Global Constitutionalism

Scholars Workshop: New Thinking in Global Constitutionalism
WZB Berlin Social Science Center, Reichpietschufer 50, D-10785 Berlin, Room A310
6 July 2019

Workshop Programme

9:00 Registration, Coffee

9:30 Introduction

9:45-11:15 First panel: Order, Contestation and Ideology in Global Constitutionalism
Christof Royer: Between Constitutional Order and Agonistic Freedom. Toward an Agonistic Global Constitutionalism
Benjamin Alemparte: Towards a Constitutional Theory of Neoliberalism
Peter Sutch and Peri Roberts: Justice, Legitimacy and Normative Hierarchy: Interstitial Moral Reasoning and Global Constitutionalism
Commentators: Antje Wiener and Mattias Kumm

11:15-11:45 Coffee break

11:45-12:45 Second panel: Global Constitutionalism, Security and Climate Change
Ben Murphy: Situating the Accountability of the UN Security Council within Global Constitutionalism (and its Dichotomies)
Dagmar Topf Aguiar de Medeiros: Constitutionalism as a Framework for Global Climate Governance
Commentators: Jonathan Havercroft and Andreas Føllesdal

The event is organized by Global Constitutionalism and sponsored by
12:45-13:45 Lunch

13:45-15:15 Third panel: **Conflict Constitutions and Courts**

Ilana Rothkopf: Civil War and Constitutional Design: Examining the Content of Conflict-Related Constitutions

Remzije Istrefi: Constitutional Courts as Guardians of Conflict Settlements?

Berihun Adugna Gebeye: Mediating Global Constitutionalism and Cultural Diversity: The Emergence of Jurisgenerative Constitutionalism in Africa

Commentators: Jonathan Havercroft and Geir Ulfstein

15:15-15:45 Coffee break

15:45-16:45 Fourth panel: **Constitutional Challenges Regarding Global Justice**


Yukiko Nishikawa: Fundamental Challenges for Global Constitutionalism

Commentators: Antje Wiener and Geir Ulfstein

16:45-17:45 Fifth panel: **Constitutionalism in the European Space**

Zsolt Körtvélyesi, Balázs Majtényi: How to Justify Supranational Responses to the Anti-constitutionalist Challenge? Applying Insights from Theories of Liberal Multiculturalism

Bosko Tripkovic: Non-foundationalism and the European Convention on Human Rights

Commentators: Andreas Føllesdal and Mattias Kumm
Abstracts of Workshop Papers

Benjamin Alemparte

Towards a Constitutional Theory of Neoliberalism

Before neoliberalism became global, it was an intellectual project that had a particular view on the power of constitutions to limit sovereign states, and protect markets from democratic pressures for greater equality. In Latin America, neoliberalism has long been identified with the political economy of the Washington Consensus. However, a comprehensive study of its legal foundations and institutional arrangements is still an area of limited scholarly attention. By examining the work of Friedrich A. Hayek, Milton Friedman, and James M. Buchanan, the Article explores the theory of neoliberal constitutionalism within the background of Chile, the so-called first neoliberal laboratory.

After the 1973 military coup, the Pinochet dictatorship initiated a series of legal transformations. Hayek, Friedman, and Buchanan visited Chile. They gave lectures, interviews, and advice to key authorities. Hayek sent Pinochet his latest work, A Model Constitution, where he designed a Constitution compatible with his legal theory. Also, after meeting Pinochet in 1974, Friedman exchange letters with the dictator, describing a detailed plan of economic and political reconstruction. Moreover, in 1981 these authors organized a meeting of the Mont Pelerin Society in Chile. The papers presented in this meeting were published in Chile, including a translation of Buchanan's book The Limits of Liberty.

The 1980 Constitution currently enforced and enacted under Pinochet was known as The Constitution of Liberty echoing Hayek 1960’s book. Hayek establishes the Constitution as a counter-majoritarian device for limiting the power of government, and as a mechanism used to anchor economic freedoms against the attempts of legislatures to enact redistributive policies. Hayek’s legal theory is compatible with and authoritarian government that favors individual liberty over political freedom and democracy. His constitutional theory will influence Jaime Guzman, the leading framer of the Constitution. Similarly, Friedman's Capitalism & Freedom is known as a corporate neoliberal version of Hayek's Road to Serfdom. Furthermore, Buchanan from a public choice perspective voiced in his Calculus of Consent, analyze the constitutional foundations of democracy based on the premise of methodological individualism and self-interested rational action. Implementing the logic of the marketplace to politics, his analysis rejects majority rule, and in a clear position of fiscal restraint exclude redistributive politics. Buchanan work is fundamental to understand Chile's constitutional architecture. His normative views are present in Chile’s market expansion to areas such as social security, labor relations, and education.

