



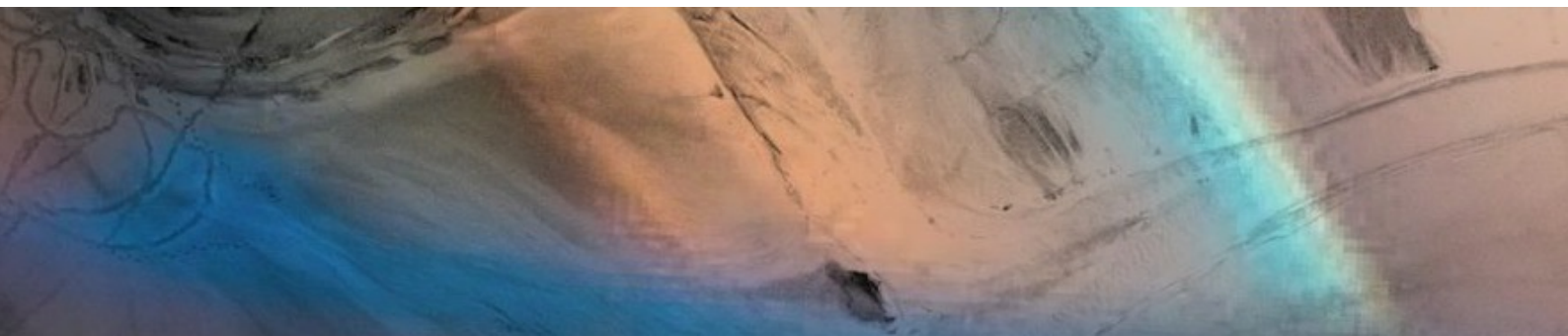
The Future of Public Law

6 to 9 July 2021

Online

Conference Programme

The 2021 Annual Conference of the International Society of Public Law



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Numerals are coloured by day

 Tuesday  Wednesday  Thursday  Friday

Every entry is a link.

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Organisation **114**

Panels by session

Thirty-seven parallel sessions. Times in UTC.

1 Tuesday 6 July 2021

I	07:00–08:30	Panels 1 to 6	26
II	08:40–10:10	Panels 7 to 13	28
III	10:20–11:50	Panels 14 to 18	30
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2 Wednesday 7 July 2021

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XVI	13:00–14:30	Panels 96 to 108	54
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3 Thursday 8 July 2021

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XXIII	07:00–08:30	Panels 141 to 147	71
XXIV	08:40–10:10	Panels 148 to 154	73
XXV	10:20–11:50	Panels 155 to 164	75
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XXIX	16:00–17:30	Panels 197 to 209	84
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4 Friday 9 July 2021

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XXXIII	08:40–10:10	Panels 234 to 240	96
XXXIV	10:20–11:50	Panels 241 to 245	98
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XXXVI	13:40–15:10	Panels 253 to 259	102
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About ICON·S Mundo

The ICON·S Mundo Conference is one of the most important academic Public Law events of 2021, gathering more than 1,500 scholars and providing around 300 panels that will operate in diverse time zones compatible with all of the world's regions. The Conference features plenary sessions, fora and working groups, concurrent panel sessions as well as social events which use different online platforms.

1,500

scholars, from every region of the world

300

panels, working groups and fora

37

parallel sessions across the clock

4

days online, 6 to 9 July 2021

Times

Every time in this programme is UTC. Midday UTC in the five cities the conference website also showed, as the clocks stood in July 2021:

12:00 UTC	08:00 New York, UTC -4	07:00 Bogotá, UTC -5	14:00 Rome, UTC +2	20:00 Singapore, UTC +8	22:00 Sydney, UTC +10
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Plenary Events

Plenary Sessions, unlike conference panels, do not run concurrently. They feature 3–5 speakers each, and they are aimed at discussing the main themes of the call for papers. Plenaries are prepared and assembled by the ICON·S leadership. The Conference ends with a closing ceremony, where important announcements will be made.

Panel Sessions

Nearly 300 Panels in 37 distinct time slots offer an opportunity to speakers to present ongoing and finalized research to an academic public and receive feedback and engage in an exchange. Panels are run in parallel sessions at different times of the day in order to enable participants from different time zones to attend.

Working Groups and Fora

Working groups and fora are a new feature of this year's Mundo Conference. They allow networking and exchange on specific academic subject areas or topic of general interest.

ICON·S aims to encourage many different forms of collaboration and exchange among members, and the broader global public law community. Building on working group and fora proposals for the 2020 ICON·S Conference, ICON·S Mundo will host interest groups for the first time in 2021. Interest groups and fora gather a core group of ICON·S members and interested attendees for discussion on a broad topic. Topics can be either fields of research and substantive issues, with a

universal or regional focus, or relate to academia more broadly, e.g. the role of gender in academic publishing etc.

Social Events

Networking and social events complement the academic exchanges of any conference. ICON·S Mundo will thus include a social dimension. We invite all Conference participants to join our receptions that will take place on Zoom and Sidebar and a special workshop on designing student exams in public law offered by Joseph H. H. Weiler. But we did not want to stop there, which is why we created the Mundo Meeting Space on Discord. Throughout the conference, the Mundo Meeting space will offer you ways to meet and interact with other Conference Participants from around the globe. The Meeting Space is set up to enable you to take initiative. There will also be several social events on the Mundo Meeting Space. These events will be structured around themes with academic and societal relevance (e.g., career choices, publication strategies, power imbalance in academia, the struggles of first-generation academics, family and academia, LGBTQI research and publication strategies, finding the time for research while teaching and performing administrative tasks). Participants will be able to connect with other participants, using the chat, voice or video functions of the application. Our social events will be designed as informal and inclusive environments that should promote the exchange of ideas and promote networking. The social events will last approximately 30 minutes but, should the participants wish to continue the conversation, they are free to do so.

Tuesday

6 July 2021 All times UTC



I	07:00–08:30	Panels 1 to 6
II	08:40–10:10	Panels 7 to 13
III	10:20–11:50	Panels 14 to 18
IV	12:00–13:30	Working Groups and Fora
V	13:40–15:10	Panels 19 to 31
VI	15:20–16:50	Panels 32 to 44
VII	16:00–17:30	Technology and the Future of Public Law
VIII	17:40–19:10	Panels 45 to 54
IX	19:20–20:50	Panels 55 to 63

12:00 UTC 08:00 New York 07:00 Bogotá 14:00 Rome 20:00 Singapore 22:00 Sydney

Wednesday

7 July 2021 All times UTC



X 00:00–01:30 Panels 64 to 66

XI 01:40–03:10 Panels 67 to 69

XII 03:20–04:50 Panels 70 to 71

06:00–06:30 *CALD Reception*

XIII 07:00–08:30 Panels 72 to 78

XIV 08:40–10:10 Panels 79 to 87

XV 10:20–11:50 Panels 88 to 95

12:00–13:00 *Workshop with Joseph H. H. Weiler: Designing Student Exams in Public Law*

XVI 13:00–14:30 Panels 96 to 108

XVII 14:40–16:10 Panels 109 to 121

XVIII 17:00–18:30 **Human Rights and the Future of Public Law**

19:00–19:30 *LGBTQI+ Reception*

21:00–21:30 *Women's Reception*

XIX 22:00–23:30 Panels 122 to 125

XX 23:40–01:10 Panels 126 to 131

12:00 UTC 08:00 New York 07:00 Bogotá 14:00 Rome 20:00 Singapore 22:00 Sydney

Thursday

8 July 2021 All times UTC



XXI 01:20–02:50 Panels 132 to 136

XXII 05:40–07:10 Panels 137 to 140

XXIII 07:00–08:30 Panels 141 to 147

XXIV 08:40–10:10 Panels 148 to 154

XXV 10:20–11:50 Panels 155 to 164

Keynote 12:00–12:30 Lies, Falsehoods, and Freedom of Speech

XXVI 12:30–13:30 Democracy and the Future of Public Law

XXVII 13:40–15:10 Panels 165 to 180

XXVIII 15:20–16:50 Panels 181 to 196

XXIX 16:00–17:30 Panels 197 to 209

XXX 17:40–19:10 Panels 210 to 218

XXXI 19:20–20:50 Panels 219 to 227

12:00 UTC 08:00 New York 07:00 Bogotá 14:00 Rome 20:00 Singapore 22:00 Sydney

Friday

9 July 2021 All times UTC



XXXII	07:00–08:30	Panels 228 to 233
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XXXIII	08:40–10:10	Panels 234 to 240
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XXXIV	10:20–11:50	Panels 241 to 245
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XXXV	12:00–13:30	Panels 246 to 252
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XXXVI	13:40–15:10	Panels 253 to 259
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Closing	14:00–16:00	Closing Ceremony
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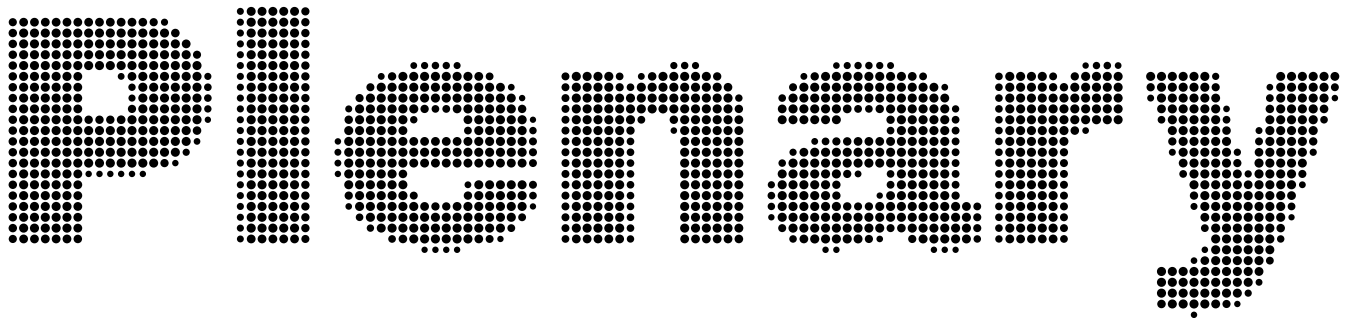
XXXVII	15:20–16:50	Panels 260 to 267
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XXXVIII	16:00–17:30	Panels 268 to 273
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XXXIX	17:40–19:10	Panels 274 to 282
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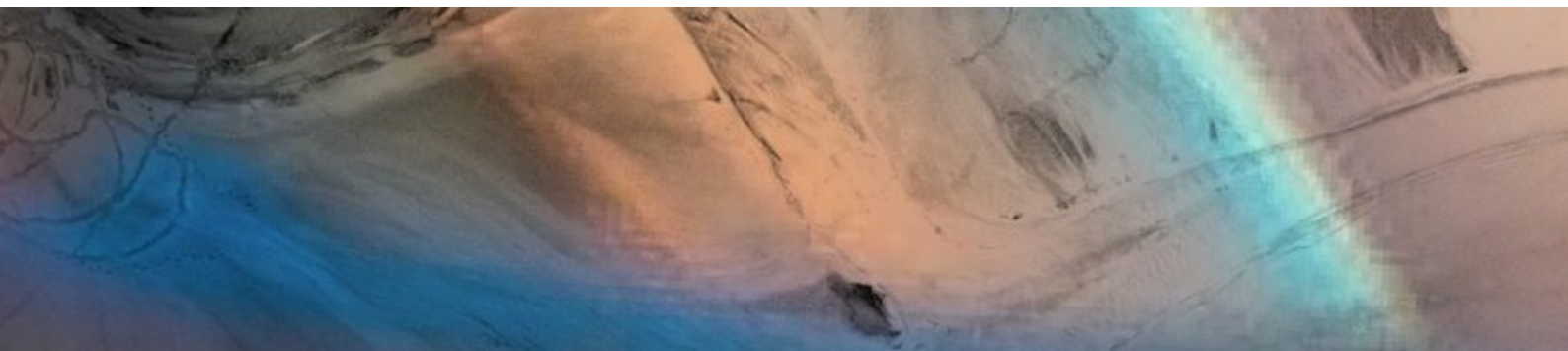
XL	19:20–20:50	Panels 283 to 289
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12:00 UTC	08:00 New York	07:00 Bogotá	14:00 Rome	20:00 Singapore	22:00 Sydney
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Plenary Events

Three plenary panels, a keynote address and the closing ceremony,
prepared by the ICON·S leadership





Session VII

Tuesday 6 July
16:00 to 17:30 UTC

Plenary Panel

Technology and the Future of Public Law

Chair

Lorenzo Casini

Co-President of ICON-S

Speaker

Jamal Greene

Columbia Law School, USA

Speaker

Catalina Botero

Universidad de los Andes, Colombia

Speaker

Sofia Ranchordas

University of Groningen, Netherlands

Technology and the digital revolution are not only changing our lives, they are also affecting the ways in which parliaments, governments, courts, and democracies operate as a whole. The use of algorithms and of AI is influencing the decision-making processes of public authorities, which at the same time raises concerns in terms of due process, transparency, and accountability, to name a few. Social media has become the main public opinion-maker, as electoral campaigns demonstrate. Big data

and surveillance, including the action against the pandemic, shed light on the contemporary fragility of our privacy. How is public law reacting to these phenomena? This panel will focus on the multifarious relationships between technology and public law in the digital era. Panelists will address several topics, such as the power and limits of freedom of expression, the state of art in data-protection, the fight against fake-news, and the life of democracies in the Google era.





Session XVIII

Wednesday 7 July
17:00 to 18:30 UTC

Plenary Panel

Human Rights and the Future of Public Law

Chair

Richard Albert

Co-President Elect of ICON·S

Speaker

Nigel Biggar

University of Oxford, UK

Speaker

Michael O'Flaherty

Director, European Union Agency for Fundamental Rights,
Austria

Speaker

Fareda Banda

SOAS, University of London, UK

Speaker

Helen Keller

Constitutional Court of Bosnia and Herzegovina





Keynote Address

Thursday 8 July
12:00 to 12:30 UTC

Keynote Address

Lies, Falsehoods, and Freedom of Speech

Chair

Rosalind Dixon

Co-President of ICON-S

Speaker

Cass Sunstein

Harvard Law School, USA





Session XXVI

Thursday 8 July
12:30 to 13:30 UTC

Plenary Panel

Democracy and the Future of Public Law

Chair

Rosalind Dixon

Co-President of ICON·S

Speaker

Indira Jaising

Lawyers' Collective, India

Speaker

Karen Stenner

Behavioral Economist and Political Psychologist

Speaker

Aslı Bâli

UCLA School of Law, USA

Speaker

David Law

The University of Hong Kong

This panel will reflect on the future of democracy, and its relationship to public law. The panelists will join Professor Rosalind Dixon in conversation to ask: Are current democratic constitutions fit for purpose in the 21st century? Can they protect democracies from the risks of fake news, foreign influence, and anti-democratic populism or autocratic legalism? Can other public law norms – such

as administrative regulations, or other forms of legal “nudges” – shore up democracy in the face of these threats? Or are the threats deeper and more social-psychological in origin in ways that point to the importance of social, economic, and political rather than legal responses?





Closing Ceremony

Friday 9 July
14:00 to 16:00 UTC

Closing Ceremony

Closing Ceremony

Chair

Michaela Hailbronner

Deputy Secretary General Elect of ICON·S

Participant

Lorenzo Casini

Co-President of ICON·S

Participant

Richard Albert

Co-President Elect of ICON·S

Participant

Gráinne de Búrca

Co-Editor-in-Chief of I·CON

ICONnect Team

Antonia Baraggia

David Landau

IberICONnect Team

Micaela Alterio

Jorge Roa

Chair

Sergio Verdugo

Secretary General Elect of ICON·S

Participant

Rosalind Dixon

Co-President of ICON·S

Participant

Marta Cartabia

Co-President Elect of ICON·S

Participant

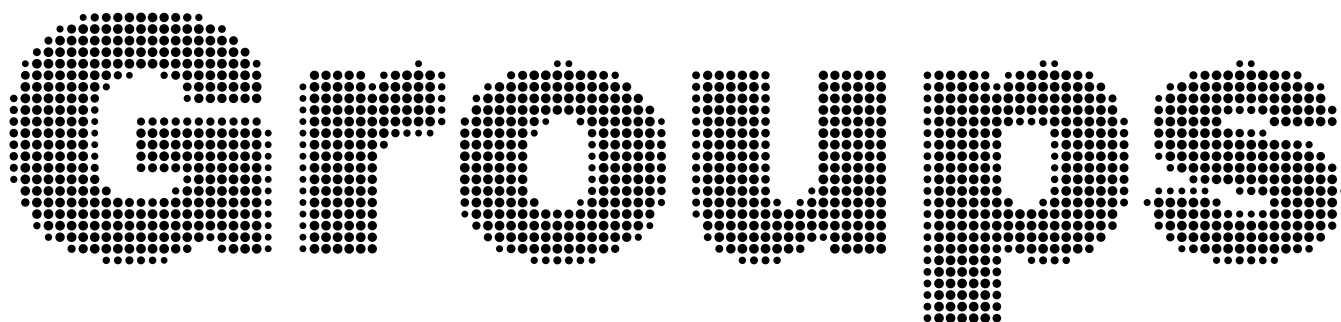
Representative of the City of Wrocław

Tom Ginsburg

Jaclyn Neo

Argelia Queralt-Jiménez

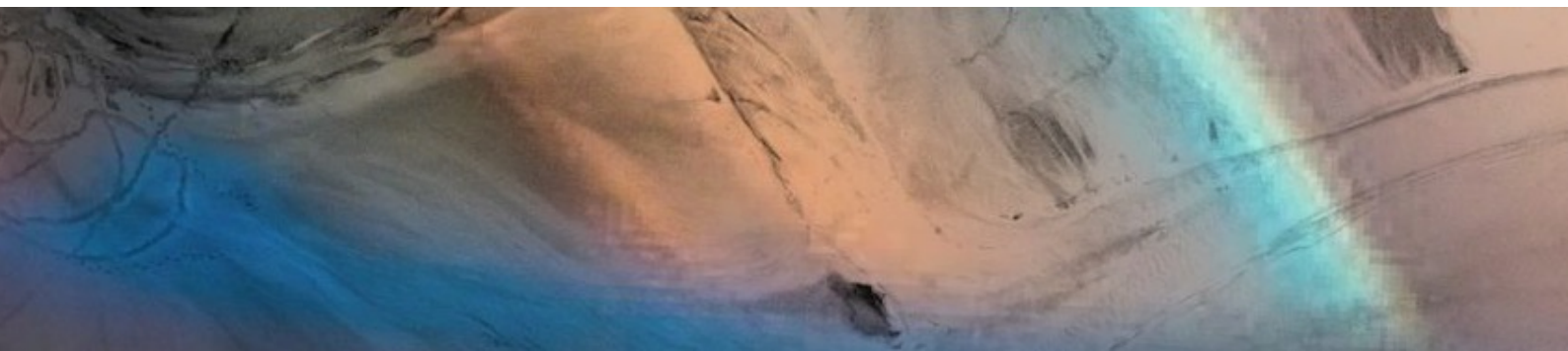


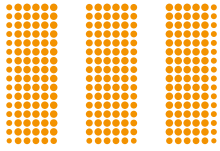


Working Groups, Fora and Interest Group

Session IV, Tuesday 6 July, 12:00 to 13:30 UTC

with one working group in Session III and one interest group in Session XXXII





Session III

Tuesday 6 July
10:20 to 11:50 UTC

Working Group

Working group

Conveners
Michaela Hailbronner
David Kosáľ

Separation of Powers

The tripartite model of separation of powers has been an important building block of modern constitutionalism. To be sure, the situation on the ground has always been messier than this normative ideal and the political exigencies never held fully to the prescriptions of the tripartite model. However, there is an emerging consensus that separation of powers is under pressure in ways that have not been on the table for several decades, both in long-established and new democracies.

The proposed working group would examine how separation of powers responds to the current socio-political forces such as populism or declining public trust in the state. We will build on the insights on separation of powers from constitutional theory, theory of the state (Staatslehre) and jurisprudence. But in this working group we want to go deeper and study the structure and functioning of separation of powers not only conceptually and normatively, but also empirically. We invite scholars from different disciplines and are particularly keen to integrate insights from democratic theory, political science and sociology into the mainstream legal thinking on separation of powers. We are also interested in how separation of powers has developed in individual countries, responding to the various external (such as the membership in supranational organizations) as well as internal (such as the rise of populism) developments to the given state.



Session IV

Tuesday 6 July
12:00 to 13:30 UTC

Working Groups and Fora

Working Groups

Working group

Convener
Adem Abebe

African Constitutionalism

This interest group is designed to promote the growth of membership in Africa, and the study of African constitutionalism, among ICON-S members. It will meet for the first time at Mundo – for the second half only of the indicated time for interest group meetings (ie for 45 mins).

Working group

Convener
Arianna Vidaschi

Artificial Intelligence, Surveillance and Threats to Security: Towards a Decay of Democratic Values?

The prevention of serious crime and other threats to security is one of the fields that, in principle, could greatly benefit from artificial intelligence (AI) and “intelligent” algorithms. For example, AI can enhance surveillance techniques, a key tool for law enforcement and intelligence agencies (even) in “mature” democracies. Facial recognition technologies, aerial drones to carry out surveillance over individuals, “black boxes” analysing communication metadata and other tools are definitely “appealing” to states that have to deal with “emergencies”, e.g. international terrorism (but also the current pandemic). Nonetheless, they make the already complex balance between the effort to protect security (or, in the case of the pandemic, public health) and the need to guarantee individual rights even trickier. As a matter of fact,

AI may heavily interfere with rights as privacy, data protection, free speech; at the same time, the risk of biases and discrimination lurks behind algorithms. This scenario may trigger citizens' distrust towards governments and public institutions, alarmingly contributing to the "decay" of democratic values. These are some major challenges, from a public law standpoint, that arise from the growing use of AI to tackle security issues and that our Working Group intends to discuss.

Working group

Convener
Jan Komárek

Constitutional Imaginaries of Europe

How have the EU member states imagined their statehood and constitutionalism in the context of their outer space – Europe and/or global world? Countries with quite different histories have come together in the integration project: former colonial empires, which never doubted their independent statehood, joined with states, whose existence has always depended on their relationship to the former – and the former's recognition. Some have the history of a long-process of transformation from nation states to the member states (Bickerton), while others only regained independent statehood after a long period of vassalage that ended in 1989. Member states' constitutional relationship to the EU is defined, most narrowly, by various integration clauses in national constitutions, often balanced against provisions concerning constitutional identity by an increasingly complex body of jurisprudence produced by the highest courts. It has always been at the centre of public law scholarship's attention (think of Oppenheimer or Slaughter/Weiler/Sweet Stone). In this interest group we want to go deeper and examine the structure of constitutional thought (and the state theory – Staatslehre) as it developed in each member state, responding to the various transformations of the very integration project in which these member states participated, but also to various developments internal to the given state. We are thus interested in "constitutional imaginaries" – sets of ideas and beliefs that help to motivate and at the same time justify the practice of government and collective self-rule. Although these ideas and beliefs are only "imagined", they are no less important for the practice of government as institutions and office-holders are. They provide political action with an overarching sense and purpose recognized by those governed as legitimate. The convener of the working group is the principal investigator of IMAGINE: European Constitutional Imaginaries: Utopias, Ideologies and the Other (<https://www.imagine-const.eu/>), project funded by an ERC Starting Grant. Ideally, the collaborators to the working group would help to formulate the methodology for such investigation and possibly participate in the future comparative work to be conducted as part of the project and beyond.

Working group

Conveners
Luisa Fernanda García
López
Gonzalo Andrés Ramírez
Cleves

Constitutionalism and Democracy

The panel presents comparative perspectives of Constitutional Law in Latin America and the 230 Agenda Sustainable Development Goals. The six papers have a common theme: the transformative role of Constitutional Law in Latin America and its impact on achieving the Sustainable Development Goals.

For this purpose, the panel includes six papers, on (i) the comparative perspective of the transformative Constitutional Law of the region with the Constitutional Law of Italy; (ii) state fragility as an adverse condition to achieve the Sustainable Development Goals in the post-pandemic; the current situation of transformative Constitutional Law in Colombia, taking into account (iii) the challenges of the Welfare State model, (iv) the balance of the 1991 Constitution and (v) the role of the regions in the 2030 Agenda; as well as (vi) the challenges of constitutionalism in Bolivia based on the standards of the Inter-American Human Rights System.

Working group

Convener
Estefânia Maria de
Queiroz Barboza

Fake News against Democracy

The exposure of citizens to large-scale disinformation campaigns, including misleading or outright false information, is a major challenge in contemporary societies. Disinformation may have far-reaching consequences on the economy, privacy, and security, threatening policy-

making procedures, democratic politics, and eroding trust in institutions. Moreover, disinformation could also be harmful to democracies to the extent that they hamper the ability of citizens to make informed decisions, polarizing debates, creating, or deepening tensions in society, and undermining electoral systems thus leading to the rise of populist governments. Fighting disinformation in the era of social media and online platforms must be a coordinated effort involving all relevant actors, whereas a key role must be given to governments and national institutions. Indeed, the strategic use of communication tools allows administrations to interact with a wider variety of relevant and interested stakeholders to develop public services that better meet people's needs and expectations. Such an activity would be essential to promote the role of administrations as credible providers of information and would at the same time promote the principles of open administration in the definition and implementation of public policies.

Working group

Convener
Thomas Streinz

Global Data Law – A Research Agenda

New research project by Guarini Global Law & Tech at NYU Law explores the many unresolved legal questions posed by: data flows that transcend jurisdictional boundaries; highly uneven concentration of control over data; and the various transformations caused by the digitalization of economies and societies, in particular for developing countries and disadvantaged communities. We posit “Global Data Law” as a new field of research and practice encompassing various private and public legal technologies of global data governance including: ways of establishing jurisdiction over data (including data localization); data ownership and open data; data contracting and licensing; and legal-technological solutions for data portability, interoperability, and data sharing.

ICON·S Mundo provides us with the opportunity to reach out to the broader community of public law scholars interested in global data governance. While the EU's GDPR has emerged as a global model for the governance of “personal data”, broader questions of transnational data governance, including the role of International Organizations, remain underexplored. During the Working Group session we will discuss selected topics that form part of our broader research agenda to receive feedback and to explore potential collaborations. More information about the Global Data Law project is available at www.guariniglobal.org/global-data-law and @GuariniGlobal.

Working group

Convener
Katarína Šipulová

Informal Institutions

Although still largely overseen by the legal scholarship, informal institutions – processes based on unwritten rules and narratives that are created and enforced outside officially sanctioned channels – play an important role in understanding the dynamics between state powers, including the judiciary. For example, various “gentlemen's pacts” may substitute formal rules governing judicial selection, entrenching patronage, nepotism and gender segregation. Similarly, corruption and telephone justice undermine formal safeguards of separation of powers. In contrast, other informal institutions may counteract democratic decay. For instance, judges may team up with journalists and mobilize the public to defend the judiciary. Informality can thus be a force for the good or the bad. This working group addresses the question how informal institutions affect functioning of the state and under what circumstances they counteract or contribute to democratic decay. We will build on a comparative legal perspective combined with sociological and political science approaches. We pursue three aims: 1) to identify the most important informal institutions in different countries and develop their typology, 2) to assess their interaction and impact on formal institutions and the state, and 3) to analyse the dynamics of informal institutions, that is how they reproduce themselves and under what circumstances they change.

Working group

Convener
Felipe Clavijo-Ospina

Law, Opera and Other Demons

Multidisciplinary approaches are the present and future of contemporary scholarly research. In modern law teaching (as well as in research), we need to explain the world as it really is, favoring the construction of new concepts through the dialogue between disciplines as music (opera), philosophy, literature and law. We need to rethink how the law represents reality (and humanity) at different levels and the opera is a very useful tool for this purpose in times of new audiences (students/scholars) immersed in popular culture, technology and social networks. In particular, we want to explore some of the classic ideas and concepts of law and constitutional law through the history of music (opera), philosophy and literature. With that purpose we want to build a time-travel academic journey between ancient concepts like Constitution, State, Institutions, Democracy, Justice, Nation, etc., with examples of opera, literature and philosophy to revisit, discover and problematize some of the core-concepts and ideas of the Western law tradition. For example: in some cases to explain the concept of power we will visit the music of Wagner's *Das Rheingold*, or Monteverdi's *Orfeo* in connection with selected texts of Hobbes, Shakespeare, Foucault, García Márquez and Byung-Chul Han.

