



Identity, Security, Democracy: Challenges for Public Law

25-27 June 2018
The University of Hong Kong

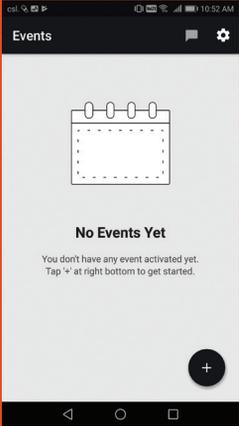
ICON-S
CONFERENCE
2018



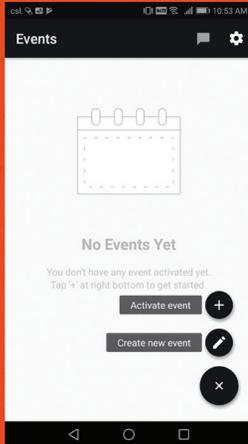
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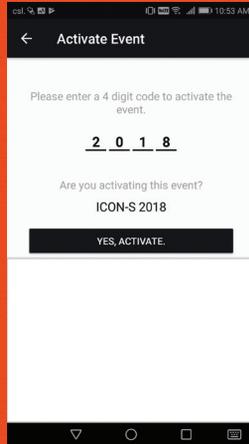
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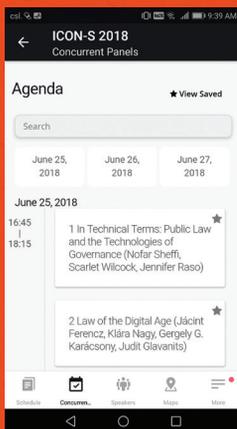


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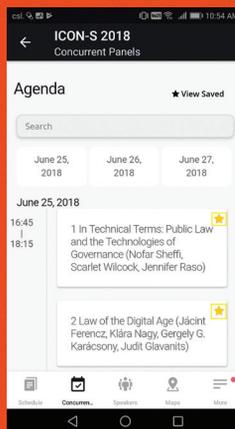


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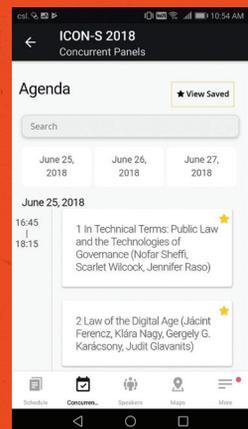
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WELCOME STATEMENTS

We are delighted to extend a warm welcome to all of the participants in the 2018 Annual Meeting of ICON·S, the International Society of Public Law. This year's Annual Meeting will be the first to take place outside of Europe and North America since the foundation of the Society in 2013. We are particularly happy that it is taking place in Asia, a vast and crucial continent with so much to offer to public law scholarship and practice. The meeting coincides with the 50th anniversary of Hong Kong University Law Faculty, one of the foremost law faculties in Asia and the world. It takes place at a time of continuing global and domestic political turbulence and uncertainty, making the mission of ICON·S to promote the interdisciplinary study of public law at the local, national, regional and global levels ever more crucial. This year, the panels, roundtables and plenary events address the overarching theme of "Identity, Security, Democracy: Challenges for Public Law" and a wide range of other topics central to public law scholarship and practice today. We are deeply grateful to our Hong Kong hosts for their immense hard work, vision and energy in putting together such an ambitious and exciting event, and we thank our sponsors for their generous support. Finally and most importantly, we thank all ICON·S members for once again responding with overwhelming positivity and enthusiasm to the call for papers, and for attending the conference in such healthy numbers. We are grateful for your interest, time and commitment to promoting the growth and vitality of the Society and its annual conference. We are delighted to present what we believe is a truly exciting, diverse and intellectually rewarding conference program featuring academics, lawyers and public intellectuals from a range of disciplines and from all parts of the globe. We wish all of you a very enjoyable and enriching conference!

GRÁINNE DE BÚRCA
New York University

RAN HIRSCHL
University of Toronto &
University of Göttingen

It is a great privilege and honour for our Faculty of Law at the University of Hong Kong to host this year's ICON·S Conference to mark the beginning of the celebration of our 50th Anniversary. Our law school, founded in 1969, is the first among the three law schools that now exist in Hong Kong. It has educated generations of graduates who have become Hong Kong's lawyers, judges, legal scholars, politicians and other movers and shakers. It has witnessed many legal, political and socio-economic changes in this cosmopolitan city, which is now the home of more than seven million residents. Hong Kong achieved spectacular economic growth in the 1960s and 1970s and became one of the "Four Little Dragons" of East Asia, together with Singapore, South Korea and Taiwan. As the era of "reform and opening" began in China in the late 1970s, Hong Kong served as China's window to international business and a bridge between China and the West. With the signing of the Sino-British Joint Declaration of 1984, Hong Kong entered its political transition from a British colony to a Special Administrative Region (SAR) of the People's Republic of China. The SAR was duly established in 1997; it celebrated its 20th anniversary last year.

We hope participants at this conference can experience first-hand the vitality and richness of Hong Kong's life under the constitutional experiment known as "One Country, Two Systems", designed to confer on Hong Kong a high degree of autonomy under Chinese sovereignty and to enable it to maintain its Common Law-based legal system. "Identity, Security, Democracy: Challenges for Public Law" was chosen as the theme of this Conference because Asian public law in recent decades has been confronted with complex issues of identity, security and democracy. Indeed, Asia is not alone in facing these challenges. They are global in nature. We hope that the sharing of experience, wisdom and insights at this Conference can contribute to the continuing international dialogue on how public law can and should develop in response to the challenges of new global economic, technological, social and ideological forces.

MICHAEL HOR
Dean of Faculty of Law
The University of Hong Kong

II SCHEDULE

Monday 25 June 2018

12:00 – 13:00	Registration → Foyer outside Grand Hall
13:00 – 13:15	Welcome and Opening Remarks → Grand Hall
13:15 – 13:30	Opening Address → Grand Hall
13:30 – 14:40	Keynote Address → Grand Hall
14:40 – 15:00	Coffee Break → Foyer outside Grand Hall
15:00 – 16:30	Plenary Panel I: Diversity, Identity and Human Rights → Grand Hall
16:45 – 18:15	Panel Sessions I pp 19-35 Sessions 1 – 29 → Cheng Yu Tung Tower and CPD Classrooms
18:30	Ceremony to Celebrate the 50th Anniversary of HKU Faculty of Law → Grand Hall
19:00	Conference Opening Reception → Foyer outside Grand Hall

09:00 – 10:30	Panel Sessions II Sessions 30 – 60 → Cheng Yu Tung Tower and CPD Classrooms	pp 36-52
10:30 – 11:00	Coffee Break → Foyer outside Grand Hall	
11:00 – 12:30	Panel Sessions III Sessions 61 - 92 → Cheng Yu Tung Tower and CPD Classrooms	pp 53-69
12:30 – 13:30	Lunch Break → Foyer outside Grand Hall	
13:30 – 14:30	ICON-S Plenary Workshop: How to Supervise a PhD Thesis* → Grand Hall	
14:30 – 16:00	Award Announcements: ICON-S Book Prize & ICON Best Paper Prize → Grand Hall Plenary Panel II: Courts and Democratization → Grand Hall	
16:00 – 16:30	Coffee Break → Foyer outside Grand Hall	
16:30 – 18:00	Panel Sessions IV Sessions 93 – 118 → Cheng Yu Tung Tower and CPD Classrooms	pp 70-83

* This workshop will be conducted by Professor Joseph H.H. Weiler (New York University School of Law)

Wednesday 27 June 2018

09:00 – 10:30	Panel Sessions V Sessions 119 – 147 → Cheng Yu Tung Tower and CPD Classrooms	pp 84-99
10:30 – 10:45	Break	
10:45 – 12:15	Panel Sessions VI Sessions 148 – 174 → Cheng Yu Tung Tower and CPD Classrooms	pp 100-114
12:15 – 12:45	Snack Break → Foyer outside Grand Hall	
12:45 – 14:15	Plenary Panel III: Technology and Public Law → Grand Hall	
14:15 – 14:30	Closing Remarks → Grand Hall	

III PLENARY EVENTS



Opening Remarks

Monday 13:00-13:15



PROFESSOR MICHAEL HOR

*Dean of Faculty of Law,
The University of Hong Kong*

Michael Hor is Dean and Professor at the Faculty of Law, The University of Hong Kong. He is a member of the Law Reform Commission of Hong Kong. Prior to that, he was a Professor at the Faculty of Law, National University of Singapore where he taught and researched in criminal law, criminal procedure and criminal justice. He studied law in Singapore before going on to read for a BCL at the University of Oxford and an LLM at the University of Chicago. Professor Hor has been a Distinguished Visitor at the Faculty of Law of the University of Toronto and a Visitor at the Oxford Centre for Criminology.



PROFESSOR RAN HIRSCHL

*University of Toronto and University
of Göttingen, Co-President, ICON-S*

Ran Hirschl (PhD, Yale University) is Professor of Political Science & Law at the University of Toronto, holder of the Alexander von Humboldt Professorship in Comparative Constitutionalism at the University of Göttingen, and leader of the Max Planck Society's Fellow Group in Comparative Constitutionalism. He is the co-president of ICON-S. Hirschl is the author of *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism* (Harvard University Press, 2004); *Constitutional Theocracy* (Harvard University Press, 2010)—winner of the 2011 Mahoney Prize in Legal Theory; *Comparative Matters: The Renaissance of Comparative Constitutional Law* (Oxford University Press, 2014)—winner of the 2015 APSA C. Herman Pritchett award for the best book on law and courts; and *City, State: Comparative Constitutionalism and the Mega-City* (Oxford University Press, forthcoming in 2019), as well as over 100 articles and book chapters on comparative constitutionalism and judicial review, and their intersection with politics, sociology, religion and geography. Professor Hirschl is the recipient of several prestigious fellowships and awards in five different countries: Canada, Israel, the United States, Australia and Germany. In 2014, he was elected Fellow of the Royal Society of Canada—the highest academic accolade in that country.



PROFESSOR GRÁINNE DE BÚRCA

*New York University,
Co-President, ICON-S*

Gráinne de Búrca is Florence Ellinwood Allen professor at NYU law school. She is Director of the Hauser Global Law School, and Co-Director of the Jean Monnet Center for International and Regional Economic Law and Justice. She is a corresponding fellow of the British Academy, and co-editor-in-chief of the *International Journal of Constitutional Law*. She was previously professor at Harvard Law School, Fordham Law School and the European University Institute. She writes on questions of EU constitutional law and governance, anti-discrimination law, international human rights, and transnational governance. She is co-editor of the Oxford University Press series *Oxford Studies in European Law*, and co-author with Paul Craig of the OUP textbook: *EU Law*, currently in its sixth edition.

Opening Address

13:15-13:30



THE HONOURABLE CHIEF JUSTICE GEOFFREY MA

Chief Justice of the Hong Kong Court of Final Appeal

Geoffrey Ma was appointed Chief Justice of the Court of Final Appeal on 1 September 2010. Chief

Justice Ma was born in Hong Kong in 1956. He studied law and graduated with an LLB from Birmingham University in 1977. After completing the Bar Finals in 1978, he was called to the English Bar (Gray's Inn) in 1978, the Hong Kong Bar in 1980, the Bar of the State of Victoria in Australia in 1983 and the Bar of Singapore in 1990. He was appointed Queen's Counsel in 1993. He became an Honorary Bencher of Gray's Inn in 2004. In 2011, he was admitted to the degree of Doctor of Laws (honoris causa) by the University of Birmingham. In 2012, he became an Honorary Fellow of Harris Manchester College, Oxford. In 2016, he became an Honorary Bencher of the Middle Temple and was admitted to the degree of Doctor of Laws (honoris causa) by the Chinese University of Hong Kong. He was appointed a Recorder of the Court of First Instance from 2000 to 2001 before his appointment as a Judge of the Court of First Instance in 2001. He was appointed a Justice of Appeal in 2002, and became Chief Judge of the High Court in 2003. Before joining the Judiciary, Chief Justice Ma was in private practice in Hong Kong and in Singapore. Chief Justice Ma is a Patron of the Bingham Centre for the Rule of Law; he is also a Patron of the International Advocacy Training Council. Chief Justice Ma was awarded the Grand Bauhinia Medal in June 2012.

Keynote Address

13:30-14:40

Balancing National Security and Public Order with Human Rights: A Judicial Perspective



THE RIGHT HONOURABLE THE LORD NEUBERGER OF ABBOTSBURY

*Former President of the Supreme Court of the United Kingdom
Non-Permanent Justice of the Hong Kong Court of Final Appeal*

After reading chemistry at Oxford and then spending three years as an investment banker, David Neuberger was called to the Bar in 1975 and practised largely in property law, taking silk in 1987. He was appointed a High Court Judge, sitting in the Chancery Division, in 1996, and was Supervisory Chancery Judge for Midland, Wales and Chester and Western Circuits from 2001. In 2004, he was made a Lord Justice of Appeal, and a Privy Counsellor. In the same year, he was appointed Judge in charge of IT and modernisation. In 2007 he was promoted to be a Law Lord and became a peer. He was appointed Master of the Rolls in 2009. In 2012, he became the President of the United Kingdom Supreme Court, a position from which he retired in 2017. In 2018, he started practising as an arbitrator from One Essex Court in the Temple, London. Since 2010, Lord Neuberger has been a Non-Permanent Judge of the Hong Kong Court of Final Appeal and was appointed a judge of the Singapore International Commercial Court in 2018. He was Treasurer of Lincoln's Inn in 2017. He is an honorary Fellow of the Royal Society, and an honorary member of the Royal Institution of Chartered Surveyors. He was on the Board of the University of the Arts London from 2001 to 2010, and was a trustee, and then chairman, of the Schizophrenia Trust from 2000 to 2012. Lord Neuberger is a trustee of MHRUK, a mental health research funding trust, and of Prisoners Abroad, and patron of Sapere, a children's educational trust. He chaired the Magna Carta Trust 2009-2012 and chaired an investigation for the Bar Council into widening access to the barrister profession in 2006-2007, and also served on the panel on fair access to the professions in 2008-2009.

Plenary Panel I:

Monday 15:00-16:30

Diversity, Identity and Human Rights

Respect for Diversity



JUDGE NAVI PILLAY

*Commissioner for the International Commission against the Death Penalty
Former United Nations High Commissioner for Human Rights*

Judge Navi Pillay was United Nations High Commissioner for Human Rights from 2008 to 2014. Preceding this, she acted as a judge on the Appeals Chamber of the International Criminal Court in the Hague from 2003 to 2008. In 1995, Judge Pillay was appointed as acting judge on the South African High Court, and was elected by the United Nations General Assembly to be a judge on the International Criminal Tribunal for Rwanda in the same year, where she served a total of eight years, the last four as President, playing an important role in the tribunal's jurisprudence on establishing rape and sexual assault as acts of genocide. Prior to her international legal career, Judge Pillay was the first woman to start a law practice in her home province of Natal in South Africa in 1967, and subsequently defended anti-apartheid activists and assisted in establishing key rights for prisoners on Robben Island. She also worked as a lecturer at the University of KwaZulu-Natal, and later was appointed Vice-President of the Council of the University of Durban Westville. Judge Pillay is a co-founder of Equality Now, an international organisation for women's rights, and a member of the Women's National Coalition of South Africa.

Diversity, Identity and Human Rights: Experiences in Asia and Africa



PROFESSOR YASH GHAI

*Director of Katiba Institute, Kenya
Emeritus Professor of Law, The University of Hong Kong*

Yash Ghai is an Honorary Professor at the University of Hong Kong, where he was the Sir YK Pao Professor of Public Law from 1989 to 2005. Prior to that, he helped to establish the first law in East and Central Africa at the University of East Africa, taught and researched at the University of Warwick, the University of Uppsala in Sweden, the International Legal Center in New York City, and Yale Law School. He has held posts as visiting professor in a number of universities. He has written extensively on comparative public law, human rights, federalism and autonomy, ethnicity, and on constitutions of Kenya, the South Pacific and Hong Kong. Professor Ghai has combined his academic career with the participation in constitution making in a number of countries, including of his own country, Kenya, where he chaired the constitutional commission and then the Constituent Assembly. Other countries include PNG, Solomon Islands, Vanuatu, Fiji, Afghanistan, Iraq, Sri Lanka, South Sudan, Somalia, Tanzania, Nepal, and Maldives. He has assisted various NGOs, in various countries, on human rights law-related issues. He drafted the Asian Human Rights Charter - A People's Charter, a project of the Asian Human Rights Commission. He founded and is the director of the Katiba Institute in Kenya, which is dedicated to the protection and development of the 2010 Kenya Constitution.

Plenary Panel I:

15:00-16:30

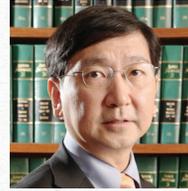
Diversity, Identity and Human Rights

Multicultural Human Rights Conflicts: We Need to Talk About Process



PROFESSOR EVA BREMS
University of Ghent

Eva Brems is a professor of Human Rights Law at Ghent University in Belgium, where she founded the Human Rights Centre. Her research interests include many human rights topics in domestic, European, international and comparative law. Her work has however focused mostly on issues of cultural and religious diversity, on women's rights, and on the case law of the European Court of Human Rights. In addition, she is attracted to transversal issues in human rights law, such as the matter of fragmentation and integration, and the topic of competing rights. Her recent publications include *Procedural Review in European Fundamental Rights Cases* (Janneke Gerards & Eva Brems, eds) CUP 2017; *Human Rights Encounter Legal Pluralism, Normative and Empirical Approaches* (Giselle Corradi, Eva Brems & Mark Goodale, eds), Hart 2017; *Children's Rights Law in the Global Human Rights Landscape: Isolation, Inspiration, Integration?* (Eva Brems, Ellen Desmet & Wouter Vandenhoele, eds), Routledge 2017; *When Human Rights Clash at the European Court of Human Rights, Conflict or Harmony?* (Stijn Smet & Eva Brems, eds), OUP 2017; *Integrated Human Rights in Practice, Rewriting Human Rights Decisions* (Eva Brems & Ellen Desmet), Edward Elgar 2017.



Chair
PROFESSOR JOHANNES CHAN
The University of Hong Kong

Johannes M M Chan is Professor of Law and former Dean (2002-2014) of the Faculty of Law of The University of Hong Kong. He has published widely in the fields of human rights, constitutional law and administrative law. His recent works include *Path of Justice* (2018), *Law of the Hong Kong Constitution* (2nd ed, 2016), "Behind the Text of the Basic Law: Some Constitutional Fundamentals" (2018); "Vindictory Damages for Violation of Constitutional Rights: A Comparative Approach" (2018). Professor Chan held a number of visiting professorships, including being the BOK Visiting Professor of University of Pennsylvania Law School, Herbert Smith Freehills Visiting Professor, University of Cambridge and a Visiting Fellow of Gonville and Caius College, University of Cambridge. He was also the first (and so far the only) Honorary Senior Counsel in Hong Kong, and has appeared as counsel in many leading human rights cases in Hong Kong. Professor Chan has served on many government/public and professional bodies, and has worked with numerous regional and international non-governmental organisations on human rights matters.

Plenary Panel II: Courts and Democratization

Tuesday 14:30-16:00

The Role of the Constitutional Court in Korea's Democratization



JUSTICE ILWON KANG
Constitutional Court of Korea

Kang Il-Won was appointed Justice at the Constitutional Court of Korea in 2012. He studied law and graduated from Seoul National University, College of Law with a LLB in 1982 and went on to complete the required programme for lawyers at the Judicial Research and Training Institute in 1984. He obtained his LLM from the University of Michigan in 1993. Justice Kang was appointed as Judge of the Seoul Central District Court in 1985, followed by appointments at the Jinju and Seoul Eastern District Courts in 1989 and 1991 respectively. He became Director of Judicial Policy of the National Court Administration in 1994. He was appointed as Research Judge at the Supreme Court of Korea in 2001, Presiding Judge of the Seoul Western District Court in 2003, Director General for the Registration Bureau of the National Court Administration in 2004 and Presiding Judge of the Daejeon High Court in 2006. Justice Kang held positions as Chief of the Judicial Policy Office (2007-2009) and Chief of the Planning and Coordination Office (2009-2011), both at the National Court Administration. Prior to his appointment to the Constitutional Court, he was Presiding Judge of the Seoul High Court. Justice Kang is a current Member of the Bureau of the Venice Commission (since 2015), after having been the commission's Chair of the Joint Council on Constitutional Justice (2014-2015). Parallel to his judicial career, he was a member of the Legal Education Committee of the Ministry of Education (2007-2008), acted as Expert Advisor to both the Judicial Reform Committee of the Supreme Court of Korea (2003-2004) and the Presidential Commission for Judicial Reform (1999-2000) and was a Guest Scholar at the National Center for State Courts in the USA (1997-1998). He is the co-author of books on the Civil Code and the Criminal Code of Korea, and has published numerous articles.

Why Populists Hate Judicial Independence



PROFESSOR KIM LANE SCHEPPELE
Princeton University

Kim Lane Scheppelle is the Laurence S. Rockefeller Professor of Sociology and International Affairs in the Woodrow Wilson School and the University Center for Human Values at Princeton University. From 2005-2015, she was Director of the Program in Law and Public Affairs at Princeton, after 10 years on the faculty of the University of Pennsylvania Law School. Scheppelle's work focuses on the intersection of constitutional and international law, particularly in constitutional systems under stress. After 1989, Scheppelle studied the emergence of constitutional law in Hungary and Russia, living in both places for extended periods. After 9/11, she researched the effects of the international "war on terror" on constitutional protections around the world. Since 2010, she has been documenting the rise of autocratic legalism first in Hungary and then in Poland within the European Union, as well as its spread around the world. Her many publications in law reviews, in social science journals and in many languages cover these topics and others. She is a commentator in the popular press, discussing comparative constitutional law, the state of Europe, the rule of law and the rise of populism. Scheppelle is an elected member of the American Academy of Arts and Sciences and the International Academy of Comparative Law. In 2014, she received the Law and Society Association's Kalven Prize for influential scholarship. She held tenure in the political science department at the University of Michigan, was the founding director of the gender program at Central European University Budapest and has taught in the law schools at Michigan, Yale, Harvard, Erasmus/Rotterdam, and Humboldt/Berlin. During 2017-2019, she is serving as the President of the Law and Society Association.

Plenary Panel II: Courts and Democratization

14:30-16:00

After Democratization: The Taiwan Constitutional Court at the Crossroads of Judicial Activism



PROFESSOR LIN TZU-YI

Director & Distinguished Research Professor, Institutum Iurisprudentiae, Academia Sinica, Taipei

Tzu-Yi Lin is Distinguished Research Professor and Director of Institutum Iurisprudentiae,

Academia Sinica. Between 2003 and 2011 he served as a Justice at Constitutional Court, Judicial Yuan, ROC (Taiwan). Before that judicial appointment he was a Professor of Law at College of Law, National Taiwan University, including serving as Chairman of the Law Faculty, Department of Law, between 1997 and 1999. He received his LL.B. and LL.M. from National Taiwan University and LL.M. and J.S.D. from Cornell University. His current research focuses on free speech, privacy, information law, and law and technology, among other topics of constitutional law and public law in general. His recent book includes *Constitutional Law: Separation of Powers* (co-authored with Jiunn-Rong Yeh, Jau-Yuan Hwang & Wen-Chen Chang, 3rd ed. 2016), one of the leading constitutional law textbooks in Taiwan.



Chair

PROFESSOR RICHARD ALBERT

The University of Texas Law School

Richard Albert is Professor of Law at the University of Texas at Austin. A specialist in the study

of constitutional amendment, his publications have been translated into Chinese, Hungarian, Portuguese, Russian and Spanish. He is co-editor of the new Oxford Series in Comparative Constitutionalism, Book Reviews Editor at the American Journal of Comparative Law, founding co-editor of I-CONnect, a former law clerk to the Chief Justice of Canada, and a recipient of the Hessel Yntema Prize for “the most outstanding article” on comparative law by a scholar under 40 years of age. A graduate of Yale, Oxford and Harvard, Richard Albert has held visiting professorships at Yale University, Externado University of Colombia, the University of Toronto and the Interdisciplinary Center in Herzliya.

Plenary Panel III: Technology and Public Law

Wednesday 12:45-14:15

Public Law and Technology



**PROFESSOR CHRISTOPHER
YOO**
University of Pennsylvania

Christopher S. Yoo is the John H. Chestnut Professor of Law, Communication, and Computer & Information Science and the Founding Director of the Center for Technology, Innovation and Competition at the University of Pennsylvania. Repeatedly recognized as one of the most cited scholars in administrative and regulatory law as well as intellectual property, he is the author of five books and over one hundred scholarly articles. His major research projects include investigating innovative ways to connect people to the Internet; analysing the technical determinants of optimal interoperability; comparing antitrust enforcement practices in China, Europe, and the U.S.; promoting privacy and security for autonomous vehicles, medical devices, and the Internet's routing architecture; and studying the regulation of Internet platforms, including network neutrality. He is building innovative joint degree programs designed to produce a new generation of professionals with advanced training in both law and engineering. Before entering the academy, Professor Yoo clerked for Justice Anthony M. Kennedy of the Supreme Court of the United States and Judge A. Raymond Randolph of the U.S. Court of Appeals for the D.C. Circuit and practiced law with the law firm of Hogan & Hartson (now Hogan Lovells) under the supervision of now-Chief Justice John G. Roberts, Jr. He is frequently called to testify before the U.S. Congress, Federal Communications Commission, Federal Trade Commission, foreign governments, and international organizations. He is currently serving as a member of the Federal Communication Commission's Broadband Deployment Advisory Committee, the Board of Advisers for the American Law Institute's Project on Principles of Law for Data Privacy, and as a co-convener of the United Nations Internet Governance Forum's initiative on Connecting and Enabling the Next Billions.

Legal Automation, Rule by Law and the Rule of Law



**PROFESSOR FRANK
PASQUALE**
University of Maryland

Frank Pasquale, JD, MPhil, Professor of Law at the University of Maryland, is an expert on the law of big data, predictive analytics, artificial intelligence, and algorithms. He has advised business and government leaders in the health care, internet, and finance industries, including the U.S. Department of Health and Human Services, the U.S. House Judiciary Committee and Energy & Commerce Committees, the Senate Banking Committee, the Federal Trade Commission, and directorates-general of the European Commission. He is the author of *The Black Box Society*, (Harvard University Press, 2015) and has served as a member of the Council on Big Data, Ethics, & Society. He co-convoked the conference "Unlocking the Black Box: The Promise and Limits of Algorithmic Accountability in the Professions," at Yale University, and is now at work on a book tentatively titled *Laws of Robotics* (under contract to Harvard University Press). He was named one of the 10 most cited scholars in health law on the Harvard Law School Petrie-Flom Center's publication, *Bill of Health*, in 2017.

Plenary Panel III: Technology and Public Law

12:45-14:15

Big Data-driven Government: Towards a New Public Analytics in Public Administration?



PROFESSOR KAREN YEUNG
University of Birmingham

Karen Yeung is Interdisciplinary Professorial Fellow in Law, Ethics and Informatics at the University of Birmingham in the School of Law and the School of Computer

Science and a Distinguished Visiting Fellow at Melbourne Law School. Originally from Australia, Karen came to the United Kingdom in 1993 as a Rhodes Scholar to read for the Bachelor of Civil Law at Oxford University, after completing a combined Law/Commerce degree at the University of Melbourne. She spent ten years as a University Lecturer at Oxford University and as a Fellow of St Anne's College, where she wrote her D Phil, before taking up a Chair in Law at King's College London in September 2006 to help establish the Centre for Technology, Law & Society ("TELOS"), occupying the role of Director since 2012 until the end of 2017. Her research expertise lies in the regulation and governance of, and through, emerging technologies, with her more recent and on-going work focusing on the legal, ethical, social and democratic implications of a suite of technologies associated with automation and the "computational turn", including big data analytics, artificial intelligence (including various forms of machine learning), distributed ledgers (including blockchain) and robotics. Her work has been at the forefront of nurturing "law, regulation and technology" as a sub-field of legal and interdisciplinary scholarship, reflected in the publication of *The Oxford Handbook of Law, Regulation and Technology* (co-edited with Roger Brownsword and Eloise Scotford) in 2017. She is currently a member of the Council of Europe's Expert Committee on human rights dimensions of automated data processing and different forms of artificial intelligence (MSI-AUT) and joint author of the Royal Society-British Academy report "Data Management and Use: Governance in the 21st Century" (2017). She is also currently Chair of the Nuffield Council on Bioethics Working Party on Genome Editing and Human Reproduction and is a member of the World Economic Forum Global Future Council on Biotechnology. She is admitted to practice as a Barrister and Solicitor of the Supreme Court of Victoria (Australia), having completed a brief stint in professional legal practice and is on the editorial boards of *Big Data & Society* and *Public Law*.