A recent Latin-American and global turn into authoritarian neoliberal politics inspire this work.
International law incorporated Africa into the world society as a colony in the late nineteenth century and recognized it as an equal sovereign into the community of nations in the mid-twentieth century. Despite the different rationales that animate international law’s treatment of Africa in these centuries, it exported the European type of territorial state to Africa. With the down of colonialism in the 1950s and 1960s and the end of the Cold War in the 1990s, the territorial state in Africa has been destined with the system of constitutional democracy championed in the liberal international order.

However, liberal constitutionalism was not implanted to Africa onto a tabula rasa. Rather it is configured in a biosphere of cultural diversity. As a result, in the bid to establish a constitutional government based on the rule of law, human rights, and democratic ideals, the accommodation of cultural, religious, and ethnic pluralism has been the outstanding quest of constitutionalism in Africa. The dynamic interplay between these pluralities and constitutionalism has led to the operation of plural constitutionalism. The singularity of the constitutional order, therefore, lies not in having a singular conception of justice, rights, and values in a certain polity, but in its ability to provide a framework within which varies pluralities exist and operate within the polity. As such, the constitutional order is procedurally and normatively open to accommodate the seemingly competing pluralisms.

In this paper, I focus on courts as constitutional actors that mediate global constitutionalism and cultural diversity. As actors within and the results of plural constitutionalism, courts are expected to accommodate these pluralities in their organizational structure and judicial philosophy. Conscious of these pluralities, courts mediate the universal projections of global constitutionalism with local realities through normative and procedural innovations. By taking Nigeria as an African case study, this paper aims to explicate how courts mediate ideas of global constitutionalism and cultural diversity through jurisgenerative constitutionalism. Jurisgenerative constitutionalism mediates the harmonious operations of cultural diversity in a constitutional order, unlike the jurispathic constitutionalism where a hierarchy of laws, normative orders, and assumptions trump divergent and plural conception of rights, justice, and values.
Remzije Istrefi

*Constitutional Courts as Guardians of Conflict Settlements?*

Post-conflict societies are characterized by difficult and painful histories marked by human rights violations and crimes against humanity. The legacies of the past violations and the absence of adequate processes for dealing with the past remain long after the conflict settlements. The biggest challenge in post-conflict settlements, usually concluded with peace agreements mediated by the international community, remains how to bridge the divide that the conflict and its origins have caused between the parties formally in conflict. Frequently, the design of a new constitution with the international community’s assistance becomes imperative as a peace-building compromise between warring factions over resources and power. Constitutional design negotiations in deeply divided or post-conflict societies must often navigate profound ethnic or sectarian divisions while attempting to overcome a history of violence. Once adopted, the enforcement of the constitution may be hampered by weak democratic traditions, damaged or non-existent government institutions, an inexperienced or corrupt public service, strong political interference and a weak rule of law tradition and civil society. Very often the international community establishes Constitutional courts comprising international and local judges that are expected to demonstrate trust and impartiality as a way to bridge the societal divide.

Internationally designed constitutions represent a tremendous opportunity, the outcomes of which can have significant and lasting impacts on the peace and stability of a state and the sustainability and quality of its democracy. However, the compromises that provide for executive power-sharing arrangements, both aiming to reflect and reinforce a fragile peace and empowering the population, as reflected in such constitutions can undermine later attempts at democratic reform and jeopardize the long-term stability of the state.

This article aims to analyze the legitimacy and effectiveness of international attempts to institutionalize states after conflict; the varying roles of international actors in constitutional design; and the challenges and prospects that internationally negotiated constitutions face to reconcile the need to tie in powerful elites with the demands of power-sharing arrangements as brokered in the peace agreements and reflected in the new constitutional design.

Post-conflict settings are characterized also with international post-conflict assistance missions with a variety of mandates often lasting for decades and including executive powers. As such this article will also assess to what extent internationally constituted constitutional courts can supervise international interventionism and mediate the influence of international human rights norms.
Zsolt Körtvélyesi, Balázs Majtényi

*How to Justify Supranational Responses to the Anti-constitutionalist Challenge? Applying Insights from Theories of Liberal Multiculturalism*

Pursuant to TEU Article 4(2), the EU is bound to respect the national identity of member states. This Article seems to protect not only constitutional structures that express constitutional identity, but also the cultural foundations of national identity. Just like in the case of their constitutional structure, member states can define their national identity in differing ways, even in ways that breach the inclusive values of the modern constitutions (e.g. equality, protection of human rights) protected under TEU Article 2. Crucially, the latter also protects pluralism and the rights of members of minorities, fundamental to constitutional democracies.