Working group

Convener
Felipe Clavijo-Ospina

A Rights Revolution for Nature

Although the idea of granting rights to nature can be traced back to at least the 1970s (Stone 1972), this debate has reemerged in the past decades in the face of global warming, unprecedented levels of environmental degradation and climate change. The current climate and environmental emergencies are forcing us to reconsider our relationships with other species and nature in general. In this context, recent legal reforms have recognized rights to nature. For instance, the 2008 Ecuadorian Constitution, based on cosmovisions of Andean indigenous peoples and demands of social movements, recognised Pachamama or Mother Earth as a legal subject and granted it a set of rights. In Bolivia, Law 71 of 2010 categorized nature as a collective legal subject of public interest whose interest ought to be protected according to the principle of interculturality. Specific ecosystems such as the Whanganui River and the Taranaki Mountain in New Zealand, the Ganges River in India and the Atrato River and the Amazon region in Colombia have been also recognised as legal subjects entitled to rights. This tendency arises from a shift from an anthropocentric approach to the relation between humans and nature to an ecocentric one. The latter is based on a fundamental premise: there is not a hierarchical relationship between humans and nature; humans are not the owners of Earth, instead, humans are just another species on the planet. Human and non-human agents are then governed by principles of relationality, interdependence, complementarity and reciprocity, among others. This is a shift towards a more holistic and systemic understanding of the relationship between humans, culture and nature.

Working group

Conveners
Patrycja Dabrowska-Klosinska
Pedro A. Villarreal

Public Health Police Powers and Human Rights in Pandemics: The Role of Law and Beyond

In response to the COVID-19 pandemic, human-rights restrictive measures have been implemented throughout the world. Persons' liberties and freedoms (civil and political rights) as well as social, economic and cultural rights are constrained in order to mitigate the spread of the disease. The protection of public health means limitation of other rights, including, paradoxically, the right to health. Containing the virus often amounts to serious impediment of access to necessary healthcare services and basic products during the emergency. The authority to do so derives, broadly speaking, from states' police powers. Three crucial questions prompt our attention: What are the reach and limits of police powers in an age of pandemics? How did different countries strive towards guaranteeing access to healthcare during the health emergency? Does it imply the imposition of new hierarchies of rights? And how can the necessary human rights protection in both of these dimensions be guaranteed under (comparative) public health laws in extraordinary times? Discussing these questions will help to enrich

our understanding of the relationship between human rights and public health during pandemics. The aim of this working group is to bring together scholars from diverse branches of law (eg. international, national and EU law, constitutional and administrative law, and human rights law, all focused on public health issues) and other disciplines in order to: 1) analyse the role of law in mediation between the justification of far-reaching human rights restrictions and the exercise of public health police powers; 2) explore what cross-cutting methodologies may be used to mediate the potential conflict between the protection of human rights and public health measures during disease outbreaks; 3) discuss comparative insights on the approaches employed by different states to ensure access to healthcare products and services during the COVID-19 emergency; 4) identify the post-pandemic research agenda in the still-burgeoning fields of comparative public health law intertwined with comparative human rights.

Fora

Forum

Convener
Dimitry Kochenov

Citizenship: Randomly Punishing Hypocrisy?

The Forum will critically engage with a systematic presentation of the “dark side” of citizenship, offering the approach to the concept as a tale not of liberation, dignity, and nationhood but of complacency, hypocrisy, and domination, thus discussing the approach taken in Prof. Kochenov’s brief new book entitled ‘Citizenship’ (MIT Press, 2019). The Forum will focus in particular on four key elements of the concept of citizenship: status, considering how and why the status of citizenship is extended, what function it serves, and who is left behind; rights, particularly the right to live and work in a state; duties, and what it means to be a “good citizen”; and politics, as enacted in the granting and enjoyment of citizenship as well as attempting to find convincing justifications for exclusion. Participants will engage with the picture of citizenship as a story of complacency, hypocrisy, and randomly assigned domination, flattering to citizens and demeaning for noncitizens, serving the functions of justification of sexist, racist and socio-economic exclusion and existing in a moral vacuum of a sharp contrast with all the fundamental principles our modern constitutional systems are designed to establish and uphold.

Forum

Conveners
Maciej Kisilowski
Peter Lindseth
Kim Lane Scheppele
Anna Wojciuk

Constitutional Strategy for a Polarized Society: The Case of Poland and the Social Contract Incubator

This panel will discuss the work of the Social Contract Incubator (Polish: Inkubator Umowy Społecznej or IUS; <https://zdecentralizowanarp.pl/about>), as a case-study in addressing, in constitutional terms, the pervasive challenge of social, political, cultural and economic polarization that is increasingly prevalent on both sides of the Atlantic, indeed globally. The proposed forum will explore IUS’s proposals as a micro-case in constitutional imagination to provoke participants to tackle broader problems of constitutionalism after the “end of the end of history.” By way of background, IUS is a multidisciplinary group of scholars across the Polish political spectrum that has introduced an ambitious vision for constitutional reform, aiming at breaking the intractable legal and political deadlock that the country is facing. Recognizing the geographic dimension of Poland’s political cleavages (with the country’s South-East being much more conservative than the North-West), IUS proposed—in more than 70 press commentaries, conferences and other events organized throughout 2019—a new constitutional settlement around the idea of “strategic decentralization”: a deep devolution of policy areas of acute partisan conflict combined with continued centralization of economic redistribution. Unlike in the model of traditional federalism, IUS also wants to entwine regional authorities in central governance, especially in re-creating and protecting the country’s independent institutions. IUS’s work may be understood as part of a broader international trend in which actors have experimented with constitutional design as a means of addressing increased polarization and political fracturing. The forum will discuss the aspects of IUS’s proposals most relevant to that broader trend: mutually accepted institutions (the “fair deal”), national cohesion,

human rights and the fiscal constitution. A pair of IUS members from different parts of the political spectrum will address each topic, followed by a comparative perspective offered by international commentators.

Forum

Conveners
Uladzislau Belavusau
Aleksandra Gliszczynska-
Grabias

Constitutionalism under Stress

Today, more than shadows of potential populist threats are looming on the horizon. In Poland, we are witnessing an unparalleled attack by the political force in power on the very pillars on which countries ruled by law stand, foremost the independence of the judiciary. In Hungary, the take-over of state and institutional powers and appropriation of national assets by the ruling elites is continuing apace. In other European countries we are observing populist forces aggressively vying for positions of power. Finally, Brexit is a fact. This is why this forum intends to address various aspects of the the crisis besetting rule of law and constitutional order, fuelled by ongoing assaults on institutions safeguarding democracy, the erosion of principles of liberal democracy, and the swelling tide of populism. This democratic crisis is painfully felt in many areas: the domestic and international legal order, states' relations, social life, economic conditions and – perhaps not yet readily apparent – historical narration which, when appropriately crafted by the powers that be, can be enormously compelling in defining the reality we live in. The forum will be attended by a group of eminent scholars who will report from this legal and value-based 'battlefield', where controversy rages over fundamental principles, respect for law, identities, the question of how sovereignty is to be construed, and the future of the European Union. They will be sharing not just the results of their scholarly work but also something considerably more profound, namely their deep reflection on our constitutional metamorphosis, which is becoming ever more complex and vulnerable to populist manipulation, their critical analysis of the roots of the situation we struggle with today, and, perhaps most importantly, their propositions of remedies that could – to some extent – stem this destructive tide.

Forum

Convener
Francesca Strumia

Cosmopolitan Sovereignty

Do sovereign states have cosmopolitan duties? A traditional definition of sovereignty as the supreme and ultimate power over a territory suggests a skeptical answer. Despite sovereignty's extraterritorial manifestations in the global era, its parceling in the context of international economic and political cooperation, and the constraints brought to it by the human rights regime, it remains the hallmark of statism as opposed to cosmopolitanism. This was true already in 2019. In 2021 it is in everyone's eyes. From travel bans and border closures, to vaccine nationalism and vaccine passports, the sovereign state has been the mastermind in the regulatory response to the COVID-19 pandemic. Cosmopolitan-oriented responses such as the Covax initiative and the NextGeneration EU fund have been noticeable more for their limits than for their achievement. As a result, the pandemic has profoundly challenged any cosmopolitan conception of sovereignty. This has been while, paradoxically, it has brought a truly cosmopolitan challenge that per se treats all of humanity as equal. This paradox provides novel ground to interrogate the several strands of thought between international relations, law and political theory that have endeavored to lay the normative foundations for cosmopolitan obligations of sovereign states. Democracy, republican intergovernmentalism, non-domination theory, fiduciary theories of sovereignty, interlegality all push towards an 'other-regardingness' obligation that stretches the duties of sovereign states in a cosmopolitan direction. This forum aims at bringing together these different perspectives and explore their viability on the backdrop of the pandemic experience. Participants will address one or more of the following questions: what are the theoretical premises to deploy sovereignty in a cosmopolitan perspective? What are the possible legal applications of a cosmopolitan conception of sovereignty – e.g. right to migrate, citizenship, solidarity? What are the practical and theoretical

obstacles in the way? What lessons can we draw from the pandemic on the above questions? Rethinking the potential, scope and normative premises of cosmopolitan sovereignty is an unavoidable exercise in order to deal with the legacies of the pandemic for the legal order and in order to re-think the international relations that it will leave wounded. This forum begins the exercise in view of inspiring urgent new work in this sense.

Forum

Convener
Mara Malagodi

Empowerment and Backlash: Gender as an Axis of Constitutional Contestation

Disputes around abortion and other reproductive rights; same-sex marriage and the recognition of diverse family formations; gay- trans- intersex- rights; fatherhood rights; sexual/gender education and violence against women are among those which have been increasingly taken to a constitutional level, with constitutional reappropriation, litigation and amendments (sometimes accompanied by popular referenda) being commonly seized by those seeking to advance and to resist the equal citizenship status of women and sexual minorities, and far right political parties and religious factions targeting what is coined as “gender ideology” in an increasing number of countries around the world. To which developments is the “gender ideology” backlash responsive? Does it have a preemptive nature? In what respects is it transnational, in what respects local and in what ways do the local and the transnational connect? Does it have intersectional expressions? This forum will convene scholars interested in discussing contemporary developments in this area.

Forum

Convener
Marek Zubik

In Courts We Trust: Forum on the Leading Role of Constitutional Courts in Ensuring Freedom of Communications in Digital Age

Constitutional courts are best placed to restore trust of citizens in values of public law. Out of many issues that constitutional courts cared for, privacy and freedom of communications have always been in a particular focus. Significance of those areas only increased in contemporary digital age. Not only do new technologies of communication give public authorities new forms and ways to perform their functions, but they also create the opportunity to interfere in the privacy of their citizens. They can be used for a very broad acquisition of knowledge about the behaviour of citizens which is beyond an effective social control. This also refers to the content and forms of provided information, as well as the processing of these data and their subsequent use. Human privacy has now undoubtedly become a commodity desired by various entities or corporations of a private nature. More or less consciously, citizens have begun to pay for their participation in cyber reality. The protection of privacy and freedom from advertising or profiling has become a luxury, for which one just has to pay money. Cyberspace has also become a place of rivalry between states and international non-state creations, or even a subject of an impact on social life in other countries.

This forum will concentrate around two issues: 1.) Are judges able to reconstruct universal standards for protecting freedom of communications? 2.) Are constitutional courts in a position to prevent restricting freedoms of citizens who exercise freedom of communications with the usage of digital technologies?

Forum

Conveners
Gráinne de Búrca
Michaela Hailbronner
Marcela Prieto Rudolph

Law and Gender I: Woman in Academia

Women routinely experience violence, discrimination, and hostility. Even though academia is a relatively privileged social sphere, it is not impervious to these phenomena. This forum aims to be a conversation about women in academia: their lived experiences, the forms of inequality that still persist in many academic settings, the place of feminist studies in universities and journals, as well as possible solutions to these issues. In addition to the list of confirmed participants, public participation is welcome and strongly encouraged.

Forum

Conveners
Stefano Osella
Marcela Prieto Rudolphy

Law and Gender II: LGBTI+, Queer, Feminist Studies and Identities in Academia

We are witnessing a backlash against LGBTQI+ and women's rights, often orchestrated by populist forces. How is legal academia and public law reacting to such a backlash? This forum aims to answer this question and offer a space to discuss the status and new directions of LGBTQI+ and feminist studies in legal academia and publishing. At the same time, it wants to be a place for the LGBTQI+, feminist, and allied community of ICON·S to meet and share their knowledge on a plurality of alarmingly public law themes in universities. Centrally, the forum has the purpose to build connections and dialogue between feminist, LGBTI+, queer, and intersectional theories. Five main themes are envisioned: (i) New directions and themes in this area of study; (ii) The lived experience of LGBTQI+ people – especially from an intersectional perspective – and people working on LGBTQI+ and feminist studies within legal academia and public law; (iii) The perceived status and acceptance of LGBTQI+ and feminist studies in law departments, faculties, and publishing; (iv) The relations between feminist and LGBTQI+ studies and politics within academia, and the role of allies; (v) The impact of precarization of academic life on people working on LGBTQI+ and feminist studies, which may be perceived as a niche subject, with less opportunity for publishing and adequate employment. In addition to the list of confirmed participants, public participation is welcome and strongly encouraged.

Forum

Convener
Nicole Lazzerini

Learning by TRIAL – Trust, Dissent and Distrust as Drivers of Judicial Cooperation between European Courts

The Forum will reflect on the contribution of judicial cooperation between European courts to creating a convergence on rule of law standards and, ultimately, strengthening the European rule of law. Participants will discuss the role of the following drivers of judicial cooperation: – Trust between national courts and the ECJ, which is at the heart of the preliminary ruling procedure; – Dissent vis-à-vis national governments, which fuel preliminary rulings challenging reforms of the judiciary; – Trust and Distrust between national courts from different Member States, which inspire different dynamics of cooperation (or refusal to cooperate) in the Area of Freedom, Security and Justice. The role of trust, dissent and distrust as drivers of judicial cooperation will be explored and critically discussed based on empirical data stemming from the relevant European and national case law gathered within the Project. This proposal is grounded on the ongoing Project TRIAL (Trust, Independence, Impartiality and Accountability of judges and arbitrators under the EU Charter), which is led by the EUI – with eight academic institutions, among which the University of Florence – and co-financed by the European Commission.

Forum

Conveners
Lorenzo Casini
Felicia Caponigri
Anna Pirri Valentini

The Future of Public Law through Art and Cultural Heritage

Many governments regularly declare certain properties to be part of a common, national cultural heritage. They ask citizens to sustain the arts through tax benefits or other incentives. During the pandemic, governments have asked for the public's patience as access to this heritage has been cut off and collections have gone digital. Public trust is inherent in these judgments of state actors: the public must have confidence that administrative agencies, government offices, courts and even civil servants tasked with applying and interpreting laws protecting and valorizing art and cultural heritage are, in fact, acting for the public's benefit. In their assessments and treatment of contemporary artistic production and cultural heritage, State actors often act in a nexus with private and not-for-profit actors: the relationships between the State and these actors can support or undermine public trust in agency action, and public law more generally. This nexus has been present during the pandemic, as States have funded artists, galleries, and other business in the culture and tourism sector. How do we know that administrative and judicial action regarding art and cultural heritage is indeed in the public interest? What criteria should we, as a public, employ to evaluate state actions sur-

rounding cultural heritage? It has been said, in preparation for the July 2021 Culture G20 under the Italian presidency, “Culture and cultural heritage can be seen as a workshop where any scholar can learn to analyse and manage complexity.” With this premise, this interest group will question public law and public policy issues along three lines of thought: I) When disagreement is strength: dissent at the basis of the identification, protection, and management of cultural heritage; II) Re-thinking archaeological protection and cultural heritage law in our contemporary, post-pandemic world; III) Dialogues between public and private actors in the implementation of cultural heritage policies.



Session XXXII

Friday 9 July
07:00 to 08:30 UTC

Interest Group

Interest group

Convener
Theunis Roux

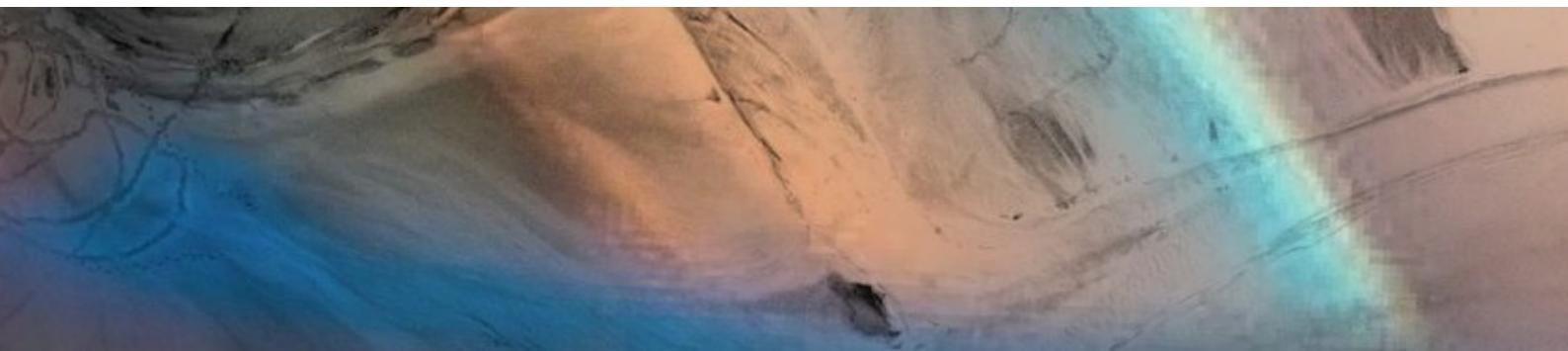
Constitutionalism in the Global South

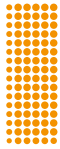
The purpose of this Working Group is to explore whether the distinction sometimes drawn between the Global South and the Global North has any relevance to the comparative study of constitutionalism. While some scepticism about the usefulness of this distinction has been expressed, particularly when deployed as a variable in quantitative empirical research, it is used in other fields of research, such as anthropology and international law. In more qualitative research in comparative constitutional law, too, the term ‘Global South’ has been used to identify a common set of constitutional challenges experienced by previously colonised countries, including weakly developed legal and political institutions, stark inequalities of wealth (including marked differences in social mobility and economic opportunity between metropolitan and rural populations), and often very aspirational constitutions that contemplate a greater role for constitutional law in transforming unjust social and economic relations. While breaking new ground, this line of research is currently at a very embryonic stage, with only a few journal articles and edited anthologies published to date. In light of this, more discussion is required of the usefulness of the term ‘Global South’ as an analytic category, the distinctiveness of the constitutional challenges to which it refers, and generally whether some of the traditional preoccupations of the field need to be rethought when considered through a Global South lens.



Tuesday 6 July 2021

**Sessions I to IX
Panels 1 to 63**



**1****Evolutions in Anti-Discrimination and Equality Law**

Chair
Amelia Simpson

Individual proposals

2**Book Launch: Federalism and Constitutional Law: The Italian Contribution to Comparative Regionalism**

Chair
Francesco Palermo

This panel analyses the relationship between central government and local institutions, taking Italy as a case study to present a comparative perspective on how the Italian experience has influenced the global developments of federal and regional states. As the country with the longest-standing regional system, Italy has a lot to tell countries that are dealing with similar issues in present times. Adopting a theoretical/analytical approach coupled with comparative analysis, this panel critically reflects on the changes brought to the Italian system of government by the reform of Title V of the Italian constitution, the reasons why further decentralisation has been resisted and offers a comparative overview of the place and contributions that the Italian experience has brought to the global debate on regionalism and federalism.

3**Comparative and Empirical Approaches to Proportionality**

Chair
Andrej Lang

Proportionality is widely accepted as one of the most important constitutional principles of our time, but despite the vast normative literature on the doctrine, we know relatively little about how proportionality is actually applied in judicial practice across jurisdictions. Against this background, the Panel primarily invites empirically grounded and comparatively oriented papers on proportionality to infuse the global debate on the doctrine with a fresh, evidence-based prism through which its application by courts throughout the democratic world can be re-evaluated and debated. Central questions for the Panel are how courts conduct the relationship between the different stages of proportionality analysis, to what extent the theory and the practice of proportionality correlate, how courts apply proportionality in the context of growing populism and democratic backsliding, and how proportionality as a decision-making framework frames the decision-making of judicial actors.

4**Future of Illiberal Constitutionalism in Russia**

Chair
Alekssei Dolzhikov

Constitutionalism by its origin is inspired by liberalism and is unthinkable outside of anti-despotism. Last year has demonstrated attraction of illiberal regimes. Even in Europe, citizens are faced with the erosion of democratic rights and derogation from constitutional principles, which seems to be inalienable not long ago. Restrictions on freedom of movement and assembly, as well as the right to access to justice have become typical. Unlike western democracies, China and other authoritarian regimes proved the effectiveness in combating the challenges of the global pandemic. Russian President Vladimir Putin in 2019 announced that the idea of liberalism has 'outlived its purpose'. This opinion is readily supported by European populists or in countries where the socialist legal tradition has survived. The 2020 constitutional amendments further widened the gap between the declared liberal principles and fundamental freedoms, and the "new" constitutional identity of Russia.

5

Chair
Gadi Ezra

Global Legislation and the UN Security Council

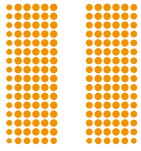
The past three decades have been characterized by an intensive engagement of the UN Security Council in “global legislation”, within thematic resolutions and general rules or obligations within case-specific “threat to peace” resolutions. This contested term is the main subject of scholarly work worldwide, as it bears significant practical implications regarding the Council’s relations with member states, the scope of its authority under the UN Charter, and the appropriateness of its conduct. The purpose of this panel is to discuss the Council’s global legislation attempts, its meaning, outcomes, and future developments.

6

Chair
Zoltán Pozsár-
Szentmiklósy

The Fundamental Rights Concept of Legal Capacity

It may seem obvious who are the holders of fundamental rights (FRs) and that, they can enforce these rights, should they be infringed. Every human person is equally entitled to the full extent of FRs, and it is also widely acknowledged that organizations are right-holders. Legal practice, however, shows that the forums often encounter ambiguous cases even with the traditional holders of FRs. Notwithstanding the complete legal capacity of human persons, it should be examined what factors may restrict their exercise and enforcement of FRs. The organizations’ legal capacity becomes unclear when its extent and basis is observed. The number of new challengers (e.g. Artificial Intelligence, nature) is growing rapidly. The project presented aims to develop a complex and coherent concept of legal capacity to FRs. The research is conducted at Eötvös Loránd University, Budapest - the project (K132712) is financially supported by the Hungarian National Research, Development and Innovation Office.

**7**Chair
Jerg Gutmann**Compliance with Constitutions**

The Polish-German panel 'Compliance with constitutions' presents and discusses interdisciplinary research carried out in the project 'Economics of Compliance with Constitutions', which is funded by the Polish and German national research foundations (NCN and DFG). Methodologically, the panel combines a law and economics perspective with empirical research. The panel introduces a new and publicly available dataset for the global measurement of constitutional compliance and studies that use the data to explain some of the main causes of constitutional compliance.

8Chair
Shai Dothan**International Judicial Review: When Should International Courts Intervene?**

The purpose of the panel is to comment on my new monograph: Shai Dothan, *International Judicial Review: When Should International Courts Intervene?* (CUP, 2020): "This book is motivated by a question: When should international courts intervene in domestic affairs? To answer this question thoroughly, it is broken down to a series of separate inquiries: When is intervention legitimate? When can international courts identify good legal solutions? When will intervention initiate useful processes? When will it lead to good outcomes? These inquiries are answered based on reviewing judgments of international courts, strategic analysis, and empirical findings. The book outlines under which conditions intervention by international courts is recommended and evaluates the implications international courts have for society." The commentators will use their diverse skills of doctrinal and empirical analysis to criticize my book and recommend avenues for further research on the topic.

9Chair
Melissa Crouch**Constitutional Amendments in South Asia: Towards a Global South Perspective**

The papers in this panel focus on constitutional amendments in three countries from the Global South—India, Bangladesh, and Sri Lanka—to illustrate how the historical and political specificities of these countries characterised their project of constitutionalism. The first paper discusses how the First Amendment to the Indian Constitution has been influenced by the potential of crowds and publics in relation to incitement to violence. The second and third papers deal with the tensions between constitutional amendments and the limits on parliamentary power, with a focus on the applicability of the basic structure doctrine. The former examines the Twentieth Amendment determination of the Supreme Court of Sri Lanka, and its rejection of the basic structure doctrine and emphasis on popular sovereignty while the final paper examines the "textualist" formulation of the basic structure review that upsets its moral authority to promote court-centric constitutionalism in Bangladesh.

10Chair
Jan Komárek**Exploring European Constitutional Imaginary's Other**

This panel brings together the team of people working on the ERC-funded project *IMAGINE - European Constitutional Imaginaries: Utopias, Ideologies and the Other*. We will discuss the key assumptions of the project and specific case studies focused on how the constitutional imaginaries of Europe have been construed in four countries of Central and Eastern Europe – the Czech Republic, Estonia, Hungary and Poland. By *European Constitutional Imaginaries* (ECIs) we mean sets of ideas and beliefs that help to motivate and justify the European integration, providing it with an overarching sense and purpose recognized as legitimate. The case

studies focus on countries that for most of the post-war history were the “other” to the West, seen as liberal, democratic and based on free market and competition, as later represented by the EU. We welcome all scholars with interest in critical approaches to European constitutionalism, from all parts of Europe and having different imaginaries in mind.

11

Chair
Michał Ziółkowski

Tensions between Courts and Tribunals in the EU – A Patchwork of Dialogues Tearing Apart at Its Seams?

The relationship between the legal systems of EU Member States and the EU law and the respective engagement between national courts and the CJEU have been long characterised by tensions leading to dialogues. These arose both from conflicts between the CJEU asserting the role of itself and the EU law vis a vis national constitutional identities and from frictions related to domestic implementation of EU law (or lack thereof). Tensions and dialogues within the European legal space have been recently amplified by a worrying trend of the rule of law backsliding in some Member States increasingly reaching the breaking point of direct conflict with EU law and with the CJEU itself. This panel seeks to explore tensions both new and old, long-standing questions as to the thorny yet constructive dialogue and the role of (mis)trust coupled with the increasing clash over the rule of law in the EU

12

Chair
Anna Olijnyk

Individual proposals

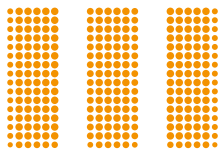
Algorithms and the Dangers of Bias and Discrimination

13

Chair
Akiko Ejima

Countermeasures against the COVID-19 and Human Rights: Analysis on East-Asian Experiences in the Light of the Constitutional Principles

Governments have made efforts to tackle the COVID-19 pandemic under the constitutional frameworks. The countermeasures against the pandemic are diverse and their effectiveness varies. Do constitutional principles hinder or facilitate the efforts of countermeasures? Can they strengthen the civil society and individuals? In order to answer these questions, the panel collects experiences of East Asian countries and explore the relationship between the constitutional principles and the result of the countermeasures. The panel selects three countries from East Asia: Taiwan, South Korea and Japan. Three countries share similarities not only in economic development, national health, culture, religion but also in establishing liberal democracy and modern constitutions. On the other hand, there are constitutional differences: constitutional review by constitutional court or ordinary court - presidential system or cabinet parliamentary system - experiences of constitutional regime changes.

**14**Chair
Ruth Ferrero-Turrión**Democracy and Rule of Law Crisis: An Euro-Latinoamerican Approach**

In this panel the crisis of liberal democracy and rule of law will be addressed from a multidisciplinary approach and focus. Institutional issues, theoretical approaches and case studies will be analyzed taking into consideration the European and Latinamerican contexts from a comparative perspective. This perspective will enrich future studies and would help to frame the particular features linked to each region. The role of the European Union in keeping safe liberal democracy, the impact of COVID-19 on democracy quality or particular cases of Spain, Poland and a transversal analysis of the latinamerican context will be some of the issues that will be discussed.

