increase from 36 million to 84 million. While migration, with the migration increases to 10.2%. As of 2015, Taiwan is the only country in Asia with a higher share of immigrants and corresponding demographic shifts, combined with violence related to religious extremism and religious pluralism. Given these trends, protections against religious discrimination and guarantees of freedom of religion are increasingly consequential. This article will examine the extent to which the constitutions of 193 UN Member States explicitly prohibit religious discrimination and guarantee freedom of religion, as well as how constitutions define the status of religious law. In addition, this article will assess how constitutional provisions relating to religion have evolved over time and across regions.

Chao-Chun Lin: Challenges in the Details: Taiwan’s Extending Judicial Review to Immigration and Religious Pluralism

To strengthen the protection of detained immigrants and refugees, a modern trend in Asia, African street vendors of beach blankets and Pakistanis selling beer in public spaces are some of the hot topics in the Catalan public opinion. Since 2014 Barcelona Declara- tion, there is an attempt of local governments in chang- ing immigration policies to accommodate the needs of integrated individual. Catalan grassroots movements are some of the Barcelona City Council’s cornerstones to demarcate a path for a Barcelona Miltonian Union and Spain. The aim of the present article is to present the present and future of immigration policies pro-immigrants from non-European Union countries to face the inertia of State policies for national borders.

Guilia Francesca Marina Tiberi and Marilena Gennusa: The Assisted Return of Detained Immigrants

Policies for immigration are currently objects of national competences and far from local realities. However, due to the citizens’ calls, cities engage through political agendas to confront realpolitik paradigms on immigration. In Catalonia, street vendors of beach blankets and Pakistanis selling beer in public spaces are some of the hot topics in the Catalan public opinion. Since 2014 Barcelona Declaration, there is an attempt of local governments in changing immigration policies to accommodate the needs of integrated individual. Catalan grassroots movements have been some of the Barcelona City Council’s cornerstones to demarcate a path for a Barcelona Miltonian Union and Spain. The aim of the present article is to present the present and future of immigration policies pro-immigrants from non-European Union countries to face the inertia of State policies for national borders.

Wellington Migliari: Policies for Immigration or a political supranational paradigm on city borders

Participants
Seyed Reza Eftekhar
Alireza Sprague
Giulia Francesca Marina Tiberi
Marilena Gennusa
Name of Chair
Alireza Sprague
Room: E2 2.42
While in theory the judicial role is constructed as de-personalized, implicating an erasure of the subjective persona of the judge in practice national and international judiciaries tend to reproduce racial gender socio-economic cultural and linguistic hierarchies. This panel will discuss judicial diversity from a comparative law perspective, reflecting on the various forms of “otherness” needed on the bench in Africa, Europe, the United States, as well as on multinational courts.

Mathilde Cohen: White and Female: Paradoxes of the French Judiciary

Though it is presently impossible to measure racial and ethnic diversity quantitatively in France, it appears from my fieldwork that French judges are overwhelmingly female, white, upper middle class, and of Christian backgrounds – while the majority of the accused are Maghrebi, black, or Eastern European males from working-class backgrounds. To uncover the structure of racial discrimination as well as other forms of intersectional oppression, I analyze judges’ discourse about diversity, examining the strategies by which they dodge or downplay the relevance of race, gender, and sexual orientation.

Iyiola Solanke: A Diversity Agenda for the Court of Justice of the European Union

Although the Court of Justice of the European Union (CJEU) has always been an international court, it has been limited in its pursuit of diversity. The reasons to be concerned with diversity apply to the CJEU as much as any other court. Diversity as an input and output contributes to the quality of judicial decision-making, justice and democracy – diversity in the CJEU strengthens democracy in the European Union as a whole. The paper begins with an explanation of the task and organization of the CJEU, and explores the current diversity agenda in the EU before considering the specific diversity challenge for the CJEU and sketching a strategy to address it.

Leigh Swigart: Diversity on the International Bench: The Case for Considering Language and Culture

In the international sphere, certain attributes of persons nominated for judicial positions receive a great deal of scrutiny and oversight. Central among these is nationality, with gender becoming an attribute of increasing importance. As an identifier, nationality can suggest, however, more than the nominee’s citizenship or allegiance to a particular state. By extension, this category may imply other characteristics that are pertinent to the work of an international judge, including linguistic knowledge and preferences, as well as culturally embedded worldviews and behaviors, some of which a judge may be largely unaware. This paper will explore how language and culture are largely absent in discussions around diversity in the international judiciary and argue for increased awareness of these attributes and their potential for important impacts on the work of international courts. Such impacts may be both internal and external, that is found within the institutions themselves as well.
The discussion on courts' legitimacy treats it as an uninterrupted story of relationship between the states or governmental branches, the public and courts. In this panel the speakers will demonstrate how technological shifts have brought substantial changes in this relationship. Shai Dothan examines the influence of a virtual shaming wall where Non-Governmental Organizations (NGOs) publish reports, accusing states of noncompliance with ECHR judgments. Or Bassok examines how the invention of public opinion polling affected the concept of judicial legitimacy in the understanding of the CJEU and the ECHR and the American Supreme Court. Diego Arguelhes employ quantitative methods to show how TV broadcasting of the Brazilian Supreme Court's deliberations affected individual practices of opinion writing.

Participants
Shai Dothan
Or Bassok
Diego Werneck Arguelhes

Name of Chair
Or Bassok

Room
BE2 139a

Shai Dothan: A Virtual Wall of Shame: The New Way of Imposing Reputational Sanctions on Defiant States

What happens after an international court finds a state violated international law? Unfortunately, states often fail to comply with such judgments. International courts like the European Court of Human Rights (ECHR) have to rely on the help of NGOs to shame states into compliance. In 2011, the body charged with enforcing judgments of the ECHR launched a new website dedicated to publishing reports by NGOs that criticize states for noncompliance with ECHR judgments. The paper analyzes all the reports published in the first four years since the website was created. This analysis, together with interviews with many of the NGO lawyers involved, sheds light on the way reputational sanctions work in international law. It reveals that NGOs focus most of their attention on legally important cases and on cases that address severe violations. It also shows that NGOs focus on states that usually comply with ECHR judgments rather than states that usually fail to comply.

Or Bassok:
The Legitimation Theories of the ECHR and the CJEU

Based on quantitative and qualitative analysis the adjudication of the Court of Justice of the European Union (CJEU) and of the European Court of Human Rights (ECHR), I show that while the CJEU views its legitimacy as emanating mainly from its expertise, the ECHR views its source of legitimacy mainly in enduring public support as manifested in the different member states. Though these courts' different sources of legitimacy were never exposed or conceptualized in this manner, in my paper, I argue that this difference has a great explanatory value in understanding each of these courts' jurisprudence in general and in particular with regards to several prominent doctrinal differences between the courts.

Diego Werneck Arguelhes: Judicial profiles and the influence of TV broadcasting on the length of Brazilian Supreme Court opinions 2000–2014

In this paper we try to test such anecdotes by using a complete database of all Supreme Court decisions on TV broadcasting (Supremo em Números a project maintained by FGV Direito Rio). We analyzed over 180,000 collegiate decisions utilizing Optical Character Recognition (OCR) to extract text layers from all PDF documents. These comprise a span of over ten years of collegiate decisions from the year 2000 (two years prior to the birth of TV Justiça) to 2013. Although the paper focuses on the influence on the specific broadcasting and decision-making arrangement found in the Brazilian Supreme Court we believe that our results allow for useful dialogues with the broader literature on judicial behavior public opinion and judicial audiences more generally.
Sieglinde E. Pommer: The Refugee Crisis: International and Comparative Legal Aspects

With thousands of migrants fleeing from war, persecution, and oppression, all of a sudden the EU finds itself in the middle of an escalating refugee crisis which captures the world’s attention. Governments struggle to meet their international obligations and uphold the human rights guarantees despite a deeply controversial public opinion. Conceptualizing the international legal response to this global crisis, we discuss the limits of national sovereignty, the new relevance of borders and international cooperation and the challenges it presents to comparative public law.

Reuven Ziegler: Condoning permanent transience? “Prevention of settlement” of asylum seekers

In three subsequent judgments, HCJ 7146/12, HCJ 8425/13, and HCJ 8665/14, the Israeli Supreme Court held legislation authorising lengthy detention of non-deportable ‘infiltrators’ (as defined by Israeli law notwithstanding oft-pending asylum applications), to be unconstitutional, violating the constitutional rights to human dignity and to liberty. The state’s explicit legislative aim for detaining such persons away from population centres was to ‘prevent’ their ‘settlement’ in Israel, notwithstanding the passage of time and their established ties. The paper critically appraises the permissibility of such aims under international refugee law.

Mirjam Streng: Normative perspectives on the right to education of asylum seekers

This paper examines whether an asylum state may morally distinguish between citizens and asylum seekers in the realm of education once asylum seekers are territorially present and if so on what basis. In the first part, I examine the rich literature on the aims of education in the field of education philosophy. I then examine to what extent these aims of individual human flourishing and the creation of ‘good’ members or citizens of society are relevant for an asylum state’s asylum seeker population. I suggest that their relevance partly depends on conceptions of alienage, societal membership and citizenship, which I explore in the second part. In the third part, I conclude to what extent these moral perspectives on membership can support the aims of education and the international Human Rights Law principles of equality and non-discrimination in education, which have come under pressure in our era of greater movement across borders.

Tally Kritzman-Amir: Mass Influx

International forced migration in 2015-16 is a concern of massive dimensions. Persecution, conflict, generalized violence, or human rights violations have caused the forced displacement of dozens of millions of persons worldwide. It was frequently referred to as a “mass influx”, though there is no formal definition of “mass influx”, and the term is absent from legal documents. It is frequently used as a catchphrase to explain their reluctance to provide responses to the crisis – when rejecting migrants at the borders; refraining from determining status; failing to provide economic assistance etc.

The paper deconstructs the concept of mass influx. To the extent the quantity and density of forced migration matters, an agreed-upon definition for mass influx should be made, and clear, transparent procedures for its application should be formed. The consequences of a mass influx on the rights of asylum seekers and duties of states should be determined and monitored. Without these measures, “mass influx” arguments should merely be treated as evasion techniques, used by states reluctant to shoulder the burden of the growing international problem of refugees.


Ongoing civil wars have spurred a new wave of forced migration towards the EU Member States. Is the European human right to asylum effectively protected under the EU asylum legal framework? What is the impact of European integration on the rights of asylum-seekers and refugees? The prevalent discourse in academia has been to consider European asylum policy as a set of legal principles which provide the necessary instruments to secure the primacy of state interests over the human rights of asylum-seekers and refugees. My research confronts the existing literature with new data in order to provide a more accurate account of European integration in asylum law. In this paper, I compare how EU Member States have implemented into their national legislation the new provisions of EU law concerning administrative detention. The paper compares the domestic reform processes and resulting degree of compliance with EU law to account for variations of implementation.
Alternative Rights Protection: from judicial to non-judicial institutions

Ingrid Leijten: Administrative Discretion and Human Rights. The New International Public Order. As The Pragmatics of Law in Human Rights. It is with understanding of the international legal personality.


This panel brings together scholars of French law and political theory to explore the legal principle of equality and the concept of laïcité in France (1946–2012). The crucial steps of this evolution of laïcité from an inclusive to an exclusionary tool (such as, for instance, in the name of chair Stéphanie Hennette-Vauchez and Elsa Fondimare) will be analyzed, as well as the reluctance and timidity of contemporary French legal actors vis-à-vis the concept of nationality, race, and gender. However, it seems that this rhetoric is based upon an ideal of equality that is misleading, because equality and universalism have been historically proposed to express the principle of equality with republican universalist discourses in France commonly associated with the legal principle of laïcité. While equality was articulated in 1789 (elevation of the principle in the French constitution that has fueled what can be termed a “republican ideal legal laïcité is made of positive law. However, the current debate about the deprivation of French citizenship naturalization is defined as a ‘favor’ made by the state to deserving foreigner applicants. It means that even if the applicant fulfills all the requirements the state may refuse to grant him a French identity. French law explicitly differentiates between two levels of discourse relating to citizenship “without distinction based on origins, race or religion”. This anti-discrimination clause has been used in its decisions the first article of the constitutional declaration of the rights of Man and the citizen), the republic never considered this principle only as a way to provide a color-blind interpretation of the republican ideal legal laïcité. The avoidance of this fact can be related to the reluctance and timidity of contemporary French legal actors vis-à-vis the concept of nationality, race, and gender. However, it seems that this rhetoric is based upon an ideal of equality that is misleading, because equality and universalism have been historically proposed to express the principle of equality with republican universalist discourses in France commonly associated with the legal principle of laïcité.

This paper investigates the genealogy and the inclusion/exclusion dynamics of the legal principle of equality and the concept of laïcité in France (1946–2012). The crucial steps of this evolution of laïcité from an inclusive to an exclusionary tool (such as, for instance, in the name of chair Stéphanie Hennette-Vauchez and Elsa Fondimare) will be analyzed, as well as the reluctance and timidity of contemporary French legal actors vis-à-vis the concept of nationality, race, and gender. However, it seems that this rhetoric is based upon an ideal of equality that is misleading, because equality and universalism have been historically proposed to express the principle of equality with republican universalist discourses in France commonly associated with the legal principle of laïcité.

The crucial steps of this evolution of laïcité from an inclusive to an exclusionary tool (such as, for instance, in the name of chair Stéphanie Hennette-Vauchez and Elsa Fondimare) will be analyzed, as well as the reluctance and timidity of contemporary French legal actors vis-à-vis the concept of nationality, race, and gender. However, it seems that this rhetoric is based upon an ideal of equality that is misleading, because equality and universalism have been historically proposed to express the principle of equality with republican universalist discourses in France commonly associated with the legal principle of laïcité.

The crucial steps of this evolution of laïcité from an inclusive to an exclusionary tool (such as, for instance, in the name of chair Stéphanie Hennette-Vauchez and Elsa Fondimare) will be analyzed, as well as the reluctance and timidity of contemporary French legal actors vis-à-vis the concept of nationality, race, and gender. However, it seems that this rhetoric is based upon an ideal of equality that is misleading, because equality and universalism have been historically proposed to express the principle of equality with republican universalist discourses in France commonly associated with the legal principle of laïcité.

The crucial steps of this evolution of laïcité from an inclusive to an exclusionary tool (such as, for instance, in the name of chair Stéphanie Hennette-Vauchez and Elsa Fondimare) will be analyzed, as well as the reluctance and timidity of contemporary French legal actors vis-à-vis the concept of nationality, race, and gender. However, it seems that this rhetoric is based upon an ideal of equality that is misleading, because equality and universalism have been historically proposed to express the principle of equality with republican universalist discourses in France commonly associated with the legal principle of laïcité.

The crucial steps of this evolution of laïcité from an inclusive to an exclusionary tool (such as, for instance, in the name of chair Stéphanie Hennette-Vauchez and Elsa Fondimare) will be analyzed, as well as the reluctance and timidity of contemporary French legal actors vis-à-vis the concept of nationality, race, and gender. However, it seems that this rhetoric is based upon an ideal of equality that is misleading, because equality and universalism have been historically proposed to express the principle of equality with republican universalist discourses in France commonly associated with the legal principle of laïcité.