The assumption behind the recognition of diverse constitutional identities, per Article 4(2), is the possible peaceful coexistence of cultural elements of the dominant population of member states and inclusive values like democracy, rule of law and human rights. Our hypothesis is, however, that there is a zero-sum game between the constitutional recognition of exclusive values (ethnicity, religion etc. of the dominant population) and inclusive constitutional values (e.g. equality, human dignity, human rights): every gain by the proponents of emergent authoritarianism translates to a loss on the side of constitutional democracy. While exclusive norms appear in virtually every constitutional system, a critical mass of exclusive values can lead to the hollowing out of a democratic order, both on the national and on the supranational level.

To try to draw the line where this shift happens, we are relying on the limits of toleration, and recognition, of exclusive norms and identity elements of minority communities in liberal theories of multiculturalism (e.g., Raz, Taylor, Kymlicka). Of course, the EU is not a state and Member States are not minorities, but we think that these cases raise structurally similar theoretical questions, insights and experiences from one case can inform the other. Structurally, the EU now faces a similar challenge with countries that undermine EU foundational values. The hasty norm-transfer by accession conditionality turned, at times, to animosity towards principles that are central to sustain the democratic framework, also raising parallels with postcolonialist settings. Our paper seeks to address the legitimacy and adequacy of European responses to the melting away of the compliance façade, and the question of how far constitutional identities can deviate from TEU Article 2 values.
This paper explores the role global constitutionalism can play in the design of effective global climate governance. In order to do this the paper draws on the literature of global constitutionalism and constitutional theory to create a framework of constitutional features against which to measure the United Nations Framework Convention on Climate Change (UNFCCC). The original aspect of this paper is to relate these two bodies of literature to the UNFCCC and explore the impact of reading this treaty through a constitutional lens. The main question in this paper is: How and to what extent can the UNFCCC be read in terms of constitutionalism?

The UNFCCC creates a forum to facilitate the continued development of globally coordinated policies aimed at addressing climate change. What makes the UNFCCC stand out, compared to other treaties, is that for it to achieve its objective states must be willing to subject them to long term precommitments in a context of relative uncertainty. The concept of the modern constitution is a familiar instrument through which citizens accept long term pre-commitments in order to achieve a specific purpose in exchange for procedural safeguards and substantive rights. The cumulative nature of climate change and the risk of prioritizing short term interests of individual states over the long term common interest of resolving climate change make the UNFCCC uniquely suited to constitutional analysis.

In considering the relevance of constitutionalism to the UNFCCC, this paper focuses on those key features of constitutionality that exist in relation to the modern constitution. This paper focuses on a functional approach that reflects the ambitions of the constitution: to create a framework for the exercise of authority to which actors willingly submit themselves in the knowledge that the framework will both aid in the accomplishment of a specific desired purpose and protect from arbitrary interference.

This paper proceeds in three steps. First it highlights specific characteristics of the UNFCCC which invite an examination of the treaty’s potentially constitutional features. Secondly, it sets out a framework of constitutional features and examines whether the constitutional expectations set out in the first part live up to it. Finally, the last step justifies looking at the UNFCCC through a constitutional lens.
The objective of this paper is to critically examine the implications for global justice processes in Africa of the precedence set by the Extraordinary African Chambers (EAC) in the Habre case. The trajectory of global justice has almost always traversed contested political and legal terrain whose concomitant implications have shaped and reshaped the structures and configurations of global justice processes. In 2016, the conviction of Hissene Habre in the Senegalese national judicial system for international crimes he committed in Chad became a remarkable development in global justice lexicons. This is because Hissene Habre was the first former African head of state to be convicted for international crimes under universal jurisdiction in the domestic court of another state. Arguably, such a development in the politically and legally contested global justice will have far-reaching implications for processes of international criminal justice in Africa. This is against the background that the role of the International Criminal Court (ICC) in the African justice cascade has since 2008 been subjected to criticism with African states arguing that the court applies international criminal law selectively by targeting mostly nationals of African countries.

Against such a background, it can be argued that the precedence set by the EAC model has the implication of reconceptualising and reshaping the trajectory of global justice in Africa beyond the ICC. The EAC model could appear overrated, exaggerated and not the first hybrid court to make use of international criminal law in a domestic setting. However, the tribunal’s reliance on international criminal law and universal jurisdiction in the conviction of the former African head of state of one country in the domestic court of another country, resonant to the Pinochet precedent, is not a development to ignore as it impacts on global justice processes in Africa.
Ben Murphy

Situating the Accountability of the UN Security Council within Global Constitutionalism (and its Dichotomies)

It is a truism to suggest that the UN Security Council wields immense power under Chapter VII of the UN Charter. It is no surprise, therefore, that the Council has taken centre stage as an identifiable, albeit nascent, discourse has developed around the idea of the ‘accountability’ of international institutions. Using the Security Council as a foil, this paper places the concept of accountability under the spotlight. It is prompted by the fact that the ‘turn to accountability’ appears to lack a sufficient theoretical foregrounding, which is apparent on at least two levels.