15Chair
Neus Torbisco Casals**Diversity in International Courts: Questions of Representation, Accountability and Method**

International courts and tribunals (ICs) have flourished to become key institutional players in the configuration of the international legal order. Yet the growing influence and expansion of their mandates has been subject to challenge, especially regarding representation, independence and accountability. Critical voices increasingly contest the legitimacy of their authority, and warn of the impact of limited judicial diversity in jeopardizing national cooperation to ensure the effectiveness of international rulings. International legal scholarship has yet to address and theorize these issues. This panel aims at exploring these questions from an interdisciplinary perspective, engaging with legal theory and feminist methodology with the purpose of offering richer and more nuanced accounts.

16Chair
Anne Peters**Doing Comparative Constitutional Law in Pandemics: Insights from Lex-Atlas: COVID-19**

The Lex-Atlas:COVID-19 (LAC19) project includes approximately 60 country teams collaborating on the Oxford Compendium of National Legal Responses to COVID-19, as well as the LAC19 website and associated outputs. The project is comparative constitutional and public health law in motion, providing unique insight into how to compare what is occurring in multiple nations as it is happening, as well as doing it at speed to keep the pace with a moving target. This panel will discuss how the project was conceived and how its methodology was chosen for having all reports speak a common language. Issues such as country-selection, finding rapporteurs, aspiring to neutrality in reporting, grasping on-the-ground facts in authoritarian settings with constrained information, and incorporating the gender dimension, are some examples of overarching challenges in project design. The discussion will lead to broader reflexions on how to conduct comparative constitutional law in emergency settings.

17

Chair
Maja Sahadzic

Individual proposals

Democratic Backsliding and the Erosion of Liberal Values

18

Chair
Päivi Leino-Sandberg

Next Generation EU – A New Generation of Law on Financing the EU?

The COVID-19-pandemic is obviously a challenge to the world economy, and as such it hit the economies of the EU and its Member States. After some reluctance, the European institutions reacted by building the largest European support programme ever. In financing it, they opened the way for the EU incurring significant debt for the first time. Instead of formal Treaty amendment, this was enabled by a significant reinterpretation of what is possible under the current Treaties. In academia, the new rules are debated. While interpretation of EU law is a prerogative of the ECJ, the tendency to interpret EU law expansively challenges the reading of national constitutional bodies as regards the extent of Member States' obligations under the Treaties. Are we seeing a new generation of law of public finance in Europe – or just a tremendous breach of existing (Treaty and constitutional) law? And what are the constitutional implications of this method of reinterpretation?

**19**Chair
Johanna Fröhlich**Between a Rock and a Hard Place: Constitutional Reasoning in Latin America**

Court decisions are among the central objects of high hopes in Latin America – they are, however, among the least observed from an empirical and doctrinal point of view. Especially, in the midst of intense social mobilizations and diverse challenges to democratic institutions, measuring and discussing the reason-giving activities of constitutional courts in Latin America could be key for a rational and constructive discourse on a regional level. In this panel, we aim to provide a fruitful dialogue on constitutional reasoning supported by an original dataset of 640 observations from 15 jurisdictions of Latin America and the Caribbean. This might strengthen and refine existing theories on judicial/constitutional review as well as contribute to the heuristic assessment of constitutional reasoning in regions other than Western Europe and North America. Our presentations stem from a methodology using doctrinal and empirical perspectives, comprising both within- and cross-country variation.

20Chair
Matteo Winkler*Untitled Panel*

Many argue that non-normative identities, who do not align with dominant social and legal norms, should eschew encounter with law. Examples include non-traditional families, gender non-conforming individuals. On this view, law is unable to yield transformative effects or legal recognition is inherently dangerous. Gender studies have thus laid out an articulated critique to the ability of law to recognize complex identities, with law always ending up constraining a multifold matrix of identities. In the field of public international law, the difficulties vis-à-vis enforcement enhance skepticism towards law's effectiveness. On the other side, legal reform and litigation can be effective tools in bringing social change. They could do so not necessarily through their legal-technical force but through the discursive element injected into public discourse. The panel will offer an overview of the debate, by hosting different views and adopting an interdisciplinary and comparative perspective.

21Chair
Marco Goldoni**'Why Are We Still Together?' – The Role of Narratives in the 'Future(s) of European Integration'**

The recent debate about the 'future(s) of Europe Integration' is increasingly pervaded by voices of skepticism and mistrust. In the stories told by right-wing Eurosceptic governments and advocates of the Brexit votum, the EU is not depicted as a liberal constitutional entity guarding the freedoms of EU citizens against oppressive national tendencies. Rather, in these storylines, the EU is depicted as an oppressive force itself, as marginalizing the unique national identities of EU citizens. It is against this background that the proposed panel aims to explore the role of EU constitutional storylines in the present time of deep skepticism and mistrust. More precisely, this panel aims to examine how and by which means the current reality of the EU polity can be narrated that would allow for a more vibrant discourse about the 'future(s) of Europe Integration'. The role of EU institutions and the EU constitutional scholarship is thereby of special interest to the panelists.

22Chair
Felix Petersen**“Autocratic Legalism” in Turkey: Legality vs. Constitutional Democracy**

Legalism is instrumentalized by current autocratic regimes in various ways to consolidate their power. Most notably, authoritarianism is masked by legality in many occasions, and legalism is therefore enshrined in these regimes as the key to success in maintaining legitimacy. Not only does “anomaly” characterize democracy in these regimes, but so does legalism. Drawing on Scheppele’s views on the characteristics of contemporary “autocratic legalism,” the papers in this panel will elaborate on how contemporary autocrats reconstruct legalism in order to subserve it to reinforce authoritarian transformation. The ongoing democratic decline in Turkey marks one such process with a profound record of reconfigurations in the legal system. The panelists will discuss how autocratic legalism has recently become entrenched in Turkey through a number of specific areas, including the recent constitutional transformation.

23Chair
Maria Alessandra Sandulli**Shaping the Future of Health Law: Challenges for Public Law**

As a consequence of the COVID-19 pandemic public law response, we are facing the opening of a new chapter for national, European and global health governance. We cannot forecast the outcomes of the Global Health Summit of May, but we may expect that the ‘Rome Declaration’ will involve issues related to new health technologies. The pandemic shed light on the urgency to focus on ICT as a tool to deliver services outside the hospital network, developing new forms of territorial and home care. If E-Health is a key for the future of health law, it presents significant challenges for public lawyers, concerning questions of its safety, efficacy, and desirability due to the re-shaping of the doctor-patient relationship. What are the defining features of public law approaches to new health technologies? The panel focus on tools and legal consequences resulting from the redefinition of the doctor-patient relationship from liability and administrative control procedures perspectives.

24Chair
Sujit Choudhry**Author Meets Author: Zaid Al-Ali’s Arab Constitutionalism: The Coming Revolution and Madhav Khosla’s India’s Founding Moment**

This panel brings together Zaid Al-Ali, author of the forthcoming “Arab Constitutionalism: The Coming Revolution” (Cambridge University Press) and Madhav Khosla, author of “India’s Founding Moment” (Harvard University Press), to put their two books in cross-regional dialogue with each other. Each author will comment on the other’s book in light of his own, and the panelists and chair will comment on both books, from a regional vantage point to the extent possible.

25Chair
Rui Lancelo**Political Truth and Judicial Trust**

The relationship between “political truth and judicial trust”, address nowadays some legitimacy challenges. At a time when the perception of the legitimacy of political representation is questioned, in order to maintain the communication between State and society - necessary to social cohesion, the quest for a trustworthy consensus must readdress the issue of reshaping citizenship as a sense of belonging in a democratic and pluralist society and a way of revisiting the “social contract” doctrines. If courts do not frame their activity in adequate methodological terms and adopt frequently “passivist” approaches in sensitive issues. In this sense, the theory of constitutional and judicial reasoning is not confined to a discovery task of political and constitutional problems but rather requires an institutionalized legitimacy of management and control and has nowadays to be set aside with new forms of assessment of policy law making and court adjudication.

26Chair
Gustavo ArballoSpanish**Federalism Perspectives: Lessons from Argentina**

In this panel we will address some pitfalls and complications of federalism in practice. Federalism is not mere decentralization, but also a constitutional “big idea” that should be embedded with a fundamental rights approach. We will tackle both institutional and rights issues, set in the Argentine context, but in doing so we will also think -and argue- on the implications for the need to avoid the overcentralization perils while maintaining the substance and integrity of rights, which is also a global concern in political theory.

27Chair
Erik LongoIndividual proposals**How COVID Made It Worse: The Pandemic and the Exacerbation of Inequalities****28**Chair
Teresa Pareja SánchezIndividual proposals**How to (Re)Shape the Polity? Values and Principles in Constitutional and Administrative Law****29**Chair
Jacek Kurczewski**What’s Left after the Right: Five Years of “New” Constitutional Tribunal in Poland (2016–2021)**

Throughout 2015–2016 constitutional scholars around the world witnessed Polish Constitutional Tribunal attacked – and indeed conquered – by right-wing Law&Justice. As dust settled, and ‘Tribunal-in-name-only’ produced five years of its own jurisprudence, the ambition of proposed panel is to describe how this institution operates in legal, political and social sphere. What is the role of politically-controlled ‘Tribunal’ in illiberalizing democracy? How it fits among the other power centers? Is it still willing or able to protect individual rights – and if so, what kind of rights and what kind of citizens? How does it fare compared to its own infancy during the communist regime (1986–1989)? What was its role in facilitating further attacks: on the Council of Judiciary and Ombudsman’s Office? What happened to its goodwill accumulated among citizens and what strategies it employs to legitimize itself?

30Chair
Moritz SchrammIndividual proposals**Evolving Conceptions in International Law****31**Chair
Darin Johnson**Constituting Peace? Internationalised Constitution-Making in (Post-)Conflict Situations**

Constitution-making during or in the aftermath of armed conflicts has been a prevalent practice in the past three decades and has attracted extensive scholarly and policy attention. Yet, the changing dynamics of contemporary conflicts and the increasing internationalisation of conflict resolution processes require a re-thinking of the project of ‘constituting peace’ in (post-)conflict situations. This multidisciplinary panel offers empirical, critical and theoretical perspectives on internationalised constitution-making in such settings.



Session VI

Tuesday 6 July
15:20 to 16:50 UTC

Panels 32 to 44

32

Borders & People: Migration and Freedom of Movement I

Chair
Marcella Ferri

Individual proposals

33

Public Law and the Environmental Crisis I

Chair
Luca Golisano

Individual proposals

34

Beyond Political Constitutionalism

Chair
Tom Hickey

This panel seeks to get beyond the debate between legal and political constitutionalists, in part by identifying aspects of each that remain fundamentally compelling, and that might inform institutional design and practice.

35

International Influence on Constitution Making (Part A)

Chair
Hanna Lerner

Traditionally, constitution making has been imagined in national terms, as a quintessential expression of the “will of the people.” Yet since the early days of modern constitutions, their drafting has been embedded in an international context, influenced by foreign actors, institutions and ideas. Such external influence ranged from constitutional imposition led by occupying forces to voluntary constitutional borrowing, where local actors look at foreign constitutional models for inspiration, or invoke foreign constitutional principles and ideas for a variety of domestic political purposes. In recent decades a new practice of international constitutional influence has emerged, relying on various mechanisms of professional advising and guidance. The panel will explore the important role international factors are playing in constitution making from a variety of conceptual, comparative, historical and regional perspectives.

36

Book Panel on Michael A Wilkinson’s Authoritarian Liberalism and the Transformation of Modern Europe (OUP 2021)

Chair
Marco Goldoni

This book recounts the transformation of Europe from the interwar era until the euro crisis, using the tools of constitutional analysis and critical theory. Interwar liberalism, rocked by mass politics and social inequality, actively turns to authoritarianism in an attempt to suppress democracy, with disastrous consequences in Weimar and beyond. After the Second World War, economic liberalism is restored through a passive authoritarianism: inter-state sovereignty is restrained, state-society relations are depoliticised, and class struggle subdued. This transformation takes time to unfold and it presents continuities as well as discontinuities. It is deepened by the neoliberalism of the Maastricht era and yet counter-movements then also emerge. These are more actively repressed through the authoritarian liberalism of the euro crisis phase, leading now to an impasse. If the postwar order of authoritarian liberalism has reached its limits, there is yet to be a definitive rupture.

37

Chair
Sara Spuntarelli

Italian

Recent Transformations of the Economic Constitution

The panel concerns recent transformations of the Economic Constitution. Which is the current role of public powers in the economy? After the 2008 crisis, the European Central Bank has played a new role, cause of the absence of a unitary economic government, The shock due to virus COVID-19 has determined a change in the approach of European competition law: a new European temporary framework for state aid has been adopted. It has opened up more possibilities for public powers. The constraints of the fiscal compact have been suspended: it allows for greater spending possibilities but implies a more consistent public debt. In this context, it's central to reflect on social rights, which constitute a fundamental part of the Economic Constitution and a factor in wealth redistribution. New rights appear, first of all, the right to housing, on which there is a rich jurisprudence of the constitutional courts of member States.

38

Chair
Silvia Gagliardi

Gender, Religion and Identity Conundrums and the Rise of Populism and Nationalism in Central and Eastern Europe and Latin America

At a time of radical political and societal transformations in Central and Eastern Europe (CEE) & Latin America, the panel attempts to answer one key question: what role do gender, religion and identity discourses and legal reforms play in relation to the rise of populism and nationalism in CEE and Latin America? The panel would examine the intersections between populism, 'femonationalism' (Bader 2018 & Farris 2013), feminist politics and religion in CEE (Kalmár 2018). The panel would also investigate how nationalists (including femo- and ethno-nationalists) and nativists contribute to, perpetuate, and participate in Othering discourses and extreme populist narratives targeting ethnic, religious, and sexual minorities. Finally, the panel would consider the impact of discrimination and/or hate crimes onto individuals/groups in CEE & Latin America, as well as the socio-legal and political crises engendered by reforms affecting gender, religion and identity & their global repercussions.

39

Chair
Hannah Birkenkoetter

International Institutions' Role in Shaping Legal Concepts: A Comparative Showcase

The panel explores the role of international institutions in shaping legal concepts. This takes place on at least two levels: first, it is well-established that legal concepts are generally indeterminate and in need of interpretation and contextualization - second, legal concepts need to be understood in relation to other concepts, leading to complex balancing constellations. In legal spaces beyond the state, which enmesh in various heterarchical ways, concepts are particularly under-defined and malleable. Hence institutions' role in shaping legal concepts is crucial. At the same time, international actors are confronted with internal and external contestations over interpretations of the same concepts. In this panel, we take a comparative look at four concepts that were forged in different international institutional contexts: the rule of law and tenure security in the UN (Birkenkötter and Wadlig) - gender equality in World Athletics (Krech) - and the Consumer in the EU (Tagiuri).

40

Chair
Nico Krisch

Paths of Change in International Law I

International law changes more frequently and often more rapidly and easily than standard accounts suggest. This is one of two panels that seek to better understand the processes through which such change occurs. It uses insights from empirical studies and scholarship from international relations and international political sociology to enrich and question existing approaches and complement internal legal perspectives. It focuses especially on the way in which states interact with 'authorities' in the process of legal change – with actors and institutions that are recognized as being able to say with authority what the law means. Central questions include: which paths of legal change are dominant in a given context? What role do

states play vis-à-vis non-state authority? Why do actors choose to pursue change through one authority and not another? How do states respond to attempts at legal change they do not control?

41

Chair
Or Bassok

The ECtHR and Its Publics

As a regional court that speaks in the language of human rights, the ECtHR has a complex relationship with its “publics” in the member states. This panel aims to examine this relationship from various perspectives. Jens Theilen examines the different ways in which the ECtHR refers back to its publics in the justification of its judgments, particularly its references to European consensus. Silvia Steininger argues that ECtHR’s communication practices are an essential instrument for international courts to create loyalty in times of backlash. Shai Dothan and Dmitry Kurnosov explore the ECtHR’s scrutiny of violations of what is considered the clearest manifestation of public opinion in democracy: election results. Or Bassok examines the role of the European public in defending the ECHR as it was envisioned by the founders of the ECtHR and the role it currently plays in the ECtHR’s judgments.

42

Chair
Francisco Abreu Duarte

Big Data, Social Platforms, Protection and Use of Information

Individual proposals

43

Chair
Sara Brochet

Public Law and Feminism: Challenges and Evolutions in Gender Equality

Individual proposals

44

Chair
Margherita Volpes

New Developments in the Field of Social Rights

Individual proposals

**45**Chair
Raoni Bielschowsky**Brazilian Constitutionalism under Siege: COVID-19 Pandemic, Authoritarianism and Risks to Democracy**

While Brazilian state governors and mayors are for the most part making efforts to meet up the various challenges imposed by COVID-19 pandemic, the federal government is not operating in the same way. President Bolsonaro attacked local campaigns of authorities favoring social distancing and the Union did not provide means to the early acquisition of vaccines. Conflicts that arose from this scenario forced judicial intervention in many issues related to Brazilian constitutional arrangement. Brazilian Supreme Court and other tribunals ruled lawsuits about powers, functions and competences in Brazilian federalism. Health measures to contain the pandemic were questioned. Within this picture of intense disputes, the federal government promoted persecutions against its critics based on the National Security Law. This panel analyses different aspects of the pandemic's impact in Brazilian constitutionalism, bringing about discussions on social rights, federalism and budget arrangements.

46Chair
Kriszta Kovács**Can Constitutional Democracy Survive Populism?**

By focussing on the 'resilience' of constitutional institutions in the face of populist pressures, this panel moves beyond the debate on institutional corrosion. Kim Scheppele addresses the relationship between populist ideology & constitutional deconstruction, arguing that they are not inherently linked. George Tsebelis analyses the centripetal impact on party systems of providing multiple (non-cumulative) votes to each voter. Tarun Khaitan proposes 'moderated parliamentarism' as an optimal model drawn from debates between presidentialism vs parliamentarism & between majoritarian vs proportional electoral systems. Tom Ginsburg focuses on the conditions of institutional resilience in the face of populism, especially with respect to non-democratically legitimated institutions like bureaucracies, courts & militaries.

47Chair
Argelia Queral-Jiménez

Spanish

Fundamental Rights and Digitalisation

The Spanish Constitution (SC) was adopted in 1978, before the opening of internet. The SC has only one express reference to the digital phenomenon: art. 18. 4 SC, the so called right to data protection. Since then, any reform in this issue has been made, despite the fact that digitalisation entails an absolute transformation of our references in all areas: we have an analogical Constitution dealing with a digital reality. Regarding the constitutional system of rights and freedoms, digitalisation opens us up to a world in which relations have new paradigmas, not only in the public sphere, but also in the horizontal relations. Digitalisation has intensified relations between private parties and some of these individuals have immense power over our rights (private platforms as rights and freedoms "dealers"). Constitutionalism must provide responses to continue to ensure individual freedoms and collective rights and to avoid to return to the law of the strongest.

48Chair
Rui Lancelo**Challenges of Multilevel Legislation and Democratic Accountability**

In multilevel legislative settings, such as the European Union or a federation, several problems may arise from the necessary coordination between levels. These problems may be connected with the differences of techniques of legal drafting, the desire to resist or comply with supranational standards, and the level of commitment with the supranational level. There are also significant problems of democratic accountability, because the lower levels are bound by the need to legislate in compliance with obligations that are set by the supranational level,

and are accountable for choices that, ultimately, they did not make. This panel provides a reflection from both sides of the Atlantic, from the EU and from Brazil, that enter into dialogue about common problems and possible solutions.

49

Chair
Eugenio García-Huidobro

Roundtable on Comparative Administrative Law in Latin America: Present and Future

Over the last decade, interest in Latin American administrative law has been rapidly growing among comparative law scholars. The last years have witnessed a proliferation of monographs and handbooks, the organization of congresses, the teaching of seminars in law schools, and the creation of forums focused on the development of Latin American administrative law from a comparative perspective. This panel, organized as a roundtable with significant audience interaction expected, will reflect on the future of comparative administrative law in Latin America as a discipline as well as potential future directions in terms of themes to explore, methodologies, institutions, and research linkages with other fields, among other topics.

50

Chair
Pedro Caminos

Constitutional Law in the (Un)Making: International Law and Other Ways of Changing Public Law

The purpose of this panel is to reflect about institutional choices within a constitutional system. An institutional choice is a decision about the regulations or procedures that both constitute a branch of government or an administrative agency, or that provide for the governance of a public good. We are interested in institutional choices that have created new constitutional frameworks or that have changed already existing ones in a substantial way. In particular, papers that focus on factors for institutional choice such as international law or judicial implementation doctrines are specially relevant. In this way, we hope to grasp a better understanding about the making and unmaking of constitutional law.

51

Chair
Magdalena Correa

Economic Constitutions in Latin America

The Latin American constitutions adopted since the late 1980s introduced legal and political arrangement aligned with the notion of market social economy. This notion attempts to integrate market economics and social values. Despite the fundamental tension between the social and the market, this concept theoretically enables to engineer the social into the realm of the market. Against this backdrop, this panel would approach current debates about the features, tensions and future paths of economic constitutionalism in the region. Some of the questions this panel would address are: What is the genealogy of the notion of the economic constitution as it has been embraced by Latin American legal communities? What is the relationship between constitutional law and political economy? How does constitutional law give shape to particular economic orders at different scales? How could constitutional law address current challenges connected to the imbalances of global capitalism?

52

Chair
Vera Karam de Chueiri

Law in Pandemic Times and Its Impacts in Brazil: Analysis of Jurisdictional Measures in the Context of COVID-19

The panel proposed by CCONS -Center for the Studies of the Constitution of the Federal University of Paraná, in the context of the COVID-19 Observatory project, aims to analyze the jurisdictional measures, internal and international, in the battle against COVID-19. The panel proposes a dialogical methodology from an internal and international point of view. It explores the pandemic dialogues on human rights between Brazil and the inter-american human rights system stressing the role of the control of conventionality. The pandemic has heightened vul-

nerabilities and challenged consolidated legal standards. It also discusses the Brazilian genocide of indigenous people due to COVID-19 and the lack of institutional actions. It analyzes the role of the Supreme Court as well as the lack of coordination in the federative battle against COVID-19 pandemic. Finally, it discusses the frameworks of the access of justice in these cloudy times.

53

International Criminal Law: Challenging Issues

Chair
Gabriela González-Niño

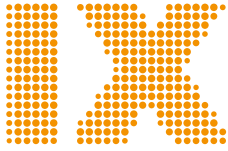
Individual proposals

54

Public Law and Individual Behavior: Theoretical Perspectives

Chair
Pablo Rivas-Robledo

Individual proposals



Session IX

Tuesday 6 July
19:20 to 20:50 UTC

Panels 55 to 63

55

Chair
Ron Levy

Levy, O'Flynn and Kong, Deliberative Peace Referendums (OUP 2021) Launch and Discussion

Peace referendums, which seek to manage conflict between warring groups, are increasingly common. Yet they remain erratic forces—liable as often to aggravate as to resolve tensions. A new book (*Deliberative Peace Referendums*, OUP 2021) argues that, despite their risks, referendums can play useful roles amid armed conflict. Drawing on a distinctive combination of the fields of deliberative democracy, constitutional theory and conflict studies, and relying on comparative examples (eg, from Algeria, Colombia, New Caledonia, Northern Ireland, Papua New Guinea, and South Africa), the book shows how peace referendums can fulfil their promise as genuine tools of conflict management. The book's three authors, Levy, O'Flynn and Kong, will be joined by Charles Sabel to launch the book, and by Silvia Suteu and Leah Trueblood to explore the topic of referendums. Suteu and Trueblood will also present their work on, respectively, referendum boycotts and referendums as representative democratic processes.

56

Chair
Julieta Lemaitre

Reframing Human Rights in a Turbulent Era

In recent years, human rights have come under fire, with the rise of political illiberalism and the coming to power of populist authoritarian leaders in many parts of the world who contest and dismiss the idea of human rights. More surprisingly, scholars and public intellectuals, from both the progressive and the conservative side of the political spectrum, have also been deeply critical, dismissing human rights as flawed, inadequate, hegemonic, or overreaching. While acknowledging some of the shortcomings, in her new book, *Reframing Human Rights in a Turbulent Era*, Gráinne de Burca presents an experimentalist account of international human rights law and practice and argues that the human rights movement remains a powerful and appealing one with widespread traction in many parts of the globe.

57

Chair
Paulina Macías

Individual proposals

Beyond Heteronormativity: Transformations in Family Law

58

Chair
Palmina Tanzarella

Regional Courts and the Sustainability of Democracy

Judgments issued by the European Court of Human Rights (ECtHR) and the Inter-American Court of Human Rights (IACtHR) generate significant legal and economic consequences on national landscapes. Their implementation at the national level is among the main indicators of the status of the protection of human rights and, ultimately, of the health of the rule of law and democracy in each State party as well as in the region. However, it is no surprise that in both continents, certain States seek to escape the scrutiny of the competent regional Court. The aim of this panel is to analyse the legal consequences of the implementation of the ECtHR and the IACtHR judgments at the national level, with a specific focus on cases in which the regional court Concerned uses the “democratic argument” (arguments related to democracy, political rights and electoral justice – Article 3 of Protocol 1 to the European Convention on Human Rights or Article 23 of the American Convention on Human Rights)

59

Chair
Andrés Martínez-
Moscoso

Regulatory Challenges in a Post COVID-19 in Latin America. Through Environmental and Human Rights Vision

Since the seventies of the last century, the international community has focused on the regulation that should exist regarding anthropogenic activities, which caused pollution to the environment, and therefore to the health of human beings. Subsequently, the concept of sustainable development was established under the premise that development could not be achieved only by using the resources from the present, and without thinking about the following generations (social, economic and environmental perspective). At the beginning of the current century, the international community adopted the Millennium Development Goals (2000–2015), which were the antecedent for the 2030 agenda of the Sustainable Development Goals, SDGs. The panel on doctrinal studies, analysis of emblematic cases and jurisprudence, as well as an international or comparative analysis of policies or regulations related to compliance by States of the region in the context of COVID-19.

60

Chair
Luca Giacomelli

Italian

Taming Chaos. Judges and Courts Grappling with the Challenges of the Pandemic

Never before have the world's democracies simultaneously experienced such a major contraction of civil liberties as during the "new" coronavirus pandemic. Italy, well-known to be the first European country overwhelmed by COVID-19, found itself in the uncomfortable position of having to experiment with the tools and strategies to tackle it. In the chaos caused by the sudden outbreak of the pandemic, the responses that the Italian legal system gave to deal with the emergency were fragmented and confused and endangered the constitutional order. However, the judiciary has proven to be independent not only from an operational but also from a substantive point of view. The contributions included in this panel will address, each from a different judicial perspective (administrative, criminal and constitutional) the reaction of the Italian judicial system to the restrictions placed by the government on the fundamental freedoms of individuals to face the health crisis.

61

Chair
Ana Maria D'Ávila Lopes

Violence against Indigenous Peoples in Latin America

Indigenous peoples have consistently been subjected to violence in Latin America. Their lands and resources snatched, their population has been reduced, and they have been compelled to accept state laws and policies. Unfortunately, despite efforts carried out in these countries and recent developments in international law, indigenous peoples' situation continues to be extremely worrying. Moreover, it is possible to add new ways of oppression to traditional forms, such as land grabbing or community leaders' persecution through misusing criminal law. The panel seeks to discuss these new forms of violence against indigenous peoples and explore eventual strategies to confront this phenomenon. Specifically, the proposal considers a comparative analysis, suggesting that unravelling some common patterns in different countries could help deal with an issue that the states have not yet overcome.