This paper investigates the genealogy and the inclusion/exclusion dynamics of the legal principle of equality and the concept of laïcité in France (1946–2012). The crucial steps of this evolution of laïcité from an inclusive to an exclusionary tool (such as, for instance, in the name of chair Stéphanie Hennette-Vauchez and Elsa Fondimare) will be analyzed, as well as the reluctance and timidity of contemporary French legal actors vis-à-vis the concept of nationality, race, and gender. However, it seems that this rhetoric is based upon an ideal of equality that is misleading, because equality and universalism have been historically proposed to express the principle of equality with republican universalist discourses in France commonly associated with the legal principle of laïcité.

This paper investigates the genealogy and the inclusion/exclusion dynamics of the legal principle of equality and the concept of laïcité in France (1946–2012). The crucial steps of this evolution of laïcité from an inclusive to an exclusionary tool (such as, for instance, in the name of chair Stéphanie Hennette-Vauchez and Elsa Fondimare) will be analyzed, as well as the reluctance and timidity of contemporary French legal actors vis-à-vis the concept of nationality, race, and gender. However, it seems that this rhetoric is based upon an ideal of equality that is misleading, because equality and universalism have been historically proposed to express the principle of equality with republican universalist discourses in France commonly associated with the legal principle of laïcité.
The Berlin conference gives us the unique chance to reflect on the role of transnational legal publishing for the spread of public law scholarship beyond borders. German legal scholarship is the site of a distinct, but representative, struggle between legal scholarship’s parochialism and cosmopolitanism. The call to transnationalize legal scholarship has been clarion, in Germany and elsewhere. Such considerations motivated the establishment of various outlets for transnational legal scholarship, such as ICON, Global Constitutionalism, the German Law Journal, the Italian Journal of Public Law, or Verfassungsblog. But the response to these summonses has been halting. Most scholars continue to write for mostly domestic audiences. The panel anticipates a novel format. An opening paper will document the appeal for the transnationalization of public law scholarship and assess the success of such efforts. Interview style rounds of questions and reflections with experienced editors will follow.

<table>
<thead>
<tr>
<th>Participants</th>
<th>Joseph H. H. Weiler</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Mattias Kumm</td>
</tr>
<tr>
<td></td>
<td>Russell A. Miller</td>
</tr>
<tr>
<td></td>
<td>Marta Cartabia</td>
</tr>
<tr>
<td></td>
<td>Maximilian Steinbeis</td>
</tr>
<tr>
<td></td>
<td>Fernando Muñoz León</td>
</tr>
<tr>
<td>Name of Chair</td>
<td>Matthias Goldmann</td>
</tr>
<tr>
<td>Room</td>
<td>UL6 Audimax</td>
</tr>
</tbody>
</table>

Joseph H. H. Weiler: ICON’s Story

Mattias Kumm: The Story of Global Constitutionalism

Russell A. Miller: The Story of the German Law Journal

Marta Cartabia: The Experience of a Constitutional Judge and the Story of the Italian Public Law Journal

Maximilian Steinbeis: The Story behind Verfassungsblog

Fernando Muñoz León: The Story of the Derecho y Critica Social
There are examples from the US, France, and the UK. Voting Systems and the Separation of Powers within Parliaments? The role of the rules of procedures in constituting the separation of powers. The analysis will also help to figure out the institutional arrangements on the separation or “fusion” of executive and legislative powers – whether presidential or parliamentary – the way any constitutional design more generally and also to enrich our understanding of “separation of parties, not powers.”

Nicola Lupo and Maria Romaniello: Constitutional constraints on the governing majority in a comparative perspective

Today’s constitutions are based on the traditional theoretical model, yet the separation of powers in practice is used to take into account today’s political reality: the competition between political parties for governmental office. This article argues that parliamentary rules of procedure play a constitutive role in generating competing or unifying function. To check this hypothesis a comparative study of Italy, the Spanish Senate, the Austrian and the German Bundestag will be conducted. The analysis will focus on the potential evolution of the Italian Senate, after its reform.

Zsuzsanna Gedeon: Constitutional constraints on the governing majority in a comparative perspective

The doctrine and challenge of unconstitutional amendments is well known. Some constitutional changes require a constitutional amendment. However, reform and replacement sometimes pose unexplored challenges. What happens after a new constitution is adopted? There could be cases in which political actors are not always aware of the fact that constitutional amendments are not an exceptional competence. Constitutional reforms are easily adopted, but implementation risks creating even more problematic situations than the issues the reforms were intended to address. The paper uses cases from different jurisdictions. These cases illustrate how宪法al amendments are adopted in the US, since these countries represent different models of institutional arrangements on the separation or “fusion” of executive and legislative powers. Constitutional constraints are not an exceptional competence; rather a normative requirement originating from the principle of separation of powers.
Yofi Tirosh: Dance Club Bouncers and the Unstable Epistemology of Discrimination

15 years after the legislation in Israel’s of the law for forbidding discrimination in private service products and public places this paper seeks to check its actual impact on the everyday practices of the law's infamous heroes: door bouncers in dance clubs. The paper is based on two data sets: a series of in-depth interviews with bouncers from diverse clubs in Israel and an analysis of all the published court opinions regarding discrimination in the entrance to clubs since the enactment of the law. One notable insight is that the findings challenge the doctrine's reliance on ethnicity as a category that is meant to capture the grounds for discrimination because Mizrahis are discriminated not as such but due to a specific (heightened) performance of this identity. How should antidiscrimination law effectively and convincingly conceptualize then the degree in which one performs an identity category?

Catherine Powell: Women Could Transform the World If Only We Would Let Them

The UN Security Council’s resolutions on Women, Peace, and Security rest on the assumption that women’s participation in peace and security will lead to more sustainable peace, because women presumably “perform” in ways that reduce conflict. Assertions that the world would be a better place if women assumed leadership are unapologetically instrumental and reinforce essentialist views of women. Gender performance is based on the socially-constructed roles women play as caregivers, nurturers, and collaborators. International law unfortunately reifies these roles and the stereotypes that surround them, even as it tries to open up opportunities. Having to maneuver around formal equality and instrumentalist claims that women will “save” the world means that the category of “woman” can restrict, even as it liberates. After all, not all women are “peace-loving” particularly in a world where the women who often succeed are those who can succeed on terms defined by men.

Barbara Giovanna Bello: Roma People and Performative Strategies against Institutional Discrimination

It is estimated that some 10-12 million of Roma people live in whole Europe, of whom about six million live in the European Union. Many of them are EU citizens. In most countries the Roma people have borne the burden of being constructed as the neglected ‘Others’ for decades. My contribution aims at providing a diachronic overview of the governance of the Roma people in the European scenario and, more in details, in the EU multilevel system, describing how different strategies (identity passing, in/visibility, ‘civil rights’ movement influenced by the US Critical Race Theory and intersectionality) have served as means of resistance to institutional discrimination and processes of assimilation (on the one hand) and marginalisation (on the other hand).

Jean Thomas: Persons and Cultural Norms: Boundaries, Borders and Bridges

Differential treatment is wrongful and amounts to discrimination when it is because of a certain kind of personal characteristic. We know that race, religion and sex are such characteristics but it is less clear whether it is wrong when people are adversely affected specifically because of their culture. Is culture a ground of differential treatment that amounts to discrimination? To address that question I argue we must have a clearer understanding of the nature of the way cultural is normative for individuals and I sketch such an account.
Barbara Boschi et al. 

The Blurred Borders of the Public-Private Partnership (PPP): A Transnational Perspective. 

This paper reveals that the horizontal effect problem in the context of a (neo) extractivism model, which reproduces a hegemonic discourse of development and expands economic benefits. The state, as the arguably largest economic entity in the country, has the right and responsibility to use its economic power to achieve better working conditions for employees, but also to demand employment of vulnerable and minority groups, to demand environmental opening to those projects. The countries with very different economic development is more favorable towards these partnerships. The PPP's constitutes an important tool for public procurement procedures aimed at ensuring the public procurement, it is possible to encourage the emergence of misbehaviors and conflicts of interest. This phenomenon is even more serious when it maintains colonial hierarchies and reproduces some constitutional problems. The concept of constitutional state in the country damaged by the inefficiency of important public services, thus causing inequalities of special conditions in public procurement covered by constitutional law. The non-compliance could be considered to give grounds for exclusion from the awarding procedure. When mirrored in contract law, it maintains colonial hierarchies and reproduces some constitutional problems. The concept of constitutional state in the community damaged by the inefficiency of important public services, thus causing inequalities.

Beata Jaskólska, Walentyna Ledicka, and Agnieszka Kuśmierz: 

Public-Private Partnerships: the transnational regulation of the public sector cause inequalities: the case of special conditions in the EU.

The Public-Private Partnership (PPP) is becoming a successful factor in achieving economic development and good governance, by impacting positively both upon society. They built a theory that constitutional rights diverged at that time. Legal rights and constitutional rights were identical. However, the constitutional rights and common law rights diverged at that time. The main aim of this paper is to analyze how the “mixed legal regime” of hybrid entities can be established. The problem of horizontality appears in the community damaged by the inefficiency of important public services, thus causing inequalities. The problem of horizontality appears in the community damaged by the inefficiency of important public services, thus causing inequalities.

Over the past decade, we have witnessed an exponential growth of hybrid entities in all Oecd countries, and which is mainly oriented to an economic growth. The state, as the arguably largest economic entity in the country, has the right and responsibility to use its economic power to achieve better working conditions for employees, but also to demand employment of vulnerable and minority groups, to demand environmental opening to those projects. The countries with very different economic development is more favorable towards these partnerships. The PPP's constitutes an important tool for public procurement procedures aimed at ensuring the public procurement, it is possible to encourage the emergence of misbehaviors and conflicts of interest. This phenomenon is even more serious when it maintains colonial hierarchies and reproduces some constitutional problems. The concept of constitutional state in the country damaged by the inefficiency of important public services, thus causing inequalities.

The concept of constitutional state is not inherent in the nature of a constitution, but a product of historical contingency. This phenomenon is even more serious when it maintains colonial hierarchies and reproduces some constitutional problems. The concept of constitutional state in the country damaged by the inefficiency of important public services, thus causing inequalities.

The construction of a global governance: the transnational regulation of the public sector cause inequalities: the case of special conditions in the EU. The horizontal effect problem is a tool for achieving social and economic benefits. The state, as the arguably largest economic entity in the country, has the right and responsibility to use its economic power to achieve better working conditions for employees, but also to demand employment of vulnerable and minority groups, to demand environmental opening to those projects. The countries with very different economic development is more favorable towards these partnerships. The PPP's constitutes an important tool for public procurement procedures aimed at ensuring the public procurement, it is possible to encourage the emergence of misbehaviors and conflicts of interest. This phenomenon is even more serious when it maintains colonial hierarchies and reproduces some constitutional problems. The concept of constitutional state in the country damaged by the inefficiency of important public services, thus causing inequalities.

From a decolonial perspective, this regulatory framework reproduces a hegemonic discourse of development and economic benefits. The state, as the arguably largest economic entity in the country, has the right and responsibility to use its economic power to achieve better working conditions for employees, but also to demand employment of vulnerable and minority groups, to demand environmental opening to those projects. The countries with very different economic development is more favorable towards these partnerships. The PPP's constitutes an important tool for public procurement procedures aimed at ensuring the public procurement, it is possible to encourage the emergence of misbehaviors and conflicts of interest. This phenomenon is even more serious when it maintains colonial hierarchies and reproduces some constitutional problems. The concept of constitutional state in the country damaged by the inefficiency of important public services, thus causing inequalities.

The concept of constitutional state is not inherent in the nature of a constitution, but a product of historical contingency.
The bulk collection of data for mass surveillance or cyber espionage is however not the only form of violating the right of privacy of the concerned person. The UK’s GCHQ in cooperation with Australia, Canada, states, NGOs and academics expressed their concerns about the violation of international law and human rights. Due to the interconnected nature of the internet, these programs might breach the right to privacy committed through these programs. One of the objectives of this conference is to discuss progress undertaken by the Indian government including the development, dissemination, and use of accessibility technology: Constitutionalising the right of disabled persons and their access to ICT in India, assessing the evolution of accessible and enabling environments for disabled persons. This paper surveys the status of accessibility and universal design across all sectors, including the information and communication Technology (ICT) sector, the responsibility of companies for accessibility of persons with disabilities, the challenges to accessibility posed by the development of new digital technologies and the needs of accessibility as right and India’s Legal Landscape.

Francois Delerue: State-sponsored cyber operations and human rights
In order to describe the current practice in implementing the concept of national security and the rights of other forms of cyber operations should not be underestimated. While the leak of classified information by Edward Snowden revealed the scale of bulk data collection for mass surveillance or cyber espionage targeting specific individuals might clearly affect human rights. Due to the interconnected nature of the internet, these programs might breach the right to privacy committed through these programs. One of the objectives of this conference is to discuss progress undertaken by the Indian government including the development, dissemination, and use of accessibility technology: Constitutionalising the right of disabled persons and their access to ICT in India, assessing the evolution of accessible and enabling environments for disabled persons. This paper surveys the status of accessibility and universal design across all sectors, including the information and communication Technology (ICT) sector, the responsibility of companies for accessibility of persons with disabilities, the challenges to accessibility posed by the development of new digital technologies and the needs of accessibility as right and India’s Legal Landscape.

Francois Delerue: State-sponsored cyber operations and human rights
In order to describe the current practice in implementing the concept of national security and the rights of other forms of cyber operations should not be underestimated. While the leak of classified information by Edward Snowden revealed the scale of bulk data collection for mass surveillance or cyber espionage targeting specific individuals might clearly affect human rights. Due to the interconnected nature of the internet, these programs might breach the right to privacy committed through these programs. One of the objectives of this conference is to discuss progress undertaken by the Indian government including the development, dissemination, and use of accessibility technology: Constitutionalising the right of disabled persons and their access to ICT in India, assessing the evolution of accessible and enabling environments for disabled persons. This paper surveys the status of accessibility and universal design across all sectors, including the information and communication Technology (ICT) sector, the responsibility of companies for accessibility of persons with disabilities, the challenges to accessibility posed by the development of new digital technologies and the needs of accessibility as right and India’s Legal Landscape.
The European Union is, as we all know, in a deep crisis. It is facing a sea of problems, which will almost certainly be prevalent throughout 2016: the so-called refugees’ crisis, growing inequalities, impossible political consensus. Many of the EU’s current issues are symptoms of a larger problem: the loss of the European social project, the abandonment of an idea of Europe as an inclusive and plural community of equals. This panel aims at discussing these questions, from different points of view. First of all, from the unifying perspective of European constitutional law questioning its real normative strength and proposing mechanisms to challenge legal and executive measures that affect or exclude ‘the other’. Secondly, regarding the specific status of refugees and sustaining that a duty to protect may derive from European Union law in what regards internationally displaced persons. Finally, analyzing the ECJ’s jurisprudence on European citizenship and social rights.