Chair
ASSOCIATE PROFESSOR CORA CHAN
The University of Hong Kong

Cora Chan is an Associate Professor of Law at The University of Hong Kong. She is the Deputy

Head of the Department of Law and the Director of the LLB programme. Her research interests are in constitutional theory, human rights and public law. She has been awarded the 2012 Society of Legal Scholars Best Paper Prize, the 2013 Hong Kong Research Grants Council Early Career Award and the 2012-2013 University of Hong Kong Research Output Prize. Her works have appeared in leading journals such as the *International Journal of Constitutional Law*, *Legal Studies*, and *Public Law*. In 2017, she (with Fiona de Londras, Birmingham) were awarded a British Academy / Leverhulme Small Research Grants. She studied law at HKU and Oxford. She is on the General Council of the International Society of Public Law, the Scientific Advisory Board of the *International Journal of Constitutional Law*, and the editorial boards of *Hong Kong Law Journal* and *Asia-Pacific Journal on Human Rights and the Law*.

Closing Remarks

Wednesday 14:15-14:30



PROFESSOR ROSALIND DIXON

*University of New South Wales,
Incoming Co-President, ICON-S*

Rosalind Dixon, professor at Faculty of Law, UNSW Sydney, earned her B.A. and LL.B. from

the University of New South Wales and was an associate to the chief justice of Australia, the Hon. Murray Gleeson AC, before attending Harvard Law School, where she obtained an LL.M and S.J.D. Her work focuses on comparative constitutional law and constitutional design, the problem of democratic backsliding or abusive constitutionalism, theories of constitutional dialogue and amendment, socio-economic rights, and constitutional law and gender. She has been published in leading journals in the U.S., Canada, the U.K. and Australia, including the *American Journal of Comparative Law*, *Cardozo Law Review*, *Cornell Law Review*, *The International Journal of Constitutional Law* and *Oxford Journal of Legal Studies*. She is co-editor, with Tom Ginsburg, of a leading handbook, *Comparative Constitutional Law* (Edward Elgar, 2011) and related volumes on *Comparative Constitutional Law in Asia* (Edward Elgar, 2014), co-editor (with Mark Tushnet and Susan Rose-Ackermann) of the Edward Elgar series on *Constitutional and Administrative Law*, and editor of the *Constitutions of the World* series for Hart publishing. She is on the Council of and Co-President elect of the International Society of Public Law, and on the Editorial Board of its associated journal, the *International Journal of Constitutional Law*, as well as advisor to the *Public Law Review*. Dixon is co-lead of the UNSW Grand Challenge on Inequality, a member of the Gilbert + Tobin Centre of Public Law and deputy director of the Herbert Smith Freehills Initiative on Law and Economics. She previously served as an assistant professor at the University of Chicago Law School.



PROFESSOR LORENZO CASINI

*IMT School for Advanced Studies,
Lucca, Incoming Co-President, ICON-S*

Lorenzo Casini is a Full Professor of Administrative Law at IMT School for Advanced Studies in Lucca (Italy), where he teaches Law and Cultural Heritage. From 2002 to 2014 he has been teaching Urban Planning Law, Cultural Heritage Law and Administrative Law at the University of Rome "Sapienza". After graduating in Law cum laude in 1999, he obtained a Ph.D. in European and Comparative Administrative Law from the University of Rome "Sapienza" in 2004. In 2008-2009 and in 2013 he has been Hauser Global Fellow at the NYU School of Law-Institute for International Law and Justice for the Global Administrative Law Project. Since 2014 he has been working as legal counsel to the Italian Minister for Cultural Heritage and Tourism. From 2009 to 2014 he served as a law clerk to Justice Professor Sabino Cassese at the Constitutional Court of Italy. He has also been Secretary general of the Institute for Research on Public Administration (IRPA) (2012-2016) and of ICON-S (2015-2018). He has written several books and articles on cultural heritage, sports, and comparative and global administrative law. He is in the board of editors of the *International Journal of Constitutional Law*, the *Rivista trimestrale di diritto pubblico*, and *Aedon*.

IV CONCURRING PANELS



**PANEL
SESSIONS I**

MONDAY
25 JUNE 2018
16:45 – 18:15

1 IN TECHNICAL TERMS: PUBLIC LAW AND THE TECHNOLOGIES OF GOVERNANCE

This panel explores public law's character in an age of technical governance. As a field, public law draws on principles, such as fairness, justice, and democracy. But technicalities shape how public law governs. Programs ranging from infrastructure to social services are delivered by multiple state and arm's-length agencies and regulated by many intersecting rules. Administrative decisions are guided by risk-calculating algorithms and generated by software. Meanwhile, platform technologies use public law techniques (constitutional principles, bureaucratic design) to govern their domains. Drawing together sociolegal research from Australia, Canada, and Europe, this panel traces shifts and continuities in governance across service-providing institutions. Each paper examines how technical details, from prescriptive software to constitution-like corporate policies, influence governance in different contexts, and theorizes how public law might respond to changes already underway.

Room:

CPD-LG.37

Chair:

Jennifer Raso

Nofar Sheffi:

The Constitution of Airbnb

Scarlet Wilcock:

'Robo-debt': Guilt, Responsibility and the Dehumanisation of Welfare Compliance

Jennifer Raso:

Past, Future, and Present: the New Temporality of Decision-making Software

2 LAW OF THE DIGITAL AGE

The global and digital life is a challenge for every regulator worldwide: with the wide use of robotics, artificial intelligence and blockchain technology, the world is now changing faster than the law could give an adequate reaction. This is effecting many spheres of life: from governmental offices to private workplaces, from the procurement process to the billing and paying methods. The panel is dealing with the regulatory issues of the modern technology: how the robotics and artificial intelligence effects the labour law, and public servants' positions. The new technologies are effecting the purchasing processes, so the public procurement needs to be revised as well. And overall: the fascinating phenomena of blockchain technology can possibly - in the future - change our way of thinking on contracts. In which manner are smart contracts "smarter" than others?

Room:

CPD-LG.39

Chair:

Judit Glavanits

Jácint Ferencz:

Labour Law for the Robots?

Klára Nagy:

Digitalisation in Hungarian Elections

Gergely G. Karácsony:

Privacy Issues of Artificial Intelligence

Judit Glavanits:

Public Procurement in a "21st Century"-way: How New Technologies May Change Public Spending?

3 CONSTITUTIONALISM IN CONTEXT I

The papers on this panel, drawn from the forthcoming volume *Constitutionalism in Context* (CUP 2018), offer contextual and interdisciplinary perspectives on issues and jurisdictions at the cutting edge of the study of constitutionalism. Each chapter introduces the reader to a jurisdiction in a context-rich way, then proceeds to explore an emerging issue at length in the context of the jurisdiction. The chapters on this panel cover the performance of constitutional review by institutions other than courts; the proliferation of government institutions that fall outside the traditional separation of powers framework and specialize in protecting constitutional democracy; the tension between constitutional autochthony and global norms; the stealth transformation of constitutional orders; and the emergence of forms of judicial review that range from “soft” to “super-hard” and beyond.

Room:

CPD-LG.59

Chairs:

David Law, Sujit Choudhry

Cora Chan:

Subnational Constitutionalism: The Case of Hong Kong

David Landau:

Constitutional Backsliding: Colombia

Mark Tushnet:

Institutions Supporting Constitutional Democracy:

South Africa

Yaniv Roznai:

Constitutional Transformation: Hungary

4 GPS INVESTIGATIONS IN JAPAN

This panel reviews GPS investigations in Japan. In 2017, the Japanese Supreme Court held that warrantless GPS searches are illegal. This case shows the boundary of permissible investigation using high technology. Rapidly developing technology challenges legal research. The Japanese Constitution has no term for “privacy;” and its notion and scope have been questioned in Japan. Criminal disposition for investigation is based on due process of law in the Japanese Constitution. Criminal procedure has provisions for criminal investigation that entails physical intrusion, such as arrest or search. However, GPS investigations do not entail such physical intrusion. There is no provision in criminal procedure law addressing GPS search warrants. The purpose of this panel is to review the distinction between the public and private spheres of our lives. Each speaker reviews this issue from the legal perspective of their country of origin.

Room:

CPD-LG.60

Chair:

Yuichiro Tsuji

Chihoko Morita:

GPS Investigation and Right of the Target. It Intrudes the “Privacy”?

Toru Yamada:

Visualizing Privacy? Converting GPS Information Via Computer Mapping

Yuichiro Tsuji:

Privacy and GPS Investigation in Japan

Shimizu Jun:

A Japanese Version of U.S. v. Jones?: the Supreme Courts Decisions on GPS Installation on a Vehicle in the U.S. and Japan

5 CONSTITUTIONAL IDENTITY AND CONSTITUTIONAL CHANGE IN THE GLOBAL NORTH AND GLOBAL SOUTH

This panel is an invitation to start a public law oriented discourse about the legal concept of “constitutional identity”, which conceived here as the “identity of the constitution”. It is seen as a part of the constitution, with which the constituent people/nation can identify with as they created it in the course of constitution-making and constitutional amendment, or which the constitutional interpretation shaped. Provisions that are entrenched by eternity clauses and a multi-tier system of constitutional amendments help to locate the identity of the constitution. The panel seeks to explore who the constituent people are and how they are involved in the formation of the identity of the constitution in the Global South (Ecuador and Kenya), and it reveals how the very same legal concept of constitutional identity can be used to unify the European integration project further (a Global North phenomenon) and could become detrimental through informal constitutional change.

Room:

CPD-LG.64

Chair:

Timea Drinoczi

Timea Drinoczi:

Constitutional Identity and “Procedural Sameness”

Maciej Serowaniec, Zbigniew Witkowski:

Constitutional Identity in the European Union

Wojciech Wloch, Anna Tarnowska, Agnieszka Bien-Kacala:

The Nation, Delegation and Constitutional Change in Poland

Jula Hughes:

The Constitutional Conceptualization of Non-status and Off-reserve Indigenous Populations in Canada

Lóránt Csink:

Constitutional Identity in the Hungarian Basic Law

6 LEGAL PLURALISM AND INTERNATIONAL HUMAN RIGHTS

Considerations of legal pluralism and human rights do not go readily hand in hand – on the face of it they appear to have different core concerns and motivations, with the former being conceptual in character while the latter is normative (Provost & Sheppard 2012: 1). This panel challenges this alleged incompatibility, and proceeds on the grounds that a reading of human rights as being solely about universal norms is an overly narrow one, instead submitting that a preferable approach is one that reflects upon the operation of international human rights norms within varied, co-existing and overlapping legal regimes.

Room:

CYTT 3.10

Chair:

Alex Green

Jen Hendry:

Legal Pluralism: Challenging ‘Default Settings’ in IHR

Elies van Sliedregt:

Counter-terrorism, IHL and the Right to Rebel

René Provost:

Pluralising the Rule of Law

Ilias Trispiotis:

Subsidiarity and Interpretive Pluralism in International Human Rights Law

7 REFUGEE PROTECTION AT THE BORDERS OF INTERNATIONAL REFUGEE LAW: LEGAL RESPONSES, EXCEPTIONS, AND POSSIBILITIES

Discourse surrounding refugee protection in the Asian context often presumes the absence of relevant legal norms since most states in the region have not acceded to the 1951 Convention related to the status of refugees. Given continuing resistance to accession, some claim that Asia has essentially “rejected” refugee law. Others suggest that states have nevertheless developed effective legal responses and there is potential for further reform. The papers in this panel will explore these questions and challenge common assumptions through an examination of legal responses in Asia and the Middle East. While these jurisdictions in many ways remain at the borders of the international refugee regime, they also exist at the centre of the current international refugee crisis. What issues remain in law and practice in these “zones of exception”?

Room:
CPD-LG.17

Chair:
Martin Jones

Martin Jones:
The Frontier of the International Refugee Regime: Refugee Protection, Legal Orientalism, and What Better Alternative in the Middle East and Asia?

Anna Lamut:
Understanding Hong Kong’s Low Grant Rate for Non-refoulment Protection Under the Unified Screening Mechanism (USM)

Kelley Loper:
International Human Rights Law and the Protection of Refugee Women in Asia

8 INSTITUTIONAL FAILURE IN COMPARATIVE CONSTITUTIONAL LAW

This panel investigates the role that institutional failure performs in comparative constitutional law. It interrogates the concept’s meaning, the ways in which it manifests in practice, and its consequences for particular claims in constitutional theory. The papers examine, in particular, (a) the role of regional human rights bodies in addressing institutional failure at the national level, (b) the breakdown in the separations of powers in Central Europe as an instance of institutional failure, and (c) the relationship between the presence/absence of institutional failure and the types of remedies that courts issue for violations of constitutional norms.

Room:
CPD-LG.63

Chair:
Aileen Kavanagh

Rosalind Dixon:
The Core Case for Weak Form Judicial Review

Michaela Hailbronner:
Regional Human Rights Courts and Institutional Failure

David Kosař, Jiří Baroš, Pavel Dufek:
Separation of Powers Under Siege: What Went Wrong in Central Europe?

Scott Stephenson:
Against Interpretation as an Alternative to Invalidation

9 DEMOCRACY AND RULE OF LAW IN ASIA (I)

Epic clashes between democracy and the rule of law now increasingly arise in many Asian jurisdictions. Indeed, these new battlegrounds have demonstrated a global reality: that these vastly important principles not only complement one other and help to sustain governments and nations, but also frequently converge, thus jeopardising such institutional arrangements. Recent events in East Asia, such as the Taiwan Sunflower Movement and Hong Kong Umbrella Movement, have brought forth intriguing questions about the operation of and balance between democracy and the rule of law. These two principles are now increasingly at issue in a region that has embraced them in a variety of ways. The papers in this panel, primarily focused on East and Southeast Asia, provide a variety of critical perspectives to how these extremely important values play out in a number of jurisdictions.

Room:

CPD-1.21

Chair:

Brian Christopher Jones

Benny Tai:

Challenges to the Rule of Law in a Semi-Authoritarian Hong Kong

Jimmy Chia-Shin Hsu:

Bringing the Sunflower Movement Into Perspective: Building the Rule of Law on a Flawed Political Foundation

Han Zhu:

Democratic Legitimacy vs. Rule of Law: a Comparative Study of Oath-taking Controversies in Hong Kong and Taiwan

Xiaobo Zhai:

The Rule of Law in China and Its Problems

Jaclyn Neo, Jack Lee:

Changing Ideas of Representation: Representative Democracy, and the Rule of Law in Singapore

10 IDENTITY CHALLENGES: SEX, GENDER AND SEXUALITY RIGHTS IN LOCAL, INTERNATIONAL AND SUPRANATIONAL LAW

This panel focuses on the theme of identity pertaining to sex, gender and sexuality and the challenges related to such in public law in local, international and supranational contexts. Drawing attention to the United Nations, the European Court of Human Rights, and the local Hong Kong jurisdiction, the panel explores the diverse ways in which rights pertaining to sex, gender and sexuality are protected, or not, in public law fora. In doing so the panel also explores strategies that may be adopted to better engage with the complexities of sexed, gendered and LGBT* identities in public law. Panelists will explore how changing conceptions of rights, an evolutive approach to supranational jurisprudence, and engagement with concepts such as governance and visibility may offer productive ways forward in this area.

Room:

CYTT 8.24

Chair:

Kathryn Mcneilly

Aeyal Gross:

Homoglobalism: Global Gay Governance

Natasa Mavronicola:

The ECtHR's LGBT Rights Case Law: Policing, Shifting, and Subverting (?) 'Borders'*

Kathryn McNeilly:

Sex/Gender Rights and Untimely Evolution in International Human Rights Law

Marco Wan:

Rethinking Gay Visibility

11 DEMOCRATIC BACKSLIDING AND CONSTITUTIONAL CAPTURE - A GLOBAL PERSPECTIVE

In recent years the democratization process, which was characterized by the expansion of principles of democracy, human rights and the rule of law in many countries in the world, and by a significant shift of power to constitutional courts, has been replaced with the worldwide rise of populism and democratic backsliding. Democratic backsliding is an incremental process where the governing powers in a state use legal, political, and public opinion tools to create a gradual change in its constitutional system, by undermining the liberal democratic characteristics of the system and replacing them with authoritarian ones, with the ultimate goal of achieving a deep and lasting change in the constitutional system of the state. At its peak such a process might lead to the complete capture of the state's system by authoritarian and anti-democratic elements. This panel will discuss instances of democratic backsliding across the globe and identify common denominators and coping strategies.

Room:

CYTT 11/F

Chair:

Moshe Cohen Eliya

Tom Ginsburg:

Near Misses: Avoiding Constitutional Retrogression

Wojciech Sadurski:

Constitutional Capture and "Lliberal Democracy": the Case of Poland

Tarun Khaitan:

India's Third Constitutional Retrogression

Gila Stople:

Democratic Backsliding in Israel

12 PENAL POPULISM, SECURITY AND IDENTITY IN A CHANGING WORLD ORDER

Weakened by the social and economic restructuring from the 1980s in Anglo-American societies, the state's authority in these jurisdictions and numerous others are now being strengthened by utilising criminal justice regimes to provide security against future risk, rather than merely punish past wrongdoings and in so doing undermining many of the foundation stones on which criminal justice in modern society had been built. The rise of populism can also be seen in penal development and penal discourse around the globe. This panel examines the causes of these developments across these jurisdictions and how penalty has been reconfigured in this process to prioritize public protection over individual rights. The three-person panelists will discuss the significance of the paradigm shift, the definition, and connotations of populism and the underlying mechanisms and triggers for the surge of populism across national borders.

Room:

CYTT 3.11

Chair:

Lena Zhong

Wayne Morrison:

The Bangladesh International Crimes Tribunal, Shahbag Protests and Political Violence: A Rather Peculiar Penal Populism, Political Vendetta or Defence of National Identity and Democracy?

John Pratt:

From Protecting Individual Rights to Protecting the Public: the Changing Parameters of Populist Driven Criminal Law and Penal Policy

Russell Hogg:

Rethinking Populism and Its Threats and Possibilities

Michelle Miao:

The Popular Politics of Punitiveness: Security, Identity, and Changing Societies

13 CONSTITUTIONALIZING TRANSITIONAL JUSTICE: HOW CONSTITUTIONS AND COURTS DEAL WITH THE PAST ATROCITY

This panel brings scholars and practitioners from different countries (Hungary, Poland, Kazakhstan, and Taiwan) and disciplines (law and political science) together to analyze the indispensable role of constitutions and constitutional courts in the process of overcoming political injustice of the past. Issues raised in the panel include: is a new constitution inevitable for the successful practice of transitional justice after democratization, revolution or civil war? What could or should a constitutional court do in response to political injustice from the past? Would it be too risky for the court to test the water with a new constitution immediately after a transition for the swift rectification of past wrongdoings? As scholars who so intensely debate the promises made by the constitution, we also try to inquire: would the process of transitional justice affect the constitutional culture, political dynamics among parties or public trust in the constitution and constitutional courts?

Room:

CYTT 3.20

Chair:

Marek Zubik

Cheng-Yi Huang:

Why Constitution Matters with Transitional Justice: Comparison of Taiwan and South Korea

Alexei Trochev:

Between Blaming and Naming: Constitutions and Transitional Justice in Post-soviet States

Kriszta Kovács:

Facing the Shadows of the Past During Transitions: the Role of the Constitution in the Case of Hungary

Gábor Attila Tóth:

Chief Justices of Constitutional Courts in Democratic Transition: Roles and Models

The Role of Chief Justices of East-Central European Constitutional Courts in Democratic Transition: A Pyrrhic Victory?

14 CONSTITUTIONAL IDENTITY AS A LIMIT FOR CONSTITUTIONAL REFORM AND SUPRANATIONAL INTEGRATION

The term “constitutional identity” has emerged in jurisprudence and academic debate as a limit of constitutional reform and supranational integration. However, the basis of this concept is rather unclear and must be closely examined from a theoretical and comparative perspective. Therefore, the panel intends to clarify whether constitutions have implicit limits to their reform even if explicit clauses such as articles 79.3 German Basic Law, 288 Portuguese Constitution or 110.1 Greek Constitution do not exist. A similar question arises for the impact of supranational law on national constitutional law. We must reflect on how to determine the core elements of the constitution which are exempt from revision or supranational impact, in a narrow or large, dynamic way and how to harmonize the national and supranational perspective of constitutional identity. Furthermore, identification through constitutional law shall be taken into consideration.

Room:

CYTT 3.21

Chair:

Rainer Arnold

Toma Birmontiene:

Constitutional Identity: Constitutional Amendments or Judicial Interpretation

Luca Mezzetti:

Constitutional Identity in the Jurisprudence of the Court of Justice and of Constitutional Courts

Mirosław Granat:

Constitutional Identity as a Tool to Analyse Constitutional Change

Selin Esen:

The Concept of Citizenship as Means of Constitutional Identity: Turkish Case

15 NEW DEVELOPMENTS IN CHINESE CONSTITUTIONAL LAW

Over the last decade, Chinese constitutional law has become an ever-vibrant field, which has incorporated a series of new topics, perspectives and methodologies, leading to vastly different yet equally stimulating takes on the what, why and how of constitution in China. This panel intends to, in a small way, reflect these new developments in this field, covering diverse topics from constitutional equality in labor law to legislative review and using both traditional doctrinal analysis and socio-legal approaches. This panel consists of four presenters and two discussants. Apart from the four presenters, Prof. Paul Craig from the University of Oxford and Professor Duanhong Chen from Peking University Law School will be the discussants.

Room:

CYTT 3.22

Chair:

Chun Peng

Yan Lin:

Reverse Law-Making: Constitutional Review with Chinese Characteristics

Tian Yan:

Social Movement and Constitutional Change: the Case of America and China

Yunxin Tu:

Civil Liberty and the Use of Surveillance Materials in Counter-terrorism Law Enforcement — a Constitutional Reappraisal

Chun Peng:

Revamping the Rule of Party's Rule

Paul Craig:

Discussant

Duanhong Chen:

Discussant

16 "THE OTHERS" OF EUROPE: DEPRIVING MIGRANTS AND MINORITIES OF HUMAN RIGHTS PROTECTION

Migrants, refugees, asylum seekers – these are “the Others” arriving in a new, often unknown and hostile destination. Even if the place of arrival (or residence) is an otherwise democratic, fully rights-protective European state, “the Others” encounter often not merely social hostility but also severe restrictions in admission policy, expulsions rules and other practices of rejection. However, state laws and policies of exclusion are targeting not only migrants as the external “Others” but also citizens belonging to various minorities. Roma minority constitutes particular example of such processes of othering in the EU. The stigmatization, embedded deeply in the very roots of xenophobic attitudes, serves as a marker of treatment of “the Others” which is demonstrated also in legal regulations. This panel seeks to demonstrate tendencies, mechanisms and consequences of the state-orchestrated policies and laws amounting to the categories of “governmental xenophobia” and crimmigration.

Room:

CYTT 3.23

Chair:

Uladzislau Belavusau

Magdalena Kmak:

Undocumented Migrants As (Non)Others of Europe

Witold Klaus:

Security-based Migration Laws in Europe. Crimmigration Against “the Others”

Aleksandra Gliszczynska-Grabias:

Governmental Xenophobia Targeting the Internal “Others” in Europe

17 THE MOVEMENT OF PEOPLE IN A BORDERLESS SOCIETY AND THEIR IDENTITY: DEMOCRATIC RIGHTS, TAX, AND SOCIAL SECURITY

The world is facing legal challenges as more and more people cross borders not only as international migrants and refugees but also as working people moving across local boundaries within a country. How can existing legal systems govern individual identities in these moving demographics? The question arises in particular as to where people “belong”: the place in which they actually live, or the place from which they originate. Such information is critical for legal purposes, for example, where they are legally entitled to vote and receive social welfare and where they are obligated to pay taxes. This panel will accordingly examine how law is taking on these challenges, such as the transformation of democracy (Kondo), the enfranchisement of foreign residents (Okitsu), threats to residence-based taxation (Fuchi), and the determination of social security benefits for legal immigrants (Sekine) and asylum seekers (Ohnishi) from a comparative perspective.

Room:

CYTT 4.24

Chair:

Takuya Hatta

Keisuke Kondo:

Rethinking Democracy in the Context of Globalization

Yukio Okitsu:

The Enfranchisement of Foreign Residents: Nationality Versus Affectedness

Keigo Fuchi:

The Changing Case for Personal Tax Liability in Japan

Yuki Sekine:

Is Immigration a Chance to Rethink Social Citizenship?

Nami Thea Ohnishi:

Refugee Acceptance and the Social State

18 PROTECTION OF CONSTITUTIONAL IDENTITY

This panel seeks to explore the notion of the protection of constitutional identity through the following perspectives: The tools of constitutional guardianship, the constitutionalization of transitional justice, and the institutionalization of transnational networks of constitutional courts. More specifically, are tools of protection applicable across a variety of constitutional systems? If so, are there variations within the use of procedures such as party dissolution or impeachment? Another aspect is the notion of constitutional identity within the process of transitional justice. What are the core elements and factors mandating the notion of transitional justice, and how do they relate to the preservation or evolution of constitutional identity? Constitutional identity also becomes a significant issue when constitutional courts develop international networks while at the same time retain their primary task as guardians of national constitutions.

Room:

CYTT 4.26

Chair:

Seokmin Lee

Birgit Daiber, Seokmin Lee:

Democratic Basic Order as the Object of Protection of Party Dissolution Procedures in Germany and Korea

Jong-Ik Chon:

Impeachment Procedure in the Korean Constitutional Litigation

Woo-Young Rhee:

Constitutionalization of Transitional Justice and the Constitutional Identity in Korea

Fabian Duessel:

Constitutional Identities and the Institutionalization of Transnational Judicial Networks

19 ADMINISTRATIVE DEMOCRACY

The Panel is concerned with various features of administrative democracy. In particular, speakers will deal with the following themes: participation in adjudication procedures; participation in rulemaking; transparency and access to administrative information; intensity of judicial review of administrative action; reforms of public administration.

Room:

CYTT 6.24

Chair:

Joana Mendes

Peter Cane:

See Panel Description

Paul Craig:

See Panel Description

Marco D'Alberti:

See Panel Description

Bernardo Giorgio Mattarella:

See Panel Description

Giulia Passino:

See Panel Description

Peter Lindseth:

Discussant

20 CONSTITUTIONAL AND REGULATORY ISSUES ON SHARING ECONOMY

Sharing-economy platforms such as Airbnb and Uber have gained growing importance throughout the world. However, there are many discussions on how to regulate it and construct an adequate legal system for it. The regulation concerns directly public law as sharing-economy platforms have been accused of facilitating activities that cause nuisance to the general public. At the same time, their regulation puts at stake the constitutional rights such as property rights and the right to engage in economic activities. This panel offers an introduction to the public order regulation of the sharing economy from a constitutional and economic law perspective. We shall delve into the following issues: 1) What constitutional problems does the sharing economy raise? 2) Is the reputational system upon which the sharing economy relies, sufficient to protect public interests? 3) How does the regulation of the sharing economy affect constitutional rights?

Room:

CYTT 5.08

Chair:

Stephen Gardbaum

Keigo Obayashi:

The Dynamic Constitutional Order Focusing on the Issues of Sharing Economy

Sofia Ranchordas:

Reputation as Regulation in the Platform Economy

Jamila Jefferson-Jones:

Regulatory Takings and Planning Compensation Rights in the Sharing Economy

21 QUESTIONING BOUNDARIES: THE ROLE OF THE JUDICIARY IN CONTEMPORARY DEMOCRACIES

Judges are faced with a wide and growing variety of issues, the contentiousness of which exceeds the borders of the legal domain. As a result of changes occurring in decision-making processes at the national, regional and global level, matters invoking political controversy, technical complexity and external relations are increasingly brought to court and framed in legal terms. Courts may thereby be transformed into surrogate fora when political processes fail to strike a satisfactory balance between competing interests, epistemologies and levels of government. How are judicial bodies reacting to such challenges to long-established conceptual and institutional boundaries? Bringing together perspectives of constitutional, European and international law, and with a particular focus on the judiciary of the European Union (EU), the panel addresses the changing role of courts in democratic society and their relation to actors beyond the traditional boundaries of law and jurisdiction.

Room:

CYTT 5.23

Chair:

Deirdre Curtin

Ioanna Hadjiyianni:

The Role of the Court of Justice of the European Union in Reviewing Extraterritoriality

Marta Morvillo:

Reviewing the Experts: a Principled Approach to the Scrutiny of Expert-based Decision Making in the CJEU

Anna Wallerman:

Negotiating Sovereignty in the Preliminary Reference Procedure

22 REGIONAL HUMAN RIGHTS COURTS: PROTECTORS OF HUMAN RIGHTS, OR OF NATIONAL AND REGIONAL IDENTITIES - OR BOTH?

Regional human rights systems are between Scylla and Charybdis: On the one hand they should uphold the states' human rights treaty obligations. On the other hand, they should arguably show appropriate respect for value pluralism, for various expressions of the majority's conception of national identity, and regionally shared modes of 'balancing' rights and other important public values e.g. in the form of 'Asian values.' The panel addresses how to alleviate the dilemmas in defensible ways, by means of a more refined understanding of the roles of the courts and committees, their use of 'proportionality tests', by granting states a certain 'margin of appreciation,' or by 'nudging' domestic authorities toward more respect for human rights.