First, within this discourse, disproportionate attention is afforded to the retrospective notion of ‘holding to account’. From an etymological perspective, this downplays the prospective notions of ‘giving an account’, and ‘taking an account of the consequences’ of a decision, which should be given equal weight. Second, the emergence of accountability has not been situated within any broader theoretical framework. In this light, prevailing approaches seem to associate accountability with attempts to unify, and verticalize, legal structures in an otherwise fragmented, horizontal, international legal system. As such, accountability would appear to be symptomatic of what Jan Klabbers (and others) have described as a move from ‘functionalism’ to the ‘constitutionalization’ of international institutional law.

This paper asks whether, instead of juxtaposing global constitutionalism against its external dichotomies, the concept of accountability vis-à-vis the Security Council might actually be more appropriately situated within the framework of constitutionalism, and its own set of internal dichotomies. Adopting a novel methodology, it uses the distinction between liberal-legal and republican-political constitutionalism as a heuristic device. Liberal-legal constitutionalism relates, in the Kelsenian tradition, to the identification of limits upon the Council’s power provided by the UN Charter (the lex specialis) or general international law (the lex generalis) and the capacity of international judicial institutions to enforce these limits. Political constitutionalism invokes the influential work of Philip Pettit and Richard Bellamy. Through this lens, the Security Council might be re-imagined, not as a ‘Frankenstein monster’ to be tamed at all costs by the straightjacket of international law, but, in the republican tradition, as a site for deliberation and contestation in the face of tensions that inevitably arise in a pluralistic international system. The paper concludes by suggesting that the perspective that one takes on the question of Security Council accountability appears to be predicated on the perspective that one takes on the liberal-legal and republican-political constitutionalism dichotomy, which serve as magnetic poles, each exerting and competing for influence.
Yukiko Nishikawa

Fundamental Challenges for Global Constitutionalism

The focus of this article is global constitutionalism for human rights protection or humanitarianism that drew attention in the post-Cold War world. Here, a critical question arises with regard to the nature and character of constitutional norms, principles and procedures for the protection of human rights: What effects did constitutionalism that is based on the constitutional tradition for human rights protection together with democracy and rule of law in liberal world order in the post-Cold War world, in practice, bring to post-colonial states, where numerous people are suffering from human rights violations and in critical insecurity? The article specifically refers to the International Criminal Court (ICC) and the notion of the responsibility to protect (R2P) in examining this question with cases of Southeast Asian states where there are numerous people who are suffering from serious human rights violations and in critical insecurity.

This article is on the premise that the ICC and the notion of R2P are the culminating actuality of global constitutionalisation for human rights and the protection of individuals. As Hedley Bull stated, institutions are shared practices and conceives of order as a result of rule-following activities. Thus, institutions are constitutive of the elementary form of international society. By the same token, the notion of the responsibility to protect is now considered as an established international norm as 'agreed upon by all' in practice, recognition of rights and duties and criticism of clear violation.

This article argues that an important but unaddressed issue when examining global constitutionalism is the distinctive discourses of sovereignty and thus the different nature of statehood in different parts of the world vis-à-vis the global polity, particularly between countries in Europe or Anglo-America and post-colonial states. While an emphasis of the differences between them is often placed on religious and cultural distinctiveness, an undescribed or ignored aspect of their differences exist in the ways their states were established and how a sovereignty right is perceived. Indeed, global constitutionalism concerns, at the most fundamental level, an order between sovereign states. Whilst this article does not deny the existing debates on cultural and religious specificity of global constitutionalism, without understanding the distinctive nature of statehood, global constitutionalisation based on a liberal order, even for the purpose of human rights protection, may bring an unjust order both domestically and, in the long run, internationally by the name of the right of the people and democracy.
In a recent editorial, the editors of Global Constitutionalism urge scholars to enrich global constitutionalism with ‘agonistic elements’ and to develop accounts of a ‘contestatory (or agonistic) global constitutionalism’ (Tully et al. 2016: 14). This paper represents a response to this challenge. Its purpose is to introduce the idea of an ‘agonistic global constitutionalism’ as an original and promising vision of world order.

This vision of world order has its roots in two recent global phenomena: First, there is an increasing constitutionalisation of the global realm. This shift ‘from globalised towards constitutionalised relations in the global realm’ (Wiener et al. 2012: 6) points to the untenability of the ‘Westphalian’ picture of an international system and towards a more hierarchical conception of contemporary world order. Second, we have recently also seen an upsurge in (transnational) protest movements all over the world, which have pilloried grave injustices and challenged the power dynamics that shape the world.