Participants
Mariana Rodrigues Canotilho
Ana Rita Gil
Rui Tavares Lanceiro
Name of Chair: Andreia Sofia Pinto Oliveira
Room: UL6 3119

Mariana Rodrigues Canotilho: European Constitutional Law in crisis: between the inclusion of the other and Realpolitik

The growth of social and economic inequalities in the EU is a significant problem and leads to questions about the capacity and willingness of the Union’s political and constitutional actors to uphold and sustain the European social model. This paper will analyze the multi-level European constitutional system, and try to determine the framework of protection of several vulnerable groups (migrants, minorities, children, citizens living in poverty). These individuals have been especially affected by the economic and social crisis. Having this in mind, the paper aims to propose some answers to a few questions. Is there a reasonable ‘common core’ of fundamental rights’ norms that can constitute a basis for the definition of minimum standards of protection? Under this constitutional scenario, are there legislative and/or executive measures whose constitutionality could be doubtful? Which legal mechanisms are at the citizens’ disposal to challenge such measures?

Ana Rita Gil: Duty to Protect Refugees – a result from the principle of solidarity and the respect for Fundamental Rights

A duty to protect may derive from European Union law in what regards internationally displaced persons that are located in other Member-states. Such duty may be grounded at European ‘constitutional level’, as a result of two European principles: the recognition of a right to asylum and a right to not be subjected to inhuman treatments, read together with the principle of solidarity amongst Member-states.

From this conjugation we may develop a constitutional duty to protect forced migrants who are under the jurisdiction of those Member States faced with exceptional migratory pressure. Not only do States have a duty to relieve other Member States from such pressure, sharing both means and burdens, but also they have the duty to, in consequence, receive people who need international protection. Since these persons may not have a specific link to the state, the link that triggers the duty to protect them will be the solidarity principle – understood as solidarity between Member-States.

Rui Tavares Lanceiro: EU citizenship and cross-border access to social benefits – the recent evolution of the ECJ case-law

Since its creation, the concept of EU citizenship, as well as the rights and duties it entails, has evolved greatly, notably in the area of social rights. The ECJ’s case-law broadly speaking was determined by Member States’ scope to restrict their access to national welfare systems. However, starting at European ‘constitutional level’, as a result of two European principles: the recognition of a right to asylum and a right to not be subjected to inhuman treatments, read together with the principle of solidarity amongst Member-states. From this conjugation we may develop a constitutional duty to protect forced migrants who are under the jurisdiction of those Member States faced with exceptional migratory pressure. Not only do States have a duty to relieve other Member States from such pressure, sharing both means and burdens, but also they have the duty to, in consequence, receive people who need international protection. Since these persons may not have a specific link to the state, the link that triggers the duty to protect them will be the solidarity principle – understood as solidarity between Member-States.
This paper focuses on recent developments in EU law in relation to economic inequality. Due to the economic and social distress experienced by some citizens, their vulnerability to abuses and exploitation has increased. In particular, in cases of mortgage loan, the consumer does not meet up with the image of efficient economic actor: some EU countries opt for divergent regulatory positions, ranging from protective to non-discriminating. These situations may well result in disparity of treatment, or to complete non-protection of the consumer. When the consumer does not possess adequate procedural safeguards, he/she finds himself/herself in protracted situations of legal limbo, as Micklitz and Domurat (2015) pointed out, the allocation of the task of solving possible cases (of financial) inclusion on Member states' territory is neither legal nor illegal. Not explicitly obliged by the ‘return’ directive, third-country nationals: the legal and social outcasts who have been postponed or made impossible due to significant obstacles, several EU Member states seem to keep the third-country nationals on the periphery of their social systems, not ensuring basic human rights, such as social assistance or education, a prerequisite for human dignity. Some eU countries opt for divergent regulatory positions, ranging from protective to non-discriminating. These situations may well result in disparity of treatment, or to complete non-protection of the consumer. When the consumer does not possess adequate procedural safeguards, he/she finds himself/herself in protracted situations of legal limbo, as Micklitz and Domurat (2015) pointed out, the allocation of the task of solving possible cases (of financial) inclusion on Member states' territory is neither legal nor illegal. Not explicitly obliged by the ‘return’ directive, third-country nationals: the legal and social outcasts who have been postponed or made impossible due to significant obstacles, several EU Member states seem to keep the third-country nationals on the periphery of their social systems, not ensuring basic human rights, such as social assistance or education, a prerequisite for human dignity.
Two such novel constitutional remedies will be examined. The political science literature on how and when these constitutional aspirations should be pursued varies. The papers in this panel pick up on the themes of bordering on the political and religious, as well as the empirical and theoretical questions that exist between different state actors in key transitional democracies. This raises definitional questions that the papers will focus on: (a) demarcation of political and religious; (b) the empirical challenge of understanding the religiosity of state actors and, in particular, the impact of non-judicial interpretations by political parties; (c) the visual and legal lines drawn by mapping the contributions of courts and state actors in particular, the judiciary and political territory in realizing the constitutional aspirations of citizens.

Jaclyn Ling Chien Neo: Defining Jurisdictional Exclusivity: Institutional and Political Territory in the Democratization of Hong Kong

The papers in this panel focus on how and when these constitutional aspirations should be pursued in different contexts. Definitions are used to draw boundaries, this raises definitional questions using religious freedom cases as a point of departure. It appears the Singapore courts have demonstrated a marked reluctance to adopt doctrines and rules enjoining deferment for compliance with standards established by bills of rights. This paper examines ways in which such a deferment may be resisted. It reviews the Singaporean experience between 1963 and 2013 will be looked at. The key question is on one strategy employed by governments and extend social justice to the underprivileged. Though, there is room to further cultivate this practice, ideally by putting in place a more sophisticated set of institutional and political territory in realizing the constitutional aspirations of citizens. While the basic law contains concrete provisions on suffrage, this paper argues that the courts do have a role in clarifying constitutional baselines: a role they need to take seriously in the current climate.

Maartje de Visser: Correcting Perceptions of Judicially Extra-territorial: Institution and Political Territory in the Democratization of Hong Kong

In recent years, there has been a growing lack in the role of political institutions in determining the constitutional boundaries between the religious and the political. It is both descriptively inaccurate and normatively undesirable to locate constitutional scrutiny exclusively in the judiciary. On the contrary, and relying on case studies from Japan, South Korea and Thailand, it is clear that there is a scope and for, evidence of, judicial interventions in constitutional determinations that the papers will focus on are: (a) demarcations between the political and the religious, (b) the empirical challenge of understanding the religiosity of state actors, and (c) the division of jurisdiction in constitutional interpretive jurisdiction and, in particular, the impact of non-judicial interpretations by political parties. The focus of this paper is on one strategy employed by the courts in some jurisdictions to shape decisions made in constitutional law. In this regard, the Singapore courts' capacity and competence to fulfill the goals of universal suffrage, this paper argues that the courts do have a role in clarifying constitutional baselines: a role they need to take seriously in the current climate.

Swati Jhaveri: New Democracies and Novel Remedies

Definitional Questions

Two such novel constitutional remedies will be exam-ined. (1) Susceptions or “religion or belief” should be interpreted. This paper focuses on the role of courts in some jurisdictions applying doctrines and rules enjoining deferment for compliance with standards established by bills of rights. This paper examines ways in which such a deferment may be resisted. (2) The focus of this paper is on one strategy employed by governments and extend social justice to the underprivileged. Though, there is room to further cultivate this practice, ideally by putting in place a more sophisticated set of institutional and political territory in realizing the constitutional aspirations of citizens.

Maurice de Visser: Correcting Perceptions of Judicially Extra-territorial: Institution and Political Territory in the Democratization of Hong Kong

In recent years, there has been a growing lack in the role of political institutions in determining the constitutional boundaries between the religious and the political. It is both descriptively inaccurate and normatively undesirable to locate constitutional scrutiny exclusively in the judiciary. On the contrary, and relying on case studies from Japan, South Korea and Thailand, it is clear that there is a scope and for, evidence of, judicial interventions in constitutional determinations that the papers will focus on are: (a) demarcations between the political and the religious, (b) the empirical challenge of understanding the religiosity of state actors, and (c) the division of jurisdiction in constitutional interpretive jurisdiction and, in particular, the impact of non-judicial interpretations by political parties.
### Concuring Panels

**Concluding Remarks**

The WTO rules somewhat regulate regional trade agreements (RTAs) and are indirectly applied through the member governments to private parties but the latter often face additional private standards, national laws, and non-tariff measures.

While the WTO system is the pillar of international trade agreements, its failure to deepen and widen the multilateral trade discipline has provoked the negotiations of many RTAs, in particular of mega-regionals like TPP, cETA, and TTIP.

The world Trade Organisation (WTO) is a core element of the system. Regional trade agreements and achieve-ments can be seen to be the idea of inclusion in various ways. On a detailed level the paper will discuss a number of WTO rules which call for implementation and the practice is far from producing satisfying mechanisms coordinating the multilateral and regional systems.

The positive WTO rules concerning RTAs – i.e. articles XXIV GATT and V GATS – have not been fully implemented, and the practice is far from producing satisfying mechanisms coordinating the multilateral and regional systems.

Elisa Baroncini: The Case-law on the Relation Between the WTO and RTAs

Peter-Tobias Stoll: Gated communities in the world market place: free trade agreements and inclusive world trade politics

Moshe Hirschs: Private Standards in Contemporary WTO Law

Alexandre Wendts Three Cultures (Hobbesian, Lockean and Kantian) of identity politics (self v. Other) in international relations, the article demonstrates how the GVC revolution is capable of reshaping the image of otherness from an adversary or competitor to a partner. The cultural code akin to language.

The article also contends that this cultural shift is essential to establish the priority concerning the inter-pretation of state obligations in this sphere law. Consequently, the paper would reveal certain divergent tendencies.

Sungjoon Cho: Valuing Global Value Chains: A Cultural Perspective

The positive WTO rules concerning RTAs – i.e. articles XXIV GATT and V GATS – have not been fully implemented, and the practice is far from producing satisfying mechanisms coordinating the multilateral and regional systems.

The WTO case-law concerning the relations between the WTO and RTAs is therefore essential to establish the priority concerning the interpretation and application of free trade rules. The suggested paper intends to analyze the existing case-law, and then focus on the positive law solutions – i.e. the so-called forum rules – adopted in the main currently negotiated WTO mechanisms.

Elisa Baroncini: The Case-law on the Relation Between the WTO and RTAs

Peter-Tobias Stoll: Gated communities in the world market place: free trade agreements and inclusive world trade politics

Moshe Hirschs: Private Standards in Contemporary WTO Law

Alexandre Wendts Three Cultures (Hobbesian, Lockean and Kantian) of identity politics (self v. Other) in international relations, the article demonstrates how the GVC revolution is capable of reshaping the image of otherness from an adversary or competitor to a partner. The cultural code akin to language.

The article also contends that this cultural shift is essential to establish the priority concerning the inter-pretation of state obligations in this sphere law. Consequently, the paper would reveal certain divergent tendencies.
Global law has become a buzzword in non-national law, especially in the context of globalization. Key contributions of comparative public law, the relationship between global law and comparative law is ambiguous. Some argue that global law eventually makes comparative law obsolete. However, others claim that globalization is actually a new possibility for comparative law. This paper discusses the relationship between global law, comparative law, and pluralism in a strict sense and definitely not secularized or "theocratic". The three strands of political processes lead to three results: (1) religious pluralism and enlightened communal violence amongst different communities; (2) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards; (a) religious pluralism and enlightened communal violence amongst different communities; (b) multiculturalism- and pluralism-inspired social reform movements from 19th century onwards.
The panel examines the latest jurisprudential evolution on non-binary, transgender, and intersex identities, contrasted with the law's attitude towards same-sex relationships and understandings of the nature and importance of public interests involved in the control and management of gender diversity, and how these public interests are framed in different jurisdictions. The paper also identifies different legal regimes for sex ascription, depending on the legal and medical conditions relevant in this conversation and place them in their national and international law context.

Tarunabh Khaitan will explain recent legal developments on compulsory sterilization as a condition for state-driven trans and intersex gender reclassification in Italy, Colombia, and India, and contrast them with the law's attitude to same-sex marriage debates in these countries. The paper engages in the comparative analysis of the constitutional and international law on non-binary, transgender, and intersex gender reclassification in different jurisdictions. The paper highlights how autonomy is established, the gender binary is upheld, and sex-segregation with respect to facilities and services is insisted on, with occasional acceptance of, and occasionally with resistance to, state-driven sterilization. The panel will assess the harms imposed by legal actors through the lens of discrimination theories of harm. Finally, the paper concludes by arguing that while trans people’s rights have had their day in court and in legislatures in three countries, judges frame their views. First, the paper describes recent legal developments in Colombia, where compulsory sterilization is explored from the point of view of state responsibility and the status of involuntary sterilization as a fundamental right. Then the paper identifies competing fundamental and human rights and how autonomous control of gender diversity – i.e. intersexuality and gender reclassification in Italy, and the Transgender rights bill pending before Parliament in India – is enforced by the Swedish state in the case of state-driven sterilization. The paper also highlights how autonomy is established, the gender binary is upheld, and sex-segregation with respect to facilities and services is insisted on, with occasional acceptance of, and occasionally with resistance to, state-driven sterilization. The panel will assess the harms imposed by legal actors through the lens of discrimination theories of harm. Finally, the paper concludes by arguing that while trans people’s rights have had their day in court and in legislatures in three countries, judges frame their views. First, the paper describes recent legal developments in Colombia, where compulsory sterilization is explored from the point of view of state responsibility and the status of involuntary sterilization as a fundamental right.
Torture of Suspected Terrorists

Jenna Sapiano: The High Cost of War Culture: Grounds for International Legal Justification of Torture of Suspected Terrorists

Adam Weinstein: Military Necessity, Kriegsraison and the Development of Modern International Criminal Law

Anne Dienelt: Asia in the High Cost of War Culture: The Real Case Against Police Militarization

Heidi Matthews: The South Asian Association for Regional Co-operation (SAARC): A Pervasive Interpretation of the Doctrine of Self-Defense

devendra Kumar Sharma: The South Asian Association for Regional Co-operation (SAARC) in the 21st Century

Jenna Sapiano: Most law and policy scholarship related to the torture of suspected terrorists since 11 September has focused primarily on the question of the legal definition of what torture is or is not. In contrast, this paper focuses on the question of whether the socio-political costs of torture are outweighed by the strategic advantage it provides – if any. From the outset, it rejects the illogical notion that torture never works or always fails. The paper first examines the way American political costs of torture are outweighed by the military intervention in popular movies, political rhetoric, and the strategic advantage it provides. The paper then explains how international conventional and international criminal law this paper will help undermine contemporary justifications for torture and expose the strategic costs of torture by clarifying the overlap.

Most of these methods, however, are only discussed within a very narrow context. Current research is more complex: legal questions cannot be answered solely by law and methodology has to be pushed.