Room:

CYTT 6.23

Chair:

Andreas Follesdal

Frans Viljoen:

The First Ten Years of the African Court on Human and People's Rights: Deference Deferred, or Activist Activation?

Hsien-Li Tan:

Do 'Asian Values' on Human Rights Exist?

Juan-Pablo Perez-Leon-Acevedo:

The Inter-American Court of Human Rights and Its Control Over National Practices Concerning Serious Human Rights Violations: Developments, Challenges, and Prospects

Geir Ulfstein:

Deference to Domestic Decisions by International Courts: Towards a New Separation of Powers?

Andreas Follesdal:

The Significance of 'Consensus'

Jiewuh Song:

Regional Human Rights Mechanisms as Enforcement Gap-filling Institutions

23 DEMOCRACY AND REPRODUCTION

The panel explores the challenges faced by public institutions in dealing with abortion regulation. David Kenny will address the ongoing debate on the repeal of the 8th Amendment of the Irish constitution; Antonia Baraggia will compare the current abortion regulation in US and Europe under a constitutional point of view, arguing that federalism may be a valuable tool in order to avoid the polarization of the opposite perspective on abortion regulation. Francisca Pou Giménez's paper addresses the role of federalism in abortion regulation in Mexico. Lolita Buckner Inniss will address the origin of the first statute that is cited as the first United States statute to criminalize abortion. She argues that it marked the beginning of a process of using formal law to rein in social, religious and sexual autonomy.

Room:

CYTT 6.25

Chair:

Julie C. Suk

David Kenny:

Repeal or Replace? Debating Ireland's Eighth Amendment and the Shadow of Judicial Intervention

Antonia Baraggia:

Abortion Regulation in the USA and in Europe: Reversed Trends?

Francisca Pou Giménez:

Abortion and Federalism in Mexico: Assessing a Decade of Constitutional Litigation

Lolita Buckner Inniss:

Sex, Drugs, Rock and Roe: Reverend Ammi Rogers and the Pre-history of Roe V. Wade

24 DEMOCRACY IN AN AGE OF HYPER-LEGISLATION

In recent decades, successive Parliaments in Australia and elsewhere have proliferated an extraordinary amount of legislation. Notable features of this phenomenon are the complexity of these statutes and the breadth of discretionary powers bestowed on the executive government with a concomitant deleterious impact on fundamental rights. This panel explores various problems that arise from this phenomenon of "hyper-legislation", including: - the ways in which statutes are used to direct, constrain and empower government - accountability for delegated legislation under national security statutes - judicial deference to the executive in relation to government action - judicial methods for dealing with broad statutory conferrals of executive power - specific problems caused by hyper-legislating in the national security context

Room:

CYTT 6.26

Chair:

Melissa Castan

Lisa Burton Crawford:

The Age of Hyper-Legislation?

Patrick Emerton:

Australian Anti-terrorism Law as Hyper-legislation

Dan Meagher:

Judicial Interpretation in the Age of Hyper-legislation

Caroline Henckels, Janina Boughy:

Hyper-legislation and Deference to the Executive

25 CHINA'S NATIONAL SECURITY: ENDANGERING HONG KONG'S RULE OF LAW?

Now governed by China under the rubric "one country, two systems", Hong Kong has a strong tradition of the rule of law - a key feature that distinguishes it from China. However, concerns over whether Hong Kong can maintain this distinctiveness in light of apparently-increasing Chinese security advances are intensifying, partly due to renewed calls for the territory to fulfil its constitutional duty of enacting national security legislation, and uncertainties over the human rights guarantees therein when China's 50-year commitment to Hong Kong's autonomy expires in 2047. This panel explores both the risks of introducing security legislation in Hong Kong as well the strength and limits of the region's sources of resilience.

Room:

CYTT 5.25

Chair:

Simon Young

Simon Young:

Old Law in New Bottles: Reintroducing National Security Legislation in Hong Kong

Puja Kapai:

Equality, Diversity and Pluralism: Examining Spaces for the Preservation of Minority Rights and Multiple Identities in the Struggle for National Identity and Security

Surabhi Chopra:

Discussant

Swati Jhaveri:

Administrative Law as a Modest Guardian of the Rule of Law

Carole Petersen:

Implementing Article 23 of the Hong Kong Basic Law: International Law and Institutions as Sources of Resilience

26 THE AESTHETICS OF DEMOCRACY: A VIEW FROM POLITICAL THEORY

At ICON-S 2017 in Copenhagen, members and friends of the Political Constitutional Theory (PolCon) network organised a panel subtitled 'A View from Political Theory'. We will retain the subtitle at ICON-S 2018 especially as political theory cannot be said to be over-represented in the papers presented at the conferences. The title of this year's panel includes a reference to Jacques Rancière's notion of aesthetics and how the social/political sphere organises itself 'aesthetically' in ways that allow some claims to assert themselves as politically relevant while disallowing the relevance of others. But papers in the panel do not limit themselves to Rancière. The panel includes contributions that deal more broadly with the spatial, the visual arts, architecture, or, indeed, any aesthetic 'logic' that organises and delineates the social or political worlds, that draws demarcation lines into spaces and environments that are supposedly 'democratic'.

Room:

CYTT 7.25

Chair:

Panu Minkkinen

Katariina Kaura-aho:

Refugees, Politics and Identity: The Aesthetics of Political Resistance

Jack Meakin:

The Political and Legal Challenge of Worker-recuperated Enterprises: an Alternative Experience of the Political in Constitutionalism

Panu Minkkinen:

The Aesthetics of Constitutional Space

Scott Veitch:

"Your Only Right is to Obey": Securing Identity in the PRC

27 LEGAL CONTESTATIONS OVER INTERSECTIONAL IDENTITIES AND SUBSTANTIVE EQUALITY

This panel explores the challenges posed to public law by current contestations over intersectional identities. It picks four contemporary debates in human rights and equality law which demonstrate some of the key challenges in addressing the structural oppression of those who belong to multiple disadvantaged groups. It analyses their claims of diversity accommodation, individual and collective equality, legal subjectivity and socio-economic integration against the background of current democratic and security challenges. The legal responses brought to issues such as the sexual violence suffered by Dalit women, the routinization of Islamophobia and the normalization of anti-Gypsyism highlight the severe limits of traditional modes of analysis in human rights and equality law. At the same time, this panel shines a spotlight on the inadequacies of the critical paradigms developed in response to these limits, revealing how intersectionality theory in Europe reproduces racial blindness.

Room:

CYTT 3.19

Chair:

Shazia Choudhry

Shreya Atrey:

Women's Human Rights: From Progress to Transformation (An Intersectional Response To Nussbaum)

Raphaële Xenidis:

The Gender of Islamophobia: Intersectional Discrimination and the 'Islamic Headscarves' Jurisprudence

Lilla Farkas:

The Multiple Layers of Romaphobia: Intersectional vs. Constructivist Readings of Discrimination

Iyiola Solanke:

The Paradox of Intersectionality in Europe

Shazia Choudhry:

When Women's Rights Are Not Human Rights: the Non Performativity of Equality for Survivors of Domestic Abuse in the Family Courts

28 NORMATIVISM AND ANTI-NORMATIVISM IN PUBLIC LAW

Is a constitution a set of legal rules from which officials obtain guidance for their own conduct and for assessing the conduct of others; or is it the result of ever-negotiable settlements employed to sustain peaceful cooperation? Those who answer the first question affirmatively are considered to be normativists; those who opt for the second suggestion are not. In the history of ideas, constitutional normativism is a rather recent phenomenon, closely attached to modern constitutional law and "judicial review". Anti-normativism, by contrast, looks back to a longstanding philosophical tradition. While public lawyers tend to understand their trade in normativistic terms, we currently witness a powerful recrudescence of anti-normativistic approaches also among those who practice constitutional law. They know how to push the envelope and respond to normativist pieties with mocking sophistry. Against the backdrop of recent events, the panel wants to contrast these approaches.

Room:

CYTT 7.24

Chair:

Alexander Somek

Mattias Kumm:

Normativist Resistance

Marco Goldoni:

The Limits of Normative Constitutionalism

Bilyana Petkova, Jed Odermatt:

EU Unilateralism and the Development of International Law

Michael Potacs:

Can We Escape Normativism in Public Law?

Christoph Bezemek:

The Constitution as an Obstacle

29 UNDERSTANDING THE RULE OF LAW

Room:

CPD-LG.36

Chair:

Giulia Aravantinou Leonidi

Ailbhe O'Neill:

Open Justice and the Rule of Law

Juan Mecinas, Victoria Alsina, Jose Martinez:

Rule of Law, State Capability and Economic and Democratic Development in Latin America

Giulia Aravantinou Leonidi:

Constitutional Reform and the Rule of Law. Challenging Democracy in Times of Crisis. a Comparative Study of the Greek and the Italian Cases.

**PANEL
SESSIONS II**

**TUESDAY
26 JUNE 2018
09:00-10:30**

30 “READER MEETS AUTHOR” OF “DISCRIMINATION AS STIGMA” BY IYIOLA SOLANKE. PART 1/2: THE UNITED STATES RESPONSE

“Meets Author Roundtable” to discuss recently released book: “Discrimination as Stigma” by Iyiola Solanke. Equality Law Scholars from diverse regions and perspectives will each address the comparative law approach to discrimination offered in the book and how it relates to their own region and research. The regions include: Hong Kong, the United Kingdom, Brazil and the United States and will encompass Equality Law applications to voting rights, employment, gender, sexuality, race and ethnicity.

Room:

CPD-LG.17

Chair:

Tanya Hernandez

Suzanne Goldberg:

Response to Book “Discrimination As Stigma” by Iyiola Solanke

Iyiola Solanke:

Author Responds to Reader Feedback

Terry Smith:

Response to Book “Discrimination as Stigma” by Iyiola Solanke

Gregory Parks:

Response to Book “discrimination as Stigma” by Iyiola Solanke

Audrey McFarlane:

Response to Book “Discrimination as Stigma” by Iyiola Solanke

Robin Lenhardt:

Response to Book “Discrimination as Stigma” by Iyiola Solanke

31 POPULIST CHALLENGES TO LIBERAL CONSTITUTIONALISM I

The two panels deal with the future of liberal constitutionalism amid the emergence of populist constitutionalism. The first panel will explore the possible reasons of both left- and right-wing populism, and their relationship to liberal constitutionalism. The second panel concentrates on case studies in Europe and beyond (Israel, Brazil). Here, particular attention will be paid to populist tendencies in new East-Central European member states of the European Union.

Room:

CPD-LG.63

Chair:

Gabor Halmai

Mark Tushnet:

Populism and Social Welfare Constitutionalism

Paul Blokker:

Populism and Legal Fundamentalism

Gabor Halmai:

Is There Such a Thing as ‘Populist Constitutionalism’?

Tom Ginsburg:

Populism and Losing Constitutional Democracy

Kim Scheppelle:

The Party’s Over

Mark Graber:

Discussant

Stephen Gardbaum:

Populism and Institutional Design: Methods of Selecting Candidates for Chief Executive

32 CONSTITUTIONALISM IN CONTEXT II

The papers on this panel, drawn from the forthcoming volume *Constitutionalism in Context* (CUP 2018), offer contextual and interdisciplinary perspectives on issues and jurisdictions at the cutting edge of the study of constitutionalism. Each chapter introduces the reader to a jurisdiction in a context-rich way, then proceeds to explore an emerging issue at length in the context of the jurisdiction. The chapters on this panel cover the performance of constitutional review by institutions other than courts; the proliferation of government institutions that fall outside the traditional separation of powers framework and specialize in protecting constitutional democracy; the tension between constitutional autochthony and global norms; the stealth transformation of constitutional orders; and the emergence of forms of judicial review that range from “soft” to “super-hard” and beyond.

Room:

CPD-LG.59

Chairs:

David Law, Amnon Reichman

Albert Chen:

What is a Constitution? What is Constitutionalism? The Case of China

Mara Malagodi:

Constitutional History and Constitutional Migration: Nepal

Maartje de Visser:

Nonjudicial Constitutional Interpretation: the Netherlands

David Law, Hsiang-Yang Hsieh:

Judicial Review of Constitutional Amendments: Taiwan

33 DELIBERATIVE CONSTITUTIONALISM

This panel features several authors from a new 26-chapter edited collection *The Cambridge Handbook of Deliberative Constitutionalism* (Ron Levy, Hoi Kong Graeme Orr and Jeff King, eds). Deliberative democratic theory emphasises the importance of informed and reflective discussion and persuasion in political decision-making. The theory has important implications for constitutionalism – and vice-versa – as constitutional laws increasingly shape and constrain political decisions. The full range of these implications has not been explored in the political and constitutional literatures to date. This unique Handbook seeks to establish the parameters of the field of Deliberative Constitutionalism which bridges deliberative democracy with constitutional theory and practice. Drawing on contributions from world-leading authors, this volume will serve as an international reference-point on deliberation as a foundational value in constitutional law. Each chapter explores aspects of an overarching question: How do judges, ordinary citizens, legislators or administrators deliberate about constitutional norms and how do the features of a constitution, such as human rights, the separation of powers and federalism, affect how democracies deliberate? Each panellist will discuss his/her chapter.

Room:

CYTT 3.19

Chair:

Ron Levy

Jeff King:

Introduction

Gabrielle Appleby:

Constitutional Deliberation in the Legislative Process

Theunis Roux:

In Defence of Empirical Entanglement: the Methodological Flaw in Waldron's Case Against Judicial Review

Haig Patapan:

Deliberative Federalism

Silvia Suteu:

Squaring the Circle? Bringing Deliberation and Participation Together in Processes of Constitution-making

34 THE AUTHORITARIAN PUSHBACK AND THE RESILIENCE OF INTERNATIONAL INSTITUTIONS - PART 1

More than a decade after the emergence of public law approaches to international institutions, such as Global Administrative Law, Global Constitutionalism, or International Public Authority, the international order has changed dramatically. The Trump administration and Brexit epitomize a growing trend against global governance. What had once been taken for granted – the proliferation of institutional institutions and the universality of democracy and human rights – is now being challenged on several fronts. Many governments and political parties stress their respective national interest and decide to opt out of, or terminate, international cooperation mechanisms. At the same time, most international institutions and courts carry on, sometimes under increasing financial and political constraints. The panel will discuss how the authoritarian, nationalist pushback affects the problem-solving capacity and the legitimacy of international institutions and courts as well as their resilience.

Room:

CYTT 3.22

Chair:

Matthias Goldmann

Felix Lange:

The Sovereignist Challenge – Backlash to International Institutions and Public Law Theories

Jorge Contesse:

Judicial Backlash in Inter-american Human Rights Law

Kristin Henrard:

Nationalism With a ‘Human’ Face (under the Veil of Integration): Is the ECtHR Allowing and Thus Fueling Nationalist Politics?

Silvia Steininger:

The Nationalist Challenge to Human Rights Courts: on Resilience and Conflict Management of the ECtHR

Pedro Villarreal:

“We Didn’t Start the Fire”: the Exercise of Authority in Nafta Dispute Settlement and the Nationalist Backlash

35 PUBLIC LAW IN THE DIGITAL ERA I: REGULATORY PERSPECTIVES FROM THE EU, JAPAN, AND CHINA

Digitalization is the megatrend of the early 21st century. Historically, much of digital innovation has originated in clusters around major US universities, most notably in Silicon Valley. Consequently, US internet law and policy had outsized influence and global impact. Yet, in current changing times, the emerging ‘digital law’ will likely look more amorphous. This first panel on public law in the digital era addresses the pressing legal questions triggered by exponential digital innovation, particularly focusing on the regulatory perspectives in and between the EU, Japan and China. The panelists will discuss a set of questions around big data, data flows, trade secrets as well as trade partnerships in the context of digitalization. The panel will be structured as an open conversation and will leave plenty of time for engagement with the audience.

Room:

CYTT 3.23

Chair:

Thomas Streinz

Vigjilence Abazi:

The EU as Global Digital Rule-Maker

Machiko Kanetake:

EU-Japan Perspectives on Law in the Digital Era

Han Liu:

The Chinese Conception of Cyber Sovereignty and Its Practical Effect

Xingfang Li:

Regulation Without Law? Perspectives from China on International Regulations Governing Infringement Disputes

36 CULTURAL HERITAGE UNDER THREAT AND PROBLEMS OF SECURITY IN WAR AND PEACE

This panel aims to address how institutions and private individuals may or may not, through and alongside public law and democracy, mediate, neutralize and potentially resolve the identity struggles and security threats which occur at cultural heritage sites. Identity struggles and accompanying security issues surrounding cultural heritage are present in history and in our contemporary times, and therefore shed light on how these threats and problems need to be taken into account both in war and peacetime. Moreover, identity struggles and threats to cultural heritage may also be resolved through legal acknowledgment of the value of public fruition and through legal recognition of the importance of historical documentation and cultural heritage preservation in shaping public memory. Uniting scholars from multiple disciplines, this panel analyses and discusses public law measures and organizational models which can be used to keep cultural heritage safe and protected.

Room:

CYTT 3.20

Chairs:

Sabino Cassese, Lorenzo Casini

Elisa Bernard:

'Nationalism' Versus Identity Pluralism? The Preservation, Management and Valorisation of Archaeological Heritage

Agnese Ghezzi:

To File the World: the Archive as Cultural Heritage and the Power of Remembering

Ted Oakes:

Cultural Institutions Versus Cultural Policies? Accommodating National Cultural Priorities Within the International Treaty Framework Protecting to Cultural Property

Fabrizio Parrulli:

A Case Study of the Carabinieri Force for the Protection of Cultural Heritage

37 DEMOCRACY AND RULE OF LAW IN ASIA (II)

Epic clashes between democracy and the rule of law now increasingly arise in many Asian jurisdictions. Indeed, these new battlegrounds have demonstrated a global reality: that these vastly important principles not only complement one other and help to sustain governments and nations, but also frequently converge, thus jeopardising such institutional arrangements. Recent events in East Asia, such as the Taiwan Sunflower Movement and Hong Kong Umbrella Movement, have brought forth intriguing questions about the operation of and balance between democracy and the rule of law. These two principles are now increasingly at issue in a region that has embraced them in a variety of ways. The papers in this panel, primarily focused on East and Southeast Asia, provide a variety of critical perspectives to how these extremely important values play out in a number of jurisdictions.

Room:

CYTT 8.25

Chair:

Brian Christopher Jones

Brian Christopher Jones:

Criticising the Courts: From 'Foreign' Judges to 'Dinosaur' Judges

Chien-Chih Lin:

Civil Constitutionalism (and the Lack Thereof) in Taiwan

Jacques deLisle:

Taiwan, Hong Kong, and the Ambivalent Relationship Between Law and Democracy

Hualing Fu:

Protest, Law, and Regime Type

Glenn Patmore:

Developing a Right to Democracy in International Law: Protection by the Rule of Law?

38 CITIZENSHIP THROUGH MEMORY POLITICS: DISTRIBUTION OF PASS- PORTS AS GAME ON HISTORY

The proposed panel will include papers offering reflections on the relationship between the legal categories of citizenship in EU member states and the concept and philosophical notion of citizenship as related to memory and the past, particularly to the most dramatic historical events, such as genocide and expulsion. These reflections will cover the motivations behind applying for the EU citizenship as well as the policies, laws and narratives concerning EU citizenship, connected as it is with the dominant European understanding of fundamental rights, anti-discrimination and the rule of law. The panel will also explore the controversies surrounding the process of including “new citizens” into the national communities which are often hostile towards the “others”. Finally, even though all presentations consider the question of EU citizenship being gained or re-confirmed by Jewish people, a concluding comparative analysis will also be offered to better elucidate the phenomenon discussed.

Room:

CPD-LG.35

Chair:

Michal Tamir

Yossi Harpaz:

*Ancestry into Opportunity: Dual Citizenship and Com-
modification*

Uladzislau Belavusau:

*Jewish Past, Mnemonic Constitutionalism and Politics
of Citizenship*

Aleksandra Gliszczynska-Grabias:

*Holocaust Survivors and Their Polish Passports – a Saga
of Refusals*

39 TRANSSYSTEMIC LEGISPRUDENCE

This panel explores questions of legisprudence from a transsystemic perspective. It examines the characteristics of “good” legislation, focussing on intertwined questions of process and substance. Panellists will discuss the role of the participatory elements of law-making, including consultation and information-sharing. They will reflect on the function of parliamentary committees in the evaluation of legislation, and the need for continued monitoring of the impact of legislation after it has entered into force. The panel will also discuss the relationship between these procedures and the soundness of laws in a substantive sense. In particular, the relationship between the quality of the process and how courts review legislation on judicial review will be examined, paying particular attention to how this review occurs in different ways in common law and civil law jurisdictions.

Room:

CPD-LG.21

Chair:

Jula Hughes

Zhixiang Seow:

*An Appraisal of Legislative Procedure in the Singapore
Parliament*

Vanessa MacDonnell, Jula Hughes:

The Art and Science of Constitutional Legislation

Tímea Drinóczi:

Quality Control and Management in Legislation

40 REVISITING COURTS AS DEMOCRACY-BUILDERS (BOOK PANEL)

--CO-ORGANISERS: PROF. SUJIT CHOUDHRY & DR TOM GERALD DALY--
1. OBJECTIVES The panel will centre on discussion of themes in Tom Daly's recently published book 'The Alchemists: Questioning Our Faith in Courts as Democracy-Builders', (Cambridge University Press)

Room:

CYTT 11/F

Chair:

Po Jen Yap

Sujit Choudhry:

Response to the Alchemists Book

David Landau:

Response to the Alchemists Book

Michaela Hailbronner:

Response to the Alchemists Book

Raul Sanchez Urribarri:

Response to the Alchemists Book

Tom Gerald Daly:

Response to the 4 Panellists' Critiques

41 NEW PERSPECTIVES ON CONSTITUTIONAL AND LEGAL PLURALISM

Constitutional monism and legal monism – the idea that there is a clear hierarchy of institutions and rules within a constitutional or legal order – have proved to be inadequate theories for conceptualizing contemporary constitutional and legal orders. This panel explores pluralism, an alternative to monism, from the descriptive, normative and explanatory angles. It examines both constitutional and legal pluralism, exposes variations within the concept of pluralism itself, and draws on the experiences in Europe, Southeast Asia, and China and Hong Kong. Neo and Bui's paper proposes the concept of "state constitutional pluralism". Barber and Chan's paper argues that the form of legal pluralism found within the European Union can and should be transposed to conceptualize the China-Hong Kong relationship. Petersen's paper analyzes why courts may be more cooperative or isolationist in some instances than others, accounting for why legal pluralism may or may not emerge.

Room:

CYTT 3.10

Chair:

Jaclyn Neo

Niels Petersen:

What Role for Pluralism in Inter-Court Relationships? – An Explanatory Framework

Damian Chalmers:

Discussant

Jaclyn Neo, Ngoc Son Bui:

State Constitutional Pluralism

Nicholas Barber, Cora Chan:

Legal Pluralism: a Means of Sustaining Liberal Constitutionalism Within Authoritarianism? The Case of China and Hong Kong

42 CONSTITUTIONS AND MARKETS: A DISCUSSION OF 'THE REDRESS OF LAW'

This panel addresses the issue of constitutional reflexivity in the age of austerity and market thinking by discussing the forthcoming monograph by Emiliios Christodoulidis, "The Redress of Law. Constitutionalism and Markets" (Cambridge University Press, 2018, forthcoming). Each of the four panelists will take up a specific chapter of the book and will discuss it from point of view of the relation between constitutional order and markets. Four topics will be broached: the role of political autonomy, the function of social rights, the impact of governance as a market-driven mechanism, and the relation between labour and constitutions. The author will then respond to the comments and a debate will follow.

Room:

CPD-LG.37

Chair:

Marco Goldoni

Scott Veitch:

The Redress of Law

Michael Wilkinson:

Arendt's Phenomenology of the Political

Marco Goldoni:

Labour Constitutionalism

Marco Dani:

The Lie of Constitutional Governance

Emiliios Christodoulidis:

Constitutions and Markets: A Reply

43 CONSTITUTIONAL REFORMS IN TIMES OF ECONOMIC AND POLITICAL CRISIS: THE ROLE OF COURTS

Constitutional reforms often occur under moments of national crisis, mainly economic and political ones. Recent economic crisis around the globe have intensified the adoption of austerity policies, reducing public spending in health system, labor and pension rights. Furthermore, political crisis in the representative government have generated self-protection measures for the maintenance of politicians in office, for example: infinite reelection, disrespect to opposition and minority groups. Usually, constitutional reforms that bring these changes lack opportunities for debate and deliberation, popular support is absent as well, jeopardizing therefore the legitimacy of constitutional amendments. This workshop: (a) it will explore the different impacts of recent economic and political crisis on constitutional design; (b) from a normative and empirical dimensions, it will debate how courts respond to austerity policies and political self-protection measures.

Room:

CYTT 8.24

Chair:

Flavia Santiago Lima

Estefânia Barboza, Ilton Robl Filho:

Unconstitutional Constitutional Amendments: Can a Strong Judicial Review Avoid Abusive Constitutionalism?

Melina Fachin:

Social Rights in Times of Economic Crisis: the Role of the Courts

Jairo Lima, Rubens Beçak:

When 5x4 is Not a Winning Majority: Judicial Decision-making on Unconstitutional Constitutional Amendments

Flavia Santiago Lima:

Who Will Protect Social Rights in Times of Economic Crisis? Exploring the Legal Parameters of Judicial Intervention in Brazilian Public Policies

44 THE ROLE OF EXPERTS IN PUBLIC LAW

In the last decade we have observed a gradual disenchantment with the reign of elites and experts. The legitimacy of the experts has traditionally been associated with governmental authority or high levels of expertise. On the one hand, with the rise of automation and digital platforms, everyone appears to have a say, the crowd has become 'wiser', traditional experts are mistrusted, and the tendency of artificial intelligence to replace to replace professionals in the legal, health, and education sectors grows. On the other, automation and platform participation are still not able to take into account the legal and ethical challenges of specific cases, understand the world and relate to persons in similar ways to professionals. This panel discusses the rise and fall of traditional and new experts through the discussion of professional judgment in health and education and law, the consideration given to experts in neuroscience, and in the regulation of the platform economy.

Room:

CYTT 4.26

Chair:

Lorenza Violini

Frank Pasquale:

Professional Judgment in an Era of Artificial Intelligence and Machine Learning

Giada Ragone, Benedetta Vimercati:

Neuroscience and Law Within the Recent Italian Law on Living Will: Which Role for Experts?

Sofia Ranchordas:

Meet the New Experts: Legitimacy and Accountability Deficits in the Platform Economy

45 NEW THEORIES OF THE SEPARATION OF POWERS

Room:

CPD-LG.39

Chair:

Octaviano Arruda

Octaviano Arruda:

State of Exception and Literature

Karol Dobrzeniecki:

The Concepts of a State Necessity in Legal Theory

Zoltan Pozsar-Szentmiklosy:

The Invisible Separation of Powers

Francisco Urbina:

Separation of Powers: the Minimal View

46 THE NEW LEGAL FRONTIERS OF IDENTITY

Room:

CPD-LG.60

Chair:

Anna Lukina

Lily Evelina Sitorus:

Geographical Indication as National Identity

Dana Burchardt:

The Psychology of Constitutional Identity Jurisprudence

Judit Sandor:

Genetic Identity: A Mereological Fallacy in the Law?

Ya Lan Chang:

Identity and Communitarian Constitutional Rights in Singapore

Anna Lukina:

Russia v ECtHR: Protecting National Identity Using Constitutional Brakes

Franco Peirone:

Legitimacy of Identity Claims in 'Free and Democratic Elections': A Rule of Law Perspective.

47 CONSTITUTIONALISM AND CONSTITUTIONAL ACTORS IN COMPARATIVE PERSPECTIVE

How do constitutions conceive of duties in addition to rights? How do constitutional provisions manufacture national identity through symbolism? What is the role of the courts in a dominant political party system in shaping the constitution? This panel brings together a range of theoretical, empirical, and comparative perspectives to challenge and explore concepts of constitutionalism and the role of constitutional actors in negotiating such ideas.

Room:

CYTT 5.23

Chair:

Samuel Issacharoff

Mila Versteeg, Erensu Altan:

Constitutional Duties

Yaniv Roznai:

Internally Imposed Constitutions

Yvonne Tew:

Courts and Constitutional Adjudication in Contemporary Malaysia and Singapore

48 BOOK PANEL: PARLIAMENT'S SECRET WAR - VERONIKA FIKFAK, HAYLEY J. HOOPER

At a time of increased tensions in Korea and elsewhere around the globe, a book-panel discussion of Parliament's Secret War offers an opportunity to provide insights into how far the UK Parliament can hold the British Government accountable for decisions to use military force. The invasion of Iraq in 2003, and the UK Coalition Government's failure to win parliamentary approval for armed intervention in Syria in 2013, mark a period of increased scrutiny of the process by which the UK engages in armed conflict. There is a widespread view amongst most politicians and across civil society that there now exists a constitutional convention which mandates that the UK Government consults Westminster Parliament before commencing hostilities. The book offers a critical inquiry into UK Parliament's role in the war prerogative, evaluating whether the UK's decisions to engage in conflict meet the recognised standards of good governance: accountability, transparency and participation.