This global activism points to the transformative potential of ‘bottom-up’ political action against oppression, exclusion and injustice. Academic commentators, by analysing both phenomena largely in isolation from each other, have not paid sufficient attention to the relationship between these two – seemingly contending – forms of global politics. An ‘agonistic global constitutionalism’, by contrast, contends that the construction of a less violent, less oppressive, less exclusionary – indeed, the construction of a more just – world requires a delicate balance between the stability of a global constitutional order and the ‘spirit of the new’ expressed in the creativity of bottom-up political action. It requires a delicate balance between constitutional order and agonistic freedom.

The paper, then, introduces the idea of an agonistic global constitutionalism by drawing on the thought of Hannah Arendt. More specifically, the paper develops four major arguments: First, as a vision of world order, an agonistic global constitutionalism must be based on universal norms and values. Second, the most fundamental value of an agonistic global constitutionalism is human plurality; as such, the basic norm (Grundnorm) upon which an agonistic global constitutionalism is based is the protection of human plurality from those who reject or violate this Grundnorm. Despite that, and third, an agonistic global constitutionalism is sensitive to the fact that the Grundnorm can never be fully secured and is always in danger of being violated or rejected. Finally, an agonistic global constitutionalism argues that the protection of the Grundnorm – however imperfectly – must be based on two forms of political action: top-down political action to defend the Grundnorm against its enemies; and bottom-up political action to strengthen the Grundnorm.
What are the characteristics that differentiate constitutions written during and after armed conflict from those that are not? In the past 25 years, numerous constitutions have been adopted or amended in a post-conflict context (Widner 2008; Turner and Houghton 2015). Many have also been written and adopted during conflict, or as a part of the conflict resolution process (Benomar 2004; Hamoudi 2014; Wallis 2014; Turner and Houghton 2015). Research in international relations often overlooks constitutional design and the role that constitutions can play as peacebuilding institutions. At the same time, international law, through the authority of the UN Security Council, increasingly regulates the production of constitutions as state-building and democracy-enhancing institutions in conflict contexts.

In fact, UN peacekeeping operations and peace agreements increasingly require constitutional reform. In other words, constitutions are being used both to rebuild the state after conflict and also, with support from external actors, to help bring about a peaceful resolution to conflicts. This paper utilizes data from the Comparative Constitutions Project (CCP) and the Uppsala Conflict Data Program (UCDP) to critically examine the category of “conflict related constitutions” in comparison with a wider universe of constitutions globally. It finds that conflict-related constitutions are indeed substantively different from other constitutions. In a comparative analysis of 3,181 constitutional events (new, interim, and newly amended constitutions), constitutions written in conflict contexts are more likely to contain clauses about power sharing, minority protections, and transitional justice than constitutions that were not written in such contexts. This paper also presents a theory of why conflict-related constitutions are substantively different from constitutions written during peacetime, with an emphasis on external intervention. This descriptive analysis has implications for global constitutionalism, post conflict reconstruction, and constitutional assistance policies.
International political theory is increasingly turning to the practises of international law to locate normative resources that can ground morally accessible and politically relevant arguments about global justice. In doing so their work promises to engage with work in constructivist legal and international relations scholarship that explores global constitutionalism and the explicit focus on justice offers a distinct perspective. This paper explores the ‘practical turn’ in international political theory through the work of scholars including Allen Buchanan (The Heart of Human Rights: Justice, Legitimacy and Self Determination), Charles Beitz (The Idea of Human Rights), Thomas Weatherall (Jus Cogens: International Law and Social Contract) and explores both the nature of their innovative position in IPT and their connections with work in global constitutionalism (Hurrell, Reus-Smit, Peters, De Wet, Klabbers, Brunée).

The paper demonstrates that each intervention develops an account of the appropriateness of ‘institutionalised moral reasoning’, a form of moral theory that grants existing practises significant authority in the construction of a moral argument. The paper also shows that each scholar finds or constructs a normative hierarchy in international practises that grounds their moral argument and functions as a constitutional principle in their critique of existing institution and in their arguments for reform. The paper argues that such a move (often reliant on the primacy of human rights claims or, more broadly, on the emergence of a range of Jus Cogens norms) is empirically and theoretically untenable, a conclusion that pushes us to rethink the nature of a ‘practical’ approach to normative international theory.