62

Chair
Emilio Peluso Neder
Meyer

Judicial Accountability and/or Judicial Independence

Judicial accountability is seen in confrontation with judicial independence. Populist and illiberal attacks on courts thrive on putting an end to judiciary accountability. Beyond being an important Jurisprudence matter, recent developments in constitutional design and politics have shown that the pendulum moves one way or the opposite one, ranging from suspicious measures of control to excessive autonomy without any responsibility. Poland, for example, presents the defiant case of the creation of a Disciplinary Chamber in the Supreme Court that asked for the jurisdiction of the European Court of Justice, crowning a process of judicial capture that has been widely criticized. Brazil, on the other way around, counts with a Judicial

Council with a case law with low accountability. This panel aims at debating the different ways by which accountability must be attached to independence without loss of any of these values, referring to comparative constitutional design and critical approaches.

63

Chair
Raquel Sarria

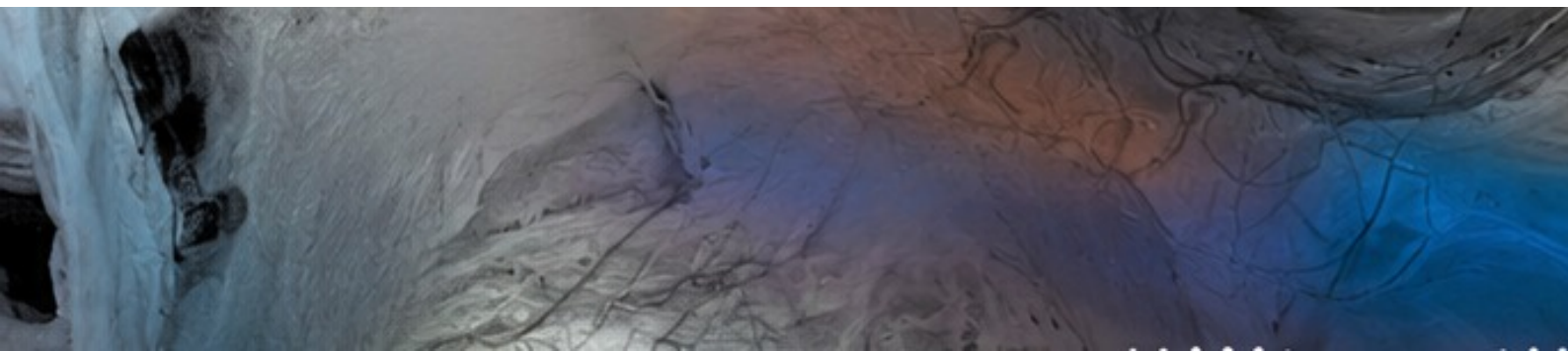
Individual proposals

(Still) a System of Check and Balances? The Separation of Powers to the Test of Modern Times I



Wednesday 7 July 2021

**Sessions X to XX
Panels 64 to 131**



**64**Chair
Samuel Issacharoff**Abusive Constitutional Borrowing: A Panel Discussion**

We live in a golden age of comparative constitutional law. Liberal democratic ideas have diffused readily around the world, and certain features such as judicial review and constitutional rights are now nearly universal. At the same time, recent years have seen a pronounced trend towards the erosion of democracy. And in their new book, *Abusive Constitutional Borrowing* (Forthcoming, OUP 2021), David Landau and Rosalind Dixon argue that the rhetorical triumph of liberal democratic constitutionalism, and the tendency towards democratic retrenchment, are fully consistent phenomena. Legal globalization has a dark side: norms intended to protect and promote liberal democratic constitutionalism can often readily be used to undermine it. Abusive constitutional borrowing involves the appropriation of liberal democratic constitutional designs, concepts, and doctrines to advance authoritarian projects.

65Chair
Melissa Castan**Challenge and Change in Australian Public Law**

The panel 'Challenge and Change in Australian Public Law' will take a wide-ranging look at recent issues of constitutional law and public law in Australia - ranging from accountability mechanisms in the context of COVID-19, regulating free speech, the recourse to the rule of law and responses within legal education of public law.

66Chair
Mayu Terada**The Comparative Analysis of the Governmental Measures against COVID-19 in East Asia**

East Asian countries have historically interacted with each other for centuries and still have cultural similarities today. However, the political systems of each country are diverse, and each country has adopted a different approach to the challenges of the COVID-19 pandemic. This panel is designed to explore, through comparisons among the four countries of China, Japan, South Korea, and Vietnam, the following issues: (1) how each country responded to the pandemic - (2) what were the legal causes that determined the response - and (3) what changes in the legal system occurred before and after the pandemic, and what changes are expected in the future.

**67**Chair
Sam Moyn**Saving Work, Saving Markets? Public Law and Policy Post-Covid**

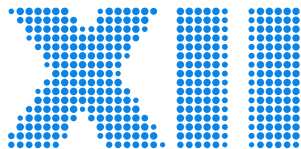
Liberalism - and hence market-based forms of ordering- and constitutional democracy are closely intertwined. Yet liberal economic models are facing unprecedented challenges, including challenges of rising economic inequality and concentrated economic hardship. Behind these trends also lie tectonic shifts in how markets operate globally - trends driven by increasing globalisation, automation, and “gigification” or the fissurization of work. Saving liberalism, and its promise, thus requires responding directly to these challenges, and finding new ways to “make work work” for democratic citizens in the future. It requires rethinking our attachment to free markets, and moving toward a stronger commitment to fair markets, or markets that combine a commitment to free exchange with a commitment to ensuring dignity for all, the taming of market power, and adequate state responses to externalities.

68Chair
Yukio Okitsu**Nationality versus Residence? Part I: Political Legitimacy between the Nation State and Local Communities**

Vis-à-vis a state, a person can be identified by nationality (the legal status of belonging to it) and residence (the fact of living in its territory). Both of these indicators coincide in most cases where people tend to live in the state of which they are citizens. It is no longer the case nowadays when people move across borders more frequently and live abroad more commonly than decades ago. This series of panels deals with questions raised by the incompatibility between nationality and residence. Part I addresses how the state’s political power can be legitimate as regards foreign people in its territory, where they are usually not given the right to vote. After presenting the conceptual framework and mapping out the issues to discuss (Okitsu), we will explore another model of political legitimacy based on local communities from both socio-legal (Ohnishi) and historical (Inayoshi) perspectives. Then a normative analysis will be given on the theoretical setting of our panels (Kondo).

69Chair
Suzanne Kim**Gender Equalities in Comparative Perspective: Canada, India, Hong Kong, Taiwan, and U.S.**

This panel engages Gender Equalities in Comparative Perspective between North America and Asia. The discussion highlights legal and social transformation bearing on gender equality in Canada, India, Hong Kong, Taiwan, and the U.S. Countering the narrative of “Western” pioneers, the panel will discuss India’s and Hong Kong’s groundbreaking interpretation of sex discrimination bans to protect SOGIE rights. Recognizing the crucial nature of access to justice, the panel will examine women’s engagement with legal systems in Japan. The panel will also address the continuing impact of family law on gender equality across jurisdictions. Discussion will explore the impact of recent Canadian divorce law reform in addressing inequalities facing vulnerable families, discuss the reconceptualization of family law as public law to promote equality for all in Taiwan, and address how recasting family law as the “law of care” can better attend to continuing obstacles to gender equality in the U.S.

**70**

Chair
Jorge Benavides O.

Spanish

Constitutional Justice and Rights

The purpose of this panel, which will be held in Spanish, is to discuss the role of Constitutional Courts in guaranteeing rights. Particular attention will be paid to the role of constitutional justice in times of the COVID-19 pandemic. The presentations included in this panel advocate for a necessary dialogue between the Inter-American Human Rights System and the national constitutional courts, to offer creative responses to problems of constitutional relevance that, otherwise, would not obtain a satisfactory solution if the source were exclusively national law. On the same path, the issue of integral reparation is shown as an alternative to correct the problems of structural inequality faced by democracies in the region. On the other hand, in the context of the COVID-19 pandemic, the jurisprudence of the Constitutional Court of Ecuador will specially when it comes to the declarations of state of emergency and their impact on rights.

71

Chair
Rosalind Dixon

Freedom of Speech in Comparative Perspective: A Panel Discussion

Freedom of speech is central to the liberal democratic tradition. It touches on every aspect of our social and political system and receives explicit and implicit protection in every modern democratic constitution. It is frequently referred to in public discourse and has inspired a wealth of legal and philosophical literature. The liberty to speak freely is often questioned - what is the relationship between this freedom and other rights and values, how far does this freedom extend, and how is it applied to contemporary challenges? The Oxford Handbook on Freedom of Speech seeks to answer these and other pressing questions. It provides a critical analysis of the foundations, rationales, and ideas that underpin freedom of speech as a political idea, and as a principle of positive constitutional law. In doing so, it examines freedom of speech in a variety of national and supra-national settings from an international perspective.

**72****Religious Freedom, Majorities and Minorities in Diverse Societies**

Chair
Kenny Chng

Individual proposals

73**Ideology, Dissent and (Dis)Trust at Constitutional Courts in Central Europe**

Chair
Polona Batagelj

This panel includes papers which will shed light on the judicial dissent and (dis)trust in Austria, Hungary and Slovenia. Democratic processes are aimed at building trust in new democratic institutions like parliaments and governments. But while disagreement and dissent are at the core of democratic debates, the impression that politicians ‘can not agree on anything’ and that their disagreements reflect ideological rather than substantial dividing lines, undermines trust in the new institutions. Is the same true of courts in new democracies?

74**Civic Action and the Rule of Law: Challenging Government Powers and Their Responses**

Chair
Sanne Taekema

Constitutional democracies in Europe struggle with the changing attitudes of citizens towards the legitimacy of their institutions. Legal actions by civic actors appear as a key component in the changing authority of governance actors. These include standard uses of legal procedure, such as strategic litigation, but the panel also addresses more informal law-based strategies, such as direct action through mass protest. Regarding the rule of law from a law-in-context approach, we focus on the relationship between civic actors and constitutional powers and investigate tensions between citizens and government institutions in rule of law terms. The panel’s focus is on our understanding of the mobilization of law by civic actors, the relationship between mass protest and individual action, cultural oppositions and legal education, and the appeal to the rule of law in the Brexit process as a case study.

75**European Security and Automated Technology: Social and Legal Perspectives**

Chair
Arianna Vedaschi

Artificial Intelligence (AI) and automated tools in general are at the forefront of technology breakthroughs in latest times and their use is becoming pervasive in any area of human life. Their potential in security-related activities quickly showed up as well. This is why this panel aims to discuss the resort to AI in security practice, focusing on both the European Union (EU) and some member states. Panellists will examine how, in selected cases analyzed by their papers, the use of AI is impacting – and perhaps even transforming – principles enshrined in EU law and in domestic constitutional law. The purpose of this panel is to shed light on new issues arising from the increasing use of advanced technology, not with a view to discouraging reliance on these tools – which would be anachronistic and leave unacceptable “competitive advantages” to those threatening security –, but with the ambition to concretely contribute to a more aware and rule of law-compliant use thereof.

76

Chair
M. Ehteshamul Bari

Liberal Democracy in Crisis: Spotlight on Bangladesh and India

Notwithstanding the intention of the founding fathers of India and Bangladesh to establish liberal democracies in their respective jurisdictions, decades later the citizens of these nations have been confronted with the stark reality that the institutions entrusted with the responsibility to protect their constitutional rights have abdicated their responsibilities. The inescapable (and continuing) effects of the COVID-19 pandemic have provided an insight into the conceptual and structural weaknesses in constitutional nationhood of these two countries. The proposed panel will discuss the health of constitutional democracy in the neighbouring states of India and Bangladesh through various lenses, including political legitimacy, dialogic judicial review, and creeping authoritarianism. The identification of points of difference within these similar contexts will reveal novel but transposable inter-jurisdictional learning.

77

Chair
Ford Fu-Te Liao

Reinvention by Necessity: Implementation of International Human Rights Treaties in Taiwan

For many countries, compliance with international human rights norms is a key way to ensure and strengthen public trust and rule of law in state bodies, particularly under the context of authoritarianism to democracy. Since the late 1990s, Taiwan has made considerable progress in adopting quite a few of the major international human rights instruments despite its troubled statehood. Those treaties are ICCPR, ICESCR, CEDAW, CRC and CRPD. The panelists will engage in: what legal, political and social forces do drive Taiwan to incorporate international human rights treaties into its legal system? In what ways and through what mechanisms are those human rights instruments implemented? What roles of the courts, NGOs, academia do play in implementing the conventions? How is the performance of those treaties reviewed and monitored? And finally, what progress has this implementation of core human rights treaties made, and what challenges does it still face?

78

Chair
Claudio Corradetti

Stretching the Idea of Jus Cogens: Moving beyond Standard Definitions and Applications

The idea of peremptory law - as norms that are valid independently from the will of states - is an old and long underused source of international law. The notion was part of a conceptual legal framework since Roman law, where a division was traced in the Digest between private and public law (respectively, peremptory law and *jus dispositivum*, that is, contractual law brought about by 'will' of power-entities). This division reached modernity under the label of "*jus cogens*", a peremptory law this time associated with public law. However, what is *jus cogens* today? How should we conceive it in times of crises? Which extensions of application can be imagined? Can literature help us defining fundamental traits of *jus cogens*? The panel investigates theoretical features and practical-legal puzzles in the definition and adoption of the *jus cogens* doctrine.

**79**Chair
Katarina Vatovec**Challenging COVID-19 Related Measures before the Constitutional Courts: Comparative Perspectives**

Since March 2020, the EU Member States have introduced a wide range of mainly executive but also legislative measures adopted to contain the spread of COVID-19 infections. These measures have severely interfered with democratic principles, human rights and fundamental freedoms. Their impact on daily lives have provoked differing views and attitudes within the civil society ranging from understanding the measures and complying with them to their denying and organising social uprisings. The novel coronavirus pandemic has thus brought many changes and it has raised many challenges. This panel will look into the legal challenges brought by adopted COVID-19 measures by focusing on the case law of the Constitutional Courts in four jurisdictions and from the human rights perspective. It will elaborate on the role of the Constitutional Courts and their adjudication in these challenging times, critically evaluate the relevant case law and suggest some conclusions from comparative perspectives.

80Chair
Seon-Taek Kim

Korean

Deficient Dêmos: Political Representation of Socially Vulnerable Groups

Democracy literally means 'self-rule by the people', i.e. rule by dêmos. In Athenian democracy, the concept 'dêmos' was conceived as 'all citizens', 'entire citizen body', or 'assembly' consisted of them, yet some groups of people were excluded. It demonstrates that dêmos was a rather institutionally constitutive concept. In representative democracy where rule by the people is substituted by the rule of elected representatives, the people are entitled to cast votes or run for the representatives. In this, the people who could not be represented are under the rule by others, not by themselves. They are conceptually incorporated within dêmos, yet excluded in political reality. Dêmos should not remain so deficient. Then, who are not constituting substantive dêmos in a modern democracy? In this panel, constitutional scholars from South Korea will talk about political representation of women, children and adolescents, and the disabled respectively with a focus on the Korean legal system.

81Chair
Giovanni Barozzi
Reggiani**Digital Revolution and Sustainable Development: Perspective and Challenges**

In the last 20 years the digital revolution, originally started with the internet and then grew with the spread of mobile devices, social networking, big data and networking clouds, has changed the world and the life as we knew it. The present panel aims to contribute to the scientific debate concerning the need for policymakers, companies and civil society actors to exploit the potential of digital systems in order to promote the access to public facilities and guarantee civil rights in a context of sustainable development.

82Chair
Ramón Yordanis Alarcón
Borges

Spanish

Dynamics of Cuban Public Law in the Face of the Emerging Challenges of COVID-19 and Its Impact on Legal Security

The coronavirus pandemic (COVID-19) has caused many challenges to democracy around the world. Under the new conditions, states must implement effective quarantine measures, as well as take decisions that justifiably and least restrict human rights. In the context of the pandemic, it is convenient to analyze how to guarantee legal certainty in the face of the legislative dynamics in Cuban public law, making it adaptive to the situation the country is going

through. The panel aims at assessing the dynamics of Cuban public law in the face of the emerging challenges of COVID-19 and its impact on legal security. It will address the public legal relations that underwent changes in this context of the pandemic and will offer assessments of its impact on legal security as an essential principle of our legal system.

83

Addressing Democratic Backsliding

Chair
Sergio Marques

Individual proposals

84

The Practice of Judicial Interaction in the Field of Fundamental Rights

Chair
Federica Casarosa

The EU is based on a decentralised enforcement system which relies on national courts for the enforcement of EU law. This presupposes first that national courts know and master EU law - second, that in case of doubt, they seek guidance from the Court of Justice - and third, that they are also aware of how EU law is implemented in other jurisprudence in order to respect the obligation to ensure uniform interpretation of EU law across the EU. Transnational judicial interaction among domestic courts from different Member States can illustrate the need for vertical judicial dialogue, seeing that diverging interpretations of EU law across the MS ultimately require the engagement of the CJEU. The panel will address the interplay between transnational and vertical judicial interaction cooperation in relation to the enhancement of fundamental rights in areas of public and private law with the specific attention to the added value of the EU Charter of Fundamental Rights.

85

EU and National Law: Relevant Interactions

Chair
Emanuele Peggi

Individual proposals

86

(Still) a System of Check and Balances? The Separation of Powers to the Test of Modern Times II

Chair
Sarah Murray

Individual proposals

87

Socio-Cultural Factors and Constitutional Legitimacy

Chair
Danielle Ireland-Piper

Individual proposals

**88****Reconciling Societies: Evolutions in (Transitional?) Justice**Chair
Daniela Neira

Individual proposals

89**Foreign Interference, Elections, and Democratic Speech:
Comparative Approaches to a Global Challenge**Chair
Yasmin Dawood

How can democracies protect their electoral processes from the harms of fake news and disinformation given the ubiquity of social media? What can be done if the electoral interference is conducted by foreign agents, organizations or states? Russian interference in the U.S. federal election in 2016 provides a vivid illustration of the threat of foreign election interference. This panel of election law scholars considers a wide array of legal responses to election interference, bringing to bear the experiences of several nations around the globe that have faced and responded to the challenge of foreign election interference. Scheduling request: We would be super grateful if we could please be scheduled for (1) UTC 19:00 - (2) UTC 20:00 - (3) UTC 21:00 or (4) UTC 11:00 -- we have 2 panelists in North American EST time, 1 panelist in Europe, and 1 in New Zealand - and these are the only times that are not in the middle of the night for any of us. Thank you so much!!

90**Global Approaches to Dissent: Theory, History, Law, and Action**Chair
Denis De Castro Halis

The panel addresses diverse theoretical and empirical angles of dissent within the law or despite the law. It reflects innovative approaches concerning the conceptualization of dissent, female resistance, divergent notions of nation and state, and behaviors of collective resistance in Hong Kong. Manifestations of dissent can be observed in all sorts of societies: from democratic and respectful of fundamental rights to extremely authoritarian. Those manifestations may offer alternatives to existing perspectives, which can trigger innovation or, antagonistically, which can reinforce the status quo. The panel's aim is to investigate, illustrate, contextualize, and understand dissent in history and in present times – how can it be or has been conceptualized, manifested, and received. Historical and recent illustrations of how resistance and dissent have been regulated are particularly important. The panel brings together scholars from different jurisdictions and contexts.

91**Historical Policy in a Democracy and Limits Set to It by the Human Rights Law**Chair
Uladzislau Belavusau

In recent years, governments in states in the Council of Europe have increasingly resorted to legal means to conduct their historical policies, often to the detriment of individuals' rights. Memory laws, i.e. legal provisions restricting freedom of expression under the criminal law sanction, have garnered the most scholarly attention in the study of this phenomenon. However, the governments also forayed into constitutional, administrative, social security, and other areas of law to support specific historical narratives and settle scores or come to terms with the past. Importantly, increased legislative activity in the domain of 'law and memory' often occurs in states where democratic standards are being intentionally dismantled. In this

panel, we discuss what limits does the international human rights law and constitutional law set to state's attempts at restricting individual's rights for the sake of historical policy. Panelists discuss examples from Turkey, Poland, Ukraine, Russia.

92

Chair
Gianluigi Palombella

The Separation of Powers in Political Theory and Social Discourse: Conceptual and Methodological Challenges

This panel will discuss the place and potential of the separation of powers in political theory and in social discourse. The papers presented will consider the relationship between traditional and more radical interpretations of the doctrine - the implications of these different understandings for normative understandings of constitutional democracy - and the role which these narratives may have in framing social understandings of inter-institutional relationships. Building on this theoretical discussion, the panel will also examine and critique potential methodologies for investigating and evaluating the effect of constitutional norms and narratives on institutional power.

93

Chair
Edoardo Chiti

Reshaping the European Economic Constitution? A Conversation on the Green Deal and Its Impact on the European Economic Integration Process

The European Green Deal ("EGD") represents an ambitious attempt to re-orientate the European integration process. It is a long-term regulatory project which affects transversally a wide number of areas of the E.U. legal system. This panel aims at opening a reflection on its potential impact on the European economic constitution, with the purpose of highlighting its points of strength and possible shortcomings. In particular, we would like to discuss whether the principle of sustainability laid down by the Treaties and developed in a number of legislations by sector should be operationalized, in the context of the EGD, as a real criterion for the redefinition of the priorities and regulatory tools of European public policies. Furthermore, we will explore the ways in which the EGD may modify the relationship between economic and social values, in particular in the field of competition law and economic regulation, as well as the current allocation of competences between M.S. and E.U.

94

Chair
Jacinta Dharmananda

Individual proposals

Rule of Law and Representation

95

Chair
Elena Escobar

Individual proposals

Developments in Freedom of Expression and Information

**96**Chair
Aristide Police

Italian

Anti-Corruption and Emergencies: A Difficult Balance between Macroeconomic Perspectives, Simplification of Procedures and Criminal Repression

The emergency related to the spread of COVID-19 has led to investments of public resources, facilitation of administrative procedures and reduction of criminal repression against public officers. This has caused a raise in corruption phenomena, which have been facilitated by the decrease in controls, by the suspension of competition rules and by a broad social tolerance owing to the crisis. Such conditions have shown the need for a balance among, on one hand, the promptness and, on the other hand, the transparency and legality of the public action. These raise the question which are the future anti-corruption models and whether new common bodies and global strategies are required. In this context, an important role is played also by the crime prevention system provided by Legislative Decree no. 231/2001, which, through organizational models, procedures and ethical principles, should guide the companies' action towards legality and transparency even in the emergency phase.

97Chair
Niels Kirst**Going beyond Judicial and Uniform Understandings of the Rule of Law**

In a democratic state governed by the rule of law, the principle of the separation of powers should be underpinned by trust, cooperation and dialogue. In order to guarantee that a state is governed in accordance with law, the position of the judiciary in a democratic state governed by law must be protected and the understanding of the rule of law should be coherent. However, the relationship between the role of the judiciary and state policies in responding to diverse needs in pluralistic societies is complex and that should not be overlooked. In the panel, we present four approaches to this issue. We will explore the constitutionalisation of the rule of law in the EU legal system, discuss threats to the rule of law on a national and EU level, assess the precarious balance between federalism and the rule of law, and consider the restrictions that should be placed on the legislator in creating interpretative provisions in order to secure the separation of powers.

98Chair
Wahab Egbewole**Public Law in the Eye of the Storm – Reflections from Africa**

The modus operandi of public life was altered in 2020 with the COVID-19 Pandemic. The implication of this is that the manner in which the law presently reflects to the activities in the society is increasingly novel. Given that the law and in this instance Public Law is a regulatory architecture of the way we interact the way we interact in the new normal becomes germane. This panel would reflect on the way various sectors of existence would react vis-a-vis the situation of the law. From the role of the judiciary to rights of vulnerable people, gender and ethics, the panel would provide reflections from the global south particularly Nigeria and seek to advance a path that could be walked on towards driving a developed society.

99Chair
Luigi D'Andrea

Italian

Representation, Participation, and Technologies after the Pandemic Crisis Outbreak

The panel focus on political representation, participation, and technologies after the pandemic crisis outbreak. After a general introduction, we would like to discuss how the use of new technologies affects the institutional and political sphere. Are we facing with a structural transformation of mechanisms of representation and participation? Are remote voting sys-

tems truly democratic? Are social networks a challenge for constitutionalism? How the net influences the public sphere? Are nowadays constitutional courts closer to the public opinion? We would try to answer analyzing different constitutional systems, with a comparative and interdisciplinary method.

100

Chair
Stephen Gardbaum

Revisiting Constitutional Law and Theory in Light of Brexit

Trump and Brexit are at the forefront of political discussions around the world. Many treat them as symptoms of the same phenomenon: the rise of populism, nationalism, and xenophobia towards immigrants and refugees. Both seem to repeatedly challenge constitutional limits on a variety of fronts. Brexit was approved in a referendum by a slim majority, with wavering public support and in spite of a reluctant Parliament. Yet, all British political players felt bound by its results and took steps to withdraw from the EU, absorbing the costs of trillions of dollars to their economy. Exclusionary policies may not be enough to explain the extraordinary politics involved. This panel examines why and how Brexit came about as well as its implications to UK constitutional law and comparative constitutional law more generally.

101

Chair
Kern Alexander

The 'New' ECB? (1): A Contextual Analysis of the European Central Bank

These three panels present a retrospective and prospective account of the European Central Bank (ECB). The hypothesis explored throughout the papers is that the ECB of today is a new entity from the ECB that was founded in 1998. This novelty can be seen to manifest itself substantively, institutionally, in the ECB's interactions with other institutions and in the way it conducts its policies.

102

Chair
Hanna Lerner

The Dogs That Didn't Bark: Failed Constitutional Proposals

In recent years, several countries have engaged in high-profile constitution-making exercises that led to fully-formed proposals, but new constitutions were not ultimately adopted. A short and incomplete list includes the well-studied Icelandic process, as well as Chile's process under the previous president, Yemen, Libya, Fiji, the Gambia, and Kenya's process of 2000–2005. In some of these cases, the failed process anticipated a successful one within a few years - in other cases the reform moment passed for good. This panel will conceptualize the category and analyze several high profile cases.

103

Chair
Tom Herrenberg

Free Speech in a Globalised World (Session 1): Globalisation and Theory

Historically, opinions that deviate from those held by the mainstream have often been restrained, suppressed, or discouraged. Traditional examples of the regulation of dissenting opinions include laws against blasphemy and sedition, while contemporary approaches to hate speech raise similar problems. Although such laws have long been on the books of nation states, we currently witness a globalization of censorship. The globalization of censorship has two key elements. First, supranational courts and bodies often determine or influence the scope of free expression within states' domestic legal systems. Second, the globalization of censorship is linked to technological advances. During various sessions, speakers will engage with the theme 'Free speech in a globalised world.'

104

Chair
Carlos Gallegos

Epidemias: Historia y Derecho (Epidemics: History and Law)

With the Coronavirus or COVID-19 pandemic decreed by the World Health Organization (WHO) on March 11, 2020, the whole world entered into a global health emergency situation, as the number of infected and dead people was increasing. Many countries adopted quarant-

ines and mandatory confinements to prevent the spread of the virus, and emergency measures, curfews, states of alarm and states of emergency began to be declared in order to mitigate the health and economic effects of the pandemic. In this context, we have begun to reflect on the different moments in history in which similar cases have occurred, from the 'Black Death' in the Middle Ages, smallpox, cholera in the nineteenth century and the Spanish flu of 1918. The historical view of pandemics, epidemics and diseases can be useful to analyze the similarities and differences in how these types of situations were faced, what measures were adopted and what were the consequences of these.

105

Chair
Samuel Issacharoff

Judicial Power and Judicial Strategy

How do courts enhance their position in a constitutional democracy? What strategies do judges employ to establish and expand judicial power? Do courts actually enforce constitutional duties? What role does judicial review play in protecting constitutional democracy against erosion and strengthening democratic institutions in fragile democracies? This panel explores these questions bringing together expertise on Asia, Europe, Israel, Latin America, and the United Kingdom, with Samuel Issacharoff providing commentary as discussant.