Room:

CYTT 6.24

Chair:

Gavin Phillipson

Paul Craig:

Commentary on the Book

Jeff King:

Commentary on the Book

Veronika Fikfak:

Response

Hayley Hooper:

Response

49 RECONSIDERING THE LEGAL EFFECTS OF THE CHINESE CONSTITUTION

On the basis of newly available court decisions, official documents and literature, the panel investigates different layers of the legal effects of the Chinese constitution. Although the Chinese Communist Party holds sovereign power to determine the meaning of the constitution in the one-party state, legal scholarship and court practice advance their distinctive approaches to develop the constitution into law that is applied in legal practice. We investigate court practice with relation to the citation of fundamental rights in judicial legal reasoning of Chinese courts both with a focus on political rights and administrative litigation. We investigate the official and scholarly views on the introduction of a constitutional review mechanism within the party-state structure and explore the application of core concepts of party ideology by courts that function as constitutional principles and inform the interpretation of ordinary laws.

Room:

CPD-LG.64

Chair:

Björn Ahl

Daniel Sprick:

The Limits of Political Rights in China as Seen in Cases

Yi Sun:

Constitutional Review Without Constitutionalism?

Prospects and Limitations of a Constitutional Review Mechanism in China

Yunfei Zha:

Fundamental Rights as "legal Rights and Interests" in Chinese Administrative Litigation

Björn Ahl:

The Application of Rule-of-law Ideology in Chinese Judicial Practice

50 TOWARDS EVER MORE EFFECTIVITY IN ANTIDISCRIMINATION LAW? TECHNICAL AND THEORETICAL INNOVATIONS IN A COMPARATIVE PERSPECTIVE

The question of discrimination has been a point of convergence for clashing societal demands. Claims for identity and diversity accommodation have met increasing opposition in the form of assimilationist discourses on security and dignity. Due to its balancing function, antidiscrimination law has been on the frontline of these debates, crystallising questions over its scope, purpose and effectivity. Positive action, effects-based approaches, and discrimination by association are examples of the legislative and jurisprudential innovations designed to adapt, modernise and improve its protection. Yet, the question of effectivity can only be raised if the underlying normative purpose of antidiscrimination law is clarified. Often invoked in the name of fundamental rights, where does antidiscrimination law stand on a value chart ranging from equality to autonomy? This panel discusses the impact of antidiscrimination law's recent technical and theoretical evolutions in a comparative fashion.

Room:

CYTT 3.11

Chair:

Julie Suk

Raphaële Xenidis:

Transforming EU Equality Law: On Disruptive Narratives and False Dichotomies

Ying Hsueh Chen:

Effectivity and Efficiency of Employment Quota for Persons With Disabilities: a Comparative Study of the French and Taiwanese Cases Based on the CRPD Objective

Claire Langlais:

The Diversification of Concepts in Antidiscrimination Law: the Case of Discrimination "by Association" in Front of ECJ and ECtHR

Robin Medard Inghilterra:

Towards a Judicial Analysis Focused on the Effects of the Adverse Treatment: What Implications for Anti-discrimination Law?

51 INTEROPERABILITY OF SECURITY EXECUTIVES

Bulk collection of data has over the years challenged the purpose limitation principle in the field of security. In the context of information gathering, processing and sharing, interoperable networks and agencies reveal the inadequacy of this approach but contains the seeds of how the limits can be overcome. Interoperability houses the potential to simplify the functioning of existing legal procedures, and it must be integrated within a broader framing of legality. The use of advanced technologies enhances the informal policy design process yet challenges its legality. It is thus imperative to identify creative forms of democratic scrutiny to the discretionary access and use of data by multiple actors interacting within such networks. This panel explores alternative perspectives to the purpose limitation principle, including actors' self-restraint and responsibility as well as informal mechanisms of information sharing, which should be accountable towards public opinion.

Room:

CYTT 4.24

Chair:

Joana Mendes

Deirdre Curtin, Filipe Brito Bastos:

Receive It to Believe It? Administrative Information-Sharing Under European Constitutional Law

Francesca Galli:

The Formalization of Interoperable Networks: Constitutionalising Information Sharing in the AFSJ?

Mariavittoria Catanzariti:

Inter-legal Perspectives on the Public/private Partnership

Gavin Sullivan:

Interoperability, Global Security Law and the Politics of Data Formatting

Marta Morvillo:

Discussant

52 CONSTITUTIONALISATION, DECONSTITUTIONALISATION AND EUROPEANISATION OF ADMINISTRATIVE LAW: A CHALLENGE FOR THE IDENTITY OF PUBLIC LAW

A key feature of the identity of public law is, as Sabino Cassese has just recalled in an I-CON Guest Editorial, its traditional subdivision into constitutional and administrative law – a subdivision which the ongoing process of constitutionalisation relativises, though. Its degree varies from country to country. Moreover, two megatrends impacting European administrative legal orders, namely their Europeanisation and their alleged emancipation from the Constitution (e.g. due to the partial codification of administrative law, the emergence of the informal administrative action, the bureaucratic autonomy), constitute an antipole. Against this background, the panel aims at comparing four European national legal orders (Germany, Spain, Italy and France) in order to identify and examine the convergences and the differences in the respective administrative and constitutional dynamics; moreover, the concept of constitutionalisation itself shall be explored.

Room:

CYTT 5.08

Chair:

Daria De Pretis

Ferdinand Wollenschläger:

The Identity of Public Law in View of the Constitutionalisation, Deconstitutionalisation and Europeanisation of German Administrative Law

Luis Arroyo Jiménez:

The Identity of Public Law in View of the Constitutionalisation, Deconstitutionalisation and Europeanisation of Spanish Administrative Law

Luca De Lucia:

The Identity of Public Law in View of the Constitutionalisation, Deconstitutionalisation and Europeanisation of Italian Administrative Law

Emilie Chevalier:

The Identity of Public Law in View of the Constitutionalisation, Deconstitutionalisation and Europeanisation of French Administrative Law

Daria de Pretis:

The Identity of Public Law in View of the Constitutionalisation, Deconstitutionalisation and Europeanisation of Administrative Law: Concluding Remarks

53 AFTER DEMOCRACY: NEW CHALLENGES IN GLOBAL AND COMPARATIVE PERSPECTIVES

Recent events have shown mature democracies beset by threats to constitutionalism and human rights. This panel brings global and comparative perspectives to bear on this phenomenon. Along with internationally prominent events like the United Kingdom's decision to leave the European Union, this panel examines new challenges facing societies that tend to be less frequently discussed or are even touted as success stories, such as South Korea. By exploring these cases in conversation with each other, panel participants aim to gain better understanding of recent crosscurrents between democracy, constitutionalism, and human rights in global and comparative contexts. Important themes include nationalistic sentiments and attitudes and institutions hostile to non-citizens, as well as broader questions about political community, citizenship, solidarity, and inclusion.

Room:

CYTT 6.23

Chair:

Jiewuh Song

Jiewuh Song:

Human Rights in South Korea: Fault Lines and Frontiers

Joo-Young Lee:

Social Rights of Non-nationals and Constitutional Values in a Diverse Society

Yoon Jin Shin:

Non-citizens' Rights and Judicial Review for Inclusive Democracy

Fabian Duessel:

Brexit: Constitutional Identity as an Obstacle to Multi-level Governance?

54 ON THE THEORY OF HUMAN AND CONSTITUTIONAL RIGHTS

The panel explores the ideas of a right to justification and the culture of justification in the context of human and constitutional rights adjudication. Questions to be discussed include: Does the right to justification require the same outcomes everywhere? How does justification relate to justice, in particular in the context of the EU? How should judges interpret imperfect constitutions? What is the moral basis of the right to justification and the culture of justification?

Room:

CYTT 7.24

Chair:

Moshe Cohen-Eliya

Mattias Kumm:

Three Good Reasons Why Universal Human Rights are Not the Same Everywhere

Ester Herlin Karnell:

The Right to Justification in EU Security Context

Iddo Porat:

The Platonic Conception of Constitutional Rights

Kai Möller:

Justifying the Culture of Justification

55 THE ROLE OF EUROPEAN CITIZENS IN REFORMING EU DEMOCRACY

This panel addresses the ever more emphatic challenge of enhancing EU democratic legitimacy and citizen involvement in EU decision making. It does so by analysing the institutional position of European citizens in EU democratic reform processes. The panel focuses on three key reform initiatives or avenues aimed at galvanising citizen participation “in the democratic life of the Union” (Art 10(3) TEU): democratic conventions advocated by the French President Macron, the proposed overhaul of the European Citizens’ Initiative, and the right of EU citizens to petition the European Parliament. The panel inquires about the relationship between direct, participatory and representative democracy in the EU and critically assesses the rationale, merits and assumptions that inform these channels of citizen participation. To what extent can they politicise the Union and increase political contestation? What are the obstacles to and the risks of placing the citizen at the heart of EU democracy?

Room:

CYTT 6.25

Chair:

Davor Jancic

Davor Jancic:

From Paris with Love: A Critique of President Macron’s Democratic Conventions

Anastasia Karatzia:

Re-designing the European Citizens’ Initiative: Revolution or More of the Same?

James Organ:

Participatory Democracy in the CJEU Case Law: Challenges and Implications for the EU

Nikos Vogiatzis:

The Past and Future of the Right to Petition the European Parliament: a Viable Alternative for Citizens’ Participation in the EU?

56 RETHINKING PEACE AND CONSTITUTION MAKING

Constitutions are considered tools to entrench peace and the rule of law; however, using constitutions to fulfil these demands raises challenges and so requires new way of thinking on how constitutions are drafted/amended in such contexts. A result of these demands is that it has become necessary to simultaneously pursue the sometimes-inconsistent requirements of peace-making and constitution-making. Constitutional rethinking is often inevitable in the context of constitutional change that occurs under the shadow of violence. Such rethinking faces constitutionality challenges when it is to take place within an existing constitution. Moreover, in the case of new constitutional arrangements, constitutional methods to accommodate discord need to be explored. As well, the implications of past-looking constitutions on the pursuit of peace must also be considered. This panel intends to offer ways to rethink constitution-making in places of conflict.

Room:

CYTT 5.25

Chair:

Vicki Jackson, Christie Warren

Omar Hammady:

Constitution-Making at Times of War: Lessons from Libya, Yemen and Syria

Jenna Sapiano:

Silences in Constitutions and Space for Self-determination

Asli Ozcelik-Olcay, Tarik Olcay:

(Un)constitutional Change Rooted in Peace Agreements

Caitlin Goss:

History and the Constitution

57 THE FORMS AND LIMITS OF CONSTITUTIONAL LEGITIMACY

Constitutional legitimacy and how that legitimacy empowers and limits constitutional actors and institutions has become increasingly important. After the wave of constitution making and innovation constitutional developments in the 1990s there has been a regression in liberal constitutionalism and rule of law across the globe. This panel will explore several topics concerning the nature of constitutional legitimacy and the fundamental values and constitutionalism that from such legitimacy. It seeks to investigate how and why certain constitutional structures are more legitimate and provide for a government that is more efficacious. It also investigates the way in which protection of individual and group rights supports constitutional order and legitimacy.

Room:

CYTT 6.26

Chair:

Mark Kielsgard

Da-Wei Kuan:

Taiwan's Indigenous People and the Challenge of Taiwanese Constitutionalism

Guy Charlton:

The Impact of Indigenous Groups on New Zealand and American Constitutionalism and Law

Leonid Sirota:

Democracy and Constitutional Legitimacy in Canada/ Québec and Spain/ Catalonia

58 THE EVOLVING JUDICIAL FUNCTION

Room:

CYTT 3.21

Chair:

Brigid McManus

Anne Richardson Oakes:

*'Popular Sovereignty and the Enemies of the People':
Can a 'Theory of Everything' Legitimise a Role for the
Judiciary as Guarantors of Environmental Rights*

Brigid McManus:

*A Boat on the Horizon: Legislative Urgency and Weak-
form Review*

Rivka Weill:

*Bills of Rights With Strings Attached – Protecting Death
Penalty, Slavery, Discriminatory Religious Practice and
the Past from Judicial Review*

Scott Stephenson:

*Constitutional vs Statutory Bills of Rights with Weak-
Form Judicial Review*

Gar Yein Ng:

From Government to Governance; from Judiciary to...?

Yoav Dotan:

*Impeachment by Judicial Review: Israel's Odd System of
Checks and Balances*

Anthony Tonio Borg:

Juridical Interest in Constitutional Proceedings

59 CONCEPTUALIZING AND OPERATION- ALIZING IDENTITY: A CHALLENGE FOR PUBLIC LAW

The conceptual framework of the panel concerns the role of public law in identity politics, in particular how law can conceptualize racial, gender and religious identities. One paper provides an overview of potential concepts through which the issue can be assessed, focusing in particular on the legal-administrative conceptualization of "choice" and "fraud." Another explores how colorism operates in the Asian American community, and thereby yields important insights about how anti-Black prejudice is formed and deployed. Two papers focus on the legal conceptualization of being Jewish, one on constitutional identity in Israel, another on Slovak legal classification on Jewry in the holocaust and the interwar period. Another paper investigates the way the market defines race and gender, in particular on gamete markets and the purchase of racially marked sperm and eggs. One paper focuses on hate crimes and 'nulla crimen sine lege certa'. challenges.

Room:

CYTT 7.23

Chair:

Nico Krisch

Andras Pap:

*Choice and Fraud: Conceptualizing and Operationalizing
Identity by Public Law*

Kim Chanbonpin:

Asian Americans and Racial Justice

Camille Gear Rich:

*Contracting Our Way to Inequality: Race, Reproductive
Freedom and the Quest for the Perfect Child*

Tamar Hostovsky-Brandes:

*Constitutional Identity in Israel: Proposed Basic Law:
Israel as the Nation State of the Jewish People*

Zuzana Illyova:

*Legal Conceptualization of Jews in the Territory of Slo-
vakia During the 20th Century*

Jennifer Schweppe:

*What is Hate, and What is a Hate Crime? Targeted Hos-
tility, the Criminal Law and the Principle of Certainty*

Stephen Rich:

Discussant

60 SECESSIONISM WITHIN LIBERAL DEMOCRACIES

The political developments in Catalunya concerning its contested referendum and the (suspended) unilateral declaration of independence have reopened the debate on secessionism in Europe. The proposed panel aims at analysing the challenges that such movements pose both for the respective constitutional orders and the European edifice in general. López Bofill's paper argues that the prohibitions on the organisation of a legally binding and democratic referendum may cripple the pillars of Spanish liberal democracy. Skoutaris's paper shows that although the EU legal order does not recognise a universal and unilateral right of secession to regions, its position is more sophisticated than just wishing them 'a Bon Voyage in their separatist identity' as JHH Weiler has suggested. Finally, Oklopcic's paper closely scrutinises the scripts -and the discursive strategies they engender- of constitutional change that accompany the vocabulary of popular sovereignty.

Room:

CYTT 7.25

Chair:

Elias Dinas

Héctor López Bofill:

Hubris, Constitutionalism and the 'Indissoluble Unity of The Spanish Nation'

Nikos Skoutaris:

Secession in the EU Constitutional Order

Zoran Oklopcic:

All the World's a Stage (of Popular Sovereignty): Catalan Referendum Between the Script, Performance, and Calculus

**PANEL
SESSIONS III**

**TUESDAY
26 JUNE 2018
11:00 – 12:30**

61 CONSTITUTIONAL DEMOCRACY IN CRISIS? I

The early twenty-first century appears to be a period of turmoil in many seemingly stable constitutional democracies. This panel and two others discuss such questions as these: Are there general forces weakening constitutional democracy around the world, or are there nation-specific reasons for crises that simply happen to be occurring at roughly the same time? Why have some major democracies – Canada and Australia, for example – seemingly not experienced these problems? And, finally, might the concerns some scholars have expressed be something like “crying wolf,” that is, might the developments around the world be more or less ordinary episodes in the ebb and flow of democratic politics, that what some scholars claim to be a constitutional crisis is merely the normal constitutional triumph of political coalitions and policies they do not like?

Room:

CPD-LG.59

Chair:

Tom Ginsburg

Yaniv Roznai:

Constitutional Democracy in Israel

Tom Ginsburg, Aziz Huq:

Defining and Tracking the Trajectory of Liberal Constitutional Democracy

Michaela Hailbronner:

Beyond Legitimacy: Europe's Crisis of Constitutional Democracy

Ran Hirschl, Ayelet Shachar:

“Religious Talk” in Narratives of Membership

62 “READER MEETS AUTHOR” OF “DISCRIMINATION AS STIGMA” BY IYIOLA SOLANKE. PART 2/2: MULTI-JURISDICTIONAL RESPONSES

“Meets Author Roundtable” to discuss recently released book: “Discrimination as Stigma” by Iyiola Solanke. Equality Law Scholars from diverse regions and perspectives will each address the comparative law approach to discrimination offered in the book and how it relates to their own region and research. The regions include: Hong Kong, the United Kingdom, Brazil and the United States and will encompass Equality Law applications to voting rights, employment, gender, sexuality, race and ethnicity.

Room:

CPD-LG.17

Chair:

Tanya Hernandez

Puja Kapai:

Hong Kong Reader Response to Book “Discrimination as Stigma”

Kelley Loper:

Hong Kong Reader Response to Book “Discrimination as Stigma”

Iyiola Solanke:

Author Response to Reader Feedback

Tanya Hernandez:

Latina Reader Response to Book “Discrimination as Stigma”

63 POPULIST CHALLENGES TO LIBERAL CONSTITUTIONALISM II

The two panels deal with the future of liberal constitutionalism amid the emergence of populist constitutionalism. The first panel will explore the possible reasons of both left- and right-wing populism, and their relationship to liberal constitutionalism. The second panel concentrates on case studies in Europe and beyond (Israel, Brazil). Here, particular attention will be paid to populist tendencies in new East-Central European member states of the European Union.

Room:

CPD-LG.63

Chair:

Gabor Halmai

Rui Tavares:

The European Promise: EU Integration as a Post-Conflict Constitutionalisation of Fundamental Rights — And Why it Matters Today

Wojciech Sadurski:

Populist Challenges to Liberal Constitutionalism: a Case of Poland

Aeyal Gross:

Constitutional Populism and Democracy — the Case of Israel

Tom Daly:

Populisms, Elitism and the Threat to Liberal Constitutional Democracy in Brazil

Tomasz Koncewicz:

Poland v EU. Understanding what's happened, re-discovering European "first principles" and thinking counter-strategies

Mark Graber:

Discussant

64 THE AUTHORITARIAN PUSHBACK AND THE RESILIENCE OF INTERNATIONAL INSTITUTIONS - PART 2

More than a decade after the emergence of public law approaches to international institutions, such as Global Administrative Law, Global Constitutionalism, or International Public Authority, the international order has changed dramatically. The Trump administration and Brexit epitomize a growing trend against global governance. What had once been taken for granted – the proliferation of institutional institutions and the universality of democracy and human rights – is now being challenged on several fronts. Many governments and political parties stress their respective national interest and decide to opt out of, or terminate, international cooperation mechanisms. At the same time, most international institutions and courts carry on, sometimes under increasing financial and political constraints. The panel will discuss how the authoritarian, nationalist pushback affects the problem-solving capacity and the legitimacy of international institutions and courts as well as their resilience.

Room:

CYTT 3.22

Chair:

Silvia Steininger

François Finck:

The Authoritarian/Nationalist Pushback as a Bottom-Up Challenge to Regional Integration Organizations: An Analysis of the EU and Mercosur

Hsien-Li Tan:

Transforming an Informal Political Grouping Into a Legalized Intergovernmental Organization: Overcoming Legal, Capacity, and Cognitive Dissonances in Building a Rules-based ASEAN

Qingxiu Bu:

The One Belt and One Road (OBOR) Initiative: Reconceptualisation of State Capitalism Vis-à-vis Remapping of Global Governance

Maurizia de Bellis:

The Resilience of Transnational Regulatory Networks in the Age of Authoritarian Pushback

Matthias Goldmann:

The Contribution of the International Economic Constitution to Authoritarian Liberalism

65 PUBLIC LAW AND THE DIGITAL ERA II: TRADE AND DATA FLOWS BETWEEN EU, JAPAN, AND CHINA

Digitalization is the megatrend of the early 21st century. Historically, much of digital innovation has originated in clusters around major US universities, most notably in Silicon Valley. Consequently, US internet law and policy had outsized influence and global impact. Yet, in current changing times, the emerging 'digital law' will likely look more amorphous. This second panel on public law in the digital era addresses a set of questions around big data, data flows, trade secrets as well as trade partnerships in the context of digitalization in and between the EU, Japan and China. The panel will be structured as an open conversation and will leave plenty of time for engagement with the audience.

Room:

CYTT 3.23

Chair:

Vigilencia Abazi

Thomas Streinz:

Re-Constituting Global Cyber-Law

Mira Burri:

Governance of Data and Data Flows in Trade Agreements

Jyh-An Lee:

China's Approach to Internet Sovereignty: Maintaining Cybersovereignty?

Lin Yang:

Internet Courts: Mapping a New Development of Online Dispute Resolution Mechanisms in China

66 ICONOCLASM, NATIONAL IDENTITY, CULTURAL HERITAGE AND MONUMENTS

Clashes surrounding the allowance or prohibition of iconoclasm reveal how public law addresses diverse cultural beliefs. Discussions concerning confederate monuments in the United States and the continuing existence of Fascist monuments in Italy have shed light on the different values societies ascribe to the iconology of certain cultural heritage. States' decisions to own or control certain cultural property as part of their 'national patrimony' and States' decisions to allow or prohibit the expressions of certain beliefs associated with certain cultural property may or may not be seen as a tool with which they construct national identity. This panel, through an interdisciplinary methodology, analyzes the role which adoption or denial of iconoclasm within the sphere of cultural heritage plays in fostering or threatening social cohesion and national identity.

Room:

CPD-LG.35

Chair:

Sabino Cassese, Lorenzo Casini

Felicia Caponigri:

Legally Contextualizing American Confederate Monuments and Italian Fascist Monuments

Anna Pirri Valentini:

The Role of Cultural Heritage Policies in the Definition of a National Identity

Emanuele Pellegrini:

A Square, a Museum and a Monument: Piazza Venezia in Rome After World War II

Fabrizio Parrulli:

Constructions of Identity and the Carabinieri Force for the Protection of Cultural Heritage

67 INTERNATIONAL NORMS AND CONSTITUTIONAL CHANGE IN UNRECEPTIVE ENVIRONMENTS: THE SOUTH EAST ASIAN CONUNDRUM I (THE INVESTEE STATE)

How do international norms bring about constitutional and administrative change in apparently unreceptive environments? In South East Asia there is sensitivity to international law intruding on domestic sovereignty; a patchy tradition of constitutional democracy; and the central vehicle for international engagement, ASEAN, largely eschews binding norms. This panel nevertheless hypothesises that international norms have brought about significant change. ASEAN has prospered because it has contributed to the image of a particular form of State: the investee State. This model is characterised by four characteristics: growing central executives; normatively elaborate forms of network governance; significant reform of public administration used as a surrogate for legislative implementation of regional commitments; and a dual constitutional order in which the parliamentary and judiciary occupy one sphere and the executive and international actors the other.

Room:

CYTT 4.24

Chair:

Damian Chalmers

Damian Chalmers:

The Regional Constitution of the Investee State

Marija Jovanovic:

Economic Integration, Common Identity and Regional Framework for Migration: the Curious Case of ASEAN

Gloria Loo Jing Xi:

ASEAN and a Janus-faced Constitutionalism: the Indonesian Case

68 HUMAN RIGHTS PERFORMANCE IN TAIWAN

In the past three decades, Taiwan has made a great stride in protecting human rights since democratization. This is all the more remarkable given the emergence of democratic backsliding around the globe and should be attributed not only to the government, including all three branches but also to civil society. This panel comprises four students of constitutional law. Yen-tu Su analyzes, explains and assesses the workings of the Constitutional Court Simulation in Taiwan as a moot court education program. Cheng-Yi Huang studies three social movements in East Asia and their appeal of constitutional reform so as to bridge epistemic democracy and legal studies of constitutional authority. Chien-Chih Lin suggests that Taiwan can become the only democracy in Chinese societies because it discards Confucianism and Asian values. Finally, Hui-chieh Su suggests that the Constitutional Court's reliance on American theories does not necessarily guarantee free speech at a higher protection level.

Room:

CPD-LG.21

Chair:

Wen-Chen Chang

Yen-tu Su:

Rights Advocacy Through Simulation

Cheng-Yi Huang:

Frozen Trials: Political Victims and their Quest for Justice

Hui-chieh Su:

Freedom of Expression in Taiwan

Chien-Chih Lin:

Towards an Analytical Framework of Constitutionalism in East Asia

69 CONSTITUTIONAL CHANGE: FOUNDATIONS AND BALANCE OF POWER

Constitutional change is fundamental to understanding a constitutional order. On the one hand, constitutional change involves the foundational questions of a political community. Should we create a new constitution? Should we change our constitution? What is the relationship between constitution, state and people? On the other hand, the mechanisms for constitutional change are highly relevant to an assessment of where power lies within the constitutional order. Constitutional actors are enhanced or diminished with reference to their ability to secure constitutional change. This panel relates these two dimensions of constitutional change through a series of papers. Li-kung Chen and Oran Doyle explore foundational moments of constitutional change. Mikolaj Barczentewicz takes an analytical approach to the concept of a legal power to change the Constitution. David Kenny explores how political actors interact with the formal rules for constitutional change.

Room:

CPD-LG.36

Chair:

Oran Doyle

Li-kung Chen:

The Temporal Dimension of the State

Oran Doyle:

Constitutional Beginnings

Mikolaj Barczentewicz:

Legal Powers and Constitutional Change

David Kenny:

Media Balance in Referendum Campaigns

70 CONSTITUTIONAL REVIEW IN CHINA

This panel involves 7 public scholars in China. Four speakers will give presentations and Prof. Qinwei GAO and Dr. P.Y. Lo will be the commentators. This panel will be moderated by Prof. Cora CHAN. Prof. WANG will share the latest debate over the nature of constitutional law in contemporary China, and invite one German scholar Prof. Bockenforde's theory to respond to that debate. Prof. ZHENG will offer a description of the current developments of the Record and Review Mechanism. It carries constitutional review presently and helps to achieve it in China. Prof. HUANG will make a reflection on the relation between Chinese ideology of "parliamentary supremacy" and the universal value of "constitutionalism", and try to explain constitutional review in the current regime. Prof. YANG will give an analysis of the powers and internal mechanism of the NPCSC. This panel will introduce the latest developments of constitutional law studies in China, and provide a platform for the dialogue.

Room:

CYTT 3.19

Chair:

Cora Chan

Gao Qinwei, Pui Yin Lo:

Discussants

Kai Wang:

From Political Constitution to Staatsrecht

Lei Zheng:

Constitutional Review in Action?: the Current Developments of the NPCSC's Record and Review Mechanism

Mingtao Huang:

A Prequel to the Constitutional Review in China: the Rise of "Constitutional Supremacy" in the Confinement of the NPC System

Xiaonan Yang:

The Institutional Competence of the NPCSC and Other Reviewers: the Possibility and Predicament of Constitutional Review in China

71 GOVERNING TECHNOLOGY UNDER INTERNATIONAL AND EUROPEAN LAW: ENHANCING SECURITY WHILST SAFEGUARDING RIGHTS (?)

Cutting-edge technologies may have a beneficial impact, including in terms of enhanced security and democracy. Yet, distinctive elements of the current technological era, such as the raising role of private actors and the growing automation, challenge traditional legal categories and raise new regulatory concerns. International and EU law are continuously confronting with a whole array of new issues, which call into question their effective capability to adapt to a dynamic World. Whereas practice shows that the spectrum of relevant legal issues is constantly growing, this Panel intends to provide a broad overview of the main emerging trends, by accommodating papers that tackle different technologies (Internet, drones, autonomous weapons systems, databases) and apply different legal perspectives. The aim is that of identifying real normative gaps, which cannot be filled by somehow stretching or reshaping the existing legal rules, but rather call for a proactive role of Public Law.

Room:

CPD-LG.37

Chair:

Nicole Lazzerini

Daniela Vitiello:

EU Anticipatory Border Governance in the Age of Interoperability. A Legal Appraisal of The New 'Flexiciency' Paradigm

Andrea Spagnolo:

The Use of Autonomous Weapons Systems in Domestic Law Enforcement Operations: Testing the Resilience of International Human Rights Law

Nicole Lazzerini, Nicolò Nisi:

Privates Involvement in Law Enforcement Activities: a Preliminary Assessment of the Emerging Role of Internet Services Providers Under EU Law

Ornella Feraci:

EU Law and Cross-border Online Disputes Over Defamation and Copyright Infringements: the Need for a Brand-new "less Is More" Normative Approach

Elena Carpanelli:

The Passenger Name Record (PNR) 'Dilemma' Within and Beyond European Union's Borders: Balancing Security Concerns and the Protection of Fundamental Human Rights

72 RIGHTS, GOVERNANCE AND ACCOUNTABILITY IN A DATA INTENSIVE AGE

In the inexorable march of digital technology, one's identity is constantly being shaped, measured and defined by fellow citizens, private enterprises and public authorities. This affects the understanding of ourselves as voters, of others as honest citizens, and of heroes of bygone days which we once held dear in our hearts. While individuals' lives are becoming more vulnerable to scrutiny and intrusion in our digitalized society, little is known of the process and dynamics of information sharing and decision making. This panel brings together five papers exploring the themes on secrecy and transparency, control and accountability from a comparative perspective. The impact of social media platforms on the right to vote, the problems caused by dataveillance in the age of big data and artificial intelligence with a focus on China's social credit system, and the implications of speech regulation that prohibits us from questioning who national heroes are will be studied.

