

9-30 – 10-00

Introduction and Welcome

10 -00 – 11-30

KEY-NOTE LECTURE

CONSTITUENT POWER - A NIGHTMARE OF POST-NATIONAL EUROPE?

PRIBAN Jiri (Cardiff University)

European integration traditionally was based on a mixture of systemic rationalities of economy, law and administration. The most recent example of the Lisbon Treaty firmly follows in footsteps of this logic but claims to enhance both efficiency and democratic legitimacy at EU level. The Union's democratic deficit has been recognized by lawmakers who now promise democratization of the EU's political system. Semantic inventions of the last decade, such as 'constitutionalism without constituent power', 'executive federalism' and 'post-sovereign community', subsequently need to be reassessed. Instead of the common public domain full of perky citizens and activists campaigning all over the Union and bringing common policies to the doorstep of all citizens of EU, we have further progressive integration facilitated by different systems of EU. Our commonality is defined by systemic, not symbolic rationality. It, therefore, is necessary to rethink the project of 'ever closer Union' in light of systemic rationality part of which is 'ever more functionally differentiated Europe'.

11 – 30 – 12-45

Session 1

(Chair Pavlakos George)

EUROPEAN CONSTITUTIONAL PLURALISM: WHOSE AUTHORITY? WHICH OBLIGATION?

GOLDONI Marco (University of Glasgow)

One of the most pressing issues for European constitutionalism concerns the conflict between authorities at the supranational and national levels. As the nature of the European compact is not clear (both federal and intergovernmental), the question of authority remains open as both

the ECJ and national constitutional courts claim to be the true authoritative guardians of their respective constitutions. As known, constitutional pluralism has offered an elaborate and intriguing answer to this problem. In the first part of this paper, I will reconstruct which conception of authority is put forward by constitutional pluralist, and whether this is compatible with classic positivist or institutionalist theories of authority. In the second part of the paper, I will test how much pluralism can be granted by this theory and I will take as a test case the idea that constitutional pluralism allows for a certain margin of so called institutional civil disobedience.

THE DYNAMICS BETWEEN NATIONAL AND SUPRANATIONAL FUNDAMENTAL RIGHTS PROTECTION IN EUROPE: A PRACTICE OF CONVERGENCE?

LAMBRECHT Sarah (University of Antwerp)

Criticism towards the European Court of Human Rights (ECtHR) and its case law has been on the rise. Criticism has been voiced by judges, academics, the (tabloid) press and politicians questioning certain specific decisions by the ECtHR and even its fundamental legitimacy. These criticisms, founded on a variety of arguments, have been translated by politicians, on the one hand, into a policy change. This is most noticeable in the UK, where Euro-sceptic politicians have been focusing on reforming both the national as well as the European level of rights protection with a purpose of shielding the nation from too much influence of the ECtHR. On the other hand, this has been translated by supreme domestic courts through defining their relationship with the ECtHR in certain (high profile) judgments.

For this presentation I would like to focus on the different criticisms put forward by politicians, on the one hand, and domestic courts, on the other hand, and analyse to what extent there is an overlap in voiced arguments. Secondly, I intend to evaluate these criticisms and the responses put forward by the ECtHR and certain ECtHR judges, as well as the recent reform (proposals) of the Convention system following the Brighton, Izmir and Interlaken conferences. Specific attention will be paid to the draft proposals of Protocol 15 and 16 of the Convention.

12-45 – 14-00

LUNCH BREAK

Session 2

(Chair Priban Jiri)

AUTHORITY AS ENFORCEABILITY: A SHIFT OF PERSPECTIVE ON EXPLANATIONS OF LAW-COMPLIANCE

GKOUVAS Triantafyllos (University of Antwerp)

On a standard conception of political or legal authority, the law through the mediation of its enforcement mechanisms is assigned with the task of telling people what to do. To many this may sound as too weak a premise to be hesitant to endorse. What I would like to argue for is that this is actually a very strong premise mainly because it entails a very controversial view of the normativity of law. To this effect I will try to embed the distinctive practical guidance associated with law in what I will call a ‘nomological conception’ of authority according to which legal norms are such that they must be capable of normatively explaining their instances by themselves. This is precisely the intuition that permeates primarily positivist accounts of legal normativity as it is evidenced by Joseph Raz’s theory of preemptive reasons or Scott Shapiro’s planning theory of law. By sharp contrast, I would like to suggest that there is a better alternative to the nomological conception that treats actions instantiating relations of authority as ways of constituting spheres of free agency. This constitutive conception I aim to defend is premised on the idea that manifestations of authority are manifestations of enforceability. The latter is a disposition that is highly relevant for our understanding of the practice of legal authority, or so I shall argue. If we accept this reduction, there emerges an alternative option that allows for authoritatively prescribed actions to be explained in terms that do not necessitate any reference to the normative reasons authority-complying agents actually have. That being the case, it may be possible to switch our perspective on relations of political authority by treating as an irreducibly normative concept.