Accepting the idea of institutional moral reasoning the paper shows that heterarchy rather than hierarchy is central feature of valid global constitutionalist claims. In accommodating heterarchical forms of normative authority the authors propose a new approach to institutional moral reasoning that is best thought of as interstitial moral reasoning. This approach draws on two accounts of interstitiality. The first is found in the legal scholarship of Vaughan Lowe, who shows how judicial reasoning must work between distinct legal regimes to make justice claims that re-create the relationships between primary norms in those regimes without establishing hierarchies. The second is the work of Christian Reus-Smit whose claim that several different forms of reasoning (rather than one authoritative form) characterise reasoning in IR. The paper develops these ideas to offer an institutionally grounded account of normative theory capable of operating in a heterarchical context.
Bosko Tripkovic

Non-foundationalism and the European Convention on Human Rights

The article articulates a non-foundationalist conception of human rights for the European Convention on Human Rights (ECHR), and explores the consequences of this conception for the central legal doctrines of the European Court of Human Rights (ECtHR). Many influential philosophical accounts of ECHR are foundationalist: they assume that the role of ECtHR is to discover fixed, universal, and practice-independent moral requirements of human rights. As a consequence, they cannot make sense of some of the key legal doctrines of ECtHR, such as the margin of appreciation, consensus-based reasoning, and evolutive interpretation, which specify human rights requirements with a reference to contingent facts that obtain in social practices in some or all of the contracting states. The foundationalist accounts face a dilemma: they either need to accept that moral requirements of human rights are contingent upon ever-evolving social facts or argue that these doctrines are mistaken. If they accept the first horn of the dilemma, they must abandon the foundationalist understanding of human rights; if they accept the second horn of the dilemma, they need to argue, counter-intuitively, that the leading human rights institution in the world is fundamentally and persistently wrong about the nature of human rights.

The article contends that the foundationalist conception of human rights ought to be abandoned. Two arguments are offered in support of this claim. First, the article argues that the non-foundationalist conception of human rights better accounts for the central doctrines of ECtHR. Non-foundationalism understands human rights requirements as practice-dependent and context-specific elaborations of evaluative commitments that justify some form of international intervention based on normatively significant features of human beings notwithstanding the reasons that may count against it, such as those that arise from the value of democratic self-determination. As such, non-foundationalism explains the evolutive interpretation of ECHR as an infinite process of working out human rights requirements from a particular perspective, in a particular context, and at a particular point in time. It understands the margin of appreciation doctrine as a consequence of under-determinacy and disagreement in human rights practices, and as the space appropriately left for the local evaluative identities and democratic self-determination. Finally, since non-foundationalism sees human rights as practice-dependent, it justifies the relevance of consensus in virtue of convergence of normative attitudes in the European human rights practice. Second, the article suggests that non-foundationalism is not less normatively attractive than foundationalism. It demonstrates that it can meet common objections, arising from (mis)understanding of universality of human rights as uniformity, and from a reductive view of social practices that sees them as unable to provide enough critical distance for protection of minorities.
Biographies of Workshop Participants

Benjamin Alemparte is an SJD candidate from Duke Law School, where he also earned his LLM in 2018. His research falls primarily in the areas of constitutional law, legal theory, and political economy. In 2016, Alemparte graduated with an LLB from Universidad de Chile, where he also was a teaching assistant in Constitutional Law at the public law department between 2010-2017. In the SJD, he is working under the supervision of professors Jack Knight and Jedediah Purdy. His dissertation reviews the legal theory of neoliberalism within the background of the Chilean Constitution. He is the author of five published papers. His work has been cited by the Chilean Constitutional Court.


Andreas Føllesdal PhD, Professor of Political Philosophy, Faculty of Law, University of Oslo. Co-Director of PluriCourts, a Centre of Excellence for the Study of the Legitimate Roles of the Judiciary in the Global Order. Principal Investigator, European Research Council Advanced Grant MultiRights 2011-16, on the Legitimacy of Multi-Level Human rights Judiciary. PhD 1991 in Philosophy, Harvard University. He publishes in the field of political philosophy, mainly on issues of international political theory, globalization/Europeanization, Human Rights, and Socially Responsible Investing.

Jonathan Havercroft is Associate Professor in International Political Theory within Social Sciences: Politics & International Relations at the University of Southampton. He is a Senior Lecturer in Politics and IR at the University of Southampton. His research lies at the intersections of international relations and political theory. He has published work on the historical development and transformation of state sovereignty, 17th century and 20th century political philosophy, space weaponization and security, global dimensions of indigenous politics and hermeneutics. His current research projects include work on the ethical dimensions of international norms, theories of political affect, and the role of agreement in democratic theory and practice. His book “Captives of Sovereignty” (Cambridge University Press, 2011) looks at the historical origins of state sovereignty, critiques its philosophical assumptions and offers a way to move contemporary critiques of sovereignty beyond their current impasse.