Room:

CYTT 3.20

Chair:

Frank Pasquale

Anne Cheung:

Rule by Data and the Quest for Data Justice: Lessons from China's Social Credit

Solke Munneke, Sofia Ranchordás:

Social Media and the Right to Vote

Marcelo Thompson:

The Problem of Virtual Co-location: China's Social Credit System and the Legal System of the Hong Kong SAR

Mei Ning Yan:

Protection of Fallen Heroes and Freedom of Expression: a Comparative Study of Mainland China and the United States

Yongxi Chen:

Accountability in Data-driven Regulation: a Critique of the Joint Punishment Scheme Under China's Social Credit System

Yueh-Hsuan Weng:

Accountability and Transparency in Embodied AI: A Focus on Sociable Robots

73 ELECTORAL JUSTICE IN A POST-ELECTION TRAUMA: THE KENYA SUPREME COURT JUDGMENTS ON PRESIDENTIAL ELECTIONS (*CANCELLED*)

Kenya is one of the Africa's most vibrant democracies, holding one of the world's most expensive elections. It is a country of ethnic diversity, but also of politics based on ethno-mobilisation, which led repeatedly to post-electoral violence; in the aftermath of 2007 elections over 1000 people lost their lives. In 2010, a new constitution was enacted. It seeks to overcome colonial and one-party-state autocratic legacies; it also provides for extensive electoral justice guarantees including the right to challenge results of presidential elections in the Supreme Court. The Court emerged as an important actor in electoral cycles upholding the 2013 elections, annulling the 2017 elections and again upholding the results of 2017 re-run. Its judgments address important questions, above all on the relationship between the law and the numbers: Does the non-compliance with the procedures alone suffice to nullify the elections, or is it necessary to establish that the results were distorted?

Room:

SESSION CANCELLED

Chair:

Gibson Nyamato

Gibson Nyamato:

Presidential Elections in Kenya, the Philosophical Approach in the Supreme Court Decisions 2013 -2017

Hildah Mutwiri:

Analysis of the First Presidential Election Petition (2013): Post the Kenyan 2010 Constitution

Stephen Ayiera:

"Computer Generated Leaders?": the Irony of the Electronic Transmission System in the August 2017 Presidential Elections

Tomasz Milej:

A One-man Show in a "Not-so-universal" Suffrage – the Second 2017 Supreme Court Ruling

74 BETWEEN COMPELLED SPEECH AND SUBSIDIZED SPEECH: INSTITUTIONAL PERSPECTIVES

What are the legal and ethical limits on the state's discretion in using financial means to either incentivize or penalize ideologically contentious speech? Throughout the liberal world, state support of private activities—artistic creation, academic inquiry, welfare provision, etc.—invokes disputes as to the legitimacy of conditions imposed upon recipients, that require them to either express support of government policies or refrain from expressions of dissent. The panel will discuss illustrative episodes from Israel and Canada, and explore several possible arguments that transcend conventional rights-based analysis and locate normative significance in institutional and structural factors of political and constitutional economy.

Room:

CPD-LG.60

Chair:

Mark Tushnet

Ori Aronson:

Do Welfare States Have a 'Freedom to Fund'? On Conditional Cash Transfers and Political Speech

Adam Shinar:

Free Speech, Free Finance, and the Anti-entrenchment Principle

Anna Su:

The Moral Market: Compelled Speech and Government Funding

75 THE CHANGING LANDSCAPE OF CHINESE CONSTITUTIONALISM

This panel investigates the changing landscape of Chinese constitutionalism from three aspects: the rise of the Supreme People's Court in protecting property rights, the establishment of the National Supervisory Commission and the unconstitutional constitutional changes regarding market economic institutions.

Room:

CYTT 4.26

Chair:

David Law

Shitong Qiao:

Federalism and the Rights Revolution: Why Do Chinese Local Governments Both Endanger and Expand Individual Land Rights?

Peng Wang:

From Institutional Interaction to Institutional Integration: the National Supervisory Commission and China's New Anti-corruption Model

Han Liu:

The Legal Logic of Chinese Economic Reform

76 THE COMPARATIVE LAW OF DEMOCRACY

This panel considers central aspects of the comparative law of democracy of relevance for multiple constitutional orders. The papers collectively consider political candidacy, election commissions and democratic decline, and the use of referenda. The panel raises doctrinal, historical, comparative, and theoretical perspectives on these topics.

Room:

CPD-LG.64

Chair:

Shubankar Dam

Michael Pal:

Election Commissions and Democratic Decline

Ron Levy:

Shotgun Referendums: Popular Deliberation in Contested Regions

Ciara Torres-Spelliscy:

Why the U.S. Supreme Court Should Recognize a Compelling State Interest in Preserving Candidate Time

77 30 YEARS OF THE BRAZILIAN CONSTITUTION: THE NEED TO TAKE STOCK

On the eve of the thirtieth anniversary of the Constitution, it is urgent to take stock of this reality. The 1988 Constitution structures the welfare state model with a view to eradicating inequalities based, above all, on the strengthening of the social order and the protection of human rights. In this sense the prospective meaning of the constituent project arises. There is, in 1988, a desire for a constitution that is not exhausted in that space-time, as a driving force, directing the constitutional narrative. However the constitutional architecture of power (*casa de máquinas*) has remained the same. Thus, Brazilian social constitutionalism is ambivalent, since, at the same time that it bets on rights, it does not alter the structure of state power able to do so. With this normative background, the idea of this panel is to answer: How are we 30 years later?

Room:

CYTT 7.23

Chair:

Melina Fachin, Estefania Queiroz Barboza

Melina Fachin:

Brazilian Social Constitutionalism 30 Years Later: Why So Distant?

Estefânia Queiroz Barboza:

30 Years After: Is Democracy in Brazil Stable?

Rodrigo Kanayama:

Tribunais De Contas (Courts of Audit): the New Protagonist of the 30th Year of the Brazilian Constitution

Jairo Lima:

The Absence of Janus: Procedural and Substantive Limits to the Amending Power in Brazil

Flávia Santiago Lima:

Strengthening the Brazilian "Juristocracy" in Self-interest: the Engagement of Justices Since National Constituent Assembly to the Super Supreme Court Thirty Years Later

Luiz Guilherme Arcaro Conci:

The Obsolescence of the Hierarchy Perspective of International Treaties for the Coordination Between Domestic Law and International Human Rights Law

78 STRUCTURAL PRINCIPLES FOR PUBLIC INTERNATIONAL LAW

Traditional accounts of the 'structural' principles of international law are 'positivistic' and 'voluntarist', suggesting that: a) law and morality are conceptually distinct; and b) no international obligations can exist without state consent. Each paper in this panel challenges these orthodoxies in different ways. Whether by assessing the limits of legitimate democratic rule, the need to respond to endemic risk, what it takes to belong to a political community or the place of political morality in legal reasoning, each suggests new ways of understanding and engaging with the law that regulates international relations. In so doing they implicate the conference themes of democracy, security and identity as they pertain between states.

Room:

CPD-LG.20

Chair:

Jen Hendry

Alex Green:

The Puzzle of States and Their Territory

Alexandra Hearne, Simon Palmer:

(International) Law as Answer to Moral Risk

Oisín Suttle:

Thick and Thin Moralities and Legitimacy in International Adjudication – the Case of the WTO

Lea Raible:

What Value for Consensus? Human Rights, Normative Force, and Universality

79 THE SCOPE AND NATURE OF NON-STATUTORY EXECUTIVE POWERS AFTER MILLER: A CONCEPTUAL AND COMPARATIVE INQUIRY

The purpose of this panel is not to rehash doctrinal controversies around the Article 50 Miller decision of the UK Supreme Court. Instead it will move the academic debate forward by considering some fundamental questions about prerogative powers in light not only of that case but also comparative judicial treatment of non-statutory executive powers ('NSPs'), including the so-called 'third source' powers. It will ask in particular: can statute shrink the scope of the prerogative or merely render particular exercises of it unlawful? Does statute replacing a prerogative abolish the latter or merely place it in (temporary) abeyance? Is the prerogative best conceived of as a broad residual power or a bundle of discrete powers – and how does that compare with NSPs in other jurisdictions, such as the US, Israel and France? How does UK case-law determining the existence and scope of particular prerogative powers compare to that identifying and delineating NSPs elsewhere?

Room:

CYTT 5.25

Chair:

Jeff King

Margit Cohn:

The Prerogative and Non-Statutory Powers: A Comparative Analysis

Robert Craig:

'Royal Prerogative: Exploring the Conceptual Architecture'

Gavin Phillipson:

Reconceptualising Prerogative Powers After Miller

80 [GLOBCON] THE FUTURE OF GLOBAL CONSTITUTIONALISM

Constitutionalist ideas inspire men and women around the world to claim their rights and build political movements towards the establishment of legal and political orders. The commitment to the three foundational features of the global constitutionalism — human rights, democracy and the rule of law — is not a commitment to abolish or flatten national cultures, but to change national culture and identity to make it more reflexive and inclusive, opening up to the wider world. Similarly, Global Constitutionalism is not about abolishing sovereign states, but about integrating them globally and building the appropriate legal and institutional infrastructure to empower them to better fulfil their function to respect, protect and fulfil the rights of those under their jurisdiction. The panel will address the future of Global Constitutionalism in a comparative perspective.

Room:

CYTT 6.24

Chair:

Mattias Kumm

Hajime Yamamoto:

Authoritarian Constitutionalism in Japan?

Mattias Kumm:

The Challenges and Opportunities China Presents for the Evolution of Global Constitutionalism

Yoon Jin Shin:

Cosmopolitanizing Engagement of the South Korean Constitutional Court

Kriszta Kovács:

The Future of Constitutionalism in Hungary and Poland

Akiko Ejima:

A Role of "constitutionalism" in the Recent Constitutional Debates on Article 9 (the "Pacifism" Clause) in Japan

81 COMMON LEGAL DRAFTING RULES FOR THE PORTUGUESE-SPEAKING COUNTRIES AND REGIONS

Legal drafting is the area of knowledge that envisages the creation of rules, standards and methods to draft laws with quality. This panel presents a research project of the Lisbon Centre for Research in Public Law which aims the definition of common standards for legal drafting in the Portuguese speaking countries and regions (Angola, Brazil, Cape Verde, Guinea-Bissau, Special Administrative Region of Macao, Mozambique, Portugal, São Tomé and Príncipe and Timor-Leste). Its main focus is related to formal legislation drafting, which envisages the definition and implementation of common rules and good practices regarding legislation drafting. The objectives are i) to deepen the collective identity of these legal systems by using their common language and common rules for legal drafting; ii) to improve legal certainty, as their citizens can better understand each other's laws, promoting cross-border investment; and iii) to ensure the quality of the democratic legislating procedures.

Room:

CYTT 3.10

Chair:

Mauro Zamboni

João Tiago Silveira:

Common Legal Drafting Rules for the Portuguese-Speaking Countries and Regions: Identification of the Existing Situation

António Delicado:

Common Legal Drafting Rules for the Portuguese-speaking Countries and Regions: Current State of the Project and Methodological Approach

Rui Lanceiro:

Common Legal Drafting Rules for the Portuguese-speaking Countries and Regions: Possible Outcomes

82 SECRECY AND ACCOUNTABILITY IN NATIONAL SECURITY LAW

This panel seeks to examine issues surrounding secrecy in security-related public law cases. Specifically, the panel will focus on exploring how UK courts have managed secrecy, and the potential implications for state accountability. The panel is chaired by Dr Hayley Hooper, and Dr Fergal Davis will act as a discussant.

Room:

CYTT 3.11

Chair:

Hayley Hooper

Katy Vaughan:

Judicial Control Over the Use of Closed Material Procedures

Daniella Lock:

Assuming Facts as an Alternative to Secret Evidence

Fergal Davis:

Discussant

83 THE TWILIGHT OF JAPAN'S POSTWAR CONSTITUTION

Japan is now in a state of what Bruce Ackerman called “constitutional politics”. In past five years, the ruling coalition of PM Shinzo Abe’s LDP and Komeito has won all national elections and secured supermajority in both houses of the Diet, thus meeting the requirement of proposing amendment to the Constitution. The Prime Minister has said he is expecting to see a referendum for constitutional amendment in 2019. This panel will not follow the routine that keeps focusing on Art 9 issue. Instead, its aim is to give non-Japanese colleagues a bigger picture of not only disfunction of the Japanese constitution, but also radical departure from rule of law in the Abe years (Dec 2012--present). Presenters will discuss the twilight of the postwar constitution from different aspects.

Room:

CYTT 3.21

Chair:

Tokuji Matsudaira

Tokuji Matsudaira:

The Academic Response to the Constitutional Zone of Twilight

Masahiko Kinoshita:

Concentration of Wealth and Democracy Under the Japanese Constitution

Mayu Terada:

Judicial Negativism in Japan

Craig Martin:

The Trojan Horse of Abe’s Constitutional Amendment Proposal

84 RELIGIOUS FREEDOM AND THE ANTI-DISCRIMINATION PRINCIPLE

Recent years have seen a rise in the importance of religion in both the private and the public spheres, as well as an increase in demands for full equality by disempowered groups such as women and gays. The combined effect of these two phenomena has been an escalation in the conflict between claims of religious freedom and claims of non-discrimination which courts throughout the world are struggling to resolve. Such tensions have arisen in areas as diverse as access to contraceptives and abortions, gay marriages, the enforcement of religious modesty rules, such as the segregation of the sexes, in public places, and the right to wear religious dress at work or in public. The papers in the panel will discuss the conflicts and convergences between religious freedom and the anti-discrimination principle and the role of courts in resolving these tensions, from comparative and theoretical perspectives.

Room:

CYTT 11/F

Chair:

Julie Suk

Tarun Khaitan, Jane Norton:

Distinguishing Freedom of Religion from Religious Non-Discrimination

Gila Stopler:

Gender Segregation in Public Places: Religious Accommodation or Sex Discrimination?

Mathias Moschel:

(Re-)characterizing Headscarf and Veil Bans as Harassment

Christopher McCrudden:

Litigating Religions

85 RELIGION AND (IL)LIBERAL CONSTITUTIONALISM IN ASIA

Asia is a fascinating laboratory of challenging interactions between religion and constitutional law, either in liberal or non-liberal settings. This panel examines how, in several Asian jurisdictions, Buddhism, Islam and Christianity are being mobilized, invoked and understood by various actors including constitutional courts and commissions - and the effects on the general state of (il) liberal constitutionalism.

Room:

CYTT 5.23

Chair:

Eugénie Mérieau

Dian AH Shah:

Religion and Constitutional Design: Divergences and Convergences in Malaysia and Indonesia

Faisal Kamal:

Adjudicating Blasphemy : Challenging the Writ of the State in Pakistan

Thomas White:

The Politics of a Cononymic Secularism in Fiji

Eugénie Mérieau:

Lese-majeste and Sacred Kingship in Southeast Asia

Khemthong Tonsakulrungruang:

Buddhism's Influence on Thailand's Constitutional Arrangement

86 EMERGENCY, LEGALITY AND RESISTANCE IN ASIA

This panel explores relationships between sovereign prerogative, legality and rights in different Asian contexts. Eva Pils and Rawin Leelapatana apply long-standing theorisation about exceptional state power to contemporary politics in China and Thailand respectively. Pils draws on Frankel's conception of the "dual state" to analyse the reversion to arbitrary displays of state power in China. Leelapatana argues that, even in a non-liberal political regime such as Thailand, the Schmittian conception of sovereignty has declining viability and explanatory power. Surabhi Chopra and Hualing Fu consider the security-based arguments states make when their powers are challenged. Chopra examines arguments the Indian government makes to preserve impunity for armed forces fighting separatist groups, and reflects upon wider debates about constitutional retrogression. Fu looks at security-based, rule-based, and rights-based responses to political protest in Hong Kong, Taiwan and Mainland China.

Room:

CYTT 7.24

Chair:

Surabhi Chopra

Eva Pils:

China's Contemporary Dual State and Its Global Implications

Rawin Leelapatana:

The Kelsenian and Schmittian Views on the Nature and Use of Emergency Powers Revisited: the Lesson from Thailand's Colour-coded Politics

Surabhi Chopra:

Impunity and Public Law in India: Lessons for Challenging Constitutional Retrogression in Liberal Democracies

Hualing Fu:

Three Approaches to Political Protest: a Hong Kong, Taiwan and Mainland China Comparison

87 PROTECTING NATIONAL SECURITY AND PREVENTING TERRORISM THROUGH ADMINISTRATIVE MEASURES

In many democracies governments have to consider what measures to adopt in an effort to best protect their national security. The war against terrorism has increased the use of administrative measures that can be quickly adopted and effectively implemented. The panel aims to discuss the importance of legal design in balancing security and fundamental rights protection and the role that can be played by administrative law from a comparative perspective.

Room:

CYTT 6.23

Chair:

Giulio Napolitano

Guy Seidman:

Balancing Effective Protection and Agency Overreach: Lessons from Israel

Veronique Champeil-Desplats:

State of Emergency and Rule of Law in France

Giorgio Mocavini, Maria Stella Bonomi, Giulio Napolitano:

Administrative Law at the Crossroad Between Domestic Safety and Human Rights

Mehrnoosh Farzamfar:

A Critical Analysis of the Use of Diplomatic Assurances in the Cases of Expulsion to Torture

88 CHALLENGES AND TRANSFORMATIONS OF THE SEPARATION OF POWERS

The principle of the separation of powers, far from being simply a constitutional principle for the organisation of public powers, is actually one of the traces that enables us to historically reconstruct the changes in constitutionalism and the original idea of defending the individual from the will of state power. We are today in the midst of a deep transformation of the public sphere, and more specifically of the boundaries of constitutionalism. The traditional categories of public law are challenged by new phenomena (terrorism, mass migration, economic crisis and in many countries we are facing unprecedented crisis (Hungary, Poland, Turkey). In light of the current constitutional law changes, are we witnessing the rise of a new model of the Separation of powers? And if so, which are its features and its spirit?

Room:

CYTT 6.25

Chair:

Lorenza Violini

Steven G. Calabresi:

The Separation of Powers in Civil Law Countries

Nicholas Barber:

Is the Separation of Powers Applicable to Parliamentary Systems?

Eoin Carolan:

The Populist Challenge to the Separation of Powers

Luca Pietro Vanoni, Antonia Baraggia:

The Separation of Powers from an Evolutionary Perspective: Reconciling Power and Freedom

89 CONSTITUTIONAL LAW IN CONTEXT

Room:

CYTT 6.26

Chair:

Jhuma Sen

Hillel Sommer:

Revisiting the Constitutional Override: Turning A “Bete Noir” into a Useful Constitutional Tool

Ntombizozuko Dyani-Mhango:

South African President Zuma’s Contribution to the Constitutional Jurisprudence

Antonios Kouroutakis:

Rethinking Constitutional Law

Jhuma Sen:

Walking With ‘The Quran in One Hand and the Constitution in the Other’: the Islamic Women’s Movement in India and Landscapes of Adjudication

90 REGULATING ONLINE THREATS TO DEMOCRACY

The scope and reach of social media and other online platforms has forced officials and citizens to recalibrate traditional boundaries between public and private regulation of speech, between local and global harms, and between speech and conduct. The balance of harms associated with regulation of defamation, political campaign speech, and hate speech requires new thinking, and charting a path forward will require collaboration between lawyers, political scientists, technologists, journalists and communications specialists, politicians, business leaders, and ordinary citizens. This panel brings into conversation scholars with a broad range of expertise in law and politics, technology, and freedom of speech to unpack these new threats to democracy and what we can do about them.

Room:

CYTT 7.25

Chair:

Jamal Greene

Jamal Greene:

Introduction

Chinmayi Arun:

Rebalancing Regulation of Speech: Hyper-Local Content on Global Web- Based Platforms

Nate Persily:

The Implications of Platform Speech Regulation of Disinformation

91 WOMEN RIGHTS AT RISK: A COMPARATIVE ANALYSIS

In spite of the conceptual difference between the words sex (indicating biological differences between men and women) and gender (which refers to social and cultural norms), for long time patriarchal stereotypes based on gender have justified discriminatory treatments against women. This made necessary a massive legal effort for erasing gender discrimination as well as the effects of apparently gender neutral provisions. Against this global effort, full emancipation of women is still hindered in some legal systems including religious law among their sources of law, as in the case of some Muslim countries. In order to provide a comparative analysis considering case-studies differing for geography, legal tradition and approach toward gender issues, the proposed panel, chaired by Prof. Bertil Emrah Oder, is structured in three presentations. Presenters will serve as each-other discussants.

Room:

CYTT 8.24

Chair:

Bertil Emrah Oder

Irene Spigno:

The Role of the Inter-American Court of Human Rights in Protecting Women Against Endemic Violence.

Valentina Rita Scotti:

Protecting Women from Violence: a European Comparative Analysis from Domestic Norms to the Istanbul Convention

Azhar Zahra, N. Mohajer Shahideh:

The Role of Sharia in Women's Rights in Iran: Promotion and Restriction

92 JUDICIAL REVIEW IN YOUNG DEMOCRACIES: INDIVIDUAL ACCESS TO CONSTITUTIONAL ADJUDICATION

Whilst judicial review is incompatible with authoritarian ideology, the introduction of such mechanism is key to democratic constitutions. A main challenge faced in this regard is whether to adopt a centralised review, exercised by a specialized institution, or a dispersed one, entrusting ordinary courts with this power. A related issue concerns the design of individual access to constitutional adjudication. This proves especially challenging in the aftermath of regimes that have deprived citizens of remedies for challenging state power. This panel explores, in a comparative perspective, the advantages and shortcomings of different models of judicial review in three young democracies - Slovakia (centralised review with individual access), Bulgaria (centralised review with no individual access) and Brazil (a hybrid model). Through law-in-context, the case studies address the rationale behind the design and performance against the socio-legal background of transitional democracies.

Room:

CYTT 8.25

Chair:

Denis Galligan

Fernanda Farina:

Politics Behind the Vail Of Law: How Fundamental Rights Discourse Can Hide Excesses in Judicial Review. An Empirical Study from Brazil.

Ivo Gruev:

Inaccessible Rights: the Unrealised Potential of the Bulgarian Constitutional Court

Simon Drugda:

Individuals in the Constitutional Court: Complaint, Protest, Scandal, and Weapons of the Weak

**PANEL
SESSIONS IV**

TUESDAY
26 JUNE 2018
16:30 – 18:00

93 CONSTITUTIONAL DEMOCRACY IN CRISIS? II

The early twenty-first century appears to be a period of turmoil in many seemingly stable constitutional democracies. This panel and two others discuss such questions as these: Are there general forces weakening constitutional democracy around the world, or are there nation-specific reasons for crises that simply happen to be occurring at roughly the same time? Why have some major democracies – Canada and Australia, for example – seemingly not experienced these problems? And, finally, might the concerns some scholars have expressed be something like “crying wolf,” that is, might the developments around the world be more or less ordinary episodes in the ebb and flow of democratic politics, that what some scholars claim to be a constitutional crisis is merely the normal constitutional triumph of political coalitions and policies they do not like?

Room:

CPD-LG.59

Chair:

Mark Tushnet

Sam Issacharoff:

Populism Versus Democratic Governance

David Landau:

Constitution-making and Authoritarianism in Venezuela: the First Time as Tragedy, the Second as Farce

Kim Lane Scheppele:

The Decline of Political Parties and Constitutional Democracy

Sujit Choudhry:

Will Democracy Die in Darkness? Calling Autocracy by Its Name

94 GLOBAL AND COMPARATIVE ADMINISTRATIVE LAW: IN QUEST FOR DEMOCRACY

The Panel intends to analyze the developments and limits of democratic guarantees in global administrative law, also from a comparative perspective. Speakers will deal with the following themes: present development of global administrative law; global standards and soft law; global administrative law and economic liberties; global administrative law and fundamental rights.

Room:

CPD-LG.17

Chair:

Marco D'alberti

Giulio Napolitano:

See Panel Description

Mariana Prado:

See Panel Description

Lorenzo Casini:

Discussant

Eric Ip:

See Panel Description

Patricia Galvao:

See Panel Description

95 CONSTITUTIONAL POLITICS IN ASIA

The panel explores contemporary instances in which constitutional law interacts with politics in leading jurisdictions in Southeast Asia. It adopts a dual take as to the meaning of politics. On the one hand, it showcases how courts and other institutions grapple with potentially explosive 'high politics' questions that go towards a polity's self-understanding and the fundamentals of its system, such as the place of religion or the structure of government. On the other hand, the papers in this panel explore the social and political identity of those who have been asked to decide those questions, allowing for provocative reflection on the role of non-legal factors and non-classical institutions, like the monarchy, in shaping a country's constitutional future.

Room:

CPD-LG.63

Chair:

Andrew Harding

Maartje de Visser:

A Deafening Silence? Non-Judicial Dialogues in a Dominant-Party Democracy

Jaclyn Neo:

The Politics of Judicial Engagement With Constitutional Amendments

Andrew Harding:

Politics and Political Footballs: Malaysian Monarchy in an Age of Consumerism

Bjoern Dressel:

Megapolitical Cases and the Constitutional Court of Indonesia: an Empirical Analysis (2003-2017)

96 BOOK DISCUSSION: ZORAN OKLOPCIC, BEYOND THE PEOPLE. SOCIAL IMAGINARY AND CONSTITUENT IMAGINATION (OUP, 2018)

This panel will bring together leading scholars to discuss Zoran Oklopcic's recent book: *Beyond the People. Social Imaginary and Constituent Imagination* (OUP, 2018). *Beyond the People* develops a provocative, interdisciplinary, and meta-theoretical critique of the idea of popular sovereignty. It asks simple but far-reaching questions: Can 'imagined' communities, or 'invented' peoples, ever be theorized without, at the same time, being re-imagined and re-invented anew? Can polemical concepts, such as popular sovereignty or constituent power, be theorized objectively? If, as this book argues, the answer to these questions is no, theorists who approach the figure of a sovereign people must acknowledge that their activity is inseparable from the practice of constituent imagination.

Room:

CPD-LG.36

Chair:

Scott Veitch

Joel Colon-Rios, Mara Malagodi, Alex Schwartz, Emiliios Christodoulidis:

Discussing "On Beyond the People"

Zoran Oklopcic:

Response

97 BOOK DISCUSSION: PROPORTIONALITY: NEW FRONTIERS, NEW CHALLENGES (CAMBRIDGE U PRESS, 2017)

This panel will bring together the editors and contributors to *Proportionality: New Frontiers, New Challenges* (2017). The panelists will discuss future directions for proportionality doctrine and scholarship, such as whether carefully designed and limited doctrines of proportionality can improve judicial decisionmaking, how proportionality doctrine is applied in different jurisdictions, its role in constitutionalism outside of the courts, and whether the principle of proportionality actually advances or detracts from democracy. In addition to those listed below, other contributors to the volume may participate in the discussion.

Room:

CYTT 6.24

Chair:

Vicki Jackson

Vicki Jackson:

Discussant

Iddo Porat, Moshe Cohen-Eliya:

Discussant

Stephen Gardbaum:

Discussant

Mattias Kumm:

Discussant

Kai Moller:

Discussant

98 INTERNATIONAL NORMS AND CONSTITUTIONAL CHANGE IN UNRECEPTIVE ENVIRONMENTS: THE SOUTH EAST ASIAN CONUNDRUM II (CONSTITUTIONALISM AS REGIONAL IMAGINARY)

In South East Asia there is sensitivity to international law intruding on domestic sovereignty; a patchy tradition of constitutional democracy; and the central vehicle for international engagement, ASEAN, largely eschews binding norms. A sister panel explored how ASEAN had reconfigured systems of administration around a model of the investee State. This panel explores the way in it has also created an 'ASEAN' imaginary look to each other and international norms in decision-making within their territories. This happens in emergent fields of ASEAN policy, such as e-commerce; regulatory fields which mimic ASEAN regulatory policy-making, such as the environment, and more sensitive fields such as human rights by institutional actors displaced by ASEAN. The possibilities for transplants not only varies but even where these norms are adopted in formally identical manners, they are subject to a domestic constitutional economy, with its own patterns of contestation and meaning.

Room:

CYTT 4.24

Chair:

Damian Chalmers

Melissa Loja:

Between an Imagined Affinity, The State and ASEAN: The Sources of Regional Human Rights Norms

Heejin Kim:

The Rise of Regulatory State in ASEAN E-commerce Market – Legislating Electronic Signatures in the Times of Commercial and Technological Innovations

Rob Real:

Judicial Transplantation as a Backdoor to Environmental Normative Integration in ASEAN

99 RESEARCH METHODS IN CONSTITUTIONAL LAW

This panel surveys a variety of research methods in constitutional law, both old and new, from multiple disciplines. The papers on this panel will appear in *Research Methods in Constitutional Law: A Handbook* (Edward Elgar, forthcoming 2019).