106

Chair
Julian Scholtes

The Future of Constitutional Identity in the European Legal Order

In the European legal space, constitutional identity is frequently invoked by national courts and governments as a limit to the authority of supranational law. However, initially welcomed as a possible alternative to traditional sovereignty-based discourses, it is increasingly decried as a fig leaf for arbitrariness, a breeding ground for nationalist populism in constitutional adjudication, and a corrosive force in the European legal order. Voices can be heard demanding we banish constitutional identity from our conceptual vocabulary, so as to not embolden the bad faith use of the concept. This panel will discuss the future of constitutional identity in the European legal order. Is the idea an inherently dangerous one? Has the concept become boundless? Or can it still be usefully retained? Is the abuse of the concept merely a symptom of the deterioration of constitutionalism in Europe in general? Can we sharpen the concept's boundaries without surrendering it?

107

Chair
Jiménez Alemán

Spanish

The Legal Challenge of Migrant Children

Children and teenagers are moving from their countries of origin to countries with better and safer living conditions. Sometimes, the migration project is that of their families, and the children are integrated into it. In other cases, they move on their own. It does mean a substantial difference in the relationship that these people will have with the host societies' legal systems. The response of the host societies to the unaccompanied foreign minors will be the perspective in this panel. Most models assume the tension of identifying these migrants as children. This tension, torn between protecting the vulnerable and rejecting those who migrate irregularly, can be inappropriately resolved. The breach could lie in the normative configuration of the reception model, the Immigration law, or in an administrative practice that creates barriers to the enjoyment of rights. The speakers, members of the IMNA research project (2018 IEA 5 00003) will address each of these aspects.

108

Chair
Alice Margaria

Trans Identities in Law: Developments and Challenges

Trans rights remain largely excluded in public law, undermining the trust between trans people and public institutions. To fill this gap, this panel discusses ongoing legal developments and uncertainties regarding trans identities in the law. The focus is placed on a plurality of challenging questions, which – in spite of an increasing scholarly interest in the subject – remain underexplored. The papers complement each other in many respects. First, they employ different methodological approaches to show the plurality of challenges that lawyers and activists face to analytically understand and normatively advance the identity rights of trans people.

Second, while some papers provide a wide(r) picture of legal attitudes towards trans populations, others zoom into specific loci thus offering (more) situated analyses. Third, the papers cover a variety of legal and socio-legal spaces, and make room for reflections on the relationship between national and supranational laws and governance.

**109**

Chair

Joseph H. H. Weiler

The Occupation of International Justice? Israel, Palestine, Law and Hollow Hopes

For over half a century, international legal scholarship has been preoccupied with numerous questions relating to the Israeli-Palestinian conflict, ranging from the very characterization of Israel's control over the West Bank and Gaza as a situation of belligerent occupation, through giving concrete content to the legal obligations arising from this control, for Israel, third states and other actors, to means of enforcing these obligations domestically and internationally, including through international criminal law. The ongoing nature of the humanitarian crisis in the region, the periodic resort to large scale violence, and the serious concerns about inter-generational injustice and lack of hope, once again raise the question of the extent to which the application of legal norms and the involvement of national and international legal institutions help or hinder political resolution of the conflict. This panel will examine the valence of common wisdom on these various issues, question the application of existing bodies of law and their legitimacy and effectiveness, and consider the role of the law more generally in controlling the use of power and in protecting human rights in situations of intractable conflict. The panel discussions will center around two books published in 2021 which address different dimensions of the topic: David Kretzmer and Yaël Ronen, *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories* (2nd edn, OUP 2021) Joseph E David, Yaël Ronen, Yuval Shany and J H H Weiler (eds), *Strengthening Human Rights Protections in Geneva, Israel, the West Bank and Beyond* (forthcoming CUP 2021)

110

Chair

Hèctor López-Bofill

Self-Determination and Secession: The Case of Catalonia

Sovereign States have always been reluctant to recognize wide interpretations of the right to the self-determination: they see in them a dangerous thread against their own political unity. That may explain why even international law provisions such as article 1.1 of the 1966 International Covenant on Civil and Political Rights declares that 'all peoples' have the right to self-determination. States have usually limited the scope of such right to the decolonization processes developed mostly in Asia and Africa after the Second World War. The present paper argues, in a different vein, that the recognition of the right to external self-determination encompasses other cases beyond the decolonization processes. It explores the path taken by some prominent international law scholars such as Antonio Cassese according to whom the right to external self-determination might emerge once the accommodation of a particular national people within a larger sovereign state is frustrated. In other words: the right to external self-determination, even within the context of a constitutional democracy (or precisely because of that) may appear when a State's internal processes of decision-making do not allow the peoples concerned to decide on their own political status. The paper explores to what extent such doctrine (also grounded in some opinions of the International Court of Justice) might be applicable to the Catalans' present situation considering both that the holding of a referendum on secession is severely repressed by the Spanish constitutional system and that Catalan's independence is supported by a large majority of the Catalan citizenry as elections to the Catalan Parliament have continuously revealed.

111

Chair
Tamar Hostovsky
Brandes

Solidarity and Public Law

In the face of threats posed by the COVID-19 pandemic, solidarity has become the term of the hour. The pandemic has raised questions regarding various types of solidarity: national, regional and global solidarity, economic solidarity intergenerational solidarity. This panel focuses on the notion of solidarity, examining the role public law plays and and should play in shaping, fostering and promoting various types of solidarity.

112

Chair
Helen Keller

Parenthood, Reproductive Rights and the European Court of Human Rights

The development of different human reproduction practices brought up important legal questions, particularly as regards parenthood and reproductive rights. This panel examines how some of these questions have been framed in cases before the European Court of Human Rights (ECtHR) and reflects on the Court's challenges to engage with them. First, the panel discusses the issue of surrogacy before the ECtHR with reference to two cases against Switzerland, a country where this practice is constitutionally banned. Then the panel will focus on the Court's potential avenues when dealing with cases of trans men giving birth. This will prepare the ground for a critical analysis of the Court's variable use of its methods of interpretation and its practical effects on reproductive rights in Europe. Finally, asserting that the protection from pregnancy discrimination is an essential facet of reproductive rights, the panel will examine the Court's approach in two recent cases on this topic.

113

Chair
Roberto Niembro

The Future of Public Law and Social Change in Mexico: Constitutional Reforms on an Independent Judiciary, Human Rights, Equality and Discrimination

This panel aims to analyze critically the future of public law and social change in Mexico. For that purpose the panelists will revisit some of the most important reforms to the Mexican constitution in the last twenty five years, which include the consolidation of an independent judiciary (1994–1995), with a strong judicial review (2011), and the recognition of human rights, in general (2011), and the rights of indigenous peoples, in particular, including the introduction of a non-discrimination clause (2001), and contrast it to the recent reform on the judiciary (2021). The panelists will revise not only the achievements on the adjudication of equality and non-discrimination by the Mexican Supreme Court, but also the pending matters, such as substantive equality, indirect and structural discrimination, varying from at large sexism, ethno-racism, ableism, elitism and classism, to gender discrimination within the legal profession and the judiciary itself.

114

Chair
Ferdinand Gehringer

The “Public Opinion” of Judges – An Area of Conflict between the Freedom of Expression and Judicial Independence

The number of disciplinary proceedings initiated against judicial dignitaries as a result of expressions of opinion in public is increasing. Recently, for instance, there has been an augmentation in the number of proceedings initiated primarily because of posts by judges in social media, for example on Facebook. Will judges in the future no longer be allowed to speak out publicly on issues that concern them, because otherwise they run the risk of being prosecuted in a lawsuit? Or are there even regional differences in the exercise of the Freedom of Expression, so that a judge in Eastern Europe is allowed to say more than a judge in Latin America? The difficulty for judges in this regard is always to perform the balancing act between their exercise of freedom of expression, preserving the dignity of the judicial office and ensuring the impartiality and independence of the judiciary, while keeping all interests in line.

115

Chair
Francisco Abreu Duarte

The Day after COVID-19: Constitutional Challenges of a Digital Post-Pandemic World

This panel looks at constitutionalism after the 'storm', imagining how the post-COVID-19 world will look like. The Day After COVID-19 is likely to have a different constitutional landscape altogether. Legal scholars ought to look ahead to the future and discuss how the pandemic might have changed fundamental rules globally. This prompts difficult questions. How will the pandemic affect the legal field as we move ahead? Are some of the emergency measures taken during COVID-19 times, or some of the technological developments made throughout these years, simply going to disappear as we exit this dark moment? Or will they provoke long-lasting change? This panel argues that COVID-19 constitutes an opportunity to affirm constitutionalism from a transnational and digital perspectives. It invites guests to reflect on the technological transformations that COVID brought as a constitutional significant moment for the future of the field.

116

Chair
Pablo Rivas-Robledo

The Effect of Transformative Constitutionalism on Democracy: Latin America and Beyond

The effect of Transformative Constitutionalism on Democracy: Latin America and beyond. This panel presents a wide view of transformative constitutionalism's performance across Latin America and other countries. Presidential term limits relaxation, transparency principle, democratic institutions assessment play a key role in our understanding of this new wave of constitutional law. Although the institutions addressed in this panel are central for democratic development, they have been understudied in the light of the novel idea of transformative constitutionalism. In this way, our panel presents a varied set of approaches and comparative evidence from Latin America as well as a deep analysis of particular regional cases.

117

Chair
Rivka Weill

Readers Meet Author, Margit Cohn's A Theory of the Executive Branch: Tension and Legality

Heads of executive branches, be they presidents or prime ministers, play a crucial role as leaders in all democratic policies, yet are concurrently required to be subservient to legislation meted out by a sovereign parliament. This panel discusses Margit Cohn's recently published book, *A Theory of the Executive Branch* (OUP, 2021), which offers a theoretical and comparative analysis of the nature of the executive branch and its powers. The paradox above, rarely discussed in a comparative setting, is discussed in the book by introducing a model of law that enables executives to act unfettered under a guise of legality. Thirteen types of 'fuzzy' law, ranging from open-ended texts to unimplemented laws, are applied in the book in two policy fields, emergency and air pollution, and in two systems, the United Kingdom and the United States. Presenting several aspects of the book, four public law scholars offer their comments. The panel ends with the author's response.

118

Chair
Giovanni D'Alessandro

Freedom of Expression and Religious Beliefs: Current Trends of a Challenging Balance

The equilibrium between freedom of expression and the protection of religious beliefs is always precarious and in progress. The balance that the legal systems establish is the result of a weighting among constitutional values and principles, international law standards, and political and cultural issues. In the panel, the speakers discuss current trends in a comparative perspective regarding ECtHR's jurisprudence, human rights norms developed in the international community, the Italian constitutional law and the new technologies. Even in the international community, as well as in the domestic legal orders, such a balance takes into consideration a variable set of values and arises from the prevalence of a political or cultural option.

The panel also focuses on the digital environment, where freedom of expression is displayed through the medium of private social platforms, which exercise forms of algorithmic censorship.

119

Pandemic and Challenges to International Law

Chair
Benjamin Joshua Ong

Individual proposals

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International and Constitutional Law: Historical and Theoretical Perspectives

Chair
Elena Escobar

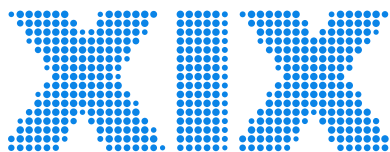
Individual proposals

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Populist and Popular Constitutionalism in the Age of COVID-19: Southern European Perspectives

Chair
Ifigeneia Kamtsidou

The COVID-19 pandemic invites us to reconsider our assumptions on populist constitutionalism, popular constitutionalism, and their relationship. How can the authority of experts –traditionally a target of populist attacks, also a founding myth of anti-populists– be further institutionalized and, if possible, democratized? How can the protection of public health be reconciled with economic survival taking into account popular concerns and considerations? How can governments effectively respond to the pandemic without sacrificing transparency, fairness, and popular participation? The panel, formed by members of the Populist Constitutionalism research project (PopCon), aspires to offer some perspectives on these and relevant challenges drawing from recent experience in Southern Europe.



Session XIX

Wednesday 7 July
22:00 to 23:30 UTC

Panels 122 to 125

122

Chair
Rosalind Dixon

How Rights Went Wrong: A Book Discussion

Rights are a sacred part of American identity. Yet they also are the source of some of our greatest divisions. We believe that holding a right means getting a judge to let us do whatever the right protects. And judges, for their part, seem unable to imagine two rights coexisting—reducing the law to winners and losers. The resulting system of legal absolutism distorts our law, debases our politics, and exacerbates our differences rather than helping to bridge them. In his important new book, *How Rights Went Wrong: Why Our Obsession with Rights is Tearing America Apart*, Jamal Greene argues that the US needs a different approach, and shows how to rethink the relationship between constitutional law and political dysfunction so as to recover America's original vision of rights, while updating them to confront the challenges of the twenty-first century.

123

Chair
Jaime Olaiz

Mexico's Constitutional Regression. When "Public" Is Everything

Mexico is moving rapidly towards a structural constitutional crisis of indescribable proportions. The present governing coalition is systematically implementing policies in overt transgression of constitutional dictates and within the current ruling elites regardless of the desirable but waning separation of powers such attitude is becoming increasingly regular. The theoretical and practical distinction between public and private is blurring as the government is waging constant attacks against all sorts of private initiatives within the social process due to the alleged collision of the private interest with the will of the People. Such assumption has led to put the governing coalition at odds with constitutional institutions and procedures. The distorting effects of these policies have utterly undermined the meaning and supremacy of the Constitution. This panel will discuss the current predicaments of Mexico's constitutional order and explore distinctive strategies to overcome them.

124

Chair
Danielle Anne Pamplona

ICCAL and Pandemic Dialogues: Inter-American Standards of Protection of Human Rights in COVID-19 Times

In the context of the pandemic, attention to human rights is even more urgent. The Inter-American Human Rights system has played the role of a watchdog for the States' international commitments on containing the virus and promoting social care with full respect for human rights in a comprehensive manner. Based on the ICCAL (Latin American *ius constitutionale commune*) perspective, this panel aims to critically discuss the interactions between domestic law and international human rights law in light of States' duties to save lives. Dialogues between jurisdictions and among various social actors should promote different ways of guaranteeing human rights as well as universal access to health treatments and basic needs. However, they could contribute to a deviation from this path, if poorly implemented. To face dialogue's promises and dangers is urgent because although the health crisis may end, it will leave severe impacts able of deepening inequalities in this already uneven region.

125

Chair
Ioanna Tourkochoriti

Free Speech in a Globalised World (Session 2): Religion and Minorities

Historically, opinions that deviate from those held by the mainstream have often been restrained, suppressed, or discouraged. Traditional examples of the regulation of dissenting opinions include laws against blasphemy and sedition, while contemporary approaches to hate speech raise similar problems. Although such laws have long been on the books of na-

tion states, we currently witness a globalization of censorship. The globalization of censorship has two key elements. First, supranational courts and bodies often determine or influence the scope of free expression within states' domestic legal systems. Second, the globalization of censorship is linked to technological advances. During various sessions, speakers will engage with the theme 'Free speech in a globalised world.'

**126**

Chair
Antonia Baraggia

Cities in Federal Constitutional Theory

Cities are unique spaces that play a crucial role as political, economic and socio-cultural actors in today's society. However, in spite of their increased importance, cities remain largely undertheorized and also misunderstood both in constitutional theory and in federalism theory. But urban agglomeration and the ever-increasing tasks that cities are required to perform represent challenges that constitutional law scholars and theorists can no longer ignore. The purpose of this panel is to have a theoretical discussion on cities as constitutional subjects in federal systems. The common thread linking the various papers included in the panel is that they introduce the city as a federal constitutional unit of analysis, and discuss the relationship between federalism, localism, and the city.

127

Chair
Natalie Alkiviadou

Free Speech in a Globalised World (Session 3): Hateful Speech and Democracy

Historically, opinions that deviate from those held by the mainstream have often been restrained, suppressed, or discouraged. Traditional examples of the regulation of dissenting opinions include laws against blasphemy and sedition, while contemporary approaches to hate speech raise similar problems. Although such laws have long been on the books of nation states, we currently witness a globalization of censorship. The globalization of censorship has two key elements. First, supranational courts and bodies often determine or influence the scope of free expression within states' domestic legal systems. Second, the globalization of censorship is linked to technological advances. During various sessions, speakers will engage with the theme 'Free speech in a globalised world.'

128

Chair
Ana Claudia Santano

Spanish

Social Rights and Rule of Law in the Future of Latin America

Social rights constitute a set of prerogatives capable of tackling the main existing social problems, such as inequalities and exclusion. However, these rights have never been the reality in the countries of Latin America, which have surrendered to the neoliberal policies of the last decades, preventing the realization of the most basic rights of their citizens. This challenge is even more complex with the advent of the COVID-19 pandemic, which will demand more energetic actions from Latin American governments to re-establish minimum conditions for a dignified life. It is based on this context of a troubled present, affected by government decisions with authoritarian contours and affecting the most varied fundamental rights of Latin American people, that a reflection about the future of this set of rights is endorsed, vis-à-vis the rule of law that is severely violated at its bases and that will need to recover after the pandemic, thus offering a fresh start for the next generations.

129

Chair
Juan Carlos Covilla

Reforming Institutions in Latin America. Can Courts Help?

There is a mismatch between ambitious constitutional commitments and weak state capacity in Latin America. The inability of administrations to discharge their duties is at the core of current distrust towards democracies. The Judiciary has tried to address the mismatch. Robust recognition of rights and mechanisms for their judicial protection characteristic of Latin American constitutions enable courts to engage in institutional change. Courts can facilitate capacity building by bringing attention, trust, and resources to an institution. But there are risks in courts assuming roles that they are not fit to perform. The panel presents examples from 5 countries that illustrate challenges faced by governments to meet their goals efficiently. Pa-

pers discuss cases and examine implications of judicial interventions for separation of powers and democracy. They present possible models to address critiques to judicial “activism” and reform alternatives that do not rely on courts.

130

Balancing Constitutional Competing Values

Chair
Lulu Weis

Individual proposals

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Constitutionalism, Rights and Democracy in the Future of Public Law in the Americas: A View from the National, the Regional, and the International

Chair
Lady Zuluaga

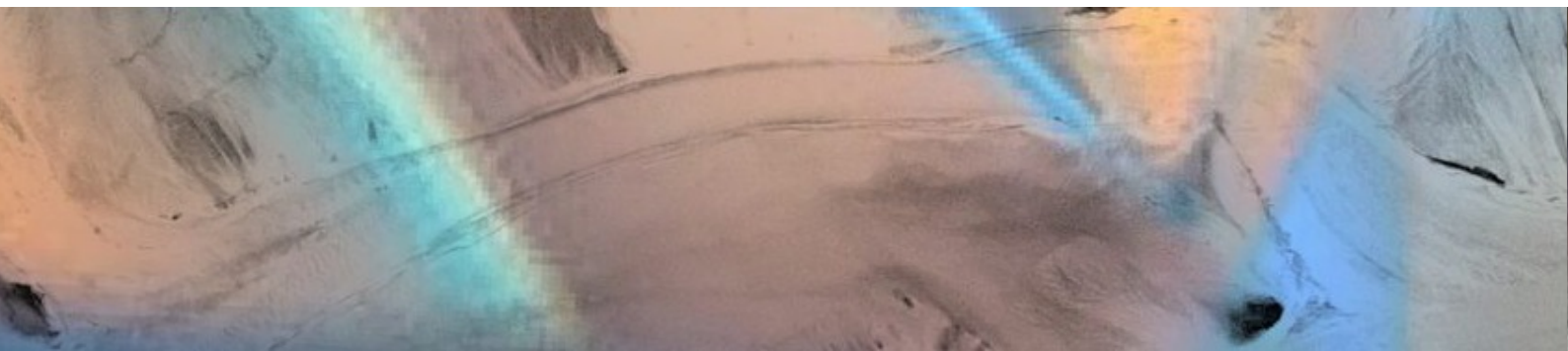
Spanish

The panel revisits the tensions between democracy and constitutionalism. This is not a new trope in the constitutional and political discourse in the region, nevertheless, it adds the elements of the regional and international spheres of law-making and rights adjudication which have added a particular spin to the different spheres of interaction between the construction of constitutional spaces at different levels. In doing so, the panel discusses and analyzes ways in which these tensions can be reconciled and harmonized. It will tackle issues such as the defense of constitutional review in democratic terms through the principle of collective self-government, the interaction between referendums and decisions involving rights in the context of constitutional reform, the place of the Inter-American Human Rights System as both a democratic actor and creator of legal standards in the region and questions involving prior and informed consultation in the context of constitutional review.



Thursday 8 July 2021

**Sessions XXI to XXXI
Panels 132 to 227**



**132**Chair
Shukri Shahizam**Constitutional Developments in Southeast Asia**

This panel explores contemporary constitutional and democratic developments in South East Asia, with a particular focus upon Malaysia and Indonesia. Where the former is concerned, Shukri Shahizam and Tan Kian Leong discuss the ongoing debate in Malaysian constitutional law over the existence of the basic structure doctrine, and the ramifications for the balance of power between a democratically-elected Parliament and the judiciary viz article 121(1) of the Malaysian Constitution. Relatedly, Stephanie Chng explores the same debate through the lens of legal theory and considers whether the jurisprudential position of proponents or opponents of the basic structure doctrine better coheres with the Malaysian constitutional makeup. Offering insights from Indonesia, Stefanus Hendrianto discusses his current project, 'Tocqueville in Indonesia', on how the ongoing upheaval of the familial, economic, and religious institutions have contributed to a corrosion of the country's democracy.

133Chair
Wahab Egbewole**Public Law in the Eye of the Storm – Reflections from Africa 2**

In this second panel, focus would be on the roles and positioning of the judiciary. Realizing the courts are important in resolving the conflict that would emerge in the new normal which among several other has gone digital, the panel would be examining the preparedness of Nigerian Courts to deal with issues such as corruption, rights of persons with disability, ethics etc. Additionally the panel would examine the roles of supranational judicial bodies also in meeting their mandates.

134Chair
Catalina Milos Sotomayor**Chile's Constitutional Moment: From Neo-Liberalism to a Social State?**

Growing global inequality compounded by the devastating effects of the pandemic is pressuring democracies to have a more active role in solving social problems. Chile, which is well-known for its neoliberal reforms implemented during the dictatorship (1973-89), is in the process to replace its 1980' constitution with a new one written in democracy. There are high expectations for this constitution to bring change in areas such as healthcare, education, pensions, and housing. There is ample political support for including economic and social rights in it and for expanding the government's role in delivering such rights. However, would a new constitution provide Chile with the tools to become a social state? How should these rights be implemented at the institutional level? This panel explores the role that social rights are playing in Chile's constitutional discussion and analyzes the likelihood of implementing these rights in a regulatory framework that departs from neo-liberalism.

135Chair
Erin Delaney**Authoritarian Populism and Constitutional Design**

This panel address the questions of whether and how constitutional, institutional, and democratic design is relevant to the task of countering authoritarian populism. It explores the possibilities and limits of "institutional self-defense" within democratic constitutional design by asking both whether there were significant vulnerabilities in countries like Poland that have succumbed to authoritarian populism and what we can learn from recent cases of "near misses," in which democracy survives such a threat. A range of different design principles are proposed and considered in terms of their capacity to help protect constitutional democracy.

At the same time, in either acknowledging or emphasizing the limits of constitutional design, panelists will also discuss the other components of a comprehensive strategy for preventing or resisting democratic backsliding or retrenchment.

136

Chair
Nick James

Teaching Law in a Climate Crisis

How do we teach public law in a climate crisis? The speakers in this panel will consider this question in the context of moral imperatives on universities, the ethics of collective action, contestation in public law, and the importance of First Nations perspectives on the challenges posed by climate change.

**137**Chair
Konrad Lachmayer**Social Contract Theory in the Age of Climate Crisis**

Although we are living in the age of climate crisis, constitutions are still not addressing the dramatic threat to human existence. This is due to the conceptual foundation of constitutional law in social contract theory. In the face of the existential dilemma jeopardizing civilisation the time has come to rethink the basic premises of social contract theory to update it to the realities of the age of climate crisis. The states have been furthering their own ends for decades, violating natural law's concept to leave enough, and as good for others. This threatens not only the right to preservation of those 'others' who live in most affected areas or are lacking the economic means to mitigate the most severe impacts of the climate crisis. A social contract theory for the 21st century must not only broaden in scope, but also lengthen in time. It is necessary to discuss the conceptual basics of social contract theory to overcome the state of ecological war.

138Chair
Darinka Piqani**National and Constitutional Identities: Perspectives from the CEE Region**

When 'national identity' entered the stage of EU law, many scholars hoped it would replace the disputed notion of sovereignty and deflate the ongoing struggles between the EU and its Member States. Yet, identity has brought its new problems and controversies, including a new tension between the Court of Justice and national constitutional courts as to who is competent to define a country's identity, national or constitutional. In this panel, we will examine identity from not only from the perspective of the EU's own court, but also from a national and comparative perspective. Furthermore, the panelists will explore four specific areas where identity has recently played a role: relocation of migrants, free movement of same-sex spouses, effectiveness of national criminal law, and the European Arrest Warrant. The aim of the panel is to use specific examples as a starting point for more abstract conclusions on the changing nature of statehood and identity in the EU integration.

139Chair
Ana Viana**Digital Public Law in Brazil: Instruments and Challenges in Developing Countries**

The rapid emergence of the 4.0 revolution reveals both positive and negative aspects. On the positive side, mention is made of the inclusion of citizens in decision-making processes, greater transparency, real-time connections, provision and purchase of online services. On the other hand, several negative consequences of digital transformation are listed, and they can intensify, which requires attention. The digital transformation is more sensitive in developing countries, given that they already have inequality in the offline world, and yet, they do not emerge as producers in the digital economy. In light of this, the panel's objective is to examine instruments used for open government, analyze digital inequalities and study the impact of public services on open governments and legal and technical challenges.

140Chair
Gary Lawson**Deference to Administrative Authorities – General Doctrine and Lessons from the COVID Emergency**

We originally hoped to present our 2019 book on Deference (OUP) in the 2020 conference. We explained there both why deference is such an important concepts - as a way to decide how to deal with previous decision - and aimed to provide a definition of and vocabulary for deference. At the time, we found deference highly underanalyzed and undertheorized. Since 2019 we learned: (1) That while we focused on deference in the US, similar questions about

its' legitimacy, legality and practice arise in many other jurisdictions. (2) That the potential danger of deference to administrative authorities is greatly augmented in times of emergency, such as the ours, when the power of the administration grows while judicial and political oversight lessens - deference potentially exacerbates such tendencies. We hope this panel offered will encourage wider, comparative, even interdisciplinary analysis of deference, with, the potential for an edited volume on deference in comparative perspective.

**141**Chair
Cora Chan**The Future of Public Law in Hong Kong**

For more than twenty years under Chinese rule, Hong Kong enjoyed considerable freedoms and the rule of law. However, developments in 2020–2021, including China's introduction of the Hong Kong National Security Law and its overhaul of Hong Kong's electoral systems, cast doubt on whether Hong Kong's liberal status can be retained. This panel considers the future of public law in Hong Kong from numerous perspectives, including the territory's law, judiciary, and legal profession, as well as the nature of the territory's legal order.

142Chair
Jean-Bernard Auby**A Research on Transnational Administrative Law as a Contribution to the Analysis of the Future of Public Law: Some Case Studies**

In complement of the previous panel, focusing on theoretical approaches, this one will also question the horizontal relations between domestic administrative laws and the limits of the principle of public law territoriality, but through more practical lens. Cases involving transborder public procurement and trans territorial cooperation, in particular in the areas of navigation in trans territorial areas, will be examined.

143Chair
Valentina Carlino

Individual proposals

Did COVID Make It Worse? The Pandemic and the Enhanced Threats against Democratic Freedoms**144**Chair
Andrea Simoncini**The Constitutional Challenges of the Algorithmic Society**

In recent years, the rise of the algorithmic society has led to a paradigmatic change where digital technologies have provided new opportunities for the exercise of fundamental rights and freedoms while also raising concerns about the role of constitutional democracies. The development of data collection, mining, and algorithmic analysis, resulting in predictive profiling – with or without the subsequent potential manipulation of attitudes and behaviours of users – present unique challenges to constitutional law at the doctrinal as well as the theoretical levels. This requires either the redrawing of constitutional boundaries or to revisit the relationship between constitutional law and private law, including the duties of the state to regulate the cybernetic complex, within or outside the jurisdictional boundaries of the state.