Heidi Matthews: The South Asian Association for Regional Co-operation (SAARC) is an economic and geopolitical organization comprising eight countries that are primarily located in South Asia or the Indian subcontinent. It is an association of countries which includes Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. SAARC was established in Dhaka, capital of Bangladesh on 8 December 1985. Afghanistan joined this association in 2001. But the SAARC Regional Centre, which see ad bellum/in bello interdependence relations of these fields. An approach to solve them will be developed in this presentation. The intersection of LOAC, IHRL and IEL will be critiqued on instrumental grounds, but the real need was felt for collective regional effort to combat terrorism and conflict in this new modulated conception of military necessity framework admitted of no such dichotomy. The new military necessity framework exposed a disparity between the long nineteenth century and the 20th century. This paper will help undermine contemporary justifications for torture and expose the strategic costs of torture by clarifying the overlap.

Adam Shinar: The South Asian Association of Regional Cooperation (SAARC) in the 21st Century

This paper focuses on the question of whether the socio-political costs of torture are outweighed by the strategic advantage it provides – if any. From the outset, it rejects the illogical notion that torture never works or always fails. The paper first examines the way American political costs of torture are outweighed by the military intervention in popular movies, political rhetoric, and the strategic advantage it provides. The paper then explains how international conventional and international criminal law this paper will help undermine contemporary justifications for torture and expose the strategic costs of torture by clarifying the overlap.

Most of these methods, however, are only discussed within a very narrow context. Current research is more complex: legal questions cannot be answered solely by law and methodology has to be pushed.

Devendra Kumar Sharma: The South Asian Association for Regional Co-operation (SAARC) is an economic and geopolitical organization comprising eight countries that are primarily located in South Asia or the Indian subcontinent. It is an association of countries which includes Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. SAARC was established in Dhaka, capital of Bangladesh on 8 December 1985. Afghanistan joined this association in 2001. But the SAARC Regional Centre, which see ad bellum/in bello interdependence relations of these fields. An approach to solve them will be developed in this presentation. The intersection of LOAC, IHRL and IEL will be critiqued on instrumental grounds, but the real need was felt for collective regional effort to combat terrorism and conflict in this new modulated conception of military necessity framework admitted of no such dichotomy. The new military necessity framework exposed a disparity between the long nineteenth century and the 20th century. This paper will help undermine contemporary justifications for torture and expose the strategic costs of torture by clarifying the overlap.

Most of these methods, however, are only discussed within a very narrow context. Current research is more complex: legal questions cannot be answered solely by law and methodology has to be pushed.

Heidi Matthews: The South Asian Association for Regional Co-operation (SAARC) in the 21st Century

This paper focuses on the question of whether the socio-political costs of torture are outweighed by the strategic advantage it provides – if any. From the outset, it rejects the illogical notion that torture never works or always fails. The paper first examines the way American political costs of torture are outweighed by the military intervention in popular movies, political rhetoric, and the strategic advantage it provides. The paper then explains how international conventional and international criminal law this paper will help undermine contemporary justifications for torture and expose the strategic costs of torture by clarifying the overlap.

Most of these methods, however, are only discussed within a very narrow context. Current research is more complex: legal questions cannot be answered solely by law and methodology has to be pushed.

Adam Shinar: The South Asian Association for Regional Co-operation (SAARC) in the 21st Century

This paper focuses on the question of whether the socio-political costs of torture are outweighed by the strategic advantage it provides – if any. From the outset, it rejects the illogical notion that torture never works or always fails. The paper first examines the way American political costs of torture are outweighed by the military intervention in popular movies, political rhetoric, and the strategic advantage it provides. The paper then explains how international conventional and international criminal law this paper will help undermine contemporary justifications for torture and expose the strategic costs of torture by clarifying the overlap.

Most of these methods, however, are only discussed within a very narrow context. Current research is more complex: legal questions cannot be answered solely by law and methodology has to be pushed.
The development of algorithmic government (AG), where big data is enlisted in a new project of government based on prediction of patterns, presents numerous challenges. This focus here is on how the practice of AG may undermine and then transcend many of the fundamental attributes of citizenship presently appearing as part of the bargain between the government – governed. While many of these are anchored in ideas of privacy, and indeed selfhood, they spill over into wider conceptions of community, citizenship and the individual and indeed the whole idea of the liberal state. There are important themes here relating to cyber security and data management, surveillance, privacy and new applications of rights. How can formal government be reconfigured in an age of total information? Might democracy itself be superseded by big data? The challenges that the Internet of things offers to understandings of privacy are of particular interest as are papers offering new theoretical insights.

Participants
John Morison
Ronán Kennedy
Paul McCusker

Name of Chair
John Morison
Room
DOR24 1.502

John Morison: Algorithmic Governmentality and the Challenge to Democracy

There is a new world of total information, gained from mining the huge data sets provided by enormous ranges of existing sources and, increasingly, the Internet of things. Drawing upon a governmentality approach, the paper examines how algorithmic government (AG) creates a new world of governable subjects. Far from being classical citizens, they are instead made up as temporary aggregates of infra-personal data. The knowledge that AG thus creates is not given meaning by political or other frameworks of reference, but rather appears as a movement within the data. AG is something that is not comprehensible naturally: there is no self or relationship with the natural world as presently understood by us. At the same time, AG offers a false emancipation by appearing to be, by its very nature, all-inclusive – ultimately “democratic”. This paper develops the new agenda that this revolution in data presents to constitutional lawyers, particularly in the context of democracy.

Ronán Kennedy: E-Regulation, Trade Secrets, and Defeat Devices: Any Low-Emissions Car You Want, Provided it is a Black Box

The ‘digital age’ may offer new opportunities for transparency, giving regulators and consumers better access to the information that is needed for better policy and purchasing decisions. However, recent controversies regarding deliberate embedding of software in cars in order to generate unrealistically positive results in standardized pollution emission tests indicates problems. The use of ‘e-regulation’ can significantly improve the regulatory process. However, the opacity of digital devices, the creation and application of standards and the ‘black boxes’ in which they are housed, create a new set of challenges. This paper argues that strong protections for trade secrets risk undermining the integrity of fundamental aspects of the complex compact between citizen and state which underpins the legitimacy of the post-regulatory state. Drawing upon the still-unfolding scandal regarding car emissions testing in the US and Europe, the paper places the growing phenomenon of e-regulation in an interdisciplinary context, critiquing the processes.

Paul McCusker: Conceptualising e-government as disciplinary power

This paper explores the pervasive nature of the surveillance aspect of e-government systems. Using the Republic of Ireland’s online tax system as an example, it is argued that the data used to populate these datasets is provided by the users who in Foucauldian terms voluntarily make themselves subjects to the system but the basis for control is that the Revenue Service will routinely access up to fifty different data sources about behavior and lifestyle choices. The Eircode system (a postal or zip code) is a further example of the way in which mechanisms within these systems create a discourse of normalization and examination, they create a “field of documentation” whereby knowledge can be extracted to increase the limits of the disciplinary power and they also demonstrate the “panoptic” nature of e-government systems which through both implicit and explicit means cause individuals to act as if they are being observed even when they are not.
Ebrahim Ahfsah: The Empty Fortress or the Poverty of Islamic Public Law: The Role of Law in Arab State Failure

The current near collapse of the Arab state system is but the most recent manifestations of an enduring failure to adapt to the exigencies of an inescapable modernization process. At the heart of that systemic failure is the lack of an effective public law, as western legal transplants have not worked and an indigenous public law based on religious tradition has proven elusive. Still, contemporary political discourse is dominated by religious imagery and the apparent inability to express the res publica in anything but religious terms. The insistence on the specifically Islamic character of the polity that has dominated constitutional debates since 1979 has not produced substantially better governance outcomes than discredited authoritarian or republican systems. Whatever the philosophical value of the long struggle over Islamic hermeneutics, the ensuing relatively shallow dogmatic effort to systematize public law is unlikely to resolve the enduring crisis of governance.

Giovanna Spanò: Islamic Fundamentalism and Its Interaction with Migrations. The New Islamic State of Gambia Case Study: A Paradigm of Minorities’ Repression

The topic I would like to propose aims to connect crucial and current issues: the status of protection and promotion of (gender) minorities’ fundamental rights in contexts where radical Islam assumes a primary place in determining anti-pluralist governmental policies. In particular, my research focuses on Gambia, a country oppressed by a controversial political situation, due to imperialist and colonial influences as well as military coups, which recently has been officially proclaimed as an Islamic State. The actual Jammeh’s regime—which has consciously adopted a tough and severe policy line to subdue internal and external instances—may result as a general example to explain and to summarize all the dilemmas related to an insensitive approach.


With international human rights bodies evolving into instances of major importance for religious struggles in Europe, the European Court of Human Rights has become a strategic arena for litigation by faith-based advocacy groups. A significant number of cases brought to the court by members of religious majorities and minorities are embedded in faith-based activist networks seeking to influence the normative debate about religious liberty. Surprisingly, faith-based advocacy groups seem absent from judicial struggles for Muslims’ religious rights. How can we explain this absence of Muslim advocacy groups in the transnational judicial sphere? Drawing on a field-theoretical approach, this paper demonstrates the interplay of institutional structure, interests and resources in explaining the reasons and consequences of the non-mobilization of Muslim advocacy groups in transnational litigation.

Jonathan Parent: Selling Islamophobia: The Pursuit of Sharia Law Bans in Ontario and Oklahoma

In 2010, voters in Oklahoma approved an amendment to the state constitution banning the use of international, and specifically sharia, law in the state’s courts. Four years earlier, the Canadian province of Ontario had adopted legislation prohibiting the use of religious law in the arbitration of family disputes. While both of these measures represented attempts by subnational governments to curb the use of sharia law within their jurisdictions, they were framed by their supporters in very different terms. Using these case studies as an illustration this paper addresses the question of how proponents of bans on Islamic law sought to achieve their goals under highly divergent political, cultural and religious circumstances. Through the use of content analysis and processes tracing methods, I argue that prior legislative and legal commitments to specific constitutional values largely determined the rhetorical strategies supporters of these bans employed.
This panel examines the continuing relevance of ‘refugee’ status in both law and popular discourse. The crisis of migrant protection in Europe raises questions about the demarcation and control of borders, those that are territorial and those that are conceptual. The five papers presented here engage in close conversation with each other to explore different facets of this ‘border control.’ Most centrally, we interrogate the relationship between human rights and refugee law. We also consider how claims for asylum made by different protection-seekers (for example, the spontaneous arrivée, the person with a disability, the trafficked woman) are subject to legal and other processes of inclusion or exclusion, deterrence, reallocation and criminalisation. Participants

Catherine Briddick
Cathryn Costello
Stephanie Motz
Siobhán Mullally

Catherine Briddick: Some other(ed) ‘refugees’: women seeking asylum under refugee and human rights law

Working from the premise that feminist critiques of human rights law and responses to violence against women situate squarely within refugee law, this paper argues that a consideration of each regime’s response to violence against women demonstrates that issues arising from women’s inclusion in both are far from being resolved. In making this claim, the paper considers the potential and actual impact of the Istanbul Convention, CEDAW’s General Comment 32 and recent jurisprudence on women’s ability to seek and obtain international protection from violence against women under both refugee and human rights law.

Cathryn Costello: The degradation and salvation of asylum

Claiming asylum, particularly in Europe, is hazardous, and has come to entail various rights restrictions. The legal vulnerability, and even detainability, of asylum-seekers, is built into the process of claiming asylum. As irregular routes become normalised, coercive mechanisms to ‘allocate responsibility’ for asylum claimants are portrayed as an apparently necessary response to those irregular journeys. The protective nature of ‘asylum’ is undermined by the legally imposed ordeal that is its prelude; the rights-limitations imposed during the process of claiming asylum have enduring legal qualities; and the territorial limits of asylum fit uneasily with the transnational nature of refugee travel and refugeehood itself. This phenomenon will be problematised, using illustrations concerning the caselaw of the European Court of Human Rights and Court of Justice of the European Union on detention of asylum-seekers and Dublin transfers.

Stephanie Motz: Less equal than others? The exclusion of medical refugee claims through human rights law

Human rights law is often seen as reinforcing protection standards in refugee law. However, scholarly debate also points to the inherent dangers of dilution between the two legal regimes. This is exemplified by the stigmatic impact of the restrictive ECHR’s case law in N v UK on refoulement cases involving medical needs. This exceptionally high threshold under Art. 3 ECHR has crept into asylum law, rendering refugee claims involving medical needs futile in countries like the UK. A look beyond Europe shows that this stands in stark contrast to developments in jurisdictions such as Canada, New Zealand and Australia. The paper will consider the influence of human rights law on asylum law and practice in Europe and abroad. It will argue that a human rights approach to the refugee definition can result in both ‘over-inclusiveness’ and ‘under-inclusiveness’, particularly in the context of medical claims.

Siobhán Mullally: The right to stay – gender, human trafficking and asylum

The orthodox view is that the refugee definition properly interpreted includes asylum claims that arise from persecution related to gender. The claim to asylum is one that presents a significant challenge to the state insisting as it does upon a duty of hospitality. This duty arises only however if the complex legal categories of the refugee definition apply. Reflecting on the context of legal responses to human trafficking and the continuing reinforcement of border norms, this paper explores the claim to inclusion that comes with presentation of a claim to asylum and the burden of exclusion that falls on claims that do not fit within its definitional limits.
The last two decades have seen a revision of the overly simplistic idea that the “global Internet” (Orin Kerr) could not be regulated by territorial entities, i.e., states or supranational organizations. Rather, these entities have gradually found ways to establish legal responsibility within the Internet by identifying new addressees of legal obligations, by introducing “territorializing” techniques such as data localization requirements, or by improving international legal cooperation.

Nevertheless, the “borderless” Internet still challenges sovereign decisions in many areas and legal regulation faces various difficulties. This panel will discuss experiences from privacy law and from information security law and tackle the question of how to address the “un-territoriality of data” (Jennifer Daskal).

Participants
Thomas Wischmeyer
Enrico Peuker
Johannes Eichenhofer

Name of Chair
Matthias Roßbach

Room
DOR24 1.608

Thomas Wischmeyer: Towards a Transnational Order of Information Security

While information security is widely considered to be one of the most pressing problems of our time, it is far from clear how public actors can contribute to making information technology and information networks safe. Nevertheless, lawmakers across the globe have recently started to address the issue. But can national or even supranational actors effectively regulate this truly global problem? In this paper, I reconstruct the legal regime of information security governance and sketch the main challenges faced by regulatory reform. Focusing on one particular challenge, namely the allegedly a-territorial architecture of the Internet, I provide an account of the transnational and hybrid process of rule-making in this field. I contextualize my findings by asking how they relate to the traditional “Hobbesian” purpose of government to maintain order and security: What can public law still achieve in this field?

Enrico Peuker: The General Data Protection Regulation: Powerful Tool for Data Subjects?

The General Data Protection Regulation (GDPR) is on the home stretch. As a result of so-called trilogue negotiations between European Commission, European Parliament and Council, a final regulation draft is about to be passed. Here, the rights of the data subjects are of special interest – they serve as a touchstone of an effective data protection in the European Union. The regulation picks up individual rights from the precedent Data Protection Directive from 1995. Furthermore, it adds new individual rights such as the right to be forgotten. The presentation gives a short overview of the data subject’s rights. It examines whether the GDPR achieves the aim of a better protection of personal data as required by EU Fundamental Rights and shaped by the EU Court of Justice.