Remzije Istrefi holds a PhD in Political Science with a specialization in International Human Rights Law and International Organizations. She finished her studies in International Human Rights Law (LLM) at the University of Notre Dame, Indiana, USA, after receiving her BA at the Faculty of Law at the University of Prishtina. Ms. Istrefi works as Professor of International Law at the
University of Prishtina. Ms. Istrefi worked as a Human Rights Advisor with the OSCE Mission in Kosovo for 10 years and has served as a consultant for different international and national institutions including UNDP, ECMI, KJI and KIPA. In 2008 Ms. Istrefi was awarded the Fulbright Exchange Scholar Program under which she spent one semester at the John Hope Franklin Centre for Multidisciplinary Studies at Duke University. Ms. Istrefi also spent time at the Institute for International Relations of the University of Graz (sponsored by WUS Austria) where she researched in the field of international territorial administrations. Ms. Istrefi is a member of the Bar Exam commission and also is actively involved as a researcher in various research projects. Ms. Istrefi has published several scientific articles in the field of human rights and has contributed to numerous books published in Europe. Since September 2008 Ms. Istrefi has been appointed a Judge at the Constitutional Court of Kosovo.

Zsolt Körtvélyesi is researcher and lecturer based in Budapest, at the Institute for Legal Studies of the Hungarian Academy of Sciences, Centre for Social Sciences, and at the Department of Human Rights and Politics of the ELTE Social Science Faculty, Institute of Political and International Studies. He holds a law degree (University of Szeged, 2006) with specialization in French Law (University of Paris Nanterre, 2005) and European Studies (University of Szeged, 2005), a Nationalism Studies MA (Central European University, 2009), an LLM (Harvard Law School, 2014, on Fulbright Scholarship), and an SJD (Central European University, 2016). He has research experience in questions of nationalism and comparative constitutional law, regarding issues of citizenship and minority protection in particular, and human rights in the EU in the pre- and post-accession context.

Mattias Kumm holds a Research Professorship on “Global Public Law” and is Managing Director of the Center for Global Constitutionalism at the WZB Berlin Social Science as well as Professor of Law at Humboldt-Universität zu Berlin. He is also the Inge Rennert Professor of Law at New York University School of Law, which he joined in 2000. His research and teaching focuses on basic issues and contemporary challenges in Global, European and Comparative Public Law. He has taught at leading universities worldwide and has held professorial appointments at Harvard, Yale, and the EUI. He is on the Board of various international journals and professional societies and is founding Co-Editor in Chief of “Global Constitutionalism” (CUP). Kumm holds a JSD from Harvard Law School and has pursued studies in law, philosophy and political sciences at the Christian Albrechts University of Kiel, Paris I Pantheon Sorbonne and Harvard University.

Dagmar Topf Aguiar de Medeiros is a PhD researcher in law at the University of Edinburgh. She holds an LLM from the University of Leiden and an LLB from the Utrecht University. She further holds a certificate in English law from the University of Warwick. Her current research focuses on constitutionalism and legitimacy in relation to international climate change law. She further works as a research assistant to the International Legitimacy Project headed by Dr Cormac Mac Amhlaigh, and as a research assistant to the Association of Human Rights Institutes. She has previously published a co-authored article on automatically renewable contracts in the Business Law Review. Her language proficiency includes Dutch, English, and German (C2), French (B2) and Portuguese (A2).

Balázs Majtényi is director of the Institute of Political and International Studies at ELTE Faculty of Social Sciences and senior research fellow at the Institute for Legal Studies of the Hungarian Academy of Sciences. He received his PhD from ELTE University in 2006. He has authored six monographs, published over 100 articles and book chapters, and has edited twelve books. His
research interests include nation building, constitutional law and human rights. His latest monograph is a counter-history dealing with the history of the Hungarian Roma minority after 1945 (co-author: György Majtényi, CEU Press, 2016).

Torque Mude is full time lecturer of international politics at Midlands State University in Zimbabwe and part time lecturer of security and strategic studies at University of Namibia. He has a PhD in International Politics from University of South Africa, Master of Arts in International Affairs Degree and Bachelor of Arts Honours Degree in History and Development Studies. He has a combined university working experience of eight years. His areas of research interests are international law, transitional justice, peace and security and global courts. He has published book chapters, book reviews and journal articles on these thematic areas in high impact journals and book publishers. Furthermore, he has attended sixteen international conferences and workshops since 2011 when he joined the academia.

Ben Murphy is a Lecturer in Law, and Deputy Director of the International Law and Human Rights Unit, in the School of Social Justice, University of Liverpool. Between 2013-2017, he served as Regional Co-ordinator for the Middle East Region for the Digest of State Practice contained within the Journal on the Use of Force in International Law. His research interests lie at the intersection between public international law and public law. Specifically, he is interested in collective security law, the law of international institutions and theories of global constitutionalism, and he has published on these topics. Further information can be found here: https://www.liverpool.ac.uk/law/staff/ben-murphy/.


Peri Roberts is Senior Lecturer in Political Theory in the School of Law and Politics at Cardiff. His research has broadly focused on John Rawls and questions that arise from, or are prompted by, his work. These include questions of liberal justification and the use of force in international politics.