Room:

CYTT 4.26

Chair:

David Law

Michael Gilbert, Robert Cooter:

Constitutional Law and Economics

Mark Graber:

Institutionalist Approaches to the Study of Constitutional Law

Mila Versteeg, Adam Chilton:

Quantitative Approaches to the Study of Constitutional Drafting

Malcolm Langford:

Mixed Methods in Constitutional Law: a Question-driven Approach

100 GLOBAL STANDARDS AND THE EU: IMPLEMENTATION STRATEGIES AND BOTTOM-UP APPROACHES

Global standards affect regulatory autonomy in a number of different domains: product technical requirements, food safety, aviation safety, environmental protection, financial regulation. Even though the EU could in theory try to compete with this process, in practice it is often de facto complying with global standards. At the same time, the EU tends to – and, sometimes, succeeds in – using global standard setting for its own regulatory purposes. The panel aims at focusing on the EU's strategy (or, better, strategies) vis-à-vis global norms. On the one hand, it will examine the implementation of global standards. Do implementation techniques follow a recurrent model? What can be the reasons for diverging strategies in different sectors? On the other hand, the ways through which the EU tries to influence global standard setting will be analyzed. Can the EU effectively influence the content of global norms and can it contribute to the accountability of global standard setters?

Room:

CPD-LG.37

Chair:

Maurizia De Bellis

Maurizia De Bellis:

Incorporation and Endorsement: The EU, Transnational Networks, and Private Financial Standards

Sabrina Röttger-Wirtz:

The Role of European Agencies in Global Health Standards from Global to EU to National Level

Georgios Dimitropoulos:

Private Implementation of Global Standards in EU Law: the Case of Certification

Rui Lanceliro:

The EU's Compliance With Environmental Law Standards Established in the Aarhus Convention: Coming Together or Drifting Apart?

Mariolina Eliantonio:

Discussant

101 DEVELOPING CONSTITUTIONAL IDENTITY THROUGH THE INCREMENTAL MODEL

The concept of constitutional identity can be considered from the duelling perspectives of socio-cultural theory or positivism. It can be also considered as a descriptive tool or as for normative purposes. The malleability of the concept has resulted in a diverse range of uses: to protect the constitution against supranational norms, or as a firewall against unconstitutional amendments. This panel aims to untangle the ambiguity of 'constitutional identity' by drawing on the incremental model developed by Charles E. Lindblom in the 1950's. In short, the model is grounded on the impossibility, for most issues, of rational political decision-making. Decisions are made through a process of mutual adjustment and significant political change occurs through a gradual accumulation of small mutations. Each speaker will address the question of authors, content and function of constitutional identity through a variety of case studies.

Room:

CPD-LG.39

Chair:

Timea Drinoczi

Eva Pons Parera:

Constitutional Identity in Discussion Without Changing Constitution? Territorial Model in Spain

Alicia Pastor y Camarasa:

The 2014 Tunisian Constitution: New Constitution, New Constitutional Identity?

Sophie Weerts:

Reshaping Constitutional Identity? Popular Initiatives in Switzerland

102 THE MATERIAL CONSTITUTION OF THE EU

The constitutional order of the EU has been already approached by a number of different constitutional schools. This panel tries to test the epistemic value of a rather neglected notion in EU studies such as that of the material constitution by focusing on two inquiries: (1) whether the EU has a constitutional structure that qualifies as its material constitution and (2) how the use of the notion of the material constitution might shed a different light on the constitutional developments of the EU. The panel will tackle in particular with the question of the impact of the new economic governance on the EU social market and on the limits of the notion of the material constitution for understanding the EU and other legal orders.

Room:

CPD-LG.60

Chair:

Michaela Hailbronner

Marco Dani:

The EU Transformation of Social Market Economy

Alexander Somek:

The Forgotten Alternative: Ancient Political Thought

Marco Goldoni, Michael Wilkinson:

The Material Constitution of the Euro and Emergency Measures

103 CONSTITUTIONAL RIGHTS AND CORPORATE ACTORS

Constitutions and constitutional rights are predominantly designed to control the power and (non-)actions of state agencies within a given territory. Victims of corporate human rights abuses have very limited means – either in their home country or the country where the corporation in question is registered or, indeed, before an international forum – to seek access to effective remedies. Against this backdrop, this panel will explore the extent to which constitutional rights provisions should and could directly apply to corporate actors both when they do business at home and abroad. Drawing lessons from a number of jurisdictions such as India, Europe and US, the panel will try to identify whether horizontal application of constitutional rights can be regarded as a generally accepted norm of comparative constitutional law.

Room:

CPD-LG.64

Chair:

Jernej Letnar Cernic, Sarah Joseph

Jernej Letnar Čerňič:

Constitutional Obligations of Corporations in Europe

Surya Deva:

Invoking Fundamental Rights to Hold Companies Accountable: the Indian Experience

Larry Catá Backer:

Constitutional Rights, Corporate Persons, and Accountability in the United States

104 IDENTITY POLITICS AND DISPUTE RESOLUTION IN NORMATIVE PLURALITIES

In plural societies identity politics and cultural practices of ethnic, religious, and sexual minorities are under pressure. At the constitutional level, religious identity politics—with the headscarf as the most prominent example—as well religious dispute resolution practices in ethno-religious communities—are increasingly seen as disregarding or threatening the constitutional and human rights order. The latter is particularly true for Muslims in Europe, who are accused of undermining basic legal principles such as the rule of law, the monopoly of the state force, secularism, and gender equality. Also, affirmative action policies for women and minorities are still heavily contested. By showcasing their empirical and interdisciplinary research, the panelists will elaborate on the discourse on the “challenges for public law” emerging from individual and collective identity politics and cultural practices with regard to alternative dispute resolution intended in a broader sense here.

Room:

CYTT 3.10

Chair:

Iyiola Solanke

Cengiz Barskanmaz:

Towards a Constitutional Doctrine of Alternative Dispute Resolution

Mathias Möschel:

Gender and Ethnic Diversity in International Arbitration

Vishal Vora:

Family Law Arbitration, How New British Citizens are Seeking Justice

Shahla Ali:

Court Mediation Reform: Efficiency, Confidence and Perceptions of Justice

105 BREXIT AS A LESSON FOR STATES IN AN INTERDEPENDENT WORLD

Brexit is a unique lesson in the consequences for a state that democratically decides to reverse the avowedly irreversible processes of strengthening global interdependence. The panel explores the ways of capturing this situation, discussing the impact of EU external relations law on the position of a leaving state, the inevitable link between the external untangling and internal unsettling and the transformation of what was once a Member State from a subject to object of EU law. This discussion, however, cannot take place without an inquiry into the reasons for the decision that was made. The papers on the panel thus also discuss the root of the Leave voter's illusion of "taking back control" as well as the tension between law, reason, identity and particularities. The papers focus upon the nexus between law, constitutionalism and governance in the depiction of the vote and its unfolding consequences as framing devices.

Room:

CYTT 3.19

Chair:

Elaine Fahey

Sionaidh Douglas-Scott:

Brexit and the Unsettled Constitution of The United Kingdom

Samantha Velluti:

Brexit, EU International Agreements and the UK

Samo Bardutzky, Elaine Fahey:

Brexit and the Shifting Future of the Subjects and Objects of EU Law

Joseph Corkin:

United We Fall: Taking Back Control in an Interdependent World

Damjan Kukovec:

Brexit and Misconceptions of Governance

106 JUDGING IN CHINA AND THE EU

Our panel presents three empirical studies on adjudication in the areas of property law, family law and competition law, and in different jurisdictions including China and the EU.

Room:

CYTT 3.20

Chair:

Shucheng Wang

Shitong Qiao:

Challenging Eminent Domain in the High People's Courts: Procedure is the Key!

Xin He:

Gender Inequality in Chinese Divorce Cases

Angela Zhang:

Judging in Europe: Do Legal Traditions Matter

107 SOCIAL RIGHTS AND ECONOMIC INEQUALITY: CONSTITUTIONAL CHALLENGES IN COMPARATIVE PERSPECTIVE

Socio-Economic rights are widely recognized and protected both at national and supranational level. However the effectiveness of such recognition is still debated. The panel aims to address the current challenges in socio-economic rights protection in different countries. Karen Kong's paper analyses the Hong Kong's jurisprudential development in adjudicating social rights, looking also at the dynamics between the courts and other branches of the government in tackling social rights issues. Surabhi Chopra's paper examines how judiciaries in the Philippines and Indonesia navigated the challenge of reviewing socio-economic rights. Mariana Canotilho and Antonia Baraggia's papers are focused on socio-economic rights protection in Europe during and after the economic crisis. Both papers highlight the peculiarity of the European case, in terms of inter-constitutionality (Canotilho) and of institutional interdependence (Baraggia).

Room:

CYTT 7.24

Chair:

Tarunabh Khaitan

Karen Kong:

Judicial Protection of Social Rights in Hong Kong

Mariana Rodrigues Canotilho:

Protecting Social Rights in an Interconstitutional Context: a Southern European View

Surabhi Chopra:

Reluctant Reviewers: Judicial Responses to Social and Economic Rights in Indonesia and the Philippines

Antonia Baraggia:

Social Rights Adjudication in Time of Economic Crisis and Institutional Interdependence

108 IS EXPRESSION THE NEW PRIVACY? LESSONS FROM THE REGULATION OF PERSONAL DATA FOR THE GOVERNANCE OF SPEECH

With the proliferation of information and communication technologies come needs for new or adjusted regulation in the various legal fields. The predominant area affected by new regulation has been the right to privacy and personal data protection. Recently, another area of law has gained increasing importance in light of new regulatory attempts: the freedom of expression. Various efforts to regulate free expression were adopted by the social network sites and other online platforms. At the same time, the obligation to balance users' rights traditionally held by states, has now shifted to privately owned Internet intermediaries. Can setting the new rules and shifting liability and responsibility to act to the social network sides provide for an adequate regulatory approach to this fundamental freedom? This panel aims to investigate whether the regulatory paradoxes of free expression could be addressed through a similar approach present in the field of data protection.

Room:

CYTT 3.22

Chair:

Ben Wagner

Jens Kremer:

Regulatory Approaches to the Right to Privacy and the Protection of Personal Data in Europe

Eliska Pirkova:

Regulatory Approaches to Free Expression in Europe

Ben Wagner:

Safeguarding Rights Through Deregulation? What Free Expression Can Learn from Privacy

109 DISCRETION AT WORK - QUALITY OF LAW-MAKING & MIGRATION POLICY I: THEORIES

Work on better law-making and quality of legislation has boomed over the last decade. It is often cast as a gateway to law that better lives up to its very nature of rule-making in a normatively valuable sense, where societal challenges can be meaningfully tackled and goals achieved. There is a growing literature on the quality of legislative practices in relation to an ever-expanding array of policy fields – from cybersecurity to linguistic policies – yet citizenship and migration policy has not yet been scrutinised. Our aim is to explore how arbitrariness and discretionary practices in the field of migration law are hindered, or fostered, by the adoption of specific law-making practices. We investigate what we can learn about how law-making puts discretion at work in the field of migration and citizenship policy, by bringing together those with an interest in the quality of law-making with scholars working on migration. This panel is one out of two and focuses on theory.

Room:

CYTT 5.25

Chair:

Patricia Mindus

João Tiago Silveira, Diana Ettner:

Legal Drafting Tools to Prevent Arbitrariness in Discretion

Tommaso Braida:

Shadow Legislative Processes: Is Detention of Stateless Persons an Arbitrary Law-making Practice?

Guilherme Marques Pedro:

Preventive Entry Policies as a Violation of the Right to Leave

Giuseppe Campesi:

For a Social Theory of Migration Law

Patricia Mindus:

Arbitrary Law-making: Analysis of a Contested Concept

110 THE RISE OF FEDERAL ARRANGEMENTS IN AFRICA: COMPARATIVE PERSPECTIVES

Federalism is often seen as a viable tool to reconcile unity and diversity, and in a continent deeply torn by ethnic cleavages such as Africa, federalism has often been taken into account to tame internal tensions, although not always successfully. Since the mid-1990s, several African countries have turned to federalism to restructure their constitutional system. A closer look at this recent wave of federal constitutionalism might thus allow to better understand to what extent federalism can help coping with the many problems endemic to Africa. Each African federation, however, is different from the other although they might share similar experiences. The goal of this panel is thus to illustrate how the problems common to most African countries are addressed in different contexts; furthermore, the partial failure of federal experiments in some of these countries may trigger questions about the actual capacity of federalism to deal with differences and reconcile unity and diversity.

Room:

CYTT 5.08

Chair:

Stijn Smet

Erika Arban, Adriano Dirri:

Beyond Formalism: Problems and Prospects of Aspirational Principles in African Federal Constitutionalism. Nigeria, Ethiopia and South Africa In Comparative Perspective

Nico Steytler:

Somalia: Building a Federation in the Absence of Trust or Constitutionalism

Jaap De Visser:

Can Federalism Help Bring Peace to South Sudan?

Yonatan Fessha:

Ethnicity and Power Sharing in African Federations

Maja Sahadzic:

Multi-tiered (Multinational) Systems in the African Continent: the Rationale Behind Constitutional Asymmetries

111 POPULISM, AUTHORITARIANISM AND THE REGRESSION OF LIBERAL DEMOCRACY

This panel analyses the impact of populist regimes in recent liberal democracies and compares this to the constitutionalist struggle in illiberal or authoritarian states. Global democratic regression has almost become a buzzword in view of the rise of right wing populism, characterised by nationalism, xenophobia, and aggression towards 'others'. Populist or anti-pluralist movements claim to represent the true 'will of people', often invoking essentialist identity discourses and exploiting security-related fears. They challenge the constitutional orders of recent and older democracies, cast doubt on viability of liberal democracy in those states, and diminish hopes that authoritarian regimes will adopt more features of liberal constitutionalism. Illiberal states have become more vocal about promoting the alleged superiority of their own systems. Will 'rule of law' be abandoned in favour of 'rule by law'? How should public law respond to these developments, nationally and globally?

Room:

CYTT 5.23

Chair:

Elena E. Cirkovic

Wim Muller:

China as a Champion of an Illiberal Rule of Law

Aydin Atilgan:

The Anatomy of the Dual State in Turkey

Maria Smirnova:

The Role of Law in National Identity Building in Putin's Russia

Wiebke Greeff:

The Positioning of the Islamic Republic of Iran and Egypt on the International Rule of Law Scale

Karolina Podstawa:

Rupture or Continuity? On Reception of Rule of Law Standards in Poland 25 Years After the "Democratic" Transition

112 IDENTITY, SECURITY AND DEMOCRACY ISSUES IN PUBLIC POLICIES FOR SOCIAL INCLUSION AND ECONOMIC GROWTH

The last two decades of 20th Century and the first decade of 21st Century have been marked by the decrease of public sector intervention in economy and the crisis of Welfare State. These two phenomena are strictly interconnected: the spread of procompetitive principles corroded some pillars of Welfare State (like public services) and the power of the State to organize industrial policies and economic activities. This panel is intended to analyze some examples of how Welfare State and industrial policy reacted to these transformations, seeking for new equilibria. In particular, this panel will discuss how Welfare State is facing with issues of social inclusions, democracy, and security, creating new instruments (as basic incomes) and reinventing the existent ones (as the emergency requisition of property) and how States are trying to gain new room for protecting not economic interests in industrial policies.

Room:

CYTT 6.23

Chair:

Riccardo Ionta

Marsid Laze:

Basic Income and Representative Democracy

Federico Caporale:

The Requisition of Property and Housing Emergency. an Unforeseen New Tool for Social Policies?

Andrea Averardi:

State Capitalism and Foreign Investors: Towards a New Protectionism in Europe?

Valerio Turchini:

Regulation and Technology: Reducing the Digital Divide as a Legal Tool to Protect National Interests and Support Economic Growth

113 TRANSPARENCY AND PARTICIPATION IN CHINA'S LOCAL GOVERNANCE

Reinforcing local governance has been a new focus of Chinese political reform. While the intellectual and institutional legacies of administrative law reform proposed by the central government have set tones of the overall reforms, local experimentalism constituted the main practice in the past years and is also being transformed into a new order of China's local politics. This panel will present the recent studies of these practices from empirical and comparative perspectives. It is the aims of the panel to present a picture of the contemporary practice in China's local governance, showing how Chinese government use transparency and participation to uphold and refine local governance and what are problems of these practices.

Room:

CYTT 6.25

Chair:

Xixin Wang

Yue Huang:

Reforming Politics or Refining Policies: A China Perspective

Wenjing Liu:

Transparency and Participation in Courtroom: a Guangzhou Story

Yaping Ji:

Public Participation in Administrative Decision-making: a Northwestern China Story

114 INVESTMENT COURTS: CHALLENGES, PERSPECTIVES AND REGIONAL POLICIES

Suggestions for the creation of permanent investment courts have been formulated for decades, but only recently they started taking actual institutional form. In particular, the European Commission has been pushing for a court-like mechanism for investment disputes in several recent trade negotiations. Such a framework was included in the EU treaties with Vietnam and Canada, and formally proposed for the TTIP agreement with the US. More recently, parties to the EU – Singapore FTA have also decided to renegotiate the dispute settlement provisions. Possibilities of relevant reforms have also been explored by UNCITRAL Working Group III. Will these developments actually lead to the creation of permanent investment courts? How will such courts change the future of international investment law? Will they bring a real institutional change of adjudicatory mechanisms, significantly different from existing arbitration practice? The panel seeks to address these very timely issues.

Room:

CYTT 6.26

Chair:

Joanna Jemielniak, Günes Ünüvar

Joanna Jemielniak, Pawel Marcisz:

A Tale of Two Unions. Debate on the Investment Court System and Competing Visions of European Integration

Julien Chaisse:

The Multilateral Investment Court Project: Assessing the Contribution of the European Union – Vietnam FTA

Günes Ünüvar:

Rules of Ethics and Qualifications of EU Investment Court Judges

115 THE SURVEILLANCE STATE

Room:

CYTT 7.23

Chair:

Angela Daly

Joe Purshouse:

Police Facial Recognition Surveillance and the Right to Privacy

Bernard Keenan:

The Paradoxical Regulation of Mass Surveillance in Britain, 2013-2016

Johann Justus Vasel:

The (Predictably) Irrational Sacrifice of Freedom for Security – a Behavioral Perspective

Angela Daly, Monique Mann, Michael Wilson, Nicolas Suzor:

The Limits of (Digital) Constitutionalism: Exploring the Privacy-security (Im)balance in Australia

116 CHINA'S "ONE COUNTRY, TWO SYSTEMS": REFLECTIONS FROM HONG KONG AND MACAU

Hong Kong and Macau are the only two "special administrative regions" in China- regions that are given a high degree of autonomy and allowed to not practice China's Socialist systems. This panel evaluates the nearly 21 years (for Hong Kong) and 18 years (for Macau) of implementing this "One Country, Two Systems" governing mode and evaluates its prospects. Tai's paper examines the nature of Hong Kong's constitutional and political systems, while Chan, Lo and Cardinal's papers evaluate what have been considered strengths of Hong Kong and Macau that would enable these regions to maintain its distinctiveness vis-à-vis China. The discussion will cover various constitutional controversies, including the enactment of national security legislation, democratic reform, and the recent controversies on co-location, oath-taking and disqualification of election candidates.

Room:

CPD-1.21

Chair:

Guobin Zhu

Benny Tai:

"One Country, Two Systems" After 20 Years: From Semi-Democracy to Semi-Authoritarianism

Pui Yin Lo:

Twilight of the Idolized: Hong Kong's Legal and Judicial Cultures Under Stress

Paulo Cardinal:

Source of Resilience in Hong Kong's Politico-legal Culture: Comparative Perspectives from Macau

Johannes Chan:

Maintaining Institutional Strength: the Court and the Rule of Law

117 AMENDING CONSTITUTIONS

Reinforcing local governance has been a new focus of Chinese political reform. While the intellectual and institutional legacies of administrative law reform proposed by the central government have set tones of the overall reforms, local experimentalism constituted the main practice in the past years and is also being transformed into a new order of China's local politics. This panel will present the recent studies of these practices from empirical and comparative perspectives. It is the aims of the panel to present a picture of the contemporary practice in China's local governance, showing how Chinese government use transparency and participation to uphold and refine local governance and what are problems of these practices.

Room:

CYTT 7.25

Chair:

Sergio Verdugo

Fred Felix Zaumseil:

Law's Claim to Authority

Vanice Lirio do Valle:

Constitutional Amendments as a Means to Entrench Public Policies: the Brazil Experience

Lael Weis:

Originalism and Constitutional Amendment

Chaihark Hahm:

How Many Times Has the Korean Constitution Been Amended?: Reflections on Constitutional Identity and the Construction of Time

Alexander Fischer:

The Vanishing Amendment Process: Judicializing Constitutional Change in India

Sergio Verdugo:

Judicial Challenges Against the Original Constitution

118 PUBLIC LAW AND AUTOCRACY

Room:

CYTT 8.24

Chair:

Alvin Cheung

Alvin Cheung:

"For My Enemies, The Law": Abusive Legalism

Raul Sanchez Urribarri:

High Courts and Autocratic Consolidation: the Venezuelan Supreme Court Under Nicolás Maduro's Rule

Robert Grzeszczak:

"Systemic Democratic Backsliding": Reflections on Recent Experience in the European Union

Muzhen Sun, Guo Senyu:

The Analysis on the Innate Popular Tendency of Democracy

**PANEL
SESSIONS V**

WEDNESDAY
27 JUNE 2018
09:00 – 10:30

119 JUDICIAL REVIEW AS CONTESTATION – FORMS AND JUSTIFICATIONS

This panel considers theoretical justifications for the institution of judicial review as democratic contestation, as well as the forms of judicial review that those justifications might suggest. The papers are connected by their apparent reliance on non-epistemic justifications; that is, justifications that recognize that judges have neither abnormal moral insight nor abnormal capacity to reason in virtuous ways. They might thus count as justifications that correspond with the basic arguments of political constitutionalism.

Room:

CPD-LG.59

Chair:

Aileen Kavanagh

Aileen Kavanagh:

Judicial Review Between Conflict and Collaboration

Tom Hickey:

The Republican Core of the Case for Judicial Review

Adam Shinar:

The Real Case for Judicial Review

Mattias Kumm:

Beyond Juristocracy and Legislative Authoritarianism: on the Criteria Governing the Legitimate Institutionalization of the Relationship Between Courts and Legislatures

120 MASS MIGRATIONS IN THE PUBLIC EMERGENCY NARRATIVE: SOLIDARI- TY, HUMAN RIGHTS AND SOVEREIGN- TY REVISITED?

The phenomenon of mass migrations represents an international dilemma encompassing increasingly complex questions for the EU transnational and global community. It calls for progressive solutions and specific legal frameworks on adequate forms of assistance to the benefit of States most severely affected by massive refugees' and migrants' movements, while also paying respect for human dignity of the most vulnerable. The panel contributes to the global discussion on the issue by underpinning the practical challenges in recent years with theoretical background, in particular through the re-imagination of long standing principles (human rights, solidarity and sovereignty).

Room:

CPD-LG.37

Chair:

Tawhida Ahmed, Saša Zagorc

Samo Bardutzky:

Responses to the Arrival of a Large Number of Refugees as A 'State of Exception' And the Sovereignty of Interdependent States

Adriana Di Stefano:

The Paradoxes of European Solidarity. Burden and Responsibility Sharing for Refugees Protection in the Factory of the Global Welfare State

Samantha Velluti:

Questioning Legal Personhood

Saša Zagorc:

Mass Migrations and Public Emergencies: Where Do Human Rights Fit In?

121 INQUIRING OF JUDICIAL DECISION MAKING

This panel brings together various scholars of law and politics from Europe and United-States whose research in various fields (constitutional law, discrimination law and theory of law). They look at the contemporary outcomes of mechanisms of judicial decision making. As opposed to classical literature on legal reasoning, which is much concerned with legal interpretation, this panel aims to put forward an overview about novel approaches to judicial decision making process. Véronique Champeil-Desplats will expose the theory of legal constraints which highlights the importance of “legal factors” in this process; through an analysis of discrimination against multiracial people (racially-mixed), Tanya K. Hernandez will explore the legal reasoning in the US Supreme Court ; finally, in their three contributions, Eleonora Botini, Toon Moonen, and Michael Koskas will focus on the role of the micro-practices that takes place within the Supremes Courts (Belgium, France, Italy...).

Room:

CYTT 3.10

Chair:

Lorenzo Casini

Véronique Champeil-Desplats:

How Judges Decides? The Hypothesis of Legal Constraints

Tanya Kateri Hernandez:

Judges and the Judging of Mixed-race Racial Identity Discrimination Claims

Toon Moonen:

Renewing a Court: Consequences for Judicial Decision Making and Identity

Michael Koskas:

The Judicial Decision Making Protocol: the Case of the French Conseil Constitutionnel

122 EQUAL RIGHTS PROVISIONS IN CONSTITUTIONS WORLDWIDE: WHICH GROUPS ARE LEFT OUT, AND WHAT WORKS TO STRENGTHEN LEGAL PROTECTIONS?

Over the past 50 years, explicit protections against discrimination on the basis of certain aspects of identity, such as gender, race, and religion, have become increasingly common in constitutions worldwide. Today, 85% of constitutions explicitly prohibit gender discrimination, compared to just 50% of those adopted before 1960. Yet far fewer include language guaranteeing equal rights on the basis of disability, and just a fraction guarantee equal rights on the basis of sexual orientation or gender identity (SOGI). Further, many constitutions include language permitting discrimination against people with disabilities and those who identify as LGBT. This panel will examine the current status of equal constitutional rights on the basis of SOGI and disability, illustrate how these rights have evolved over the past five decades, including a statistical analysis of the evolution of LGBT rights, and provide an in-depth evaluation of national and international processes for change.

Room:

CPD-LG.17

Chair:

Jody Heymann

Amy Raub, Jody Heymann:

Quantitative Measures of Equal Rights in Constitutions: Methods and Key Findings

Aleta Sprague, Amy Raub, Jody Heymann:

Sexual Orientation and Gender Identity in 193 Constitutions: Progress and Retrenchment on Equal Rights

Jody Heymann, Amy Raub, Aleta Sprague:

Equal Rights on the Basis of Disability in 193 Constitutions: Movements, Language, and Paths Forward

Andrew Park:

Examining Trajectories for LGBT Rights

123 JUDGING IDENTITIES. LGBT RIGHTS BEFORE EUROPEAN COURTS

This panel focuses on LGBT's fundamental rights judicial process of acknowledgement in Europe both at national and supranational level. In particular, it unfolds along three lines of thought: firstly, from a general and comparative perspective, the contribution of the vertical division of powers - as indicated by the contributory action of subnational legislation, administrative practice and case-law in this field - to the development of a pluralistic rights culture; secondly, the progressive dematerialization of human rights law "from facts to feelings" and the consequent change in the legal dialectic between social exigencies and individual entitlements. Thirdly, the expanded interpretation of "the right to private life" as enshrined by Article 8 ECHR, which shifted from the foundational idea of protecting individuals from the threats known through the whole gamut of fascist and communist inquisitorial practices to encompassing new rights promoting the individuals' identity.

Room:

CPD-LG.39

Chair:

Benedetta Barbisan, Valentina Volpe

Benedetta Barbisan:

The ECHR Article 8's Right to Privacy: Cordon Sanitaire or Isolation Tank? Homosexuality, Transsexualism, and Sado-Masochism in the ECtHR Case-Law.

Valentina Volpe:

From Facts to Feelings. LGBT Identities Before European Courts

124 EXCLUSIONARY CONSTITUTIONALISM

This panel considers how constitutional symbolism as well as constitutional design can and have been used as tools in nationalist, majoritarian and colonial projects. The panel papers examine a number of vehicles for constitutional inclusion/exclusion: constitutional directives, invocations of the nation in postcolonial constitutions, institutions in settler states, and unamendable provisions reinforcing majoritarian values. The papers span a variety of jurisdictions and invite us to interrogate and challenge key assumptions of modern constitutionalism, not least of which the very nature of constitutions and their expressive functions.

Room:

CYTT 3.19

Chair:

Silvia Suteu

Tarun Khaitan:

Political Insurance for the Poor: Liberal Constitutionalism and Extreme Inequality

Mara Malagodi, Luke McDonagh:

Invoking the Nation in Partitioned Lands: Postcolonial Constitutions and Exclusion in Ireland and the Indian Subcontinent

Mazen Masri:

Comparative Settler-colonial Constitutionalism

Silvia Suteu:

Unamendability and Exclusion: Eternity Clauses as a Tool for Majoritarian Constitutional Projects

125 THE STUDY OF THE MATERIAL CONSTITUTION

This panel invites scholars to engage with a relatively neglected idea of 20th century constitutional studies: the material constitution. As an object of constitutional study, this notion has been engaged in a systematic way only by legal institutionalists of the first wave (Heller, Smend, Mortati, Schmitt of the 30s) and, in a different tradition, by a legal positivist like Hans Kelsen. The main intention of this panel is to unearth this notion and to begin an exploration of its epistemic potential. This will be done by examining how the notion has been understood by legal positivists and by sociological constitutionalism. Moreover, two concrete case studies (Mexico and Chile) will illustrate how the notion has been used by the judiciary and the political system.