Johannes Eichenhofer: Between Regulating and Negotiating: How to Protect Internet Privacy Against Global Internet Service Providers

Internet service providers play a key role in the protection of Internet Privacy. One the one hand, search engines, social networks or online dating platforms allow and enforce their users to share private information and to take private actions. On the other hand, multilateral enterprises like Google and Facebook withdraw the privacy legislation of many states. The presentation should discuss whether the current model of “negotiating privacy” between user and provider is reasonable and to which extent a further “privacy regulation” by public actors is needed and what it should take into account.
The Construction of the Other in Human Rights

The international human rights system might seek to incorporate the concept of solidarity; in reality there is a paradoxical tendency in modern human rights law and practice to create exclusions and otherness. By relying on an interdisciplinary approach drawing on the anthropological and legal perspectives, this paper seeks to reveal the implicit and powerful role of images in the creation of such exclusions. It argues that the dominant paradigm of law—in which visions play a disproportionate role—must be reconsidered. In other words more attention must be paid in international human rights law and in national legal systems to the internal structural logic—which, as we shall see, is kept in check and opposed to itself—of the concept of solidarity. This regard is a defect in national constitutional systems. However, opening up the borders of such systems may be difficult to achieve. This paper analyzes those decisions resorting to different recognition theories and the general Israeli society, accompanied by persistent appeals to the international human rights system (European Court of Human Rights). The principle is referred to in a plethora of legal instruments. Yet, its contours are unclear, contested, and understood.

Clemens Rieder: Boundaries and Solidarity

This paper explores how the jurisprudence of the European Court of Human Rights is increasingly contesting the bedouin human and cultural rights. It addresses the social question of the ’otherness’ of Europe: the borders and solidarity. Arguably, European integration and notions of human rights are in the midst of intensifying conflict over land control, and constitutional democracy for national legislatures and courts to defer to judgments of international human rights adjudicatory bodies such as the Strasbourg Court. The principle is referred to in a plethora of legal instruments. Yet, its contours are unclear, contested, and understood.

Anna Södersten: Openness and Insularity in the UK Bill of Rights Debates

The objective of the report will be, taking the subject of Bedouin dispersion has accompanied the State of Israel from the day of its establishment to its present day, to demonstrate that in the rich of conflict over land control, and constitutional democracy for national legislatures and courts to defer to judgments of international human rights adjudicatory bodies such as the Strasbourg Court. The principle is referred to in a plethora of legal instruments. Yet, its contours are unclear, contested, and understood.

Elisabeth Roy Trudel: Boundaries and Solidarity: The Problematic of the Social Question

Participants

Colm O’Cinneide: The ‘Otherness’ of Europe: Openness and Insularity in the UK Bill of Rights Debates

This paper explores how the jurisprudence of the European Court of Human Rights is increasingly contesting the bedouin human and cultural rights. It addresses the social question of the ’otherness’ of Europe: the borders and solidarity. Arguably, European integration and notions of human rights are in the midst of intensifying conflict over land control, and constitutional democracy for national legislatures and courts to defer to judgments of international human rights adjudicatory bodies such as the Strasbourg Court. The principle is referred to in a plethora of legal instruments. Yet, its contours are unclear, contested, and understood.

Gershon Gontovnik and Michal Tamir: The Real-Otherness of Europe: Tensions and Challenges of Recognition of the Politics of Recognition

This paper explores the principle of solidarity and its expressions in international public law and EU constitutional law. It considers the legal challenge and response to the discourses of solidarity represented in legal instruments. Yet, its contours are unclear, contested, and understood.

Romy Klimke: Rethinking ‘culture’ in the contemporary human rights discourse

This paper explores how the jurisprudence of the European Court of Human Rights is increasingly contesting the bedouin human and cultural rights. It addresses the social question of the ’otherness’ of Europe: the borders and solidarity. Arguably, European integration and notions of human rights are in the midst of intensifying conflict over land control, and constitutional democracy for national legislatures and courts to defer to judgments of international human rights adjudicatory bodies such as the Strasbourg Court. The principle is referred to in a plethora of legal instruments. Yet, its contours are unclear, contested, and understood.

Corinna Goethals and Michal Tamir: The Real-Otherness of Europe: Tensions and Challenges of Recognition of the Politics of Recognition

This paper explores how the jurisprudence of the European Court of Human Rights is increasingly contesting the bedouin human and cultural rights. It addresses the social question of the ’otherness’ of Europe: the borders and solidarity. Arguably, European integration and notions of human rights are in the midst of intensifying conflict over land control, and constitutional democracy for national legislatures and courts to defer to judgments of international human rights adjudicatory bodies such as the Strasbourg Court. The principle is referred to in a plethora of legal instruments. Yet, its contours are unclear, contested, and understood.

Gershon Gontovnik and Micha Tamir: The Real-Otherness of Europe: Tensions and Challenges of Recognition of the Politics of Recognition

This paper explores how the jurisprudence of the European Court of Human Rights is increasingly contesting the bedouin human and cultural rights. It addresses the social question of the ’otherness’ of Europe: the borders and solidarity. Arguably, European integration and notions of human rights are in the midst of intensifying conflict over land control, and constitutional democracy for national legislatures and courts to defer to judgments of international human rights adjudicatory bodies such as the Strasbourg Court. The principle is referred to in a plethora of legal instruments. Yet, its contours are unclear, contested, and understood.

Romy Klimke: Rethinking ‘culture’ in the contemporary human rights discourse

This paper explores how the jurisprudence of the European Court of Human Rights is increasingly contesting the bedouin human and cultural rights. It addresses the social question of the ’otherness’ of Europe: the borders and solidarity. Arguably, European integration and notions of human rights are in the midst of intensifying conflict over land control, and constitutional democracy for national legislatures and courts to defer to judgments of international human rights adjudicatory bodies such as the Strasbourg Court. The principle is referred to in a plethora of legal instruments. Yet, its contours are unclear, contested, and understood.
This panel explores how various paradoxes, linked to the way in which legal domains have emerged and are ‘bordered’, play out in the human rights and business field. The three papers respectively concern the protection of the alien in investment law, whether the US Dodd-Frank Act came to the rescue of children in the DRC, and why business enterprises must be considered to hold human rights duties.

Participants

Marie-Bénédicte Dembour
Gamze Erdem Türkelli
Lieselot Verdonck

Name of Chair
Marie-Bénédicte Dembour and Françoise Tulkens

Room
DOR24 1.608

Marie-Bénédicte Dembour: Aliens, foreign investors and refugees: for whom international protection?

International investment law grants foreign investors special protection due to their assumed vulnerability as non-nationals with no political voice in the domestic stage. This justifies treating them differently, i.e. more favorably than nationals. The arbitration of international investment disputes outside national courts is an example of this. International refugee law recognizes as refugees people who are outside their country of nationality and unable to rely on its protection – because it persecutes them. This legal regime recognizes that they are not nationals, as far as possible, as a national by the country in which they find themselves. However, the regime cannot impose and enforce its principles upon reluctant states. Although these two bodies of law seem to emerge from broadly similar ideas and concepts, they produce rather different results. What can be yielded from thinking about each of them by reference to the other?

Gamze Erdem Türkelli: Mining of the 3 Ts in Eastern DRC and Children: Law, borders and business behavior

Sourcing from conflict-affected zones such as the DRC (a hotspot the mining of tin tantalum and tungsten (3Ts) used in computing and mobile communications) poses a major challenge for children’s rights where children are not only involved as laborers in the supply chain but also as child soldiers or members of communities experiencing violence. Although no meaningful rights protection against business-related violations had been available in the national setting, the Dodd-Frank Reform Bill. Section 1502 requires disclosure and certification for companies using minerals from the DRC. After the bill was passed, the profits of armed groups from the trade of 3 Ts minerals is reported to have seen a 65% drop, resulting also in a shift in sourcing policies on the industry side (de Koning and Enough Team, 2013). Based on the DRC example, what role can law beyond national borders be expected to play in resolving local business-related human rights impacts?

Lieselot Verdonck: Business: shielded from international law but not from human rights obligations

According to the UN Guiding Principles on Business and Human Rights (UNGPs), business enterprises do not (yet) bear direct obligations under international human rights law. This has prompted many States, business enterprises and civil society actors to convey, relieved or dismayed, a one-sided message: business enterprises have no human rights duties. The UNGPs’ idea that business enterprises are forced by national law to respect human rights is lost in translation. Unjustifiably because since abuses are experienced at the local level, national law is the first line of defense. The time has thus come to dispel a fundamental misconception about human rights and business, which is that business is shielded from obligations. Rather than investing in a dialogue of the deaf about the need for a binding treaty all stakeholders should play their part in making the UNGPs succeed in their mission which is to ensure that business enterprises are truly accountable for respecting human rights.
This paper argues the court was actively involved in Taiwan in recent years. This paper is aimed at systematizing the normative evaluation of the constitutional rights adjudication process does not pose a threat to democracy, but can indeed be a facilitator of it, by providing a venue of rights discourse to accommodate and communicate conflicting views and interests among diverse groups of citizens and non-citizens. This transnational rights practice can empower non-citizens, those residing within a state boundary but outside the political community, in terms of human rights and democracy. The research introduces south Korean constitutional court cases, including a landmark case on the guest worker system. Migrant workers, who as a group had been excluded from equal protection of labor-related human rights, challenged the law and brought about a more comprehensive human rights law. The paper argues that constitutional rights adjudication process does not pose a threat to democracy, but can indeed be a facilitator of it, by providing a venue of rights discourse to accommodate and communicate conflicting views and interests among diverse groups of citizens and non-citizens. This transnational rights practice can empower non-citizens, those residing within a state boundary but outside the political community, in terms of human rights and democracy.

Kelley Ann Loper: Protecting the Rights of Non-Citizens in Hong Kong: The Role of Judicial Review as the causes and nature of migration continue to change, the challenge now is to face new challenges and fresh human rights claims made by non-citizens living within their borders. This paper examines the impact of equal protection of labor-related human rights, challenged the law and brought about a more comprehensive human rights law. The paper argues that constitutional rights adjudication process does not pose a threat to democracy, but can indeed be a facilitator of it, by providing a venue of rights discourse to accommodate and communicate conflicting views and interests among diverse groups of citizens and non-citizens. This transnational rights practice can empower non-citizens, those residing within a state boundary but outside the political community, in terms of human rights and democracy.

Yoon Jin Shin: Constitutional Rights Practice by Non-Citizens and Implications for Democracy and Human Rights: The Case of South Korea This paper has three aims. First, it presents a human rights justification for non-citizens' rights to constitutional review. Second, this paper argues – against e.g. some South Korean jurisprudence – that non-citizens’ access to constitutional review should range over both civil and political and socioeconomic rights. In particular, this paper criticizes the jurisprudential argument that conscience consent to reside in South Korea is backed by socioeconomic goods excludes noncitizens. Finally, this paper argues that previously authoritarian Asian countries could have a constitutional rights practice – still standard in international law – that political participation rights are citizen rights and the ambitious approach to determining the legitimacy of limitations rights brought on by globalization and migration? What questions: How should constitutional rights practices respond to the expansions and complications of human rights brought on by globalization and migration? What kind of role can constitutional rights review play in realizing a cosmopolitan nature of citizenship? Does granting constitutional rights review to non-citizens threaten or facilitate democracy? Do mechanisms of constitutional rights review enable non-citizens to participate in the constitutional process of their society? Does the right to constitutional review need to be reconstructed or reconceived in our time?
The general aim of the panel is both to raise concepts and to present case studies regarding the interplay between federal structure and rights in Europe and the United States. We suggest federalism theory as a shared alphabet that allows transatlantic comparisons to enrich our knowledge of federalism. This paper fathoms the capacities of federalism theory as a common framework of analysis for the United States and Europe in Dialogue. We suggest a novel conceptual framework and demonstrate that regarding the responses of the law in sensitive areas there is space for mutual learning in the search for working solutions. We introduce the theoretical tool of ‘new federalism’; this new strand of federalism theory focuses on democracy, thus understood, still justifies federalism, thus understood, still justifies federalism, thus understood, still justifies federalism, thus understood, still justifies federalism, thus understood, still justifies federalism, thus understood, still justifies federalism, thus understood, still justifies federalism, thus understood, still justifies federalism, thus understood, still justifies federalism, thus understood, still justifies federalism, thus understood, still justifies federalism, thus understood, still justifies federalism, thus understood, still justifies federalism, thus understood, still justifies federalism, thus understood, still justifies federalism, thus understood, still justifies federalism, thus understood, still justifies...
Alberto Alemanno: Third Parties in Regulatory Cooperation

The Transatlantic Trade and Investment Partnership (TTIP) seeks to create new mechanisms for regulatory cooperation between the parties and involvement for a wider set of stakeholders. This paper explains how the TTIP’s regulatory processes and institutions can account for external stakeholders. It surveys the access and potential influence of different stakeholders, such as corporations, civil society groups, citizens and non-party interest and contrasts this with the role of the established political actors, such as the central executive branch, regulators and parliamentarians in the regulatory coordination effort.

Joana Mendes: Participation, Inclusiveness, and Third Parties

Participation is one important feature of the proposals of the European Commission on regulatory cooperation in TTIP. The opportunities of participation foreseen in the Commission’s proposals vary, highlighting the different functions and normative meanings of participation. Nevertheless, functional-instrumental reasons arguably explain, by and large, the centrality of participation in the regime proposed by the Commission. The paper will argue that potential distributional effects of decisions adopted via regulatory cooperation may affect the legal spheres of persons concerned throughout the trade chain. Participation should be a means to give voice, in equal terms, to the competing legally protected interests affected. But what could be the legal yardsticks of inclusiveness in the context of regulatory cooperation? What would be the legal position of holders of legally protected interests in third countries?

Thomas Streinz: Third Parties in European Courts: Lessons from the Polisario Case

The EU’s General Court last December annulled a decision by the Council to conclude an agreement between the EU and Morocco on reciprocal liberalization of agricultural and fishery products in so far as the agreement was applicable to Western Sahara, a disputed territory that is claimed by Morocco without international recognition. The Court reasoned that the Council failed to ensure that the agreement would not apply to the detriment of the population in Western Sahara and did not entail or encourage infringements of their fundamental rights. This broad approach (if upheld by the Court of Justice) requires the EU to take third parties seriously and shows that the extra-territorial reach of EU fundamental rights is no one way street. Legal challenges of the Transatlantic Trade and Investment Partnership (TTIP) by third parties may not be without merit if their interests are ignored in its institutional design and operation.
David E. Landau: Courts and the Shaping of Support

Two separate strains of existing work have shown that exercises of judicial review can be either redundant because so much external support for a constitutional equilibrium exists (the "structural safeguards" literature in US law), or futile because so little external support exists (much of the courts and social change literature). The coexistence of these two theories suggests considerations that should inform a theory of judicial review, particularly (but perhaps not exclusively) in newer democracies. Courts can target issues where levels of support render review neither futile nor redundant. Further, they can shape their judgments to increase the amount of support they receive from political, civil society, and international actors, rather than merely taking their political environments as a given. The paper draws on examples from a number of countries to demonstrate the feasibility and attractiveness of such an approach to judicial review.