Christof Royer holds a PhD degree from the University of St Andrews, an M.Litt in International Political Theory from the University of St Andrews, an LLM from the University of Reading and a Magister Juris from the University of Vienna. He specialises in International Political Theory and is particularly interested in questions surrounding the Responsibility to Protect, the International Criminal Court and world order, as well as in the political thought of Hannah Arendt, Judith Shklar, Hans Morgenthau, Bernard Williams and Chantal Mouffe.
Ilana Rothkopf is a PhD student in the Department of Political Science at the University of Notre Dame and a Doctoral Affiliate at the Kellogg Institute for International Studies. Her research areas are international relations and comparative politics, with interests in international and comparative law, constitutional design, post-conflict reconstruction, international organizations, and negotiations. Her PhD dissertation focuses on the influence of external actors in constitution-making during and after armed conflict. She completed her MA in Political Science at the University of Notre Dame (2018), and also holds an MSc in International Relations from the London School of Economics and Political Science (2012) and a BA from McGill University (2011).

Peter Sutch is Professor of Political and International Theory in the School of Law and Politics at Cardiff. He is also visiting Professor at the University of the Witwatersrand, South Africa. His research draws on Anglo-American political theory, constructivist and English School IR theory and focuses on the politics of International law in areas including Use of Force, Global Commons governance and benefit sharing, and Human Rights as well as in the political theory of IR more broadly.

Bosko Tripkovic is a lecturer in law at Birmingham Law School. He holds PhD and LLM degrees from the European University Institute, MJur degree from the University of Oxford, and MPhil and LLB degrees from the University of Novi Sad. He has previously worked as a research associate at the European University Institute, and has been a visiting scholar at NYU Law School. Dr. Tripkovic researches and teaches in the areas of jurisprudence, constitutional law, and EU law. His book “The Metaethics of Constitutional Adjudication” (Oxford University Press 2017) develops an original theory of the role of values in constitutional reasoning, and combines insights from comparative constitutional law and metaethics. He has published articles in leading journals (such as International Journal of Constitutional Law), and book chapters with the most prominent publishers (CUP, Hart). Dr. Tripkovic won the 2016 Mauro Cappelletti Prize for the best thesis in the field of comparative law defended at the European University Institute.

Geir Ulfstein is Professor of International Law at the Department of Public and International Law, University of Oslo and Co-director of PluriCourts – Centre for the Study of the Legitimate Roles of the Judiciary in the Global Order, University of Oslo. He has been Director of the Norwegian Centre for Human Rights, University of Oslo (2004-2008). He has published in different areas of international law, including the law of the sea, international environmental law, international human rights and international institutional law. He is General Editor (with Andreas Føllesdal) of two book series Studies on Human Rights Conventions (Cambridge University Press) and Studies in International Courts and Tribunals (Cambridge University Press). He is President of the Norwegian Branch of the International Law Association; Co-chair of the International Law Association’s Study Group on the “Content and Evolution of the Rules of Interpretation” and is Vice-Chair of the Scientific Advisory Board, Max Planck Institute for Procedural Law, Luxembourg. He has been member of the Executive Board of the European Society of International Law (2010-2016). He will deliver one of the special courses during The Hague Academy of International Law’s 2022 winter session.

Antje Wiener has held the Chair of Political Science, especially Global Governance at the University of Hamburg since 2009. She is a By-Fellow of Hughes Hall, Cambridge and has been a Fellow of the Academy of Social Sciences since 2011. Before coming to Hamburg, she has taught in the USA, Canada, and the UK, where she held Chairs in International Studies at Queen’s
University Belfast and the University of Bath. In 2015, she was awarded an Opus Magnum Fellowship of the Volkswagen Foundation for research on the “Constitution and Contestation of Norms in Global International Relations.” She has held numerous visiting fellowships at world-leading research institutions, including Stanford, Sussex, the New School, Victoria, Oxford, Cambridge, Toronto, Florence, the LSE and Edinburgh among others. In 2018, she returned to the Lauterpacht Centre for International Law at Cambridge as a Visiting Fellow. Her research centres on International Relations theory especially norms research, where her research addresses the normativity-practice nexus. She has served on boards of several leading academic journals and has been co-founding editor of “Global Constitutionalism” (CUP). Her work has been published widely in peer-reviewed journals including the European Journal of International Relations, the Review of International Studies, the Journal of International Relations and Development, Theory and Society, and the European Journal of International Law. Among her many book publications are three monographs: “European’ Citizenship Practice: Building Institutions of a Non-State” (Westview 1998), “The Invisible Constitution of Politics: Contested Norms and International Encounters” (CUP 2008) and “A Theory of Contestation” (Springer 2014).