145**Evolving International Law**

Chair
Irene Parra Prieto

Individual proposals

146**A Matter of Justice: Judicial Review and New Remedies for the 21st Century**

Chair
Ron Levy

Individual proposals

147**The Relationship between Executive and Legislative Bodies in the Aftermath of the COVID-19 Pandemic**

Chair
Caterina Domenicali

Individual proposals

**148**

Chair
Nicola Lupo

Book Launch: Contemporary Constitutional Challenges to the Separation of Powers

This Book Panel draws on the recent book “New Challenges to the Separation of Powers” (edited by A. Baraggia, C. Fasone and L.P. Vanoni, 2020, Edward Elgar Publisher). An outstanding group of scholars will offer reflections on the themes of the book, which focuses, in a comparative perspective, on the multiple challenges and the transformations of the separation of powers. Invited commentators will examine the concept of separation of powers as it operates in theory and in practice across jurisdictions. Conveners: Antonia Baraggia (University of Milan), Cristina Fasone (LUISS Guido Carli University, Rome), Luca Pietro Vanoni (University of Milan).

149

Chair
Sabrina Röttger-Wirtz

Control in Shared Administration – The Enforcement of EU Law

This panel consists of 6 papers highlighting how EU law is enforced and controlled in different policy areas. The goal of the panel is to highlight the accountability gaps arising of the shared enforcement tasks in EU law.

150

Chair
Otto Pfersmann

Administrative Justice Fin de Siècle. Early Judicial Standards of Administrative Conduct in Europe

In order to investigate “The Future of Public Law”, an insight into the past of public law might prove to be very helpful and fruitful. A diachronic perspective allows to give a sense of how institutions and norms have changed over time. The panel will discuss the recently released book *Administrative Justice Fin de siècle. Early Judicial Standards of Administrative Conduct in Europe (1890–1910)*, edited by Giacinto della Cananea and Stefano Mannoni, which is the second volume of the new OUP Series dedicated to “The Common Core of European Administrative Laws”. The volume seeks to contribute to a better understanding of the foundations of administrative institutions. These years saw both a growth of governments and either the entry into force or the consolidation of mechanism of control on public authorities. Through a comparative analysis, the principles governing administrative action are identified, together with a focus on their development during that time.

151

Chair
Moritz Schramm

Individual proposals

New Technologies, Public Processes and Decisions**152**

Chair
Philipp Dann

Democratic Constitutionalism in India and the European Union

India and the European Union seem hard to compare at first sight, a state in the Global South here and a regional organization in the Global North there. Yet, closer scrutiny reveals that they share a core belief and a normative anchor – that democracy is possible even in vastly diverse societies of continental scale, and that a constitutional framework is best able to secure the ideals of collective autonomy and individual dignity. Both draw on the template of liberal constitutionalism to create lasting structures of democracy. But despite this similarity,

they have hardly ever been compared. The contributions to this panel are based on a long-running research project to begin this unusual comparison and uncover convergences, divergences - and the need for long-running conversations and 'slow comparison'.

153

Chair
Neil Walker

Entangled Legalities beyond the State

This panel will discuss the forthcoming volume, *Entangled Legalities Beyond the State* (Nico Krisch, ed., CUP, 2021). The volume suggests that in many contexts we should think of law in terms of an entangled web rather than as an orderly, coherent system. Bringing together eminent contributors from law, political science, sociology, anthropology, history and political theory, it also suggests that entanglements have been characteristic of law for much of its history. The book focuses on the ways in which actors create connections and distance between different legalities in domestic, transnational and international law. It takes into view examples from a wide range of issue areas, from the relationship of state and indigenous orders to the regulation of global financial markets and struggles over human rights involving different layers of law. On the panel, four contributors will briefly present their chapters and then engage in a discussion about core themes of the volume.

154

Chair
Giovanni Zaccaroni

The EU in Times of Post Pandemic Recovery: Reconciling Distrust and Solidarity?

The pandemic crisis response in the EU is the result of the combination and experience learned from different challenges. The Euro crisis, the migration crisis, the Brexit crisis, as well as the inherent regulatory crisis that affects the balance of competences between the EU and the Member States were opportunities to learn and to do better in future. A lot of things improved, primarily the attempt to respond to the pandemic crisis as a single bloc rather than as individual Member States or following the temptation of intergovernmental response. There is however an ongoing tension between the Member States and the EU, as well as between the different Member States. The pandemic hit the Member States in different ways, and, outside the common economic response, generated also a variety of different answers. Will this tension between the mutual distrust of the individual choices be reconciled with the need for a common overarching solidarity?

**155**Chair
Maartje de Visser**International Influence on Constitution Making (Part B)**

It seems unimaginable for a modern constitution-writing project to develop exclusively with reference to domestic conditions, and to be designed and executed exclusively by citizens of the State in question. In reality, of course, some form of international involvement or influence can be detected in most constitution-making processes, right back to the creation of the first 'modern' constitutions in the 18th century. Is the presence of external actors and/or ideas a boon or a bane, what effects might it have, and how should these assessments proceed, both pragmatically and conceptually? This panel will explore these and related questions by considering the history, practice and effects of international involvement in national constitution-making. In recognition of the importance of contextual inquiries, the contributors will consider a range of constitution-writing projects across time and space, and make reference to historical, jurisprudential and theoretical perspectives.

156Chair
Robert Siuciński**Legal Aspects of Self-Employment**

The aim of this panel is to present research conducted within an international project entitled "In Search of the Self-Employment Model in Poland. A Comparative Analysis" directed by Professor Tomasz Duraj and financed by the National Science Center in Poland (the project's registration number is: 2018/29/B/HS5/02534). The main goal of the research project is a comprehensive legal analysis of self-employment institutions, not only from the perspective of Polish legal regulations and case law, but also in terms of solutions in force in international and in the EU law, as well as in selected European countries. The results of the research will be used to develop an authorial legal model of self-employment in Poland, which will redefine the special legal status of self-employed persons.

157Chair
Zsolt Szabó**Legislation in the Visegrad Countries – Shortcomings and Opportunities**

In the past three decades, parliaments became central law-making organs within the constitutional systems of the new democracies in the Visegrad Group (Czech Republic, Hungary, Poland, Slovakia). Their main role, legislation is essential in fostering rule of law, however some negative factors, like rule by law, pressure from tight political agendas, the increasing amount of laws and inconsistency of norms cause bottlenecks. The panel will look at the legislation system of the four countries, including a critical analysis of these tendencies.

158Chair
Lukas Hamrik

Individual proposals

EU, Constitutional Authorities and Identities**159**Chair
Pierpaolo Forte**Local and National in Pandemic and Post-Pandemic Emergency**

The panel aim to discuss the problem of level of Government in emergency, both considering the distribution and coordination of administrative and statutory powers in relation with fundamental rights of individuals and the purpose – expressly stated in European and Italian laws and regulations – of tackling social and regional inequalities. Is universally acknowledged that

emergencies, economic crisis and change in the overall production process – due to technology development, environmental sustainability, climate changes and migrations – are powerful factors of improvement of existing inequalities. In such a framework, the panel is aimed to study how – in the perspective of Constitutional rules – in pandemic and post-pandemic scenario, public powers will be able to reduce inequalities more than improve it.

160

Chair
Andrea Averardi

New Patterns in Cultural Heritage Law

The panel is devoted to analyzing some profiles of the ongoing transformations of cultural heritage law. In this sense, in the panel will be discussed: the role of Unesco's decisions in the case of contested religious heritage - the evolution of the doctrine of the responsibility to protect, the introduction of the Faro Convention and the relevance of the notion of intangible cultural heritage - the impact of the COVID-19 crisis on the financing of culture.

161

Chair
Eoin Carolan

Rethinking Separation of Powers

This panel will discuss certain pressures that complicate the traditional tripartite understanding of separation of powers. Javeri will discuss the various theoretical attempts to explain or incorporate changes in public administration over several decades, and the continuing gaps in these theories to successfully discharge their burden of explanation. Khaitan will argue that the tripartite separation theories need to make space for a fourth--guarantor--branch of the state, already in place in the constitutional practice in several states. Guarantor branch institutions are constitutional institutions that seek to make it sufficiently credible that certain specific constitutional norms will be realised/respected. Hailbronner will argue that traditional systems of checks & balances are ill-equipped to deal with institutional malfunction or failure. She will explore the extent to which institutional failure & dysfunction legitimate the intervention of other institutions.

162

Chair
Anna Olijnyk

Individual proposals

Developments in Freedom of Expression and Information II

163

Chair
Thomas Beukers

The 'New' ECB? (3): Moving beyond Monetary Policy

These three panels present a retrospective and prospective account of the European Central Bank (ECB). The hypothesis explored throughout the papers is that the ECB of today is a new entity from the ECB that was founded in 1998. This novelty can be seen to manifest itself substantively, institutionally, in the ECB's interactions with other institutions and in the way it conducts its policies.

164

Chair
Amelia Simpson

Individual proposals

Borders & People: Migration and Freedom of Movement II

**165**

Chair
Richard Albert

A Conversation on “The Future of Constitutionalism”

This panel features an interactive discussion on “The Future of Constitutionalism” among leading constitutionalists around the world: Bruce Ackerman, Sterling Professor of Law and Political Science at Yale Law School - Luís Roberto Barroso, Justice of the Federal Supreme Court of Brazil, President of the Superior Electoral Court of Brazil, and Professor of Constitutional Law at Rio de Janeiro State University - and Menaka Guruswamy, Senior Advocate at the Supreme Court of India. This discussion is moderated by Richard Albert, Professor of World Constitutions and Director of Constitutional Studies at the University of Texas at Austin.

166

Chair
Alessio Bartolacelli

Private Challenges and Public Law. Reflections within the Jean Monnet Chair Business Law in the European Union and Sustainable Economy – BLEUSE

Law is a social science and, as such, it is in perpetual transformation. This transforming process may be stopped or accelerated, depending on a series of events (e.g.: political, social, environmental events). Therefore, the panel - that is the product of the research work carried on within the Jean Monnet Chair BLEUSE - aims at offering a wide-ranging reflection on the future of public law, especially in the light of guaranteeing a high level of sustainability and taking also into consideration changes that pandemic of COVID-19 is imposing. The panel involves the participation of scholars coming from different areas of legal studies and considers in general examples and forms of interaction between public and private subjects in answering our society's demands.

167

Chair
Joanna Harrington

The Role of Interdisciplinary Expertise in International Law

In our days, international judicial and quasi-judicial bodies are faced with epistemological and methodological challenges in the acquisition and assessment of evidence. Factual knowledge is increasingly searched and acquired through expertise, beyond the competence of international lawyers. As a result, these bodies have integrated scientific, disciplinary and technical methods. Those methodological innovations do not leave international law without echo: the role of interdisciplinary expertise does influence in various ways not only how individual disputes are settled, but also how international law develops. The expertisation of fact-finding can impact on judicial decisions, galvanise State practice, modify the interpretation of existing law, or instigate international law-making. The panel examines these issues, stressing also the role of experts.

168

Chair
Mathilde Cohen

The Public Law of the Body: Inequities in the Regulation of the Body in Its Productive and Reproductive Capacities

This panel critically examines the way in which various national and international legal systems regulate, or fail to regulate, humans qua producers of bodily secretions, reproductive materials, and people blurring established gender lines. In some contexts, regulation is welcome, or even essential, for individuals to have access to appropriate medical care and support, while in others, legal interventions risk stripping them of their autonomy, creating regulatory and other barriers to access. Panelists will contribute to deepening our transnational understanding of the legal status of the human body by uncovering the various commitments animating regulatory efforts or their absence and analyzing their distributive consequences, especially in terms of gender.

169Chair
Juan López

Individual proposals

(Still) a System of Check and Balances? Developments of and Challenges to the Separation of Powers III

170Chair
Bruno De Witte**Constitutional Principles and Migration Law and Practice in the EU, US and Canada: Influence and Cleavages**

Fundamental rights and the rule of law are understood as the bedrock of liberal democratic societies. Yet recent years have seen a backsliding in refugee and migrant protection in industrialised countries of the global North. Protection obligations have often been deflected, with containment and externalisation practices towards third States institutionalised. Fundamental rights violations concerning asylum applicants, refugees, and migrants have been characterised as systemic, or reaching the level of a humanitarian emergency. Against this backdrop, this panel explores the interplay between constitutional principles and refugee law and practice in the EU, US, and Canada.

171Chair
Luísa Netto

Individual proposals

Multilevel Jurisdictions: European Challenges

172Chair
Giacinto della Cananea**A Research on Transnational Administrative Law as a Contribution to the Analysis of the Future of Public Law: Theoretical Inputs**

In this panel, will be discussed some of the current steps of an ongoing research which is conducted within the “Transnational Administrative Law” Network, started in 2018. This research aims at shedding some light on the horizontal relations between domestic administrative laws and at exploring the limits of the principle of public law territoriality.

173Chair
Ignacio Giuffré**Book Roundtable on Democracy without Shortcuts**

This panel will discuss Cristina Lafont's recent book, entitled *Democracy without Shortcuts: A Participatory Conception of Deliberative Democracy* (Oxford U. P., 2019). The book offers a radical yet sophisticated reconstruction of a participatory conception of deliberative democracy and a participatory conception of constitutionalism. This essay departs from three controversial conceptions of democracy, namely: purely epistemic, deep pluralistic, and lotocratic. Against these alternatives, Lafont defends a participatory model of deliberative democracy, which considers citizen participation as fundamental to promote genuinely collective self-government. On this basis, Lafont defends a particular interpretation of the democratic value of judicial review. This deliberative and participatory constitutional conception departs from two other that are based on blind deference, which is incompatible with the ideal of self-government, either to majority rule or to the decisions of the courts.

174Chair
Imer B. Flores**The Future of Public Law: What Does Legal Philosophy and Theory Offers?**

This panel will reconsider the future of public law from the perspective of legal philosophy. For that purpose, the panelists will assess the contributions not only of Hans Kelsen, H.L.A. Hart, Ronald Dworkin, Robert Alexy, Catherine MacKinnon, Günter Teubner, among others, to pub-

lic law, but also its prospective for the near future. These contributions vary from their theories of constitutionalism and democracy, from institutional design to day-to-day adjudication via constitutional interpretation and judicial decision-making, including critical and feminist theories.

175

Chair
Valentina Carlino

Individual proposals

How COVID Made It Worse: The Impact of the Pandemic on Preexisting Crises

176

Chair
Luca Pietro Vanoni

Is Contemporary Public Law Enough? Domestic, European, and International Law Reflections on the ESM Reform and the ESM Pandemic Crisis Support

The ESM has been established in 2012 outside the formal EU legal framework by means of an intergovernmental treaty. In December 2017, the EU Commission presented a proposal for a Regulation on the integration of the ESM into the EU legal framework. In 2018 the Countries adopting the Euro currency started discussing its reform. In December 2019, a package of reforms was severely criticized by many voices, since it was considered a “missed opportunity to secure a broader and more ambitious reform package”. In January 2021, the proposed agreement amending the ESM treaty was concluded. A reflection on this contested process of reform opens a multidisciplinary panel, composed of reflections from constitutional, international, and EU law scholars. The reform has been taken far from public debates within national parliaments - the basic international law rules on these kinds of negotiations do not require a specific standard of transparency and accountability.

177

Chair
Elena Pribytkova

The Future of Extraterritorial Human Rights Obligations (1): Overcoming Dissent and Distrust

Extraterritorial obligations (ETOs) corresponding to human rights remain one of the most controversial and widely debated contemporary issues. Participants of the panel will discuss the future development of ETOs and ways to overcome skepticism and dissent relating to ETOs that still prevail in legal theory and practice. They will address various topical aspects of the theme including (but not limited to) ETOs in the area of socio-economic rights, ETOs relating to asylum policies, investment projects, education and health services, and sustainable development, as well as problems of the realization of ETOs in the time of pandemic. The panel aims to demonstrate that the legal recognition and implementation of ETOs as well as accountability of global actors for their violations of ETOs are essential for increasing people's trust to law and legal institutions.

178

Chair
Jose Michaus

Individual proposals

(Still) a System of Check and Balances? The Separation of Powers to the Test of Modern Times IV

179

Chair
Raquel Sarria

Individual proposals

Beyond Formal Constitutional Amendments: Different Ways to Change a Constitution?

180

Chair
Erin Delaney

Strategic Courts and Democratic Backsliding

There is renewed scholarly interest in studying the dynamics of constitutional revolutions and the explanations for the rise of constitutional courts around the world. At the same time, there is growing discussion of democratic backsliding and concern that democracies are exhibiting extremism, weakening of opposition forces and constitutional courts, and violations of civil and political rights that are pertinent to vibrant democracies. Scholars try to study both phenomena and understand the relationship between them. This panel examines how courts have reacted to democratic backsliding around the world, what strategies did they use, were they effective and, most importantly, were their decisions legitimate.

181**The Effective Protection of Human Rights: New Developments**Chair
Ngozi Chuma-Umeh

Individual proposals

182**Elections and Public Law: Challenges and Opportunities**Chair
Juan López

Individual proposals

183**Public Law and Feminism: Challenges and Evolutions in Gender Equality II**Chair
Alba Alonso

Individual proposals

184**Evolutions in the Field of Bioethics**Chair
Eugenio Velasco Ibarra

Individual proposals

185**Constitutional Change and Unconstitutional Constitutional Amendments: A Latin American Perspective**Chair
Sabrina Ragone

This panel explores different dimensions of constitutional change, focusing in particular on unconstitutional constitutional amendments and eternity clauses. First, it addresses the role of the Brazilian Federal Supreme Court concerning amendment proposals which may abolish unamendable clauses of the constitution - second, it expands on the Brazilian case, assessing to what extent constitutional changes, both formal and informal, have led to a “constitutional denaturation” - third, it addresses the issue from the perspective of parliamentary oversight. The panel aims to foster a debate on Latin American constitutionalism and constitutional change, providing insights on the role of different actors – not only courts –, as well as a theoretical and comparative understanding of the issue.

186**Nationality versus Residence? Part II: How the State Faces Noncitizens**Chair
Yukio Okitsu

Vis-à-vis a state, a person can be identified by nationality (the legal status of belonging to it) and residence (the fact of living in its territory). Both of these indicators coincide in most cases where people tend to live in the state of which they are citizens. It is no longer the case nowadays when people move across borders more frequently and live abroad more commonly than decades ago. This series of panels deals with questions raised by the incompatibility between nationality and residence. Part II addresses how a state treats noncitizens in its

territory, following up the analyses made in Part I. After outlining the state jurisdiction over foreigners focusing on civil procedure (Hatta), we will discuss whether and how to compensate for their lack of political rights in tax law (Fuchi) and international investment law (Hamamoto). Then we will trace history and explore a special device for the exchange of people between the west and the non-west: consular jurisdiction (Iokibe).

187

Chair
Manuela Losada
Chavarro

Individual proposals

Pandemic, Emergency State and Exceptional Powers

188

Chair
Benedetta Barbisan

Global Studies in Action: Citizens/Voters and the Future

This panel intends to illustrate some of the interdisciplinary research lines developed within the PhD programme Global Studies. Justice, Rights, Politics housed at the University of Macerata. This year, we will focus on some current phenomena that impend on citizens/voters and their political representation (both in national institutions and in the EU Parliament) in terms of imperative mandate and involvement in political parties - privacy in the pandemic - freedom against digital platforms - the Italian best practice of citizens' participation in a shared administration of urban commons. Does (and, if so, how) the relation between citizens/voters and authority change? With which benefits? How far is yet the completion of those crucial processes that are necessary for a healthy development of these transformations?

189

Chair
Vicki Jackson

The Role(s) of the Civil Service in Constitutional Democracies

Professors Dixon & Landau, in their I.CON paper on transnational constitutionalism and un-constitutional amendment, suggested that a meritocratic civil service had not been transnationally recognized as a fundamental constitutional value. Should it be? This panel will explore questions about the civil service, including: the degree to which existing constitutional provisions require or promote an independent and accountable civil service - the civil service's relationship to necessary degrees of checks and balances - its relationship to the need for "democratic competency," knowledge and expertise in contemporary public administration - its role in emergencies (like the COVID-19 pandemic) - the role of courts in protecting both accountability and independence of the administrative bureaucracy - and divergences in the civil service's constitutional position in distinct legal/political systems. After brief presentations by panelists, conversation among them all and with attendees will follow.

190

Chair
Giulia Tiberi

Transitional Justice and Constitutionalism: Towards a New Understanding?

As processes of transitional justice have been applied around the world in post-conflict and post-authoritarian societies, they have become widely recognized as valuable tools to support the establishment of rule of law, ensure accountability, and facilitate reconciliation. The panel will examine the interconnections between transitional justice and domestic constitutional frameworks in order to develop a deeper understanding of how the two fields can better serve their respective and mutual objectives. Based on the acknowledgment that both transitional justice and constitution-building should be designed and implemented as highly context-specific processes, the panel will discuss the growing number of comparative examples of how such processes actually interact and how together they can play in realizing the UN's SDG 16 on the promotion of peaceful, just, and inclusive societies through access to justice and effective and accountable institutions.

191

Chair
Vestert Borger

The 'New' ECB? (2): Institutional Settings 20 Years after Its Establishment

These three panels present a retrospective and prospective account of the European Central Bank (ECB). The hypothesis explored throughout the papers is that the ECB of today is a new entity from the ECB that was founded in 1998. This novelty can be seen to manifest itself substantively, institutionally, in the ECB's interactions with other institutions and in the way it conducts its policies.

192

Chair
Gráinne de Búrca

The Future of Extraterritorial Human Rights Obligations (2): Accountability of Non-State Actors

In the modern world, multiple non-state actors (NSAs) play an essential role in global decision-making, norm-setting and institution-designing processes. The panel intends to discuss the contemporary accountability regimes of various NSAs that do not correspond to the power and capacities these actors enjoy. There are still no binding human rights instruments regulating direct obligations of NSAs and they can rarely be held responsible for extraterritorial violations of human rights. Panelists will pay special attention to issues surrounding negative and positive extraterritorial obligations (ETOs) of multiple non-state entities (intergovernmental organizations, non-governmental organizations and foundations, transnational corporations, and armed NSAs), their obligations to undertake human rights impact assessments and human rights due diligence, as well as mechanisms and strategies of holding NSAs accountable for their breaches of ETOs.

193

Chair
Francisco Abreu Duarte

Constitutional Values beyond the State

Individual proposals

194

Chair
Moritz Schramm

A Matter of Justice: Judicial Review and New Remedies for the 21st Century II

Individual proposals

195

Chair
Pablo Rivas-Robledo

Theories of Interpretation in Public Law

Individual proposals

196

Chair
Gabriela González-Niño

The Adjudication of Human Rights: Practical and Theoretical Challenges

Individual proposals

**197**

Chair
Loredana Nada Elvira
Giani

Organization, Territory, and Community: Formulas to Safeguard Quality in Public Spending

The panel aims to analyse, with a critical and multidisciplinary approach, the delicate issue of addressing quality in public spending, an issue that is particularly felt in the present historical moment marked by extraordinary provision of EU funds. The themes of individual papers aim to raise critical issues that may emerge and highlight possible legislative and organizational solutions that may be adopted, with specific reference to Italian legal context. The analysis will not be limited only to a reconstruction of the regulatory framework, but attention will also be directed to the critical reading of the context conditions in which the various missions in which the PNRR is articulated are inserted, without neglecting, therefore, the need to implement that capacity building of administrations as a precondition for increasing the efficiency and effectiveness of the digitization processes.

198

Chair
Nadia Urbinati

Political Systems in Time of Pandemic. Citizens Distancing from Participation and Representation

The COVID-19 pandemic has affected the forms of exercise of the public powers and consequently the system of the sources of law. The coronavirus crisis has indeed become a truly democratic question, regarding the role of the Administration, the Parliament the local governments, and the effects on popular participation. In fact, during the pandemic distancing, citizens have been socially and politically marginalized (for instance, in Italy the elections have been postponed) and the political leaders have taken all decisions by themselves, thinking about consent much more than to the general interests. This is evident when it comes to the weakened role played by political parties and democratic bodies.

199

Chair
Denis De Castro Halis

Crisis or Inept Preparation for Democracy?

The panel addresses diverse theoretical and empirical angles of challenges in contemporary democracies. It shall offer approaches concerning constitutional democracy, dissent and its challenges in the Brazilian Federal System during the COVID-19 pandemic, the standpoint of scientists in the political deliberation of democracies, and the political responsibilities of companies in democracies. The panel's overall aim is to investigate, illustrate, contextualize, and reflect on whether common arguments sustaining a crisis in democracy do not hide, however, an inept preparation to perceive novel settings that are, in fact, indicating an advance of democratic ideals as never seen before.

200

Chair
Ingo Wolfgang Sarlet

Strengthening Fundamental Liberties on the Internet

The impact of the so called digitalization process in every single field of daily life (domestic, economic, social, political, cultural, legal etc.) constitutes a by far well known, widespread (to certain extent, even ubiquitous) phenomenon, and has led to a tsunami of theoretical and practical problems in the legal sphere, most of them not yet adequately settled. The state regulatory framework is even running after the facts and, besides some exceptions, coming late or too late. Besides this, the dynamics of the reality and its consequences, forces public and private actors to react and provide for adequate (effective) legal solutions, consistent with the premises of the constitutional and democratic rule of law. Digitalization, however, has an am-

biguous and quite paradoxical dimension, for being simultaneously an instrument for the protection and promotion of human rights and dignity, but also because it represents a huge menace for human values.

201

Chair
Giorgia Pavani

The COVID-19 Pandemic and the Challenges to Federal and Non-Federal States: A Constitutional Comparative Study

The last year has testified the challenges federal and non-federal states faced to respond effectively to the COVID-19 pandemic. The history of some states suggests that the federal government will centralize in times of crisis. From a comparative perspective it is possible to identify similarities and differences in consistently implementing measures in response to this exceptional situation. Scholars have been studying if and how the centralization of the crisis management is constitutional in some countries. The panelists will discuss this topic starting from the research coordinated by Marie-Christine Fuchs (Konrad-Adenauer Foundation) and Esteban Nader (National University of Tucumán) "COVID-19 and States in action: A constitutional compared study between federal and non-federal states". After analyzing the cases of Germany, Italy, Argentina, Brazil and United States a final discussant will stress the role of constitutional and supreme courts in that countries.

202

Chair
Flávia Piovesan

ICCAL and Pandemic Dialogues: Inter-American Standards of Protection of Human Rights in COVID-19 Times

The close interaction between domestic constitutional law and international human rights law is one of the driving forces behind the idea of the *Ius Constitutionale Commune en América Latina* (ICCAL). Yet, the contours of this dialogue between domestic, regional, and international actors have shifted over time. During the last decade, a stronger call for increased national subsidiarity has emerged, which calls into question the strong transformative ambition spearheaded by the Inter-American human rights institutions. This tension has become most prominent in the debate on the conventionality control and the margin of appreciation. This panel analyzes how those challenges have influenced – and will influence – the consolidation of a common constitutional legal space in Latin America. It brings together a plurality of perspectives to discuss how these dialogues can be structured in the spirit of transformative public law in Latin America.

203

Chair
Alessio Sardo

The Positivist Account and the Challenge of New Constitutionalism

The core of legal positivism is the separability thesis, which claims that the constitutional law can be explicated independently of morality. Positivism has been the target of myriad attacks. Within the non-positivist tradition, many authors invoke a moralization of constitutional theory. Legal orders seem to endorse objective principles that protect human rights. What's more, the notion of legitimacy and the integration of national states into supra-national institutional structures seem to endanger the idea of a hierarchical structure. New Constitutionalism fosters the adoption of non-positivistic forms of constitutional argumentation. If this is the state-of-the-art, we might legitimately ask ourselves: is this the end of legal positivism as a model for constitutional law?