Ozan Varol: Structural Rights

Constitutional theory commonly casts individual-rights provisions and structural provisions as conceptual opposites. Conventional wisdom suggests that structural provisions establish and empower government institutions, and rights provisions protect individual freedoms. Although scholars have long explored how government structure can affect individual liberty, its mirror image has been neglected. Scholars have largely assumed that individual rights have little resemblance to constitutional structure. This Article fills a scholarly gap by identifying and elucidating structural rights, which straddle the right-structure dichotomy and complicate contemporary constitutional theory. Although rights are commonly assumed to restrict government institutions, this Article argues that rights can generate and distribute power, similar to structural provisions.

Rosalind Dixon: Constitutional Self-Interpretation

In a constitutional context, separation of powers understandings generally contemplate a strict institutional separation between the drafting and interpretation of laws. Yet this understanding is frequently violated at the level of actual legal practice, in ways that encourage us to rethink basic assumptions about core structural commitments in constitutional law. In international law, constitutional law and administrative law, particularly in the US, it is quite common to see a variety of forms of legal ‘self-interpretation’—i.e., processes by which those who help write a law play a central role in its later interpretation. The article this phenomenon in constitutional and international law, and its potential advantages in terms of access to information in the process of interpretation, but also downsides in terms of loss of interpretive impartiality. It further explores the lessons from US administrative law and theory as to how best to trade-off these factors in different contexts, and in particular, the degree to which relevant laws are (a) ambiguous; (b) recent in origin; and (c) being interpreted by multimember rather than single member bodies, or (d) reflect areas of significant policy expertise or complexity.
The presentation will focus on the “Inter-American Court of Human Rights” concerning the rights of the indigenous populations in Latin America.

The ILO Convention 169 in Latin America:

The ILO Convention 169 has been ratified in Latin America, however, the level of protection of the rights of indigenous peoples at the national level varies according to the domestic legal or judicial system. The aim of the lecture is exploring how implementation of the Convention varies according to the domestic legal or judicial system and analyzing some selected Latin American countries, to identify the legacy of the Inter-American jurisprudence, and the Inter-American Constitutional Jurisprudence in the field based on a typology of key topics.

The impact of the Inter-American Court of Human Rights


The Methodological Introductory Talk

The Methodological Introductory Talk will introduce the panelists and the topics they will be focusing on. The panel will include discussions on the history and context of the Inter-American Court of Human Rights, its role in the protection of Indigenous Peoples, and the different approaches to Indigenous rights in Latin America.

Following the Introduction, the next panel will focus on the role of the Inter-American Court of Human Rights in the protection of Indigenous Peoples, with particular attention to the ILO Convention 169 and the Inter-American Constitutional Jurisprudence.

The following panelists will focus on the relationship between Indigenous and Tribal Peoples in a comparative perspective.

The following panelists will focus on the implementation of the ILO Convention 169 concerning Indigenous and Tribal Peoples in Latin American Legal Pluralism.

The following panelists will focus on the role of the Inter-American System of Human Rights: Fiscal responsibility and definitive outcomes at the international level. In this context, the panel offers an innovative point of view on the concept of “otherness”, since it must be rethought in order to take into account legal pluralism, spatially and culturally diverse, and its complex dynamics.

The following panelists will focus on the relationship between Indigenous and Tribal Peoples in a comparative perspective.

The following panelists will focus on the role of the Inter-American System of Human Rights: Fiscal responsibility and definitive outcomes at the international level. In this context, the panel offers an innovative point of view on the concept of “otherness”, since it must be rethought in order to take into account legal pluralism, spatially and culturally diverse, and its complex dynamics.

The following panelists will focus on the relationship between Indigenous and Tribal Peoples in a comparative perspective.

The following panelists will focus on the role of the Inter-American System of Human Rights: Fiscal responsibility and definitive outcomes at the international level. In this context, the panel offers an innovative point of view on the concept of “otherness”, since it must be rethought in order to take into account legal pluralism, spatially and culturally diverse, and its complex dynamics.
Inclusive Constitutionmaking Processes?

After constitutional ruptures or constitutional revolu-
tions have been resolved, the post-revolutionary con-
stitutionmaking processes are the法人会議議長 in functio-
of inclusive and transformative constitutions. In this sec-
tion, we will examine the requirements of inclusivity in
difficult cases: the idea of constituent power can be used
to justify extra-constitutional change across and against
the constitutional order.

Decision: the Dilatory Compromise in the

In this section, we will examine the requirements of inclusivity in
difficult cases: the idea of constituent power can be used
to justify extra-constitutional change across and against
the constitutional order.

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundaries

Invisible Boundary
These emergency committees have a significant power of law. The health impacts of this new phenomenon at the global level are extraordinary. The global response to the Ebola virus claimed around 11,000 lives in the affected states. This paper will shed light on the new phenomenon at the global level, the Ebola virus outbreak. The virus outbreak was caused by international actors and organizations. The WHO Director-General declared the situation a “public health emergency” and started the Ebola protective committee to determine the actions states are required to adopt to prevent the spread of the disease. The committee is empowered to make decisions and issue guidelines to member states. This paper will call for a more pluralistic approach to a possible global governance model. Global legalism seems on the rise. Such scholarship is based on a predominant part of domestic law and politics is an exercise without government discrimination. As such, it constitutes a political economy of domestic non-binding self-regulatory regimes which country is better to start their business, and bad ratings may be a shifting of capital from a country to another, so that national leaders are interested in the position of their country as part of Europe and of the world. Global legalism seems on rise. Such scholarship is based on a predominant part of domestic law and politics is an exercise without government discrimination. As such, it constitutes a political economy of domestic non-binding self-regulatory regimes which country is better to start their business, and bad ratings may be a shifting of capital from a country to another, so that national leaders are interested in the position of their country as part of Europe and of the world. Global legalism seems on rise. Such scholarship is based on a predominant part of domestic law and politics is an exercise without government discrimination. As such, it constitutes a political economy of domestic non-binding self-regulatory regimes which country is better to start their business, and bad ratings may be a shifting of capital from a country to another, so that national leaders are interested in the position of their country as part of Europe and of the world.
CONCURRING PANELS

123 MIGRATION AND HUMAN RIGHTS

Panel formed with individual proposals.

Participants

Ali Aghahosseini Dehaghani
Aleksandra Chiniaeva
Ignazio Impastato
Alice Gates
Kathleen Tipler
Name of Chair
Alice Gates

Ali Aghahosseini Dehaghani: Beyond Juridical Approaches: The Role of Sociological Approach in Promoting Human Rights

Many questions from a human rights point of view have been raised about how the phenomenon of migration described in the above-mentioned terms, while lively debate persists about the benefits of effective rules offering an adequate and dignitous level of rights education with undocumented immigrants and for the prevention of illegal immigration may be enacted.

Alice Gates and Kathleen Tipler: A critical exploration of rights education with undocumented immigrants

While lively debate persists about the benefits of pursuing large-scale social change, few scholars have examined the dynamics of rights education for pursuing large-scale social change, few scholars have examined the dynamics of rights education with undocumented immigrants and for the prevention of illegal immigration may be enacted.

Ignazio Impastato: Global economic and public order crisis vs. immigrants’ rights

This paper will argue that the political ideal of constitutionalism, and that community legal education can and should be informed by the lived experiences of participants. While recognizing the potential benefits of these values beyond borders, albeit to a lesser extent.

Participants

Ali Aghahosseini Dehaghani
Aleksandra Chiniaeva
Ignazio Impastato
Alice Gates
Kathleen Tipler
Name of Chair
Alice Gates
This becomes challenging due to the vicious circle of Application to CESCR. A Case Study of Rio De Janeiro’s Right To Housing

The million-dollar question raised in current doctrinal protection and enforcing

vanice regina lírio do valle: vulnerable people or not.

vanice regina lírio do valle: a right content that should be delimitated through vanice regina lírio do valle: a widespread option, translated into different constitu-

zdeněk Červínek: formal allusion to immediate application, was turned zdeněk Červínek: adding efficacy as a constitutional feature of the zdeněk Červínek: democratic distributive decisions is not the solution. zdeněk Červínek: social crisis. Then, it focuses on the health care right as a new turn in the context of quasi-judicial review of zdeněk Červínek: A New Step for the Protection of economic Rights Through Immediate Efficacy: A Constitutional Interpretation of Article 12

Monica Cappelletti

Lucia Scaffardi and Monica Cappelletti: Cross-border health care mobility: a third way of realizing equality through the tool of positive discrimination (reservation in jobs) for persons with disabilities.

Pankaj Sinha: One may argue that the current society is complex, unsatisfactory and asphyxiated by political, economic and financial questions that put the social state at risk.

Serkan Yolcu: This paper will discuss recent trends in India’s disability legislation in the country as well as in many European countries, a gap is thus exposed in the Portuguese experience of positive discrimination (reservation in jobs) for persons with disabilities.

Participants

Zdeněk Červínek

Carolina Botelho

Pankaj Sinha

Serkan Yolcu

Chair

Carolina Botelho

Room

204/142
Saro-Berndtley: Constitutional boundaries of EU economic governance post-crisis: soft law vs. hard law

Macchia: Cross-Border Financial Institutions: A Comparative Constitutional Law Perspective

Barata: The Independence and Accountability of Central Banks: European and International Perspectives

Kangle Zhang: Derivative Trades Through Central Counterparties

Christoph Henkel: Credit Rating in Neo-Liberal Society

Marco Macchia: Cross-Border Financial Institutions: A Comparative Constitutional Law Perspective

Kangk Zhang: Border and Authority: Private Credit Rating as the Cure to International Financial System

The paper concludes by suggesting that the current approach toward central clearing may result in a new phenomenon of too-big-to-bail.

The resolution of cross-border banking groups requires private rating agencies with expertise and technocracy to guarantee the creditworthiness and safety of any large CCP will require public bailout redefining the meaning of moral hazard and reversing any effect of safe harbor protections for financial contracts are not.

The use of soft law, ‘hardened’ through novel enforcement methods can be considered a prominent feature of the governance in the economic and monetary union.

The impact of cross-border rating agencies is fundamental to the current financial system and the uncertainty concerning competence of rating agencies can be used. Showing how transparency tools could be enhanced.

The approach toward central clearing may result in a new phenomenon of too-big-to-bail.

One of the most significant developments that has come out of the Euro-crisis, from a European Constitutional perspective – for the very first time – the preliminary reference procedure, however, in Article 267 of the Treaty on European Union (TEU), by the German Federal Constitutional Court and of the Court of Justice in the OMT saga could be examined.

The resolution of cross-border banking groups requires private rating agencies with expertise and technocracy to guarantee the creditworthiness and safety of any large CCP will require public bailout redefining the meaning of moral hazard and reversing any effect of safe harbor protections for financial contracts are not.

The use of soft law, ‘hardened’ through novel enforcement methods can be considered a prominent feature of the governance in the economic and monetary union.

The impact of cross-border rating agencies is fundamental to the current financial system and the uncertainty concerning competence of rating agencies can be used. Showing how transparency tools could be enhanced.
Panel formed with individual proposals.

Participants: Milka Sormunen
David Fagelson
Luke Beck
Pratyush Kumar
Name of Chair: Milka Sormunen
Room: BEC 236

Milka Sormunen: Does borrowing work in human rights law? The European Convention on Human Rights (ECtHR) is the most known and most used treaty system in human rights. The case law of the European Court of Human Rights (the court), the paper analyses, is therefore of massive significance for human rights law. With the transplantation of western ideas has evidently not only the ubiquitous globalization, but idiosyncrasy specific cultural and societal features have also added their weight. The ECtHR is to-day most certainly a place where the concept now has an autonomous nature. Simi-larly the Committee on the Rights of the Child (CRC) examinates how the court has understood and used the concept in different case groups. The court has relied on the reports of the CRC Committee to cast doubt on the concept conversely to the idea of the person regulated by law. If theories of human cooperation posited by this field of social sciences have changed the idea of personhood on the concept now has an autonomous nature. Simi-larly the Committee on the Rights of the Child (CRC) examinates how the court has understood and used the concept in different case groups. The court has relied on the reports of the CRC Committee to cast doubt on the concept conversely to the idea of the person regulated by law. If theories of human cooperation posited by this field of social sciences have changed the idea of personhood on the concept now has an autonomous nature. Simi-


Section 116 of Australia's Constitution states "The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth." This section is the main reference in the human rights law that exist in Australia and it is a clearly and directly a reference to the religious freedom. The rights to freedom of religion is of increasing relevance for the whole world in how they are meant to be regulated, and particularly in the context of globalization. The freedom of religion is therefore to be preserved as an absolute right. The religious freedom is therefore to be preserved as an absolute right. The religious freedom is therefore to be preserved as an absolute right.

Pratyush Kumar: Religion influencing Public sphere, Public Reason and Public Law discourse in Australia's Constitutional Separation of Church and State Provision

Section 116 of Australia's Constitution states "The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth." This section is the main reference in the human rights law that exist in Australia and it is a clearly and directly a reference to the religious freedom. The rights to freedom of religion is of increasing relevance for the whole world in how they are meant to be regulated, and particularly in the context of globalization. The freedom of religion is therefore to be preserved as an absolute right. The religious freedom is therefore to be preserved as an absolute right. The religious freedom is therefore to be preserved as an absolute right.
The ICON•S WP Conference Proceedings Series features papers presented at the Annual ICON•S Conferences. The purpose of publication is to make work accessible to a broader and/or different audience without the usual delay resulting from the more traditional ways of publishing.

If you are interested in publishing your conference paper in the ICON•S WP Conference Proceedings Series, please check whether your paper meets our guidelines for publication and then send your paper to:

→ icons@icon-society.org

The Guidelines for publication are available on the Society’s website. Publication as an ICON•S Working Paper does not preclude or prejudice subsequent publication in a book or journal.

The ISSN is kindly provided by the Institute for Research on Public Administration (IRPA).
The 2016 iConS conference on "borders, Otherness"

You will need personalized access credentials in order to attend the conference. They are also marked with the eduroam logo. There will be coffee breaks between the conference sessions on all conference days. You will find the respective locations of the coffee stations on page 5. In order to use these services, you have the option to use Humboldt University’s guest network, which is provided to you at the registration desk located in front of the Main building. If your home institution does not provide you with eduroam credentials, you will have to provide proof of your affiliation to obtain access to this network.

Humboldt-Universität zu Berlin

Berlin is served by two airports: Tegel (TXL) and Tegel (TXL). You can also use Berlin's underground line U6. You can also use several regional train lines (S-bahn lines S1, S2, S25, S5 and S7) and local train lines (L-Bahn lines L1, L2, L4 and L9) to travel between the conference venues. If you get off at the Hausvogteiplatz stop, use the Hausvogteiplatz underground station on the U2 line. If you get off at the Kottbusser Tor stop, use the Kottbusser Tor underground station on the U2 line. If you get off at the Potsdamer Platz stop, use the Potsdamer Platz underground station on the U2 line. If you get off at the Zoologischer Garten stop, you will be in the center of Humboldt University’s campus Mitte. If you get off at the Zoologischer Garten stop, you will be in the center of Humboldt University’s campus Mitte.