Room:

CPD-LG.60

Chair:

Marco Goldoni

Paul Blokker:

The Political Sociology of Constitutions and the Material Constitution

Lars Vinx:

Kelsen's Material Constitution and the Limits of Amendment Review

Fernando Munoz:

The Material Constitution in the Longue Durée: Reflections on the Chilean Constitutional Dilemma

Mariana Velasco Rivera, Joel Colon Rios:

On the Legal Implications of a 'permanent' Constituent Power

126 CHIEF JUSTICES IN SEMI-DEMOCRACIES: COMPARATIVE PERSPECTIVES ON JUDICIAL (DIS)EMPOWERMENT

This panel will examine the role of chief justices in semi-democratic judicial systems. The global expansion of judicial power has seen a concomitant expansion of court presidents' powers. But to date there is no systematic efforts to compare or theorize the new powers and roles of these judicial leaders and their effects on judicial empowerment. Are court president's protecting judicial autonomy or undermining it through their clientelist networks? Is it possible to have a strong, autonomous chief justice within a weak judiciary? What is the role, if any of professional judicial/legal norms in shaping the behavior of chief justices? When do court presidents reach out to allies, when do they go it alone? This panel will seek to answer these questions through analysis of three different case studies: Venezuela, Russia, and Slovakia. Each contribution will illustrate the importance of analyzing the judiciary in terms of formal and informal institutional rules and behavior.

Room:

CPD-LG.64

Chair:

Björn Dressel

Alexei Trochev, Peter Solomon:

Pragmatic Constitutional Court in Russia's Dual State

David Kosař, Samuel Spáč:

From Transmission Belts to (semi)autonomous Actors – Chief Justices in Slovakia

Raul Sanchez Urribarri:

Chief Justices and Autocratic Consolidation: the Venezuelan Supreme Court Under Nicolás Maduro's Rule

127 UNCONSTITUTIONAL AMENDMENTS: THEORY AND PRACTICE

The idea that the constitutional amendment power is limited and that amendments can be unconstitutional gains traction by the day. While scholarship attempts to make a theoretical sense of it, the idea continues to migrate across jurisdictions. This panel will discuss the idea of unconstitutional amendments from both theoretical and comparative perspectives. Is the Slovak Constitutional Court devising a doctrine of unconstitutional constitutional amendments? What is the politics of the development of the Colombian constitutional replacement doctrine? Can an evaluative justification be offered for constitutional unamendability instead of the recent positivist justifications? What does 'the people's participation in constitutional change entail regarding democratic constitutionalism and the legitimacy of constitutional change? Exploring these questions, this panel aims to contribute to this topical issue with novel perspectives.

Room:

CYTT 3.11

Chair:

Neliana Rodean

Simon Drugda:

The Theory and Practice of Unconstitutional Constitutional Amendments in Slovakia

Tarik Olcay:

Unamendability for Constitutionality

Neliana Rodean:

(Il)liberal Constitutionalism and Populism: How "We, the People" Threat Constitutional Changes

Oran Doyle:

Discussant

128 OXFORD HANDBOOK OF CONSTITUTIONAL LAW IN ASIA

This panel brings together a selection of chapters from the forthcoming Oxford Handbook of Constitutional Law in Asia, which covers East Asia, Southeast Asia, and much of South Asia from a regional and interdisciplinary perspective.

Room:

CYTT 11/F

Chair:

David Law, Julie Suk

Weitseng Chen:

Constitutionalism and Development in Asian Hybrid Regime

Albert Chen:

The Constitutional Project of "one Country, Two Systems" in Hong Kong

Maartje de Visser:

Regional Judicial Cooperation and Dialogue in Asia

Akiko Ejima:

The Influence of International Law on Constitutional Law in Asia

Jimmy Chia-Hsin Hsu:

The Right to Life and Human Dignity in Asia

Malcolm Langford:

Economic and Social Rights in Asia

129 PUBLIC LAW IN A CYBERNETIC ERA

Room:

CYTT 3.20

Chair:

Andrea Simoncini

Adedeji Adekunle:

*Information Technology and Threats to Security in
Nigeria: Challenges for Public Law*

Anna Su:

*Can International Human Rights Law Survive the Rise
of Artificial Intelligence*

Maksim Karliuk:

Artificial Intelligence: Challenging the Law

Elisa Spiller:

The Rule of Law and Algorithms

Jan Podkowik:

*Artificial Intelligence – New Challenges for Public Law
and the Human Rights' Doctrine*

Mayu Terada:

*Possible Public Law Framework on AI (artificial Intelli-
gence) and Security -ai Network and the Risk-*

Andrea Simoncini:

*"Cybernetic" Sovereignty and the Future of Constitu-
tional Law*

130 SECURITY CHALLENGES AND HUNGARY - A EUROPEAN CONTEXT

The panel addresses the question whether the increased presence of various threats to national security and the legal responses has challenged the commonly accepted notions of the rule of law, democracy and human right standards in Europe, and most particularly in Hungary. Recently, problems have called for and resulted in the establishment of different crisis situations, constitutional and statutory changes. Panellists depart with a hypothesis that current crisis Europe is facing with has caused a tendency to reinterpret the rule of law, democracy and human rights. Hungarian legislation, emergency related constitutional law, and jurisprudence of Hungarian courts along with the case law of the CJEU and ECtHR are studied with the view to see whether the Hungarian legislation is still in line with European standards. Today's biggest challenge seems to be formed around the question whether to sustain or rather reinterpret existing values and practices.

Room:

CYTT 3.21

Chair:

Timea Drinoczi

Marton Monika:

*Hungary's Response to Security Challenges – Regula-
tory Background*

Reka Torok:

*Human Rights, National Identity, Public Security and
Sovereignty – Constitutional Questions on the Concep-
tion of the EU's Compulsory Quota System*

Lorant Csink:

Hungarian Regulation from the View of Strasbourg

Timea Drinoczi:

*Security Challenges and Public Law – Lessons Learned
from Hungary*

131 JUDICIAL GUARANTEES, IMPEACHMENT AND POLITICAL JUDGMENTS: INTER-AMERICAN COURT OF HUMAN RIGHTS AS DEMOCRACY PROTECTOR?

There is a close bond of interdependence between State, Constitution, Democracy and Human Rights. Based on this intrinsic relationship, international bodies, such as the Inter-American Human Rights System have built substantial standards of the democratic rule of law in the region. Within the material nucleus of democracy there are judicial guarantees -especially those contained in the due process clause- material and procedurally focused. On the basis of recent political experiences in the American continent (Honduras, Paraguay, Brazil and Peru), it is relevant to inquire the role of these international bodies in safeguarding the political guarantees of democratic exercise. The cases above mentioned have demonstrate that there may be a dangerous denaturation of the use of the figure of political judgment and impeachment -in an arbitrary way- to subvert, and even subtract, the popular will. These are the debates that this panel intends to raise.

Room:

CYTT 7.23

Chair:

Jorge Ernesto Roa Roa

Melina Girardi Fachin:

Inter-American Dialogues: Searching for Common and Shared Standards of Democracy

Estefânia Maria De Queiroz Barboza:

Judicial Guarantees in the Process of Brazilian Impeachment: the Opinion of the Federal Supreme Court

Rodrigo Kanayama, Fabrício Tomio, Ilton Norberto Robl Filho:

Impeachment, Public Budget and Accountability

Vera Karam de Chueiri, Heloísa Câmara:

The Rhetoric of Crisis in Constitutional Law

132 EXTERNAL ASSISTANCE TO CONSTITUTION MAKING IN THE 21ST CENTURY

The proposed panel will discuss external assistance to constitution making. The panelists all have recent experience in delivering such advice in dozens of countries around the globe. Reflecting on their own experiences, the panel will discuss questions such as: - Does external constitutional advice contribute to a growing global constitutionalism? Is this a problematic or a positive development? - Who is the client when international actors provide advice? - Most accounts of what drives constitutional design choices characterize the drivers as a mixture between path dependency and political negotiation. How can we fit external advice into these frameworks? - There is a bias in the number of external advisors towards individuals from the West/North. What effect does this have on constitution making and design? - How does the role of external advice fit with the concepts of legal transfer, borrowing, transplants, migration and 'the IKEA theory' (Frankenburg, 2010)?

Room:

CPD-LG.63

Chair:

Tom Ginsburg

Sumit Bisarya:

External Assistance and the Endogenous Forces and Mechanisms of Constitution Making

Tom Ginsburg:

Reflections on External Assistance to Constitution Making

Sujit Choudhry:

Reflections on External Assistance to Constitution Making

Yash Pal Ghai:

Reflections on External Advice to Constitution Making

133 PUBLIC LAW AND DEMOCRATIC MEDIA

Room:

CYTT 3.22

Chair:

Eszter Bodnar

Asaf Wiener:

Freedom of the Press Vs. Freedom of the Screen: Democratic and Constitutional Challenges of Media Law and Policy in the 21st Century

Michal Tamir, Ariel Bendor:

Prior Restraint in the Digital Age

Gözde Böcü, Faisal Kamal:

New Dynamics in Judiciary-executive Friction: Evidence from National Media Coverage in Bangladesh and Turkey

Eszter Bodnar:

From Banned Interviews Till Saturday Night Live: Judicial Appearance in the Media and Its Limits

Jurij Toplak:

Information Delayed Is Justice Denied: Lengthy Procedures Deny the Right to Access Information

134 CURRENT STATUS AND FUTURE OF EMU AND EBU IN A CONSTITUTIONAL DIMENSION

Both the European Economic and Monetary Union and the European Banking Union are currently in a phase of consolidation. Several European and international legal norms were recently adopted to strengthen the EMU's resilience and preserve the common currency. However, these measures are deemed largely insufficient and there is a wide consensus that further reforms are needed to 'make sure that Europe is better prepared for future shocks' (European Commission). To this end, the European Commission presented its EMU Deepening Package on 6 December 2017. At the same time, while significant progress has been made in establishing the Banking Union, it is still incomplete and there too the European Commission has been making proposals to continue to move forward. Against this background, this panel offers an opportunity to debate and assess the progress made so far as well as the proposals under discussion for the future of the EMU and EBU, from a comparative constitutional law perspective.

Room:

CYTT 3.23

Chair:

Deirdre Curtin

Matthias Goldmann:

Separation of Powers in the Banking Union

Diane Fromage:

The ECB's Accountability to National and European Parliaments Today

Luca De Lucia, Paola Chirulli:

Administrative Means of Review of European Supervisory Authorities and ECB Decisions: a Comparative Analysis

Takis Tridimas, Napoleon Xanthoulis:

Judicial Responses to Crises Measures: a Post-crisis Assessment

135 DISCRETION AT WORK - QUALITY OF LAW-MAKING & MIGRATION POLICY II: CASE STUDIES

Work on better law-making and quality of legislation has boomed over the last decade. It is often cast as a gateway to law that better lives up to its very nature of rule-making in a normatively valuable sense, where societal challenges can be meaningfully tackled and goals achieved. There is a growing literature on the quality of legislative practices in relation to an ever-expanding array of policy fields – from cybersecurity to linguistic policies – yet citizenship and migration policy has not yet been scrutinized. Our aim is to explore how arbitrariness and discretionary practices in the field of migration law are hindered, or fostered, by the adoption of specific law-making practices. We investigate what we can learn about how law-making puts discretion at work in the field of migration and citizenship policy, by bringing together those with an interest in the quality of law-making with scholars working on migration. This panel is one out of two and focuses on case-studies.

Room:

CYTT 5.25

Chair:

Mauro Zamboni

Mauro Zamboni:

Law-Making in the Face of the Migration Crisis: To Find the Best Legislative Policy (The Swedish Case).

Rebecca Thorburn Stern:

This is Very Urgent Indeed': How the 2015 'refugee Crisis' Justified Departing from Established Processes of Law-making

Enrica Rigo:

The Design of Jurisdiction in Asylum Proceedings. Reflections on the Italian Case

Tesseltje de Lange, Pedro de Sena:

Your Income is Too High, Your Income is Too Low: Discretion at Work in Labour Migration Law and Policy in Macau and the Netherlands

Elena Prats:

Does Discretion in Citizenship by Investment Programs Affect the Quality of Legislation?

136 ACCOUNTABILITY AND REVIEW IN ADMINISTRATIVE AND CONSTITUTIONAL LAW

Room:

CYTT 4.26

Chair:

Leah Angela Robis

Leah Angela Robis:

Judges as Administrators (Defining Institutional Judicial Accountability)

Pasquale Pantalone, Giulia Schneider:

The Algorithmic Governance of Administrative Decision-making: Towards an Integrated European Framework for Public Accountability

Philip Joseph:

Unreasonableness and the Shifting Language of Judicial Review

Marcelo Labanca Corrêa de Araújo:

Constitutional Courts, Decentralization and Democracy: a Research on the Participation of Subnational Entities and the Opening of Judicial Review

Jihyun Kwon:

Overlapping Oversight and Arrested Accountability: Coordination Among Adversaries Through Judicial Reviews of Administrative Police Oversight

137 MANAGING INTERFACE CONFLICTS: ENTANGLED LEGALITIES BEYOND THE STATE

As spheres of authority in the global order increasingly overlap and provoke conflicts between them, this panel explores the ways in which these interface conflicts are dealt with and produce a new order 'at the margins'. Interface conflicts arise when actors have conflicting views about international norms and rules associated with international authorities. Actors from different spheres of authority more often than not engage with each other directly, be it in the formal setting of a court or in more informal venues. The papers seek to develop a typology of the norms applied to manage such conflicts (Krisch) and how courts in particular address or avoid them (Birkenkötter). They also investigate the interaction of formal and informal transnational norms in the fields of corporate social responsibility (Reimers) and transnational financial regulation (Corradini). All panelists work together in the interdisciplinary Berlin-based OSAIC research group.

Room:

CYTT 5.08

Chair:

Christopher McCrudden

Nico Krisch:

Entangled Legalities: Interface Law in the Global Order

Hannah Birkenkoetter:

Conflict Managers or Avoiders? The Role of Global Courts in Entangling Normative Orders

Lucy Lu Reimers:

New Forms of Normative Relationing in a Pluralist Legal Order: Interface Interactions in the Area of Corporate Social Responsibility

Francesco Corradini:

Legal Interactions in the Global Governance of International Finance

138 DEMOCRACY AFTER GLOBALIZATION

Room:

CYTT 5.23

Chair:

Elisabetta Morlino

Angela Costaldello, João Pedro Ruppert Krubniki:

The Rise of Global Governance and Liquid Authority: New Challenges for Public Law from a Brazilian Historical Perspective

Michael Krakat:

Citizenship by Investment Naturalization and the Globalization of Citizenship Law

Carola Glinski:

Dilemmas and Limits for Constitutional Courts to Defend Democracy in an Era of Deep Globalisation

Muzhen Sun, Binbin Liu, Yi Zhu:

Democracy: the Balance of Globalization and Nation-state

Emilia Korkea-aho:

"In Through the Back Door": Empirical Findings on Third Countries as EU Environmental Legislators

Elisabetta Morlino:

Democratization by International Organizations: EU and Romania

139 INFRASTRUCTURES AS REGULATION (INFRAREG): TRANSNATIONAL LEGAL TECHNOLOGIES AND THE ORDERING POWER OF PHYSICAL, INFORMATIONAL, AND DIGITAL INFRASTRUCTURES

Infrastructures—whether physical, informational, digital—can have regulatory-type effects. These include requiring, preventing, channeling, enabling, and nudging particular human and social behavior. Infrastructures also interact or compete with law. In these ways, infrastructures have major effects on social relations, identities, roles, capabilities, and possibilities. In today's world, infrastructures-as-regulation, and the enabling and controlling legal technologies and practices, are frequently transnational. As such they are deeply connected to other processes of globalization, and may in significant parts be beyond the control of most states or national public processes. We study these phenomena in an incipient research project on Infrastructures-as-Regulation (InfraReg) based at New York University School of Law, with collaborators around the world. The panel discusses major themes of the project in an open roundtable conversation that encourages participation by the audience.

Room:

CYTT 6.23

Chair:

Gráinne De Búrca

Benedict Kingsbury:

Transnational Legal Technologies Regulating Infrastructures-As-Regulation

Thomas Streinz:

The Ordering Power of Digital Infrastructures and Their Legal Regulation

Shitong Qiao:

Infrastructure Institutions: Democracy, Dictatorship, and Corporation

Karen Yeung:

Discussant

140 THE RULE OF LAW AND NON-DEMOCRATIC REGIMES

To what extent and in what form can the rule of law exist in non-democratic jurisdictions? This panel explores issues related to these perennial questions from fresh angles. The first two papers expound the nature of the rule of law. Jeff King argues that state regulation is an important element of the rule of law, but that this does not necessarily enable the rule of law rhetoric to serve authoritarian states. Ewan Smith's paper critically evaluates accounts of the rule of law developed in authoritarian constitutional orders which present the rule of law as a set of requirements that rectify officials rather than institutions. The next two papers explore what room there might be for courts to establish and sustain the rule of law in non-democratic regimes. Ruiyi Li presents a case for judicial enforcement of constitutional rights in China, a one-party state, while Julius Yam analyses how electoral politics in a hybrid regime such as Hong Kong can sustain judicial independence.

Room:

CYTT 6.24

Chair:

Cora Chan

Jeff King:

The Rule of Law, State Protection, and Authoritarianism

Ewan Smith:

The Expanding Symmetry of the Rule of Law

Ruiyi Li:

Can Constitutional Rights Be Justiciable in China?

Julius Yam:

Judicial Independence in Hong Kong from a Hybrid Regime Perspective

Nicholas Barber:

Discussant

Dayuan Han:

Discussant

141 CRIMINAL LAW IN CONTEXT

Room:

CYTT 6.25

Chair:

Fergal Davis

Li Li:

Admissibility of Evidence Obtained Through Mutual Assistance in Criminal Matters Between Mainland China and Hong Kong: Inter-Regional Conflicts of Law

Fergal Davis:

The Special Criminal Court: Hollowing Out the Right to Trial by Jury in Ireland

Klemen Jaklic, Masa Setnikar:

The Place of Liberty: Staying the Sentence of Imprisonment in a Comparative Constitutional Perspective

Peng Han:

The Changes of Criminal Law and Collective Consciousness in Contemporary China: A Durkheimian Approach

142 SOCIAL RIGHTS IN CONTEXT I

Room:

CYTT 4.24

Chair:

Miriam Allena

Anne-Marlen Engler:

German Refugee Accommodation Between Social Welfare and Privatization: The Role of Security Companies is German Emergency Shelters.

Miriam Allena:

Non Conviction Based Confiscation Against Corruption and Human Rights: the European Public Law Perspective

Juan Mecinas, José Martínez, Victoria Alsina:

Exploring State Transformation to Guarantee Citizens Fundamental Rights and Security

Sanjay Jain:

Right to Education of Person With Disabilities at Crossroads : Inclusive Versus Special Education

Angel Aday Aleman:

Building the Fourth Pillar: Towards a Socially Secure Europe

143 REFUGEES AND MIGRANTS IN PUBLIC LAW

Room:

CYTT 6.26

Chair:

Jo Shaw

Vivianne Yen-ching Weng:

Between Human Trafficking and Illegal Migrants: In Search of an Effective Legal Protection for Fishermen Recruited Overseas Aboard Taiwanese Fishing Fleets

Amalia Sofia:

From Migrant to Commodities: International Human Rights Protection and the Growing Privatisation of Migration Management

Barbara Boschetti:

The Procedural Side of Migration in the EU. Building up Democratic (and Economic) Resiliency Through Administrative Flexibility

Ruvi Ziegler:

No Vote= No Voice? Political Rights of 'aliens' Under the ECHR

Ana Pereira:

Political Rights and Migration Policies: "Right to Vote, and Right to Be Voted"

144 COMPARING IN(EQUALITIES)

Room:

CYTT 7.25

Chair:

Tammy Harel Ben-Shahar

Cheoljoon Chang:

Change of the Mandatary Retirement Age Based on the Constitutional Equal Protection

Meital Pinto:

Why and When Irrational and Arbitrary Distinctions are Discrimination

Tammy Harel Ben-Shahar:

Student Ability, Tracking and Discrimination

Charles-Maxime Panaccio:

Substantive Inequality and Discrimination as the Irrational Distribution of a Benefit: a Rehabilitation

Bryan Dennis Tiojanco:

Integrated Diversity: a Pluralist Constitutional Framework

Joseph Marko:

Multiple Diversity Governance Through Law and Politics

145 CONSTITUTIONAL COURTS AND 'FOREIGN' JUDGING

The traditional model of constitutional judge is a local citizen and resident, and an individual appointed for life, until a certain age, or a non-renewable fixed term. Not all judges, however, conform to this archetype: judges in a surprisingly large number of countries are in fact foreign citizens and residents. Many of these - and some other judges - also serve on relatively short-term, renewable contracts. These arrangements pose obvious challenges for judicial independence and legitimacy: this panel these explores challenges, as well as the potential historical and contemporary justifications and benefits for this form of 'foreign' judging - i.e. Judging that is done by foreigners, and via institutional arrangements that are foreign to traditional notions of judicial independence.

Room:

CYTT 7.24

Chair:

Simon Young

Vicki Jackson, Rosalind Dixon:

Hybrid Constitutional Courts: Foreign Judges on National Constitutional Courts

Gabrielle Appleby, Suzanne Le Mire, Andrew Lynch, Brian Opeskin:

Temporary Judicial Officers: Best Practice in Comparative Perspective

Anna Dziedzic:

Foreign Judges on Constitutional Courts: Global Insights from Pacific Experience

Alex Schwartz:

The Promise and Perils of Foreign Judges on Constitutional Courts

146 CONSTITUTIONALISM AND ITS MULTIPLE DIMENSIONS

Room:

CYTT 8.24

Chair:

Eugenie Merieau

Constantinos Kombos:

Shades of Constitutions and Constitutionalism as a 3-Dimensional Concept: National, Post-National and Co-Owned Elements

Eduardo Moreira:

Constitutional Philosophy as a New Subject

Theunis Roux:

The Risk of Neo-formalism in Empirical Constitutional Studies

Eugenie Merieau:

The Theory of the Dual State Revisited : Dual Constitutionalism in Thailand, Turkey and Pakistan

Yu-Yin Tu:

The Study on Indigenous People's Right to Participate or Consent

147 DEMOCRACY AND CONSTITUTIONAL IDENTITY

Room:

CYTT 8.25

Chair:

Dana Burchardt

Pasquale Viola, Domenico Amirante:

State Structure and Governance: Multi-Identity Democracies and Conflicts Resolution in India And Nepal

Dana Burchardt:

Transplanting Identity Language – the Migration of “Constitutional Identity” in European Constitutional Law

Johanna Hase:

The Enigmatic Notion of Constitutional Identity

Pablo Riberi:

Democratic Identity, Institutional Inadequacies and the Political

Hsiu-Yu Fan:

From “Our Constitution”, “Our People”, to “Our Justices”: Constructing a Non-citizen “People”

**PANEL
SESSIONS VI**

WEDNESDAY
27 JUNE 2018
10:45 - 12:15

148 CONSTITUTIONAL DEMOCRACY IN CRISIS III

The early twenty-first century appears to be a period of turmoil in many seemingly stable constitutional democracies. This panel and two others discuss such questions as these: Are there general forces weakening constitutional democracy around the world, or are there nation-specific reasons for crises that simply happen to be occurring at roughly the same time? Why have some major democracies – Canada and Australia, for example – seemingly not experienced these problems? And, finally, might the concerns some scholars have expressed be something like “crying wolf,” that is, might the developments around the world be more or less ordinary episodes in the ebb and flow of democratic politics, that what some scholars claim to be a constitutional crisis is merely the normal constitutional triumph of political coalitions and policies they do not like?

Room:

CPD-LG.59

Chair:

Mark Graber

David Law, Chien-Chih Lin:

Constitutional Inertia and Regime Pluralism in Asia

Roberto Niembro, Ana Micaela Alterio:

Constitutional Culture and Democracy in Mexico: a Critical View of the 100-year-old Mexican Constitution

Michael Pal:

The Democratic Resilience of the Canadian Constitution

Gabor Halmai:

A Coup Against Constitutional Democracy: the Case of Hungary

149 COMPARATIVE EXECUTIVE POWER AND GOVERNANCE

Room:

CPD-LG.37

Chair:

Roxan Venter

David Fagelson:

Law or Power: An Application of Legal Theory to the Practice of American National Security Policies

Shubhankar Dam:

Temptations of Executive Power: Repromulgation of Ordinances in India

Roxan Venter:

“Uneasy Lies the Head That Wears the Crown”: When National Executives are Under Siege – a South African Perspective

Lorne Neudorf:

Lawmaking in 21st Century Canada: Executive Power and the Search for Accountability

Piotr Mikuli:

Strengthening the Role of the Minister of Justice in the New Statutes Concerning Courts in Poland

Oren Tamir:

Governing by Chief Executives

150 PUBLIC LAW AND RELIGION

Room:

CPD-LG.17

Chair:

Ayesha Wijayalath

Andrea Gatti:

Religious Freedom and Abuse

Netta Barak-Corren:

Social Impact Discrimination: the Religious Response to the Liberal Challenge

Benjamin Joshua Ong:

Religious Identities and the Right to Religious Profession in Indian, Malaysian, and Singaporean Law

Ayesha Wijayalath:

Constitutional Contestation of Religion in Sri Lanka

Stefano Civitarese Matteucci:

Western Values and Liberty of Religion. A Matter of Dual Loyalty?

Kevin Vance:

Each Conscience a Law Unto Itself? Religious Accommodation in the U.S. and Germany

151 THE HISTORY AND FUTURE OF INTERNATIONAL LAW

Room:

CPD-LG.60

Chair:

Giulia Raimondo

Niamh Kinchin:

Reflecting Modern Realities: From Implied Powers to Implied Obligations

Giulia Raimondo:

Securing the European Space Through Technocratic Borders: What Role for International Responsibility?

Tamar Hostovsky-Brandes:

International Law in Domestic Courts in an Era of Populism

152 THE RELATIONSHIP BETWEEN LAW, REGULATION AND JUSTICE IN BREXIT

The panel explores the relationship between law, regulation and justice as to Brexit, at national and international level as a question of socio-legal and critical legal studies. Whose justice is affected by Brexit? How is a 'just' Brexit to be evaluated? What are objective analytical tools for evaluating significant shifts in regulatory orders and structures? What are the consequences for global governance of nationalism at regulatory level? Whether Brexit is perceived as one of justice or injustice is related strongly to our perspective on the kind of British, European and global society we want and envisage. The panel considers the regulatory parameters set by Brexit, at national, supranational and international level. It reflects upon the role of national, international authorities and civil society. The panel reflects upon methodology and human rights, private law and borders.

Room:

CPD-LG.64

Chair:

Mara Malagodi

Elaine Fahey, Tawhida Ahmed:

The Tripartite Implications of Brexit: Framing Law, Regulation & Justice

Adrienne Yong:

Human Rights Protection as Justice in Post-Brexit Britain

Luke McDonagh:

From 'Old Wounds' to Constitutional Uncertainty – Addressing the Impact of Brexit on Northern Ireland

Nora Honkala:

Brexit, Migration and Politics of Fear

David Mangan:

The Common Law's Challenge: Employment Law & Brexit

153 PUBLIC LAW IN THE DIGITAL AGE

Room:

CYTT 3.11

Chair:

Angela Daly

Bernard Keenan:

Pre-Legislative Authorisation of Interception of Communication – A Genealogy of the Warrant

Mário Barata:

Secret Service Access to Metadata in Portugal: the Making of a Constitutional Trilogy?

Robert Rybski, Jan Podkowik, Marek Zubik:

European Constitutional Courts Towards Data Retention Laws

David Fennelly:

Fundamental Rights and Security in the Digital Era – the Case of Data Retention

Arianna Vidaschi:

Privacy, Data Protection and National Security: the EU-Canada PNR Agreement Before the CJEU

Angela Daly:

Data and Fundamental Rights

154 LAW AND POLITICS

Room:

CYTT 3.21

Chair:

Jennifer Duxbery

Jennifer Duxbery:

See and Avoid: Exploring the Role of Lawyers Who Advise Government in Difficult Politics

Octaviano Arruda:

Friend and Enemy Revised: Derrida and the Politics of Friendship

Yan-Ho Lai:

Depoliticising Contentious Politics by Law: a Critical Evaluation of Legal Politics in Post-colonial Hong Kong

Yu-Jie Chen:

The Party and the Law: China's Legalization of Party Punishment

Ching-Fang Hsu:

Legal Profession in the Waning and Ebbing of Liberal Politics: Clashing Rule of Law Ideals in Taiwan and Hong Kong

155 COURTS AS DEMOCRACY BUILDERS IN COMPARATIVE PERSPECTIVE

The papers in this panel address a number of questions relating to the role of courts as democracy builders. What are the costs and benefits of a court-centred strategy for protecting democracy? Are the circumstances in which a court-centred strategy is likely to be successful rare? What are the challenges for the courts if they are to remain a critical arena for confrontation with populism in situations where populist movements have used the structures of democratic elections to unwind the liberal underpinnings of post-1989 democracies? What is the relationship between the strength of a country's democracy and the ability of its courts to address deficiencies in the electoral process? Are courts perhaps necessary in systems where there is significant gridlock between political actors on how to advance democracy? Are there courts which have been under-studied in the comparative work done on the role of courts in a democracy (most notably, the courts in post-war Africa)?