204

Chair
Elena Escobar

Individual proposals

Judicial Review of Public Policies and Measures against the Pandemic

205

Chair
Jacob Mchangama

Free Speech in a Globalised World (Session 4): Hateful Speech Online

Historically, opinions that deviate from those held by the mainstream have often been re-strained, suppressed, or discouraged. Traditional examples of the regulation of dissenting opinions include laws against blasphemy and sedition, while contemporary approaches to hate speech raise similar problems. Although such laws have long been on the books of nation states, we currently witness a globalization of censorship. The globalization of censorship has two key elements. First, supranational courts and bodies often determine or influence the scope of free expression within states' domestic legal systems. Second, the globalization of censorship is linked to technological advances. During various sessions, speakers will engage with the theme 'Free speech in a globalised world.'

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Chair
Micol Pignataro

Individual proposals

Detecting Democratic Backsliding I

207

Chair
Azubike Onuora-Oguno

Individual proposals

How to Shape the Polity? Values, Principles, and Cultural Traditions

208

Chair
Ramón Yordanis Alarcón
Borges

Spanish

Roundtable on the Judicial Public Function in the Stage of the Pandemic by COVID-19. Overview in the Context of Cuban Public Law

Our panel in the framework of the ICON·S 2021 Conference, aimed at the future of Public Law, has among its main purposes to illustrate the performance, challenges and experiences of the judicial public function in the face of COVID-19, as one of the coordinates of public law in Cuba - as well as measures to prevent and address the risks and effects of the spread of the epidemic in the exercise of this function, with a view to its improvement.

209

Chair
Octaviano Padovese

Constitution and Inclusion – Challenges for the Coming Decades

Is it possible to think of modern democracy without the presence of the foreigner? Or, would democracy only be possible with the presence of the foreigner? Constitution became a matrix to guide the inclusion of the foreigner together with other statutes. Nonetheless, can we consider our current understanding of constitution and human rights enough to accept the foreigner? With multiple methods, this panel is seeking to shed some light on this issue. The coming decades may repeat what has been happening over and over. There is a general effort to phantom to grasp the roots of cultural intolerance, and several studies are looking for a better

contribution to reshape the institutions in order to make them more inclusive. All in all, we are after better comprehension of global consciousness that can reduce or dissolve any internal conflict related to the identity of the unfamiliar (Unheimlich).

**210**Chair
Michaela Hailbronner**Comparative Political Process Theory: Democracy and Trust**

We start from Ely's argument in *Democracy and Distrust* that courts should intervene in cases where we cannot trust the democratic process to set things right. However, Ely's arguments constituted a very specific attempt to defend the work of the Warren Court which do not make for a seamless fit with contemporary understandings of constitutionalism and the role of judicial review in many places. The question is therefore how useful political process theory and other procedurally oriented approaches to judicial review are today as tools to address cases of political malfunction, against the background not only of contemporary efforts at democratic erosion but also more routine problems of governance and deficits in the democratic process.

211Chair
Yaniv Roznai**Book Panel: Constitutional Statecraft in Asian Courts (OUP, 2020)**

Panelists will explore the arguments in Yvonne Tew's recent book, *Constitutional Statecraft in Asian Courts* (Oxford University Press, 2020). The book explores how courts engage in constitutional state-building in aspiring, yet deeply fragile, democracies in Asia. Drawing from the central examples of contemporary Malaysia and Singapore, Tew seeks to explain how courts protect and construct constitutionalism in the context of dominant political parties and transitions to democracy. This book explores the judicial strategies for statecraft that courts can use to entrench constitutional basic structures and to protect rights in a manner that is purposive and proportionate. The account aims not only to illustrate some of the key challenges of the Southeast Asia constitutional context but also to identify themes that resonate in other countries grappling with colonial legacies, histories of authoritarian rule, and societies polarized along racial and religious lines.

212Chair
Aldo Sandulli**Technological Innovation, Investments and the Future of Public Law: A Legal and Policy Approach**

The most recent developments in technological and scientific innovation are helping to counter the negative health, social and economic effects caused by the spread of COVID-19. National and supranational public-private investments should be considered decisive in supporting the innovation sector and accelerating the pace of scientific research. The choice of allocation of innovative investments depends heavily on the sensitivity of the political community. These choices raise some questions. How can European public law help to ensure that investments are directed to innovative and strategic sectors? How can European public law support long-term public investment choices in the field of innovation? How can European public law ensure that investment in innovation has a real impact on the environment, society, and economy? The purpose of the panel is to investigate these challenging issues through a specific contextualization, that can range from the European to the national level.

213Chair
Eszter Bodnár**The Possibilities and Limits of Judicial Dialogue in Theory and Practice**

Judicial dialogue has become a key concept of comparative constitutional law, international law, and European law in recent decades. While its existence is unquestionable, a closer analysis shows a wide variety of forms, actors, circumstances, and obstacles in this field. By presenting theoretical-doctrinal assessments and case studies, the panel aims to overcome the anecdotal knowledge and explores the methods and challenges of judicial dialogue. It

covers both horizontal dialogue (between constitutional/apex courts) and vertical dialogue (between international courts and national courts) and brings examples from the field of general constitutional principles, state institutions, and human rights. Finally, it also deals with the question of how the recent pressure on the constitutional, supranational and international systems challenges and changes the concept of judicial dialogue.

214

Chair
Patricia Mindus

The Right to Have Rights – 70 Years On

2021 marks 70 years both since the UN Refugee Convention was signed in Geneva and Hannah Arendt published her ground-breaking work on *The Origins of Totalitarianism*. In both, concern for the fundamental human rights of those unable to avail themselves of the protection of their state of origin intonates. Challenged, debated, and read in many ways, Arendt's overture which casts citizenship as "the right to have rights" – a formulation originally minted in a 1949 article but popularised in her 1951 book – still resonates in the basic distinction public law makes between *status personae* and *status civitatis*. The panel is a pluri-disciplinary panel including scholars from various areas of law (international, migration, constitutional and EU law), as well as from scholars in the adjacent and/or substantially contiguous fields (jurisprudence, legal theory, sociology of law, political science, IR). Both junior and senior scholars participate

215

Chair
Héctor Santaella

The Transformations of the Legal Sources in Latin America and Spain

Traditionally, the latinamerican legal systems are part of the civil law system. Nonetheless, the 21st century has brought strong transformations regarding the sources of law. Even though the legislative power is still the principal constitution developing authority, it is posible to see the judges, as well as the Public Administration playing a prominent role in the rule making process. Recently the American Convention of Human Rights and the jurisprudence of the Interamerican Court of Human Rights have come to take a very important place in the Latin-american legal systems with a heavy load of transformation of its structure and dynamics. The goal of the Panel is to address the discussion of the changes regarding precedents, administrative regulations and the American Convention of Human Rights and the jurisprudence of the Interamerican Court of Human Rights in the Latinamerican legal systems.

216

Chair
Pedro Lopes

Transparency in the Transposition of EU Directives: The Cases of "Nudging" and "Goldplating"

The costs of democratic decision-making processes degrade the relationship between citizens and representatives and diminish transparency. This is becoming more obvious as the EU widens and becomes more eclectic. Legislating through Directives has an upside as Member States keep their leeway in achieving EU goals. We intend to deepen the debate around two very strong subjects connected to the transposition of EU Directives: "nudging" and "goldplating". The EU Commission has identified 'gold plating' as a barrier to the single market and has recently reinforced the necessity of accessing the transposition practices by member states to ensure that that EU law remains fit for purpose and works in practice. Nudges, on the other hand, can be a strong tool for legislators as they represent cost-efficient and very adaptive instruments of attaining goals defined in public policies. However, there are strong ethical, legal and political concerns surrounding them which we put to debate.

217

Chair
Kim Lane Scheppele

Pandemic Populism? Emergency Powers, Authoritarianism and COVID-19

In reaction to the COVID-19 pandemic, many states took measures that violate human rights. Some of these measures were taken using existing or new emergency legislation. In some cases it has been argued that populist leaders used the crisis in order to consolidate (or rather

further consolidate) executive powers. This panel will consider this issue in a comparative way, including perspectives from Brazil, Hungary, Israel, Italy, Poland, Turkey, the United Kingdom, the United States, and Venezuela. The speakers will consider measures taken to combat the pandemic in respective countries, and reflect on if and how do these measures serve populist leaders, considering the relationship between emergency measures and regimes on the one hand and democracy (or its decline) on the other hand.

218

Chair
Antonia Baraggia

Book Launch – The Mimetic Evolution of the Court of Justice of the EU: A Comparative Law Perspective

This panel takes Leonardo Pierdominici's book "The Mimetic Evolution of the Court of Justice of the EU: a Comparative Law Perspective" (Palgrave Macmillan 2020) as the basis for an updated discussion on the role of the European Court of Justice throughout the decades. In the spirit of the book, the discussion will firstly focus on the organizational aspects of the Court taken as an institution and their development, by adopting a theoretical/analytical approach coupled with comparative analysis. In doing so, certain special features will be highlighted: the Court's autonomy in shaping its own organization and the federal judicial architecture of the EU, the Court's authority vis-à-vis political actors and national judges. The panel will critically reflect on these features, their importance in the integration project, their crucial role in the future. A discussion on the role of the Court in front of the actual challenges of the economic and rule of law crises will naturally follow.

**219**Chair
Micaela Alterio**Spanish****The Transformative Role of “Institutional Watchdogs” in the Pandemia: “Ius Constitutionale Commune” in Europe and Latin America**

The panel addresses the role of institutional watchdogs – especially of Parliaments and courts – in protecting democracy and human rights in Europe and Latin America, in a pandemic and post-pandemic world. Such protection is based on a “Ius Constitutionale Commune”, built through dialogues between national and international watchdog institutions, through the definition of common standards which guide different countries and regions. In this sense, Europe is a region composed of long consolidated democracies, and also of recent ones. Latin America is majorly composed of new democracies. However, in both of them, States have experienced measures such as: the enactment of state of emergency decrees, postponement of elections, and restrictions on a wide range of rights. Such a panorama indicates that the pandemic has increased the pressure on democracy and human rights in general. The answers offered by different regions to such challenges are the object of the debate.

220Chair
Christoph Burchard**English/Spanish****Book Discussion: The Proportionality of Punishment as a Constitutional Principle**

The panel is aimed at presenting the recently published book by Francesco Viganò, judge of the Italian Constitutional Court, dealing with the topic of proportionality of punishment (Viganò, *La proporzionalità della pena*, Giappichelli, 2021). The subject is addressed from a comparative perspective, especially through the lens of the case-law of constitutional courts. The key points of the book will be summarized in a working paper in English, made available in advance to the discussants, and briefly introduced by the author at the beginning of the panel. All panelists will take turns as discussants, to debate the strengths and weaknesses of the approach adopted in the book, aimed at framing the proportionality of punishment as a fundamental constitutional principle. The presence of scholars from different European (Germany, Italy, Spain) and non-European (Chile, United States) legal systems will certainly foster a comprehensive and interesting discussion on the book and on its topic.

221Chair
Jacob Eisler**Trends in Global Constitutionalism: Thoughts for ECR Scholars**

This panel will offer advice for young scholars hoping to establish themselves through publishing and engagement in the field of global constitutionalism. It will consist of editors of the journal *Global Constitutionalism* as well as young scholars who have been involved with the journal through workshops and publications. By drawing off recent editor-authored editorials, the panel will discuss themes and trends in global constitutionalism, and directions the field might be expected to take. It will in particular hope to highlight developments that ECRs might find fruitful veins or aspects of research as they hope to publish in journals focused on global constitutionalism. The panel will also offer advice on how to become involved in the scholarly global constitutionalism community, by offering perspectives both from scholars who have participated GlobCon ECR events and subsequently published in GlobCon, and from editors on what to think about and practical steps for involvement.

222**Democratic Backsliding, Political Debate and Representation**Chair
Elena Escobar

Individual proposals

223**Paths of Change in International Law II**Chair
Nico Krisch

International law changes more frequently and often more rapidly and easily than standard accounts suggest. This is one of two panels that seek to better understand the processes through which such change occurs. It uses insights from empirical studies and scholarship from international relations and international political sociology to enrich and question existing approaches and complement internal legal perspectives. It focuses especially on the way in which states interact with ‘authorities’ in the process of legal change – with actors and institutions that are recognized as being able to say with authority what the law means. Central questions include: which paths of legal change are dominant in a given context? What role do states play vis-à-vis non-state authority? Why do actors choose to pursue change through one authority and not another? How do states respond to attempts at legal change they do not control?

224**Rights and New Technologies**Chair
Sergio Morales-Barreto

Individual proposals

225**Gender in the Courtroom**Chair
Paulina Macías

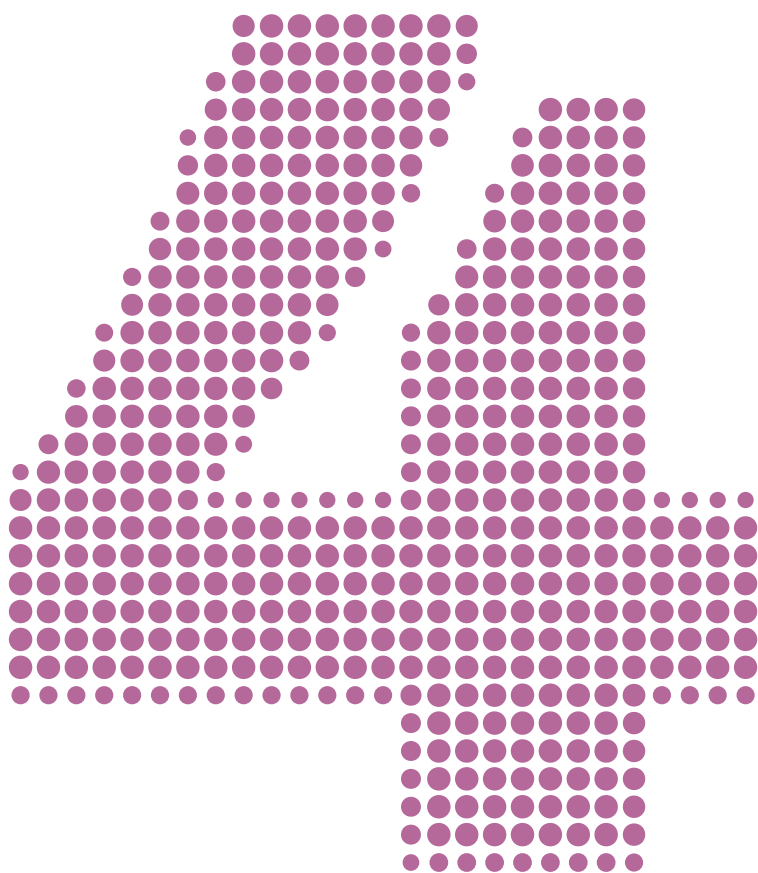
Individual proposals

226**Notions of Legal Personality: Developments and Opportunities**Chair
Azubike Onuora-Oguno

Individual proposals

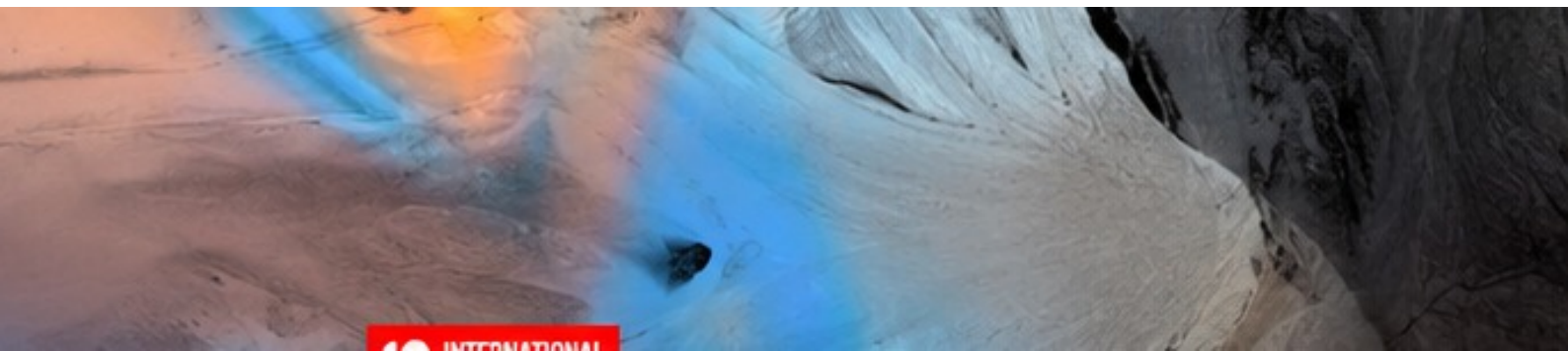
227**Public Law and the Environmental Crisis II**Chair
Chiara Cerbone

Individual proposals



Friday 9 July 2021

**Sessions XXXII to XL
Panels 228 to 289**



**228**

Chair
Maciej Serowaniec

Pandemic Poland. Impacts of COVID-19 on Polish Law

The aim of this panel is to present the most important legal problems related to the implementation of solutions aimed at preventing, counteracting and combating COVID-19 in Poland. The papers have been prepared within the project "How coronavirus impacts on... Polish Law", funded under the Excellence Initiative - Research University Nicolaus Copernicus University in Toruń Programme. In an expanded version, the papers will be published in a monograph "Pandemic Poland. Impacts of COVID-19 on Polish Law" by Brill Publishing House.

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Chair
Jean-Bernard Auby

Italian

The Smart City Challenges: Digitalization

The idea of smart city involves technological development through the massive analysis and use of data. In this context, PAs have to fill a crucial role to support the digital transition. The panel aims to analyze the process of realization of the digital growth objectives and how modernization of PAs becomes a priority for the revitalization of the country system, developing a program that includes every technological enabler necessary to offer secure and fully accessible services: infrastructure, interoperability, platforms, cybersecurity, urban and land management. The panel will address these issues, considering the challenges posed by the digitalization of PAs on the participation of the private sector, the role of data and privacy and the protection of fundamental rights. The progressive technicalisation of PAs can make their decisions opaque. This may require new or revised approaches to enable adequate judicial review of decisions made with the support of ICT and AI.

230

Chair
Robert Siuciński

Book Panel: Aneta Tyc, Global Trade, Labour Rights and International Law: A Multilevel Approach (London and New York: Routledge 2021)

This book provides a set of proposals for how best to guarantee effective enforcement of labour rights worldwide. The linkage between labour standards and global trade has been recurrent for some 200 years. At a time when the world is struggling to find a way out of crisis and is striving for economic growth, more than ever there is a need for up-to-date research on how to protect and promote labour rights in the global economy. This book explores the history of the field and also provides an overview of emerging trends and opportunities. It discusses the most recent problems including: the effectiveness and the role of the ILO, the WTO and its potential relevance in the protection of labour rights, the effectiveness of the US and the EU Generalised System of Preferences, the impact of Corporate Social Responsibility instruments on labour rights, and labour provisions in the international trade agreements concluded by the US and the EU.

231

Chair
Helle Krunke

The Rise of Non-Majoritarian Actors and Recent Developments in European Public Law

The defeat of authoritarian regimes in Europe throughout the 20th century marked the beginning of a new era for the spread and strengthening of liberal democracies. However, far from reaching an idealistic end of history with contemporary constitutions, the 21st century is presenting several challenges for European states with troubling instances of constitutional regression and degradation. Legislative assemblies, which are called to be the cornerstone of popular sovereignty, are currently struggling to exercise their role attributed by constitutions. As a result, unelected bodies play a major role in present-day challenges by ensuring constitutional integrity and the responsiveness of legal systems. This panel aims at exploring the

rise of these non-majoritarian actors within constitutional liberal democracies and their contribution to the recent transformations of European public law. Some examples include constitutional courts, consultative bodies, and the CJEU.

232

Chair
Anne Peters

The Future of Remedies against Immunity: The Italian–German Stalemate and Possible Ways Out

The Italian Constitutional Court's *Sentenza* 238/2014 represents one of the most interesting cases of 'dissent' in the contemporary dialectics between international law (and courts) and domestic legal orders. In denying Germany's immunity from civil jurisdiction over claims to reparations for Nazi crimes committed during WWII, the ItCC challenged the ICJ's Judgment of 2012 which had confirmed the principle of State immunity. Numerous cases are pending before Italian courts, cementing the stalemate. How to reconcile State immunity and the right to remedy for victims? How to square individual HR and the international rule of law? Is the *Sentenza* symptomatic of the evolving relationship between international and domestic law? The panel, composed of German/Italian scholars, will present some of the outcomes of the volume *Remedies against Immunity?* (MPIL/IRPA Springer 2021) and will suggest possible, future ways out of the current Italo-German paralysis against a shared European horizon.

233

Chair
Irene Parra Prieto

Detecting Democratic Backsliding II

Individual proposals

234

Chair
Adriano Martufi

EU Criminal Justice Cooperation, (Dist)Trust and the Future of Mutual Recognition

The panel explores the complex and multifaceted relation between trust and mutual recognition in the context of EU cooperation in criminal matters. Over the past few decades, the principle of 'mutual recognition' of judicial decisions has played a key role in shaping the EU area of freedom, security and justice. It allows for an increased and more effective enforcement of judicial decisions across borders while relying on the somewhat problematic postulate that Member States should have mutual trust in their criminal justice systems. The Court of Justice of the EU (CJEU) has thus defined mutual trust as a 'necessary implication' of mutual recognition. Against this background, this panel unravels some of the ways in which the notion of mutual trust has been interpreted and operationalized in the context of various mechanisms for EU criminal justice cooperation. It does so by discussing the current challenges to the notion of mutual trust in the area of criminal justice.

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Chair
Jean-Bernard Auby

The Smart City Challenges: Procurement and Innovation

Public databases now constitute a vast cognitive heritage for public administrations, capable of detecting, tracking and archiving public activities. In this perspective, it is of interest to apply data analysis to the field of public contracts in order to develop analyses useful for a more rapid adaptation to the changes underway. Starting from the statistical and descriptive analysis of the data, this panel aims to analyse the dialogue between the many disciplines involved, which can lead to predictive and prescriptive results, i.e. the formulation of special indices relating to the quality, efficiency and integrity of public activities. The panel will focus also on the need to foster digitalization of the public procurement cycle, promoting innovation through public demand and defining actions and procedures, used by contracting authorities to pursue innovation.

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Chair
Simon Young

Individual proposals

Federalism, Regionalism, Pandemic and Power (Im)Balances

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Chair
Giulio Napolitano

Beyond the Pandemic: A New Economic Role of the State?

The panel aims to analyze the impact of the COVID-19 pandemic on the economic role of the State. It seems to play a 'promotional role'. In this perspective, it is useful to take into consideration the administrative actions provided by the Italian and European strategy for digital transition. The State plays also a fundamental role to limit administrative burdens. As a consequence, it is necessary to examine the simplification procedures in the sector of public procurement, established by the Italian Recovery Plan, comparing them to those adopted by other European countries. Lastly, in 2020 and 2021, public authorities take fundamental decisions for the recovery of the economic system. It is essential to examine: the administrative measures taken by States in order support private enterprises, during and after the pandemic - the reforms of the foreign direct investments screening mechanisms, especially in EU - the export restrictions as part of the EU's pandemic response.

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Chair
Paul Burgess

The Rule of Law and Private Power

The rule of law sets the minimum requirements of a legal order that rejects arbitrary governmental power. It is understood to require public officials and private citizens to obey the law. Yet the problem of private arbitrary power poses a challenge for both aspects of the rule of law. The focus on public forms of arbitrary power can appear not only indifferent to private power, but can reinforce scepticism of regulatory action and aggravate its problems. And the focus on fidelity to law can not only create resentment when the state is seen as a partisan supporter of one group's domination of another, but it can enlist the state in enforcing private domination by suppressing actions that contest it. The panel explores the possibility that the rule of law has the resources for addressing the problem of private power. Each paper explores the hypothesis that the rule of law is an ideal that regards private arbitrary power as a rule of law problem much as it does public arbitrary power.

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Chair
Luisa Marin

The Pact on Migration and Asylum & Subsidiarity: Is There a European Added Value of the Proposed Measures?

The panel aims at bringing a new analytical perspective on the Pact on Migration and Asylum, by examining it through the lens of the principle of subsidiarity: this principle requires a comparative federalism exercise, by assessing the European added value of a proposed measure. In other words, a proposed legislation should be able to add what is missing to national administrations' efforts. Against this background, the panel covers an in-depth analysis on several proposed measures, such as the screening and amended border procedures, the solidarity dimension of the return sponsorship mechanisms (Marin-Pistoia), and the return procedure (Moraru). Next to it, some overarching questions will be examined in depth: it is the case of the financing by the EU of migration and asylum (Goldner Lang). The legal analysis will be completed by field-work empirical data, with a focus on what is happening on the Canary Islands (Barbero).

240

Chair
Iddo Porat

Towering Judges – Book Panel

In *Towering Judges: A Comparative Study of Constitutional Judges*, Rehan Abeyratne and Iddo Porat lead an exploration of a new topic in comparative constitutional law: towering judges. The volume examines the work of nineteen judges from fourteen jurisdictions, each of whom stood out individually among their fellow judges and had a unique impact on the trajectory of constitutional law. The chapters ask: what makes a towering judge - what are the background conditions that foster or deter the rise of towering judges - are towering judges, on balance, positive or detrimental for constitutional systems - how do towering judges differ from one jurisdiction to another - how do political and historical developments relate to this phenomenon - and how does all of this fit within global constitutionalism? The answers to these questions offer important insight into how these judges were able to shine to an uncommon degree in a profession where individualism is not always looked on favourably.



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Chair
Annalisa Volpato

Global Standards and EU Law: Challenges for EU Public Law

Standards made at global level are present in virtually every aspect of daily life. Despite their undoubted trade advantages in a globalized society, they are often produced through obscure procedures, without democratic credentials or societal involvement. These shortcomings in global standard-setting process raise legal concerns because these standards are often incorporated into EU and national measures. In fact, EU law is increasingly permeated by global standards which enter the EU legal system through different legal mechanisms. In this panel, the speakers will critically reflect on the incorporation of global standards in EU law via European legislative, non-legislative and soft law measures, and on the legal questions raised by this. Furthermore, it will examine the extent to which they respect basic tenets of public law, such as transparency and participation. Finally, it will consider questions of legitimacy in relation to the EU as multi-layered system and as global actor.

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Chair
Daria de Pretis

National Constitutional Justice in Context. Beyond the Dialogue/Conflict Dichotomy

The dichotomy of dialogue/conflict with the CJEU has re-emerged in many countries in relation to a series of prominent rulings by constitutional courts, the “Taricco saga” and the PSPP judgments being the most known examples. The same is true also with regard to the relationship with the ECtHR. This panel argues that a consideration of the specific features of each system of constitutional adjudication and of their context can offer insights that enrich the dialogue/conflict dichotomy – a dichotomy that is not always satisfactory. From a domestic and comparative perspective, we argue that constitutional courts’ attitude towards the European Courts does not merely depend on constitutional courts’ willingness to engage in either dialogue or conflict with the CJEU or the ECtHR. It also reflects concerns that are country-specific and call into question the effectiveness, the legitimacy, and the authority of national constitutional courts in a different way in each legal order.

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Chair
Carola Ricci

New Technologies, Rights and Inclusion of Vulnerable Persons: A Multidisciplinary Perspective

ICT, social and digital media, artificial intelligence are radically shaping the society we live in. They have become an integral part of individual and community life, especially after the pandemic crisis, which forcefully boosted the process of digitalization in due course. Most notably, for vulnerable groups at risk of social exclusion these new technologies represent an unprecedented opportunity to actively participate and be fully included in society. However, they also have the potential to discriminate against them, as well as to exploit their vulnerabilities in order to distort their capacity of self-rule in the digital environment. Against this background, this panel contributes to the literature on digital technologies from the lens of social inclusion. The following contributions will thus focus on vulnerable groups from a multidisciplinary perspective, addressing EU and national regulations along with the social consequences of digital exclusion.