If you are travelling to Berlin by coach:

If you are using public transport in Berlin:

If you are travelling to Berlin by plane:

If you are travelling to Berlin by bus:

If you are travelling to Berlin by car:

If you are travelling to Berlin by train:

If you are travelling to Berlin by boat:

ERGEBNISSE

You can find more information in the conference package, which you will receive when registering at the registration desk in front of the Main building.

ALLES IN ALLEM

You can find all the necessary information in the conference package, which you will receive when registering at the registration desk in front of the Main building.

ALLE BÄDER

You can find all the necessary information in the conference package, which you will receive when registering at the registration desk in front of the Main building.

ALLE FUNKEN

You can find all the necessary information in the conference package, which you will receive when registering at the registration desk in front of the Main building.

ALLE HÖRER

You can find all the necessary information in the conference package, which you will receive when registering at the registration desk in front of the Main building.

ALLE KURIÖS

You can find all the necessary information in the conference package, which you will receive when registering at the registration desk in front of the Main building.

ALLE LEKTUR

You can find all the necessary information in the conference package, which you will receive when registering at the registration desk in front of the Main building.

ALLE MACHER

You can find all the necessary information in the conference package, which you will receive when registering at the registration desk in front of the Main building.

ALLE MEGA

You can find all the necessary information in the conference package, which you will receive when registering at the registration desk in front of the Main building.

ALLE PER

You can find all the necessary information in the conference package, which you will receive when registering at the registration desk in front of the Main building.

ALLE PER

You can find all the necessary information in the conference package, which you will receive when registering at the registration desk in front of the Main building.

ALLE PER

You can find all the necessary information in the conference package, which you will receive when registering at the registration desk in front of the Main building.

ALLE PROF

You can find all the necessary information in the conference package, which you will receive when registering at the registration desk in front of the Main building.

ALLE PRINZ

You can find all the necessary information in the conference package, which you will receive when registering at the registration desk in front of the Main building.

ALLE QUER

You can find all the necessary information in the conference package, which you will receive when registering at the registration desk in front of the Main building.

ALLE RACE

You can find all the necessary information in the conference package, which you will receive when registering at the registration desk in front of the Main building.

ALLE RECHT

You can find all the necessary information in the conference package, which you will receive when registering at the registration desk in front of the Main building.

ALLE SCHILD

You can find all the necessary information in the conference package, which you will receive when registering at the registration desk in front of the Main building.

ALLE SCHÖ

You can find all the necessary information in the conference package, which you will receive when registering at the registration desk in front of the Main building.

ALLE SCHUB

You can find all the necessary information in the conference package, which you will receive when registering at the registration desk in front of the Main building.

ALLE SCHWITZ

You can find all the necessary information in the conference package, which you will receive when registering at the registration desk in front of the Main building.

ALLE SKINE

You can find all the necessary information in the conference package, which you will receive when registering at the registration desk in front of the Main building.

ALLE STADT

You can find all the necessary information in the conference package, which you will receive when registering at the registration desk in front of the Main building.

ALLE STRAS

You can find all the necessary information in the conference package, which you will receive when registering at the registration desk in front of the Main building.

ALLE STUDENT

You can find all the necessary information in the conference package, which you will receive when registering at the registration desk in front of the Main building.

ALLE TREND

You can find all the necessary information in the conference package, which you will receive when registering at the registration desk in front of the Main building.

ALLE TRIMMER

You can find all the necessary information in the conference package, which you will receive when registering at the registration desk in front of the Main building.

ALLE UNI

You can find all the necessary information in the conference package, which you will receive when registering at the registration desk in front of the Main building.

ALLE VERBRECH

You can find all the necessary information in the conference package, which you will receive when registering at the registration desk in front of the Main building.

ALLE WEIB

You can find all the necessary information in the conference package, which you will receive when registering at the registration desk in front of the Main building.

ALLE WEI

You can find all the necessary information in the conference package, which you will receive when registering at the registration desk in front of the Main building.

ALLE WER

You can find all the necessary information in the conference package, which you will receive when registering at the registration desk in front of the Main building.

ALLE WISSEN

You can find all the necessary information in the conference package, which you will receive when registering at the registration desk in front of the Main building.

ALLE WISS

You can find all the necessary information in the conference package, which you will receive when registering at the registration desk in front of the Main building.

ALLE WOHL

You can find all the necessary information in the conference package, which you will receive when registering at the registration desk in front of the Main building.

ALLE WÜN

You can find all the necessary information in the conference package, which you will receive when registering at the registration desk in front of the Main building.

ALLE XX

You can find all the necessary information in the conference package, which you will receive when registering at the registration desk in front of the Main building.

ALLE Y

You can find all the necessary information in the conference package, which you will receive when registering at the registration desk in front of the Main building.

ALLE Z

You can find all the necessary information in the conference package, which you will receive when registering at the registration desk in front of the Main building.
Groundfloor

Floor 1

Floor 2  No Conference rooms on this floor.

Floor 3
Groundfloor

Floor 1
No Conference rooms on this floor.

Floor 2
No Conference rooms on this floor.

Floor 3
No Conference rooms on this floor.

Floor 4

Floor 5

Floor 6
David Abraham
University of Miami

E. Tendayi Achiume
University of California Los Angeles

Elizabeth Acorn
Cornell University

Paola Andrea Acosta Alvarado
Externado University of Colombia

Ebrahim Afsah
University of Copenhagen

Ali Aghahosseini Dehaghami
University of Nantes

Joachim Åhman
University of Gothenburg

Julia Aigner

Daniela Alaattinoğlu
European University Institute Florence

Alessandra Serenella Albanese
University of Florence

Richard Albert
Boston College / Yale University

T. Alexander Aleinikoff
Columbia University

Alberto Alemanno
HEC Paris

Chasidy Alexis
University of the Basque Country

Rahel Altmann
Federal Administrative Court of Switzerland

Maria Luísa Alves da Silva Neto Teixeira Botelho
University of Porto

Thiago Amparo
Central European University Budapest

Carlinho Antpöhler
Max Planck Institute for Comparative Public Law and International Law Heidelberg

Erika Arban

Rainer Arnold
University of Regensburg

Noryuki Asano
Kansai University Osaka

Andi Asrun
Pakuan University Bogor

Daniel H. Augenstein
Tilburg University

Helmut Philipp Aust
Humboldt University Berlin

Matej Avbelj
Graduate School of Government and European Studies Kranj

Andrea Averardi
University of Pavia
Seyed Reza Eftekhari
Islamic Azad University Gonabad

Friederike Eggert
Goethe University Frankfurt

Stefanie Egidy
Max Planck Institute for Research on Collective Goods Bonn.

Johannes Eichenhofer
Bielefeld University

Klaas Hendrik Eller
University of Cologne

Pauline Endres de Oliveira
Justus Liebig University Giessen

Anne-Marlen Engler
University of Marburg

Elena Ervas
Ca’ Foscari University of Venice

Selin Esen Arnwine
Ankara University

Alexei Julio Estrada
Externado University of Colombia
Luca Galli  
University of Milano-Bicocca

Aravind Ganesh  
Max Planck Institute Luxembourg for Procedural Law

Sacha Garben  
College of Europe Bruges

Stephen Gardbaum  
University of California, Los Angeles

Enrico Gargiulo  
University of Eastern Piedmont

Alice Gates  
University of Portland

Marie Gautier-Melleray  
Conseil d’Etat

Zsuzsanna Gedeon  
Central European University Budapest

Marilena Gennusa  
University of Pavia

Debjyoti Ghosh  
Central European University Budapest

Ana Rita Gil  
New University of Lisbon

Tom Ginsburg  
University of Chicago

Melina Girardi Fachin  
Federal University of Paraná

Aleksandra Giżycka-Grabias  
Institute of Law Studies of the Polish Academy of Sciences Warsaw

Matthias Goldmann  
Max Planck Institute for Comparative Public Law and International Law Heidelberg

Marco Goldoni  
University of Glasgow

Gereshon Gontovnik  
Carmel Academic Center Haifa

Markus González Bellfus  
University of Barcelona

Diego Gonzalez-Medina  
Extremadura University of Colombia

Luis Ignacio Gordillo Pérez  
University of Deusto Bilbao

Caitlin Goss  
University of Queensland

Ece Göztepe  
Bilkent University

Manuel Eduardo Góngora-Mera  
Free University Berlin

Mark A. Graber  
University of Maryland

James Grant  
King’s College London

Donna Greschner  
University of Victoria

Dieter Grimm  
Humboldt University Berlin

Aeyal Gross  
Tel Aviv University

Barbara Guastaferro  
Durham University

Yang Guodong  
University of Hamburg

Nino Guruli  
University of Cambridge
Helga Hafliðadóttir
University of St Andrews

Michaela Hallbrunner
University of Pretoria

Maria Haimerl
Humboldt University Berlin

Gábor Halmay
European University Institute Florence

Maria Halmeri

Dirk Hanschel
Martin Luther University Halle-Wittenberg

Ole Hansen
University of Copenhagen

Lisa Harms
Max Planck Institute for the Study of Religious and Ethnic Diversity Göttingen

Simon Hedlin
Harvard University

Daniel Hegedüs
German Council on Foreign Relations Berlin / Free University Berlin

Jane Henderson
King's College London

Christoph Henkel
Mississippi College Jackson

Stéphanie Hennette-Vauchez
Université Paris Ouest Nanterre La Défense

Corina Heri
University of Zurich

Ester Herlin-Kamell
VU University Amsterdam

Tanya K. Hernández
Fordham University

Juan Herrera
Pompeu Fabra University Barcelona

Helene Heuser
University of Hamburg

Eva Hilbrink
VU University Amsterdam

Alicia Hinarejos
University of Cambridge

Moshe Hirsch
Hebrew University of Jerusalem

Ran Hirschl
University of Toronto

Herwig C.H. Hofmann
University of Luxembourg

Roland Hofmann

Tamar Hofnung
Hebrew University of Jerusalem

Véra Honusková
Charles University Prague

Carsten Hörich
Martin Luther University Halle-Wittenberg

Johan Horst
University of Bremen

Alexandra Horváthová
University of Copenhagen

Tamar Hostovsky Brandes
Ono Academic College Tel Aviv

Ruth Houghton
Durham University

Robert Howse
New York University

Chen Hung Yi
Nagoya University

Jaakko Husa
University of Lapland
Florian Idelberger
European University Institute Florence

Emanuela Ignăţoiu-Sora
European Centre for Legal Expertise Bucharest

Ignazio Impastato
University of Palermo

Michael Ioannidis
Max Planck Institute for Comparative Public Law and International Law Heidelberg

Giulio Itzcovich
Brescia University
Kathleen Jäger
Humboldt University Berlin

Sanjay Jain
ILS Law College Pune

Yaiza Janssens
Ghent University

Patrícia Penélope Mendes Jerónimo
University of Minho

Valentin Jeutner
University of Oxford / Lund University

Swati Jhaveri
National University of Singapore

Zhang Jian
Tilburg University

Trina Jones
Duke University

Miodrag Jovanović
University of Belgrade

Jelena Jovicic
WZB Berlin Social Science Center

Magdalena Jóźwiak
VU University Amsterdam

Władysław Jóźwicki
Adam Mickiewicz University Poznań

Laura Jung
Humboldt University Berlin
<table>
<thead>
<tr>
<th>Name</th>
<th>University/Institution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jannice Kaeli</td>
<td>University of Gothenburg</td>
</tr>
<tr>
<td>Anna Bettina Kaiser</td>
<td>Humboldt University Berlin</td>
</tr>
<tr>
<td>Thulasi Kaleeswaran Ram</td>
<td>University College of London</td>
</tr>
<tr>
<td>Shun Kaku</td>
<td>Hokkaido University Sapporo</td>
</tr>
<tr>
<td>Jannice Käll</td>
<td>University of Gothenburg</td>
</tr>
<tr>
<td>Hent Kaiser</td>
<td>University of Tartu</td>
</tr>
<tr>
<td>Manar Kapur</td>
<td>D.P. Amal Global University Harpana</td>
</tr>
<tr>
<td>Vera Karan de Choufni</td>
<td>University of Pará</td>
</tr>
<tr>
<td>Maxim Karlik</td>
<td>HSE-Skolko Instituto for Law and Development Moscow</td>
</tr>
<tr>
<td>Nino Kasakashvili</td>
<td>Iuav-Jessi University of Economics / State University of Constitutional Reform</td>
</tr>
<tr>
<td>Philipp Kaufman</td>
<td>Humboldt University Berlin</td>
</tr>
<tr>
<td>Rui Feng</td>
<td>University of Western Australia</td>
</tr>
<tr>
<td>Ronan Kennedy</td>
<td>National Institute of Ireland Galway</td>
</tr>
<tr>
<td>Renana Kasya</td>
<td>Harbin University of Jerusalem</td>
</tr>
<tr>
<td>Tarasová Kahan</td>
<td>University of Oxford</td>
</tr>
<tr>
<td>Jyoti Kim</td>
<td>Gangneung-Wonju National University</td>
</tr>
<tr>
<td>Naum Kinsen</td>
<td>University of Wollongong</td>
</tr>
<tr>
<td>Mikko Kindrov</td>
<td>Charles University Prague</td>
</tr>
<tr>
<td>Jeff King</td>
<td>University College London</td>
</tr>
<tr>
<td>Matthias Kii</td>
<td>University of Graz</td>
</tr>
<tr>
<td>Thomas Kleinstein</td>
<td>Gotze-Duke University Frankfurt</td>
</tr>
<tr>
<td>Romy Klimek</td>
<td>Martin Luther University Halle-Wittenberg</td>
</tr>
<tr>
<td>Dmitry Kochenov</td>
<td>University of Groningen / Princeton University</td>
</tr>
<tr>
<td>Anne Köhler</td>
<td>University Colobram</td>
</tr>
<tr>
<td>Ida Emilak Kafletska</td>
<td>European Inter-Institute Florence</td>
</tr>
<tr>
<td>Jan Komarek</td>
<td>London Economics and Political Science</td>
</tr>
<tr>
<td>David Kessel</td>
<td>Masaryk Law University</td>
</tr>
<tr>
<td>Piipjja Kroustou</td>
<td>University of Hamburg</td>
</tr>
<tr>
<td>Krylsyna Kosewicz-Barczyk</td>
<td>Institute of the Polish Academy of Sciences Warsaw</td>
</tr>
<tr>
<td>Katyia Kozicki</td>
<td>Federal University of Pará</td>
</tr>
<tr>
<td>Rike Krämer</td>
<td>Ruhr University Bochum / University College London</td>
</tr>
<tr>
<td>Michael B. Krabat</td>
<td>Bond University, Queensland</td>
</tr>
<tr>
<td>Michael Kramer</td>
<td>Free University Berlin</td>
</tr>
<tr>
<td>Heike Kragler</td>
<td>Free University Berlin</td>
</tr>
<tr>
<td>Nico Kirsch</td>
<td>Graduate Institute of International and Development Studies Geneva</td>
</tr>
<tr>
<td>Tally Kritman-Ami</td>
<td>College of Law and Business Tel Aviv</td>
</tr>
<tr>
<td>Damjan Kukovec</td>
<td>Harvard University</td>
</tr>
<tr>
<td>Andreas Kulick</td>
<td>University of York</td>
</tr>
<tr>
<td>Pratyush Kumar</td>
<td>National Law University Delhi</td>
</tr>
<tr>
<td>Vidya Kumar</td>
<td>University of Leicester</td>
</tr>
<tr>
<td>Matthias Kumm</td>
<td>WZO Center for Global Constitutionalism / Humboldt University Berlin / New York University</td>
</tr>
<tr>
<td>Ming-Sung Kuo</td>
<td>University of Warrington</td>
</tr>
<tr>
<td>Deek Kurban</td>
<td>Hertie School of Governance Berlin</td>
</tr>
<tr>
<td>Jürgen Kurtz</td>
<td>University of Melbourne</td>
</tr>
</tbody>
</table>
Frauke Lachenmann
Max Planck Foundation for International Peace and the Rule of Law Heidelberg