Room:

CPD-LG.63

Chair:

Wen-Chen Chang

Stephen Gardbaum:

What Role for Constitutional Courts in Protecting Democracy?

Samuel Issacharoff:

Courts and the Populist Moment

Po Jen Yap:

Courts as Democracy Builders in Asia

Swati Jhaveri:

Reconstitutionalizing Politics in the Hong Kong Special Administrative Region of China

James Fowkes:

Judicial Contributions to Democratization: Cases from Post-war Africa

Tom Ginsburg, Wen-Chen Chang:

Commentators

Rosalind Dixon, David Landau:

Abusive Judicial Review

156 THE RIGHT TO HEALTH AND A HEALTHY ENVIRONMENT

Room:

CYTT 3.22

Chair:

Monica De Angelis

Monica De Angelis:

The Relationship Between Rules and Technologies in a Modern Healthcare System

Scilla Vernile:

The Risks of "Securitization" of Climate Change

Miluše Kindlová, Ondřej Preuss:

Conscientious Objection in the Context of Compulsory Vaccination (and Beyond)

Ricardo Pereira, Alberto Quintavalla:

The Nexus Between 'energy Security' and 'ecological Security': the Case for an Integrated Policy Framework for Effective Mitigation and Adaptation to Climate Change

Chen Xi:

The Adaptation and Development of China Emission Trading System: Legal Transplants as a Bridge

157 FEDERALISM: RETRENCHMENT, PROGRESS AND COMMUNITY IN AN AGE OF TRUMP AND BREXIT

The emergence of Brexit and of President Donald Trump have prompted a significant rethink of federalism, sovereignty, and who should decide notions of community. In both cases, charismatic leaders stoked nationalist resentment and anti-globalist back lash against global, cosmopolitan elites. The implications for federalism, the principle of subsidiary, and law have been enormous. At this same time, in this moment (and in prior moments), subnational governments have advanced progressive agendas, challenging nationalist retrenchment. Examples include the rise of sanctuary cities and climate change cities in the United States; subnational legalization of marijuana and innovation in health care, marriage equality, and civil rights; and threats by Northern Ireland and Scotland to withdraw from the United Kingdom after Brexit. This panel would examine these trends and theorize the implications of this moment for a "new progressive federalism" (to use Yale Law Heather Gerken's phrase).

Room:

CYTT 11/F

Chair:

Grainne De Búrca

Christopher McCrudden:

Brexit's Effect on State Architecture: Subsidiarity, Devolution, Federalism and Independence

Catherine Powell:

We the People: These United Divided States

Vicki Jackson:

Interpretive Federalism

Paul Craig:

Brexit: Paradoxes of Community and Sovereignty

158 ENGENDERING CONSTITUTIONAL DEMOCRACY

Room:

CYTT 3.23

Chair:

Mary Anne Case

Geoffrey Yeung:

From Gender Recognition to Transgender Discrimination – Addressing Essentialism and Assimilationism in the Law

Luke Beck:

How Different Are Male and Female Judges in Australia? A Time Series Analysis

Violeta Canaves:

CEDAW Incorporation and Federalism: the Role of Subnational Conflict for the Strengthening of Women's Rights Through an Abortion Case in Argentina

Lidia Balogh:

The European Parliament's Affair With the #MeToo Movement

Mary Anne Case:

Trans Formations in the Worldwide War on "Gender" Ideology

159 CONTROVERSIES IN JUDICIAL DECISION-MAKING

Room:

CYTT 4.26

Chair:

Violeta Besirevic

Violeta Besirevic:

Deterrence or Deference? The Constitutional Court Under the Rise of Populism in Serbia

Eduardo Moreira:

The Role of Constitutional Courts in Examining Presidential Appointments.

Frédéric Bouhon:

How Do Judges Manage Risks for Life?

Elena Chachko:

Policy and Procedure in the Age of Personalized Foreign and Security Policy

Amnon Reichman:

Due Process Under Extreme Conditions: Burdens, Deference and the Judicial Function

160 THE JURISDICTION OF CONSTITUTIONAL COURTS

Room:

CYTT 5.08

Chair:

Carissima Mathen

Michael Gilbert, Mauricio Guim:

Active Virtues: Case Attraction in Constitutional Courts

Carissima Mathen:

Courts Without Cases: the Law and Politics of Advisory Opinions "Actors, Advice and Law"

Marco Antonio Da Costa:

New Instruments of Judicial Activism and Their Impact on Public Policies

Patrick Jiang, Gonzalo Villalta Puig:

A Comparative Study of the Preliminary Reference Procedure Under the Hong Kong Basic Law and the Treaty on the Functioning of the European Union

161 NATIONAL (IN)SECURITY?

Room:

CYTT 5.23

Chair:

Karin Loevy

Robert Zbiral:

Gun Control, Security, National Identity: The Story of Fighting EU Law by Introducing "Right to Bear Arms" Into Czech Constitutional Order

Craig Martin:

The Royal Prerogative and Legal Constraints on the Use of Force: Brining Canada into Line

Nino Guruli:

Rule of Law and Democratic Legitimacy: Legislative Engagement in National Security

Rebecca Ananian-Welsh:

National Security and Human Rights in the Courtroom

Caroline Gloeckle:

National Security Concerns in Trade Disputes: an Analysis of Art. XXI (b) (iii) GATT

Karin Loevy:

Limited "Spheres" Vs. Limited "Capacities": Judicial Institutional Identity in Emergency and Security Cases

162 NEW FRONTIERS IN CONSTITUTIONAL RIGHTS

Room:

CYTT 5.25

Chair:

Dana Pugach

Dana Pugach, Michal Tamir:

The Right to Violate Victims' Rights – A Constitutional Review

Eva Maria Belser:

Accommodating Compound Peoples – Wedding Votes and Bargains

Judit Sandor:

Transnational Surrogacy: When the Domestic Law is Not Enough

Emilio Meyer:

The Ethics of Judicial Profession in Brazil: Governing Adjudication Through Human Rights

Alina Cherviatsova:

Regulated Memories: Memorial Laws, Memory Wars and Freedom of Speech

Zhuqing Hou:

Informed Consent Rule in Suborbital Flights: in the Context of the European Convention of Human Rights (ECHR)

163 THE CONSTITUTIONAL THEORY OF HUMAN RIGHTS

Room:

CYTT 6.23

Chair:

Karine Millaire

Mikolaj Barczentewicz:

Bringing Rigour to Fundamental Rights and Principles Reasoning

Christopher Roberts:

The Systemic Approach to Human Rights

Jorge Contesse:

Settling Human Rights Violations

Sanjay Jain:

Reconstructing Constitutional Theory of Right to Life With Special Reference to Constitution of India

Karine Millaire:

The Waiver of Human Rights as a New Constitutional Paradigm

164 MAJORITARIAN POLITICS IN PUBLIC LAW

Room:

CYTT 6.25

Chair:

Nadja Lirio Do Valle Marques Da Silva Hime Masset

Cristóbal Caviedes:

Foundations of Majority Rule and Its Application to Constitutional Courts

Donal Coffey:

Parliamentary Supremacy in the Commonwealth: Dominions and the Struggle for Legislative Autonomy

Henrique Caldas, Fábio Muniz, Rafael Perri:

The Struggles of Majoritarian Democracy: an Incipient Latin American Trend Towards the Development of Dialogic Democracy

Nadja Lirio do Valle Marques da Silva Hime Masset:

New Technologies as an Instrument for Citizen Engagement and Enforcing the Participatory Dimension of the Democratic Principle

Magdalena Correa:

How Democratic is Democracy? A Question from the Case of the Popular Consultations in Colombia.

Stefanus Hendrianto:

Liberal Constitutionalism and the New Global Populism: a Legal-philosophical Investigation

165 CHALLENGES IN CONSTITUTIONAL DEMOCRACY

Room:

CYTT 6.26

Chair:

Fernanda Farina

Alica Mohnert:

Gremlins in the Electronic Voting Machine: For a Right to Vote Analogously

Fernanda Farina, Danilo Alves:

Shades of Intimacy: Exploring Lobby Regulation in Developing Countries

Hendrik Lubbe:

The Lack of Political Will to Institute Post-TRC Prosecutions in South Africa: a Threat to Democracy and Challenge for Public Law?

Anat Scolnicov:

Corporations Are People Too? – on the Status of Non-human Legal Persons in Public Law

Pierre Notermans:

The Concept of Democracy in the Jurisprudence of the European Court of Human Rights (ECtHR)

Carlos Ignacio Giuffré:

A Dialogic Approach to the Place of Judges in Democracy

166 PUBLIC LAW AND THE WORLD OF COURTS

Room:

CYTT 7.25

Chair:

Susana Ruiz-Tarrias, Diletta Tega

Susana Ruiz-Tarrias, Manuel Bonachela-Mesas:

Spanish Constitutional Court as Guardian of the Constitution

Agne Andrijauskaite:

Good Governance Through the Prism of the European Court of Human Rights

Radek Piša:

Saved by the Court?

Rodrigo Camarena:

Militarization by Infra-constitutional Means: How the Mexican Supreme Court Paved the Way for the Ley De Seguridad Interior and How it Should Invalidate it

167 PROBLEMS IN CONSTITUTIONAL THEORY

Room:

CYTT 7.23

Chair:

Hannele Isola-Miettinen

Rehan Abeyratne:

Displacing Private Law: The Growing Dominance of Public Law in South Asia

Xiaobo Zhai:

Hart, Bentham, and Constitutionalism

Hector Morales:

Constitutional Intent and Reflexive Identity

Hannele Isola-Miettinen:

Post-legislative Doctrine in Public Law

Rostam J. Neuwirth:

Public Law in the Time of Oxymora

168 SOCIAL RIGHTS IN CONTEXT II

Room:

CYTT 4.24

Chair:

Flavia Santiago Lima

Tu Nguyen:

Workplace (In)Justice, Law and Labour Resistance in Vietnam

Flavia Santiago Lima:

Who Will Protect Social Rights in Times of Economic Crisis? Exploring the Legal Parameters of Judicial Intervention in Brazilian Public Policies

Dragica Vujadinovic:

Neoliberal and Welfare Interpretation of Social Development and Global Crisis

Bruck Teshome:

Human Rights, Identity and the Common Good: Revisiting the Right to Development in the Uncertain Context of the Future of Work

169 CONSTITUTIONAL COURTS, VALUES AND A GLOBAL CANON?

Room:

CYTT 6.24

Chair:

Mattias Kumm

Jiri Priban:

Constitutional Values as Legitimation Formulas: A Systems Theoretical Critique

Michaela Hailbronner:

Constructing the Global Constitutional Canon: Authority and Criticism in Comparative Constitutional Law

Sujit Choudhry:

Canon Construction as an Interpretive Exercise: a Critical Perspective

Mattias Kumm:

Canon Construction and Global Constitutionalism: the Normative Challenge

Vilija Velyvytė:

A Constitution With Multiple Judicial Voices: the Challenge of Canon Construction in European Constitutionalism

170 SECESSION AND SUBNATIONAL IDENTITY

Room:

CYTT 3.10

Chair:

Amanda Cats-Baril

Vito Breda:

Substate Identity-Based Constitutional Claims: Negotiation, Rejection, and Confrontation

Enyeribe Oguh:

The Right of Secession in International Law Reconsidered

Amanda Cats-Baril:

In the Name of Social Harmony: Ethnic Dominance, Rights Limitations and Pluri-nationalism in South Asia

Timothy Waters:

Implementing a Right of Secession: Constitutional and International Legal Strategies

Rivka Weill:

Secession and the Prevalence of Militant Constitutionalism Worldwide

James Grant:

Is There a Right to Secession?

171 PARLIAMENTARY CONTROL OF EXECUTIVE POWER: TRACING THE GAPS OF INFORMATION

This panel centres on the role of information in the parliamentary control of executive power. It maps and analyses the challenges of information asymmetries in security and finance as two fields where executive privileges predominate. Despite a vast literature on issues of parliamentary control, the specific features and consequences of gaps of information have been somewhat disregarded. Whilst laws exist on obligations of executive institutions to share information, practice suggests that who gets access, on what issue and when to a significant extent depends on the inter-institutional relations and even at times personal relations of the actors involved. Especially in the current context of 'post-truth' politics where facts are contested or even set aside regarding the most consequential political decisions, parliaments as platforms of public debate and oversight must have access to information and effectively contribute to an informed public deliberation.

Room:

CYTT 8.24

Chair:

Davor Jancic

Elena Griglio:

Parliamentary Control of Europol: Challenges of Collective Access to Information

Diane Fromage:

Parliamentary Access to Information in Two Different Yet Similar Domains: Economic and Security Governance Compared

Vigjilence Abazi:

Parliamentary Oversight Between Security Exceptions and Executive Confidentiality

Nicola Lupo, Luca Bartolucci:

National Parliaments and Information Asymmetries in the European Semester

172 UNCONSTITUTIONAL CONSTITUTIONAL AMENDMENTS IN COMPARATIVE PERSPECTIVE

This panel will consider a range of under-explored questions relating to the doctrine of unconstitutional constitutional amendments. Are there alternatives to invalidating a validly passed constitutional amendment? Can constitutional design and democratic sequencing deal with the problem of anti-democratic, but popularly supported, forms of constitutional change? How do we resolve the tension between 'eternity' clauses and the possibility of constitutional replacement? Does the newly-introduced doctrine have the potential to rebuild public confidence in the independence of the judiciary and challenge the validity of controversial constitutional changes in the context of Malaysia?

Room:

CYTT 7.24

Chair:

Silvia Suteu

Khemthong Tonsakulrungruang:

Sacred Space: Thailand's Constitution Unamendability

Richard Albert:

Alternatives to the Invalidation of Constitutional Amendments

Mark Tushnet:

Unconstitutional Constitutional Amendments and Constitutional Replacements

Yaniv Roznai, Silvia Suteu:

Commentators

173 DEMOCRACY AND THE GENDERED FAMILY

This panel will address the interest of democratic constitutional orders in the family, and particularly in enforcing and disrupting gender roles. Marriage and the family have been given constitutional status either explicitly or through judicial interpretation in many jurisdictions throughout the world, largely premised on the interest of the state in social reproduction and the raising of the next generation of citizens. Whereas the traditional model of social reproduction depended on gender-differentiated roles within the family, commitments to equality, dignity, and autonomy are de-gendering these roles. Addressing a range of issues, from the regulation of media representations of same-sex marriage to the legal recognition of multiple parents to antidiscrimination challenges to maternity leave, this panel addresses the legal puzzles surrounding the destabilization of gender expectations in the family.

Room:

CYTT 3.19

Chair:

Puja Kapai

Julie Suk:

Feminism and Family Leave

Marco Wan:

Gay Visibility and the Family

Edward Stein:

Poly-parenting

174 NEW APPROACHES IN QUANTITATIVE CONSTITUTIONAL STUDIES

Comparative constitutional studies has been energised by the application and development of quantitative and computational methods. This panel showcases how three cutting-edge approaches cast new light on central topics within the field: the use of agent-based models to simulate the development of judicial power; the use of natural language processing methods to measure constitutional change; and the use of dynamic ideal point estimates to study judicial disagreement on non-US courts.

Room:

CYTT 3.20

Chair:

Alex Schwartz

Ryan Whalen:

*Constitutional Amendment Versus Constitutional
Change: An Empirical Comparison*

Lindsay Stirton:

*Studying Judicial Disagreement Quantitatively: the
Case of Judges on the UK Supreme Court*

Alex Schwartz:

An Agent-based Model of Judicial Strategy

V ICON-S Governance



The Presidency

De Búrca, Gráinne (co-President of ICON·S)
Hirschl, Ran (co-President of ICON·S)
Cassese, Sabino (Honorary President of ICON·S)

The Executive Committee

De Búrca, Gráinne (co-chair of the Committee)
Hirschl, Ran (co-chair of the Committee)
Casini, Lorenzo (Secretary general of ICON·S)
Golden, Claudia (Treasurer of ICON·S)
Choudhry, Sujit
Okowa, Phoebe
Rubio Marin, Ruth
Ruiz Fabri, Héléne
Weiler, Joseph H.H. (I·CON Editor in Chief)

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Amato, Giuliano
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Jacobsohn, Gary J.
King, Jeff

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Tega, Diletta
Torchia, Luisa
Uitz, Renata
van Aaken, Anne
von Bogdandy, Armin

VI SERVICE



VENUE

The 2018 ICON-S conference will be held at:

→ **Faculty of Law**
Cheng Yu Tung Tower
Centennial Campus
The University of Hong Kong
Pokfulam Road, Hong Kong
香港薄扶林道
香港大學百周年校園
鄭裕彤教學樓法律學院

Plenary sessions will take place at the **Grand Hall, Lee Shau Kee Lecture Centre**, Centennial Campus, The University of Hong Kong, Pokfulam Road, Hong Kong (abbreviated as “Grand Hall” in the programme). Coffee and lunch breaks and the opening reception will take place at the Foyer right outside the Grand Hall. Parallel sessions will take place at the classrooms around this hall (abbreviated as “CPD” rooms in the programme), as well as classrooms at the Cheng Yu Tung Tower (abbreviated as “CYTT” in the programme.) For maps and floorplans, see pp 120-123.

REGISTRATION & INFO POINTS

Registration and Info Desks are located at the Foyer outside the Grand Hall. See the floorplan on p 121.

TRANSPORTATION

The University of Hong Kong is located at “HKU” station of the local train (called the Mass Transit Railway - the “MTR”).

When you arrive at the Hong Kong International Airport, you may take the express train – the “Airport Express” – to get to “Hong Kong” station. This station is located at Central district on Hong Kong Island. You may then take the train on the Hong Kong Island Line (towards Kennedy

Town) to go to HKU Station, or take a taxi to your hotel or the University. You may also take a taxi directly from the airport to the city centre or the University. A taxi journey from the Hong Kong International Airport to the Faculty of Law takes approximately 40 to 60 minutes (about 40 km) and costs around HKD 300-400. A Taxi journey from the Hong Kong Station to the Faculty of Law takes approximately 15 minutes (about 4 km) and costs around HKD 60. Taxis in Hong Kong accept cash, and do not take credit or debit cards. Some taxi drivers do not speak English. If you wish to commute by taxi, you are recommended to carry with you the above-mentioned Chinese address of the conference venue as well as the Chinese address of your hotel.

The conference venue is a 10-minute walk from **Exit C1 of HKU station**. If you are arriving by MTR, after taking a lift from the HKU station concourse to the Ground Floor, follow the arrows for Centennial Campus. They will direct you to an escalator for the footbridge above your head. Cross the bridge and take the two escalators to the LG floor of the Centennial Campus and you will arrive at the Grand Hall.

WIFI & IT SUPPORT

To access free WiFi:

1. Join this available WiFi network: “Wi-Fi.HK via HKU”
2. Open a web browser and read the conditions of use.
3. After clicking “Accept and continue”, you may start using the WiFi service.

Audiovisual equipment is provided in the classrooms for concurrent sessions. Participants may use the computers in the room or connect their own laptop to the display equipment in the room. Please see the equipment available in your assigned room here: <http://50.law.hku.hk/icon-s2018/it-support/>

MOBILE APP

This year we introduced a mobile app for the conference that will enable you to access paper abstracts, navigate the conference venue, and put together a personal conference itinerary. Follow the instructions on pp 2-3 to **download the App**.

WATER REFILL POINTS

The University of Hong Kong has launched the Ditch Disposable Campaign to reduce single use plastic water bottles on campus. We encourage conference participants to use the reusable water bottle included in the conference pack. Numerous points for refilling drinkable water are conveniently located around the conference venue: see the floorplans on pp 120-123. There will also be drinkable water at the classrooms for concurrent sessions. Note: tap water in Hong Kong is not drinkable.

ATTENDANCE CERTIFICATES

Certificates verifying your attendance at the Conference will be included in your conference package, which you will receive upon registration.

CATERING

There will be coffee breaks as indicated in the schedule on pp 6-8. A light lunch will be provided on the second day. For catering options on campus, please see the map on pp 120-121. The catering points on campus only accept cash and a local debit card called the Octopus.

PRAYER ROOMS

There are two prayer rooms: see the floorplans on pp 120-121.

ATM

HSBC: G/F, Run Run Shaw Building, Main Campus; Bank of East Asia: Shop P0030, G/F, Centennial Campus; Bank of China: Podium of Haking Wong Building, Main Campus. ATMs are also located in the unpaid area of HKU station.

SUPERMARKETS

Convenient stores are located inside HKU station close to Exit C1 and carries refreshments, basic toiletries etc. Nearby supermarkets can be found at The Westwood, 8 Belcher's Street, Western District, Exit C2 of HKU station (opening hours: 0730-2300) and on Queen's Road West, near Hotel Jen, Exit B2 of HKU station (opening hours: 0800-0000).

EMERGENCY SITUATIONS

Should you find yourself in an emergency situation with no immediate help available, the local emergencies services may be reached by dialling 999.

VII MAP OF CONFERENCE VENUES & FLOOR PLANS

Grand Hall and CPD Classrooms



Lift



Toilet



Drinkable Water



MTR



Registration / Info Desk



Publishers' Exhibition



Escalators



Restaurants



Prayer Room



Stairs

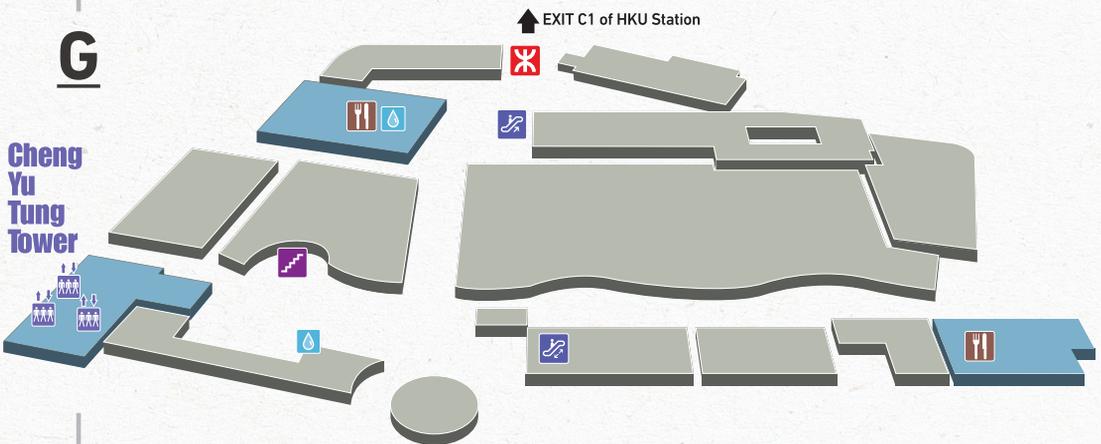


Computer Room

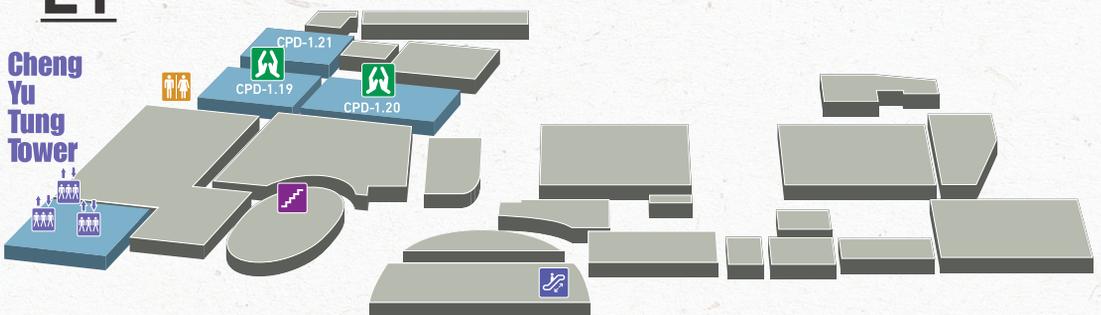
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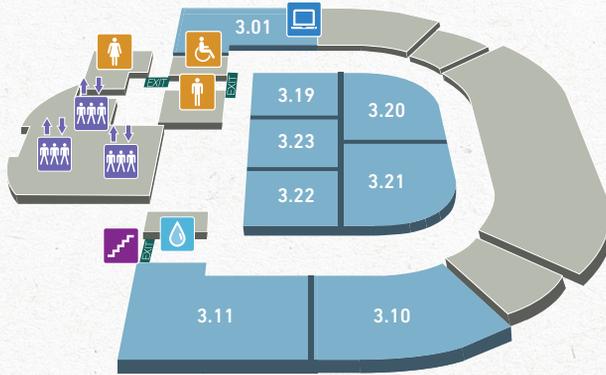


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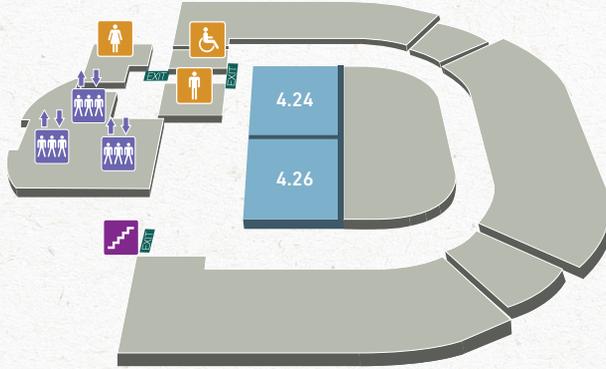


Cheng Yu Tung Tower (CYTT)

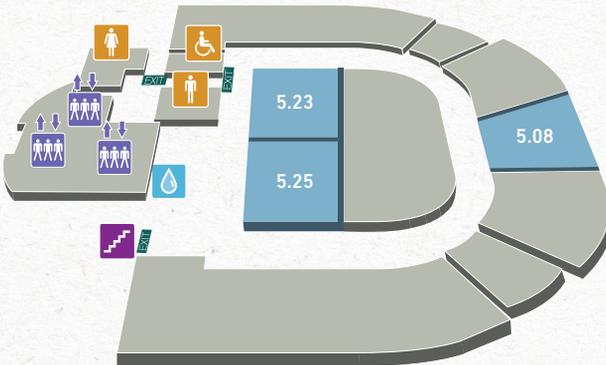
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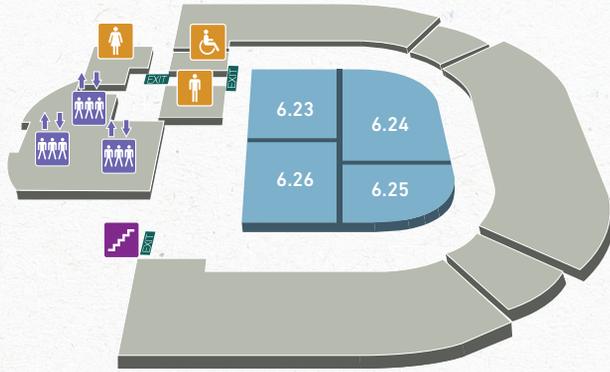
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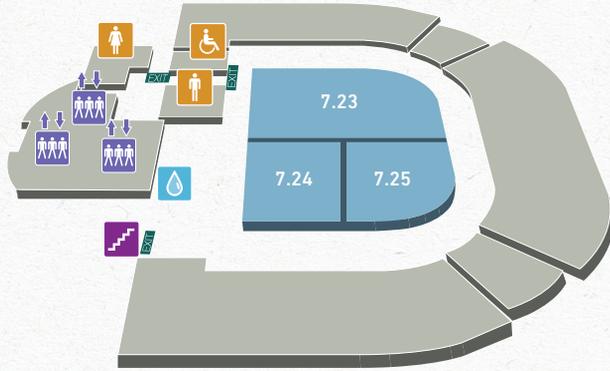
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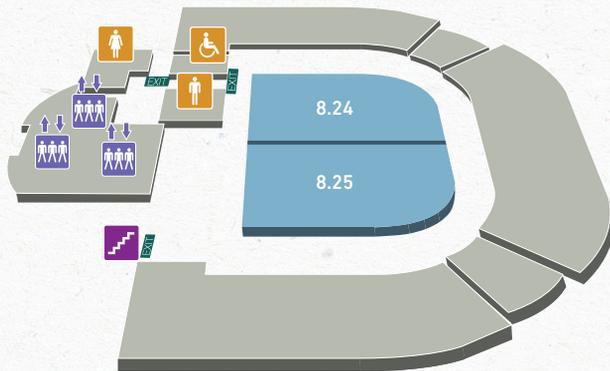
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