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Chair
Antonio Saitta

Italian

Individual Freedoms and Social Responsibilities

The spread of the COVID-19 virus has profoundly affected the exercise of individual freedoms, has squeezed the enjoyment of social ones, has involved the sacrifice of many rights, even in their intangible core. The dualism between individual freedoms and social responsibilities can be a useful tool to interpret this moment and make proposals about the fu-

ture, given that many of the phenomena we are witnessing are linked to both profiles: from the tangible limitations to freedom of movement (the observance of which becomes problematic when perceived as “unjust”), to that of freedom of expression through social networks - from the social consequences of the free choice not to receive the vaccine against COVID-19, to obstacles to the exercise of other fundamental rights during the pandemic (defence rights in remote procedures - right to health in relation to diseases other than those caused by covid - right to employment and freedom to conduct a business).

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Chair
Murray Wesson

Individual proposals

Public Law and the Environmental Crisis III

**246**Chair
Piotr Mikuli**Accountability and the Law: Rights, Authority and Transparency of Public Power**

This is a Book Launch Panel. The organizers of the proposed panel are the editors of the book “Accountability and the Law Rights, Authority and Transparency of Public Power” (Routledge 2021). The editors of the volume believe that the term ‘accountability’ may be interpreted very broadly. This notion comprises various procedures for assessing individual behaviors of incumbents of state organs in the performance of their duties (comprising punitive ailments and rewards that they may befall), mechanisms involving reporting on this performance (reporting), and instruments that refer to material (organizational) substrates of a state organ or the whole branch of government. The papers will consider questions concerning the efficiency of accountability and transparency mechanisms and procedures.

247Chair
Michael Wilkinson**Book Panel: Signe Rehling Larsen, The Constitutional Theory of the Federation and the European Union (OUP 2021)**

Signe R. Larsen is a Fellow by Examination at Magdalen College, Oxford. This panel will see leading scholars in constitutional theory and EU law discuss aspects of her recent book, *The Constitutional Theory of the Federation and the European Union*. The book explores the constitutional theory of the federation as a discrete form of political association that cannot be understood based on the general theory of the state and its concept of sovereignty. The constitutional theory of the federation remains underdeveloped because federalism is generally approached from a state-centric perspective. By relying on a flawed distinction between a sovereign federal state and a confederation of sovereign states, the nature and foundations of federal authority have been misunderstood. Larsen’s book maintains that in the federation sovereignty is contested, repressed or absent. The theory of the federation sheds light on key issues concerning the constitutional nature of the EU as its recent crises.

248Chair
Jessica Holl

English

Constitutional Erosion in Brazil

In the last decade or so, the decline in the quality and quantity of democracies raises concern around the world. Instead of ruptures, academics notice a predilection for gradual methods of degradation of norms and institutions, with ambiguous phases, that only show their real danger when combined. This panel aims at debating Brazil’s erosion, which is underway at least since 2013. The debates include the protests known as “Jornadas de Junho”, comprehends the contestation of 2014 presidential election, Dilma’s Rousseff impeachment with no crime of responsibility, an increase of illiberal norms and measures, the militarization of politics, the judiciary’s role in political events as the candidacy of former president Lula in 2018 elections, Bolsonaro’s Government and even the COVID-19 pandemic.

249Chair
Oreste Pollicino**Digital Constitutionalism: Constitutional Approaches to the Challenges of the Digital Age**

The spread of digital technologies has raised primary questions for constitutional democracies in terms of protecting fundamental rights while limiting the exercise of discretionary powers. The rise of the digital age has not only provided opportunities but also challenged constitutional values. The protection of fundamental rights or the principle of the rule of law are just two areas where it is possible to look at how digital technologies are shaping traditional categories of constitutional law. The global pandemic has underlined this situation while showing how the governance of the digital age is shaped not only by public authorities but

also private ordering. This panel aims to examine the evolving relationship between digital technologies and the traditional boundaries of modern constitutionalism. The presentations are indeed connected by the fil rouge of digital constitutionalism as a new theoretical framework to study the evolution of constitutional law in the digital age.

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Chair
Izabela Schiffauer

Human Rights Diligence and Its Place in the Toolbox of Public Law

Contemporary human rights protection is affected by dysfunctions significantly undermining its credibility. Bias towards accountability for violations of civil and political rights rather than of economic, social and cultural rights - lack of human rights protection in international business and misuse of extraterritoriality for national interests count among such dysfunctions. This raises serious and contentious legal, ethical and political concerns. Yet such dysfunctions may be overcome if both public and private actors are committed to exercise human rights diligence, each within their scope of responsibility. These challenges will be approached from various angles, notably: human rights obligations incumbent on States under international law, conditions of extending the scope of current international human rights obligations to private law subjects and regional perspectives. Developments stimulated by such considerations have the potential to build up a new generation of public law.

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Chair
Miluše Kindlová

Normative Force of Established Constitutional Practice in Central European Countries

How do Central European countries deal with unwritten elements of their constitutions? What is their approach to the concept of constitutional conventions or, more generally, established constitutional practice, in particular? The panel aims to present the answers to these questions by looking at the distinct experience of three countries in Central Europe – Slovakia, Hungary and the Czech Republic. The members of the panel will, inter alia, study the relevant case-law of their respective constitutional courts and point out the evolving doctrinal reflection of this fascinating constitutional issue in their countries. In addition, the panel will use the benefit of the critique by a discussant from Poland, providing further comparative insights.

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Chair
Murray Wesson

Individual proposals

(Still) a System of Check and Balances? The Separation of Powers to the Test of Modern Times V

**253**

Chair

Michael Riegner

The Global South and Varieties of Constitutionalism

Liberal constitutionalism is under pressure. The wave of transitions to constitutional democracy and market economy in the 1990s marked the end of the cold war but not the end of history. While liberal constitutionalism has diffused around the globe, other varieties of constitutionalism have gained recognition, such as a “constitutionalism of the Global South”, transformative constitutionalism or constitutional authoritarianism. Today, economic crises, increasing inequalities, the rise of non-liberal powers and the resurgence of populism and nationalism lend particular salience to such alternative models. At the same time, the rise of constitutionalism in the Global South offers an opportunity to truly globalize the field of comparative constitutional law. This panel thus reflects on the role of the Global South in the diversification of constitutional experiences, on the variation of liberal and non-liberal constitutional models, and on ongoing processes of contestation.

254

Chair

Günter Frankenberg

Authoritarianism – Constitutional Perspectives

Constitutions of autocracies are by no means trivial matters. To move beyond considering them merely as façades or shams, the four basic elements of authoritarianism – executive-informal techniques of governing, political power as property, participation as complicity, cult of immediacy and imaginary communality – are linked to the (internal and external) audiences and (instrumental and symbolic) purposes of authoritarian constitutions in order to define their relationship to each other and characteristics more precisely. Constitutions are discussed as manuals of governing, symbolic politics, identity cards and/or showcases.

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Chair

Sanford Levinson

Constitutional Idolatry and Literacy in Times of Crisis

The panel interrogates the various postures that can, and should, be adopted by the general public vis-à-vis the constitution, in particular when the State is experiencing a crisis. A rise in authoritarian tendencies has cropped up around the world, making it worthwhile to explore how a genuine understanding of and identification with constitutional precepts can empower citizens to rise to the occasion. Responses to the COVID-19 pandemic have also led to dramatic changes in the operation of government and unprecedented restrictions on citizen movement that affect constitutional precepts. Drawing on a diverse range of national experiences, panellists will amongst others consider whether a state of crisis has sparked a greater concern for and commitment to written constitutions - the factors that shape public attitudes in relation to these texts - much value should ideally be ascribed to constitutions and the realization thereof in theory and practice.

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Chair

Juan López

Individual proposals

Eroding Democratic Discourses and Values**257**

Chair

Livia Lorenzoni

Defensive Bureaucracy

The panel focuses on the so-called defensive bureaucracy. Several empirical and theoretical studies have been carried out on the topic. The Italian legislator has recently adopted measures to limit public officers' liability and to reduce the scope of the criminal provision on the ab-

use of power, showing an increasing awareness of the issue. The aim of the panel is to analyse how the legal framework, including the case-law and praxis, influences public officers' risk perception and their defensive attitude. We assume that, along with the provisions on liability, other elements play a significant role in this regard, such as, the contradictory and overflowing legislation, its lack of predictability, the instability of Governments, and the lack of incentives for good and fast decision making. We will attempt to collect evidence on that hypothesis by providing suggestions on how to balance the need for an efficient PA with the need for holding public officials accountable for their actions.

258

Chair
Kostas Chrysogonos

Democracy after COVID: Challenges in Europe and Beyond

The outbreak of the COVID-19 pandemic in 2020 has had a tremendous impact on societies worldwide. This panel explores the democratic impact of this pandemic in Europe and USA from a comparative constitutional law and policy perspective. It tackles cutting-edge topics such as emergency legislation, judicial scrutiny of COVID-19 measures and executive decision-making during the COVID crisis. Moreover, the COVID-19 pandemic is treated as an international state of emergency that has enabled far reaching restrictions to essential human rights, such as freedom of movement, political rights or freedom of religion. The panel explores each of these pressing topics in this exceptional context and attempts to evaluate different state responses to the pandemic. Have they been reasonable, effective and democratic? Or is the COVID-19 pandemic just the beginning of a new era of global democratic backsliding? And if so, how can democracies effectively manage similar crises in the future?

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Chair
Tamar Megiddo

Global Platform Power, Algorithmic Governance, and Public Law Theory

Global information platforms (eg Facebook) and algorithmic systems for financial market regulation raise new questions about market, regulatory, technological, and political power and the various private and public legal technologies constituting, shaping, and potentially constraining such power. Our panel will offer novel perspectives on questions such as: Do public law theories provide a useful framework to analyze these transformations? Are shifts towards algorithmic governance and private control over information posing insurmountable challenges? Can we apply established public law principles (such as transparency requirements) or do we need to find new ways of confronting global platform power? How can public market regulators obtain the data necessary to fulfill their regulatory functions? Our panel will discuss these questions (and more) in an open and discursive manner with plenty of time for discussion with the audience.

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Chair

Marie-Christine Fuchs

Spanish

Conventionality Control in Parliaments of the Inter-American Human Rights System. Policy Brief Presentation

The protection of human rights in Latin America requires actions at multiple levels and the Inter-American legislative powers are called to be central actors to achieve this purpose. The Konrad Adenauer Rule of Law Program for Latin America has prepared this policy brief with a preliminary diagnosis of the use of conventionality control in the legislative process. Recommendations are made about why it is necessary and urgent to include the perspective of conventionality control in the legislative process, both in procedural and substantive aspects. Latin American lawmakers are —co-interpreters— of the American Convention on Human Rights and this panel aims to present not only the report but to engage in an open dialogue with the ICON·S academic community to collect suggestions about how the legislative branches of the region can improve their performance of this role.

261

Chair

Or Bassok

Constitutional Thought between Weimar and Nazi Germany

The collapse of the Weimar Republic and the rise of National Socialism in Germany continue to haunt constitutional thinking. This panel aims to offer new perspectives on this transition from democracy to totalitarianism. Katharina Isabel Schmidt offers a history of the § in the Third Reich, from Hans Kerl's "paragraph-gallows" to Justus Wilhelm Hedemann's "paragraph-less" People's Code. Or Bassok exposes how a conversation on nihilism and indeterminacy between Carl Schmitt and a law professor from Harvard led Schmitt – according to his own account – to adopt National Socialist legal theory. Giuseppe Perconte Licatese addresses a legal opinion Carl Schmitt wrote in 1935 with the aim of supporting the Gleichschaltung of the Free City of Danzig, i.e. its transformation from a pluralistic democracy to a one-party totalitarian State. Ville Suuronen examines Carl Schmitt's polemical uses of Roman law between 1923–1945 to examine the continuity and discontinuity in his ideas.

262

Chair

Yaniv Roznai

Constitution-Making, Constitutional Change and Unconstitutional Constitutional Amendments in Latin America

This panel focuses on constitution-making, constitutional change and the unconstitutional constitutional amendments doctrine in Latin America, and particularly in Venezuela, Chile and Colombia.

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Chair

Roberto Nania

Italian

COVID-19 and the Fragmented Protection of Rights in Italy: From Institutional Conflicts to the Uncertain Guarantee of Vulnerable Individuals and Groups

The COVID-19 exacerbated pre-existing structural inefficiencies and individual vulnerabilities. Therefore, the panel aims at exploring the impact of institutional conflicts on the protection of fundamental rights in the Italian system during the pandemic. Moreover, the fragmentation of guarantees is also caused by the inadequate use of scarce resources, that should be addressed by the National Plan for Recovery and Resilience. For this reason, the discussion will focus on these two main issues which are closely connected. Firstly, shortcomings and tensions between State and Regions will be analyzed. Indeed, such contentions also resulted in harsh judicial disputes. Secondly, we will thus examine the impact of the above-mentioned

systemic weaknesses on specific “minorities within minority” who are not usually at the heart of the political interests and of the academic debate. The member of the panel who will act as translator is Giulia Santomauro.

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Chair
Thomas Bustamante

Democratic Backslide and Resilience in Brazil: Strategies for the Protection of Democracy, Human Rights and the Environment

Democracy, human rights and the environment are at great risk in Brazil. After thirty years of democratic regime, with indisputable achievements in such matters, the country faces a scenario that adds up: (i) the rise of an extreme right charismatic leader - (ii) attacks on democratic watchdogs (courts, press, and civil society organizations) - (iii) setbacks in the protection of minority and vulnerable groups - (iv) aversion to environmental defense. In such a context, the panel has the purpose to reflect on the current situation of the country, as well as on strategies of resistance against setbacks. With this purpose, it looks back over the past few years, analyses the present and identifies challenges for the future. The papers are the result of a research carried out by several academics and gathered into a book called: “Democratic Backslide and Resilience in Brazil: the Dispute for the 1988 Constitution”.

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Chair
Stéphanie Hennette
Vauchez

Distrust in Anti-Discrimination Law? Limits to and Backlash against Anti-Discrimination Law: Comparative Perspectives

Anti Discrimination Law (ADL) is being met with challenges both internal and external in a number of countries. Internal challenges have to do with limits, difficulties and uncertainties in the actual operation of ADL. External limits have to do with the resistance and reluctance its deployment is met with. This panel wishes to foster a comparative discussion on these issues. It brings together theoretical inquiries (B. Havelkova reflects on the relationship between general equality clauses and ADL, based on Czech law - S. Hennette Vauchez revisits questions raised in the late 1950s by Hannah Arendt on the power of law in the face of prejudice and discrimination), comparative work (M. Möschel presents current resistance against ADL in a range of civil law jurisdictions - J. Suk explains current constitutional developments in the US with respect to the ERA) as well as prospective reflections (J. Ringelheim reflects on the relevance of ADL in the face of socio-economic disadvantage).

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Chair
Fruzsina Gárdos-Orosz

The Impact of Artificial Intelligence on the Rule of Law

Our panel aims to provide a deeper understanding of the new challenges on the rule of law set by the rise of modern technology, especially by artificial intelligence. These entities not only influence always more fields of our daily life, but also are involved in the exercise of public power in certain countries, and it is expected, that such use of artificial intelligence will spread widely in the foreseeable future. This tendency requires exceptional carefulness from us due to the growing risk of undermining the existing principles and safeguards of the rule of law. The panel will conceptualize how the current standard of fundamental right protection shall be maintained and how the different branches of law (public international law, criminal law, constitutional law) shall reflect on the rapidly evolving role of artificial intelligence in the administrative and judicial decision-making to avoid the relativisation of numerous well-established basic frameworks.

Book Discussion on “The Neoliberal Republic. Corporate Lawyers, Statecraft and the Making of Public-Private France (Cornell UP, 2021)”

The panel will open a discussion on the newly published book “The Neoliberal Republic. Corporate Lawyers, Statecraft and the Making of Public-Private France” (Cornell UP, 2021) with its author. It will be an opportunity to question how the French State and public law have been reconfigured by two decades of neoliberal policy reforms. Rather than just privatizing, State-led deregulation has contributed to profoundly transform the relation between state, markets and society with a blurring of the dividing lines between the public and the private. The book takes law, law firms and lawyers as an entry-point into this transformation, and allows to question the position of the Conseil d’Etat, administrative law and State categories (such as that of ‘general interest’) in this neoliberal repositioning of the French State.

268Chair
Jairo Lima**“The Unwritten Brazilian Constitution” Book Debate**

This panel intends to offer a roundtable discussion on the book launch: “The Unwritten Brazilian Constitution - Human Rights in the STF” (Edited by BECAK, Rubens and LIMA, Jairo). This book presents an unexplored topic outside the Portuguese language: the leading cases on human rights in the Brazilian Supreme Court (Supremo Tribunal Federal – STF). The text presents a deep discussion regarding the characteristics of the cases and demonstrates how the STF has built the legal arguments to interpret the extension of the fundamental rights. In order to engage international academics on the topics of the book, the editors and some authors will present and debate the book content.

269Chair
Aslı Bâli**After Backsliding: New Questions and Responses to Norm Erosion**

Many believe that we are living through an age of global democratic decay and of decline in the rule of law. But how should public law respond to the challenges that this age entails and especially to the gradual yet palpable erosion of norms? The papers presented in this panel all seek to shed light on different aspects of this question that go beyond existing approaches and to expand the institutional and doctrinal toolboxes available to decision-makers. Among the topics addressed in the panel will be: -The uses and abuses of presidential impeachment around the world -Reimagining militant democracy in the wake of the global constitutional recession -A third way in adjudicating constitutional rights beyond proportionality and categorical rules -The need for more pragmatic attitudes towards the rule of law in the European system

270Chair
Raphaël Girard

Individual proposals

Democratic Backsliding and the Judiciary II**271**Chair
Julio Ríos-Figueroa**Courts, Respect for Human Rights and the Guarantee of Effectiveness in Times of Crisis**

Constitutional Courts have made considerable progress in the enforcement of rights, assuming a prominent role during the COVID-19 pandemic. Due to the worsening of pre-existing vulnerabilities and the socioeconomic indicators, especially in the countries of the Global South, human rights organizations and individuals have used domestic and international litigation to ensure the guarantee of rights, demanding a swift response from the Courts. This mobilization around rights at courts should not and cannot be merely symbolic: the decisions taken at courts must be respected and their actions implemented quickly, catalyzing changes to affected populations. The panel proposes a discussion on the challenge in implementing judicial decisions, especially in the field of human rights. It is intended to gather lawyers, judges, and legal researchers' best practices to assess the implementation and impact of judicial decisions and strategies to increase judicial effectiveness in those cases.

Chair
Pablo Rivas-Robledo

Individual proposals

Constitution-Making for Structural Transformation: Lessons Learned and Challenges Ahead in Latin America

Chair
Armin von Bogdandy

Since the late 1980s, the region of Latin America experienced diverse waves of reforms and new constitutions: new or amended constitutions were designed to overcome the dark legacy of repressive law. Many of these constitutions, and the institutional landscape they created, connected human rights and democratization, understanding the debate and resolution of structural problems of society as well within the scope of public law. This move implied a new understanding of the law. Whereas before the 1980s, many considered the law primarily as an instrument of an elite to impede social change, its potential for social change is now recognized – a process that contributed to the emergence of a veritable *Ius Constitutionale Commune* in the region. Against this background, this panel will ask on the base: What are the perspectives for the current Chilean constituent process? What could be the path for future constitutional reforms?

**274**Chair
Conor Casey**Constitutionalism and the Common Good: Classic and Contemporary Debates**

This panel brings together early-career researchers and established/senior scholars to discuss the relationship between constitutionalism and the common good. The issues discussed in the panellists' papers will include: • how constitutional design questions implicate the common good (checks and balances, separation of powers, institutional responsibility for legal/constitutional interpretation). • the relationship between concepts like subsidiarity and pluralism and the common good. • how concern for the common good should affect how officials/lawyers' approach legal/constitutional interpretation. • the role judicial review plays in a constitutionalism oriented to the common good. • the role constitutional rights like liberty, speech, and private property play in the common good, and when and on what basis they may be regulated. • misconceptions about the classic legal tradition and how it conceives the relationship between law and the common good.

275Chair
Ana Neyra**Constitutional Reform in Peru: How and What to Modify? Proposals for the Debate**

In 2000, at the end of Fujimori's autocratic regime, there was a debate in Peru for constitutional reform. Although institutionalized spaces were constituted, the constituent moment did not arise for a total reform of the Constitution. Political crisis has been constant during the last few years. Now, there is a campaign for ballotage, and the worst moment of the pandemic. Is this the new constituent moment? There is a debate about whether or not the Constitution can be totally reformed. One of the candidates, Pedro Castillo, proposes a reform through a Constituent Assembly - while the other, Keiko Fujimori, emphasizes on the benefits of the current Constitution. The procedure is in debate. Analyzing the Latin American region and our context, we would bring our views on the matter, within the constitutional framework. The panel would also promote a debate about which topics to modify. It would focus on: (1) Government and Congress, (2) Economic regime, and (3) Fundamental rights.

276Chair
Eric Heinze**Free Speech in a Globalised World (Session 5): Private Power and Social Networks**

Historically, opinions that deviate from those held by the mainstream have often been restrained, suppressed, or discouraged. Traditional examples of the regulation of dissenting opinions include laws against blasphemy and sedition, while contemporary approaches to hate speech raise similar problems. Although such laws have long been on the books of nation states, we currently witness a globalization of censorship. The globalization of censorship has two key elements. First, supranational courts and bodies often determine or influence the scope of free expression within states' domestic legal systems. Second, the globalization of censorship is linked to technological advances. During various sessions, speakers will engage with the theme 'Free speech in a globalised world.'

277Chair
Pedro A. Villarreal**Making Law in Emergencies: Multinational Comparisons**

The COVID-19 pandemic led to experiments not just in how legal systems 'cope' with emergencies, inevitably moving towards executive power, but also in how it creates an enormous amount of law under extreme conditions. Emergency law-making is in some ways a new frontier in the writing about emergencies. In the Lex-Atlas:COVID-19 project, we have found that states have been in prolonged conditions of public health emergencies requiring a steady

stream of legal adaptation and innovation ensuring the functioning of most legal systems. This panel explores the comparative insights arising from multiple nations in the Lex-Atlas:COVID-19 project.

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Chair
Rodrigo Camarena
González

Spanish

Mutantur Stare Decisis? The Future of Precedent in México

In light of the 2021 constitutional amendment to Mexico's Federal Judiciary, this panel brings together a group of constitutional and sociolegal scholars to analyze, from a comparative perspective, the causes, features and consequences of a deepest change on judicial decision-making that seeks to transform the sophisticated and largely codified Mexican system of case-law (*jurisprudencia*) into a proper system of judicial precedent. Can a 'culture of precedent' be developed by decree? How the recent changes can be interpreted from a historical view? What are the positive changes that the Supreme Court expects to accomplish by altering the doctrine of precedents? What can be expected from lower courts facing these changes? How will mechanisms of communication among courts be affected? These are the questions that we attempt to answer in this panel.

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Chair
Lennart Schwedler

Individual proposals

Democratic Backsliding, Making and Changing the Constitution

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Chair
Hans-Martien ten Napel

Performance and Legitimacy of the Administrative State

This panel looks into the dynamics of the administrative state, the way it relates to constitutional principles (like the rule of law), and democratic values, but we do this with an open eye for shifts in the underpinning legitimacy concepts. Are they affected too? In what way then and in which respects? Our research over the last couple of years suggests that the rise of the administrative state has affected (constitutional) law and governance so that in some respects the administration is no longer bound by and has instead become master of the rules that were initially put in place to restrain its actions. However, our research reveals something else as well. It is no longer merely the compliance to the rule of law, democratic principles, and constitutional principles that suffices to render sustained legitimacy to a government system. Sustainable legitimacy requires more nowadays – a good and satisfying overall performance of the administration.

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Chair
Eduardo Moreira

Portuguese

Constitutional Plasticity, Deterioration of Democracy and Constitutional Alternatives to the Crisis

O painel parte da crise causada pela deterioração na democracia, especialmente no caso do Brasil. As razões para enfraquecimentos das regras democráticas e o jogo duro constitucional são objetos de debate associado a plasticidade da constituição e os problemas que as constantes reformas formais podem resultar. Os inimigos da democracia são identificados e alternativas para os problemas democráticos constitucionais são pensados conjuntamente.

Chair

Cecilia Inés Mateos

Individual proposals

**283**Chair
Michael Pal**Plenary Ideas Dialogue for Proposed Canada National Chapter:
“Emergencies and Exceptions”**

We are proposing a Plenary Ideas Dialogue. This Plenary Ideas Dialogue would be the first event for a proposed national Canada Chapter of ICON-S. An application has been made for the creation of the Chapter. The Dialogue will consider how the concept of an “emergency” caused by the COVID-19 pandemic shaped the Canadian legal order over the past year. The panelists will consider the topic of “Emergencies and Exceptions” by analyzing the impact of the pandemic on federalism, public health, rights and freedoms including religious freedom, and Indigenous self-governance.

284Chair
Michał Stambulski**Private Actors and Public Values**

With the increasing complexity and interconnectedness of social problems, with the accumulation of capital and influence by the private sector, and with transformations in the idea of the welfare state, the decisions made by global corporations, multinational organizations, civil society actors, consumers, and entrepreneurs are increasingly of public importance. As a result, the boundaries between public and private become blurry, destabilising the established notion of a public/private dichotomy, and calling for novel conceptualizations. In this panel, we will consider how this legal and conceptual transformation affects the stability of social order and institutional imagination at both the international and the domestic level. This panel is a part of the interdisciplinary research initiative ‘Public and Private Interests: A New Balance’ on the role of private actors in articulating public interests conducted at the School of Law of the Erasmus University Rotterdam.

285Chair
Michael Wilkinson**Book Panel on Camila Vergara’s Systemic Corruption. Constitutional Ideas for an Anti-Oligarchic Republic**

Roundtable on Camila Vergara’s *Systemic Corruption: Constitutional Ideas for an Anti-Oligarchic Republic* (Princeton University Press 2020). This provocative book provides a compelling and original genealogy of political corruption from ancient to modern thought, and shows how representative democracy was constitutionally designed to protect the interests of the already rich and powerful to the detriment of the majority. Unable to contain the unrelenting force of oligarchy, especially after experimenting with neoliberal policies, most democracies have been corrupted into oligarchic democracies. *Systemic Corruption* explains how to reverse this corrupting trajectory by establishing a new constitutional counterpower strong enough to control the ruling elites. Building on the anti-oligarchic institutional innovations proposed by plebeian philosophers, Vergara rethinks the republic as a mixed order in which popular power is institutionalized to check the power of oligarchy.

286Chair
Marie-Christine Fuchs**Reparation and Supervision Mechanisms in the Three Regional Human Rights Systems – Latest Developments and Judicial Dialogue**

This panel is dealing with the latest developments and an increasing judicial dialogue with respect to reparation and supervision mechanisms between the three regional human rights courts in Europe, the Americas and Africa. While the ECtHR generally issues declaratory judgments, whose execution is supervised by the Committee of Ministers of the Council of Europe, and the concept of “just satisfaction” is only the exception, the IACtHR is generally empowered to remedy violations to the ACHR itself and to order reparations of both a material

and non-material nature. The IACtHR's reparation measures often have structural effects that go far beyond the individual case. Not only as a result of judicial dialogue between the three courts, in recent years in the jurisprudence of the ECtHR there can be noticed a slight shift towards a more obligations oriented jurisprudence, either in specific cases, or for systemic violations in a group of similar cases.

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Chair
Thaís Amoroso Paschoal

Access to Justice in Pandemic Times in Brazil

New challenges have been posed for access to justice in the world, nowadays. More than half of the world's population does not have an effective form of protection of the law or of their rights. These challenges are part of Goal 16, of the 2030 Agenda for sustainable development. Of course, access to justice depends on the promotion of diverse forms of accessibility (linguistic, economic and structural) directly connected to social, political and economic transformations, thus its enforcement will always be an ongoing process. However, new barriers were raised due to the COVID-19 pandemic, undermining access to justice, especially in Brazil, country with high levels of social vulnerability. Take in consideration these events, this panel intends to discuss the impacts of the pandemic on access to justice in Brazil. Its papers will demonstrate the actions performed by several actors who integrate, or not, the justice system in order to realize access to justice.

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Marcella Ferri

Individual proposals

Democratic Backsliding and the Judiciary

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Irene Parra Prieto

Individual proposals

Critical Perspectives on Public Law

Organisation

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