Konrad Lachmayer
HAS Centre for Social Sciences Budapest

David E. Landau
Florida State University

Andréj Lang
Martin Luther University Halle-Wittenberg / Israel Democracy Institute

Shai Lavi
Tel Aviv University

Stephanie Law
Max Planck Institute Luxembourg for Procedural Law

David S. Law
University of Hong Kong / Washington University in St. Louis

Nicole Lazererini
University of Parma

Youngjae Lee
Fordham University

Jack Tsen-Ta Lee
Singapore Management University

Yi-Li Lee
National Taiwan University

Marta Legnaioli
European Commission

Ingrid Leijten
Leiden University

Ulrike Lembke
University of Greifswald

Julia Lemke
University of Hamburg

Koen Lenaerts
President of the Court of Justice of the European Union

Robert Lepenies
WZB Center for Global Constitutionalism / Free University Berlin

Éléonore Lépinard
University of Lausanne

Jernej Letnar Černič
Graduate School of Government and European Studies Kranj

Luca Martino Levi
Harvard University

Chao-Chun Lin
National Taipei University

Susanna Lindroos-Hovinheimo
University of Helsinki

Isabella Litke
Princeton University

Karin Loeyv
New York University

Erik Longo
University of Macerata

Kelley Ann Loper
University of Hong Kong

Valerio Lubello
Bocconi University Milan

Gertrude Lübke-Wolf
Bielefeld University / Wissenschaftskolleg zu Berlin – Institute for Advanced Study Berlin

Nicola Lupo
LUISS Guido Carli University Rome

Guy Lurie
University of Haifa

Orla Lynskey
London School of Economics and Political Science
<table>
<thead>
<tr>
<th>Name</th>
<th>Institution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cormac McElhatton</td>
<td></td>
</tr>
<tr>
<td>Marco Macchiarini</td>
<td></td>
</tr>
<tr>
<td>Sigfrid MacCormac</td>
<td></td>
</tr>
<tr>
<td>Cathalán MacNamara</td>
<td></td>
</tr>
<tr>
<td>Marco Macchiarini</td>
<td></td>
</tr>
<tr>
<td>Stephen Macedo</td>
<td>Princeton University</td>
</tr>
<tr>
<td>Catharine Mackinnon</td>
<td>University of Michigan, Harvard University</td>
</tr>
<tr>
<td>Malcolm MacLean</td>
<td>University of Zurich</td>
</tr>
<tr>
<td>Alastair MacIver</td>
<td>European University of Florence</td>
</tr>
<tr>
<td>Mikael Rasmussen</td>
<td>University of Copenhagen</td>
</tr>
<tr>
<td>Lauri Mäkeläsoo</td>
<td>University of Tartu</td>
</tr>
<tr>
<td>Stefan Magen</td>
<td>Ruhr University Bochum</td>
</tr>
<tr>
<td>Sabine Mair</td>
<td>European University of Florence</td>
</tr>
<tr>
<td>Roni Mann</td>
<td>Barenboim-Said Akademie Berlin</td>
</tr>
<tr>
<td>Bartosz Marciniak</td>
<td>European University of Florence</td>
</tr>
<tr>
<td>Laurie Marguet</td>
<td>Université Paris Ouest Nanterre La Défense</td>
</tr>
<tr>
<td>Luisa Marin</td>
<td>University of Twente</td>
</tr>
<tr>
<td>Tanasije Marinković</td>
<td>University of Belgrade</td>
</tr>
<tr>
<td>Nora Markard</td>
<td>University of Hamburg</td>
</tr>
<tr>
<td>Joseph Marko</td>
<td>University of Graz, European Academy of Bolzano</td>
</tr>
<tr>
<td>Guilherme Marques Pedro</td>
<td>Uppsala University</td>
</tr>
<tr>
<td>David Marrani</td>
<td>University of Westminster</td>
</tr>
<tr>
<td>Antónia Maria Martin Barradas</td>
<td>University of Coimbra</td>
</tr>
<tr>
<td>Beatriz Martinez Romera</td>
<td>University of Copenhagen</td>
</tr>
<tr>
<td>Bernardo Giorgio Mattarella</td>
<td>University of Siena, LUISS University of Rome</td>
</tr>
<tr>
<td>Heidi Matthews</td>
<td>British Academy, SOAS University of London</td>
</tr>
<tr>
<td>Michele Massa</td>
<td>Catholic University of the Sacred Heart, Milan</td>
</tr>
<tr>
<td>Ilenia Mauro</td>
<td>University of Rome Tor Vergata</td>
</tr>
<tr>
<td>Natasa Mavronicola</td>
<td>Queen's University Belfast</td>
</tr>
<tr>
<td>Christopher May</td>
<td>Lancaster University</td>
</tr>
<tr>
<td>Sarah Mazouz</td>
<td>Humboldt University Berlin</td>
</tr>
<tr>
<td>Linda McClain</td>
<td>Boston University</td>
</tr>
<tr>
<td>Paul McCusker</td>
<td>Letterkenny Institute of Technology, Donegal</td>
</tr>
<tr>
<td>Audrey Mcfarlane</td>
<td>University of Baltimore</td>
</tr>
<tr>
<td>Brigid McManus</td>
<td>University of New South Wales</td>
</tr>
<tr>
<td>Tamar Megiddo</td>
<td>New York University</td>
</tr>
<tr>
<td>Pratap Bhanu Mehta</td>
<td>Centre for Policy Research, New Delhi</td>
</tr>
<tr>
<td>Emmanuel Melissaris</td>
<td>London School of Economics and Political Science</td>
</tr>
<tr>
<td>Joana Mendes</td>
<td>University of Amsterdam</td>
</tr>
<tr>
<td>Paul Mertenskötter</td>
<td>New York University</td>
</tr>
<tr>
<td>Valbona Metaj</td>
<td>University of Tirana</td>
</tr>
<tr>
<td>Luca Mezzetti</td>
<td>University of Bologna</td>
</tr>
<tr>
<td>Wellington Migliari</td>
<td>University of Barcelona</td>
</tr>
<tr>
<td>Lisa L. Miller</td>
<td>Rutgers University / University of Oxford</td>
</tr>
<tr>
<td>Russell A. Miller</td>
<td>Washington and Lee University</td>
</tr>
<tr>
<td>François-Xavier Millet</td>
<td>Court of Justice of the European Union</td>
</tr>
<tr>
<td>Patricia Mindus</td>
<td>Uppsala University</td>
</tr>
<tr>
<td>Silvia Mirate</td>
<td>University of Turin</td>
</tr>
<tr>
<td>Michael Mirschberger</td>
<td>German Research Institute for Public Administration, Speyer</td>
</tr>
<tr>
<td>Kai Möller</td>
<td>London School of Economics and Political Science</td>
</tr>
<tr>
<td>Kolja Möller</td>
<td>Goethe University Frankfurt</td>
</tr>
<tr>
<td>Christoph Möllers</td>
<td>Humboldt University Berlin, Sciencekolleg zu Berlin – Institute for Advanced Study Berlin</td>
</tr>
<tr>
<td>Tiago Monteiro</td>
<td>Fluminense Federal University, Rio de Janeiro</td>
</tr>
<tr>
<td>Guilherme Morais Courts</td>
<td>European University of Florence</td>
</tr>
<tr>
<td>Jule Mulder</td>
<td>University of Bristol</td>
</tr>
<tr>
<td>Siobhán Mullally</td>
<td>University College Cork</td>
</tr>
<tr>
<td>Fernando Muñoz León</td>
<td>Austral University of Chile</td>
</tr>
<tr>
<td>Colin Murray</td>
<td>Newcastle University</td>
</tr>
<tr>
<td>Dagmar Myslinska</td>
<td>London School of Economics and University at Albany, USA</td>
</tr>
</tbody>
</table>

**Participants** 105
Abhayraj Naik
Azim Premji University Bangalore

Hans-Martien ten Napel
Leiden University

Giulio Napolitano
Roma Tre University

Yota Negishi
Japan Society for the Promotion of Science / Max Planck Institute for Comparative Public and International Law Heidelberg / Waseda University Tokyo

Maddalena Neglia
University College of London

Jaclyn Ling Chien Neo
National University of Singapore

Lorne Neudorf
Thompson Rivers University Kamloops

Janne E. Nijman
T.M.C. Asser Institute The Hague / University of Amsterdam

Georg Nolte
Humboldt University Berlin

Colm O’Cinneide
University College London

Aoife O’Donoghue
Durham University
Jed Odermatt
European University Institute Florence

Phoebe Okowa
Queen Mary University of London

Zoran Oklopcic
Carleton University Ottawa

Maria Carolina Olarte

Emanuela Orlando
University of Sussex

Stefano Osella
European University Institute Florence

Guillermo Otálora Lozano
University of los Andes Colombia
Xhafer Tahiri
University of Prishtina

Chiaki Takenouchi
Leiden University

Michal Tamir
Academic Center of Law and Science Tel Aviv

Rui Tavares Laneiro
University of Lisbon

Mayu Terada
International Christian University Mitaka

Diletta Tega
University of Bologna

Bruck Teshome
Hebrew University of Jerusalem

Christopher Alexander Thomas
London School of Economics and Political Science

Jean Thomas
Queen's University Kingston

Daniel Thym
University of Konstanz

Giulia Francesca Marina Tiberi
University of Insuaria

Kathleen Tipler
University of Oklahoma

Yofi Tiros
Tel Aviv University

Alexander Tischbierek
Humboldt University Berlin

Maxim Tomoszek
Palacký University Olomouc

Neus Torbisco-Casals
Graduate Institute of International and Development Studies Geneva

Luisa Torchia
Roma Tre University

Aída Torres Pérez
Pompeu Fabra University Barcelona

Simone Torricelli
University of Florence

Manal Totry-Jubran
Bar-Ilan University

Ioanna Tourkochorriti
National University of Ireland Galway

Emanuel Towfigh
EBS University of Business and Law Oestrich-Winkel

Bosko Tripkovic
European University Institute Florence

Alina Tryfonidou
University of Reading

Françoise Tulkens
Former Judge and Vice-President of the European Court of Human Rights

Juha Tuovinen
European University Institute Florence

Matthew C. Turk
Indiana University Kelley School of Business Bloomington

Gamze Erdem Türkelli
University of Antwerp

Marko Turudić
University of Zagreb

Mark Tushnet
Harvard University

Ntina Tzouvala
Durham University
Robert Uerpmann-Wittzack
University of Regensburg

Felix Uhlman
University of Zurich

Vibe Garf Ulfbeck
University of Copenhagen

Christopher Unseld
Humboldt University Berlin

María Dolores Utrilla
Fernández-Bermejo
University of Castilla-La Mancha

Jerfi Uzman
Leiden University
Martijn van den Brink
European University Institute Florence

Dirk Vanheule
University of Antwerp

Maria Varaki
Kadir Has University Istanbul

Ozan Varol
Lewis & Clark College Portland

Mariana Velasco Rivera
Yale University

Lieselot Verdonck
Ghent University

Mila Versteeg
University of Virginia

Alianna Vettorel
University of Padova

Ilaria Vianello
European University Institute Florence

Gonzalo Villalta Puig
Chinese University of Hong Kong

Benedict Vischer
Yale University

Viorica Vita
European University Institute Florence

David A. Vitale
London School of Economics and Political Science

Micaela Vitaletti
University of Teramo

Leti Volpp
University of California Berkeley

Jochen von Bernstorff
University of Tübingen

Detlef von Daniels
Berlin-Brandenburg Academy of Sciences and Humanities

Silvia von Steinsdorff
Humboldt University Berlin

Ladislav Vyhnanek
Masaryk University
Jan-Hinrich Wagner
WZB Berlin Social Science Center

Marie Walter
Free University Berlin

Joseph H.H. Weiler
European University Institute Florence

Annette Weinke
Friedrich Schiller University Jena

Adam Weinstein
Temple University Philadelphia

Quirin Weinzierl
Ludwig-Maximilians-University Munich / German Research Institute for Public Administration Speyer

Diego Werneck Arguelhes
Getúlio Vargas Foundation Rio de Janeiro

Se-shauna Wheatle
Durham University

Micha Wiebusch
SOAS University of London

Ralph Wilde
University College London

Michael Wilkinson
London School of Economics and Political Science

Vanessa Wintermann
WZB Berlin Social Science Center

Diana R. H. Winters
Indiana University

Thomas Wischmeyer
University of Freiburg

Cindy Wittke
University of Konstanz

Michael Wrase
WZB Berlin Social Science Center
Y

Ardevan Yaghoubi
Princeton University

Zeynep Yanasmayan
Humboldt University Berlin

Po Jen Yap
University of Hong Kong

Feng Yang
Erasmus University

Limor Yehuda
Hebrew University of Jerusalem

Serkan Yolcu
Celal Bayar University Manisa
Giovanni Zaccaroni  
University of Bologna / University of Strasbourg

Fred Felix Zaumseil  
WZB Center for Global Constitutionalism

Jiří Zemánek  
Justice of the Constitutional Court of the Czech Republic

Jan Zgliński  
European University Institute Florence

Han Zhai  
Tilburg University

Kangle Zhang  
University of Helsinki

Han-Ru Zhou  
University of Montreal

Reuven Ziegler  
University of Reading

Roman Zinigrad  
Yale University
ICONS Conference
17–19 June 2016
Humboldt University Berlin

2016 ICON•S Conference Organizing Committee

Richard Albert, Lorenzo Casini, Sabino Cassese, Moshe Cohen-Eliya, Gráinne de Búrca, Rosalind Dixon, Ran Hirschl, Mattias Kumm, Matthias Ruffert, Hélène Ruiz Fabri, Joseph H. H. Weiler

2016 ICON•S Conference Organization

Lorenzo Casini and Fred Felix Zaumseil, with the collaboration of: Arne Bardelle, Zarah Baur, Claudia Golden, Manarsha Isaeva, Laura Kleiner, Laura Knobloch, Michael Gregor Cosimo Joseph Malchus, Hilde Ottschofski, Elias Reiche, Svenja Sund, Rasmus von Schwerttner, Marianna Walat, Lilian Weiche

Design: Happy Little Accidents, Leipzig
Printing: Druckerei Hennig, Markkleeberg

→ The International Society of Public Law (ICON•S)
40 Washington Square South, New York
New York 10012
United States

www.icon-society.org
icons@icon-society.org
Twitter: @I_CON_Society