THE THRONE IS EMPTY: THE CONCEPT OF PEOPLE AS A LEGITIMACY FOR CONTEMPORARY DEMOCRACIES

SEJVL Michal (Academy of Sciences, Institute of State and Law)

Using the theories of Giorgio Agamben (esp. his “Kingdom and Glory”) the presentation will focus on the concept of People. Various conceptions of People will be presented (e.g. abstract People, organic People, People as a source of *pouvoir constitué* and at the same time of *pouvoir constituant*), the necessity of not only mechanism of power (Kingdom), but also the symbolic aspect of power (Glory) will be dealt with and Agamben's metaphor of “empty throne” will be

used to conclude: That in the similar way like Christians are looking forward for the second coming of Christ, contemporary democracies are looking forward for the coming of People.

CUPIO DISSOLVI: POLITICS AND LAW IN NEOLIBERAL TIMES

CROCE Mariano (Sapienza University of Roma)

In this paper I will be concerned with the far-reaching changes that are affecting both the political and the legal field in today's global scenario. The rise of some striking phenomena – such as the widespread penetration of neoliberal rationality (which carries with itself new political narratives) and the creolisation of the legal field (favoured by so-called legal pluralism) – is altering the nature of traditional political authority. Even though there seem to be no evident links between such phenomena, they are signs of a deep metamorphosis of both politics and law. This metamorphosis urges these two domains to combine in a renewed and unprecedented form of collaboration. The hypothesis I will put forward is that the collapse of the traditional integration between law and politics is bringing about the self-displacement of politics and the migration of legal powers. In the wake of this process, Western politics ends up serving as both the cradle and the vehicle of a driving force of homogenisation and standardisation. In this new framework, national policies appear as baskets of short-term answers to problems that domestic political institutions are no longer able to face and the law as a technique-technology in the hands of restricted, autonomous and well-organised sectors of society.

ANTIGONE AND HER NOMOS

AGHA Petr (Academy of Sciences, Institute of State and Law)

This paper reads Sophocles' Antigone as an exploration not just of the politics of lamentation but of a larger conflicts these stand for. Each economy of mourning (symbolic economy) sees the other as excessive and politically unstable. In this essay, I read Antigone's burial of her brother (but also other actions of hers) as a performance of objections to the city's democracy (the legislation in place). Creon on this reading represents not sovereignty run amok but the fifth-century democratic polis that appropriated funerary certain funerary practices that suited the needs of the polis. Together, Antigone and Creon play out the political and psychic costs of profoundly political changes. Through the issue of funerary practice, Sophocles's Antigone explores conflicts between different conceptions of justice. Indeed, Antigone's act exposes the injustice of the Law. The tension I would like to explore is between on the one hand the multiplicity of social positions that depend on fixed categories or structural necessity, and 'singular universality' on the other hand and how the dissenting individuals and their "alternative nomoi" challenge the legitimacy of the incumbent regimes and of symbolic orders.

15 -45 -16 - 15

- Coffee Break -

16 -15 – 17 - 45

Session 3

(Chair Patricia Popelier)

ON MARKET RATIONALITY AND THE PROSPECTS OF DEMOCRACY OR WHY WE MAY ALL BE GREEKS SOON...

BARTL Marija (University of Amsterdam)

The perspective taken by this article is provoked by the recent article ‘Love or nothing: The real Greek parallel with Weimar, which should prompt the reflection about the normative basis of law, and our commitment to rule of law, in a globalized world. That article portrays the impacts of growing unemployment in Greece, and profound changes in the Greek political landscape: the majority of Greeks are withdrawing from the ‘political’ into the ‘private’, leading to rapid de-politicisation and de-democratisation of the society, while leaving the streets today (and steering tomorrow) to the socio-political extremes. This scenario reminds of yet another historical epoch – epoch, which we all want to avoid in the future.

If we step over ascribing the responsibility to the Greeks themselves, or concentrating on the reasons of economic crisis, we find two levels of governance that are directly involved in the economic governance of Greece: the EU and the global financial and economic institutions. Those are actively engaged in the economic governance of Greece – yet, little voice is given to the Greeks themselves, with potentially catastrophic consequences as the article corroborates. If this does not surprise at the global level, we Europeans should be asking ourselves, how is it possible that this is the case also in the EU? After so much effort invested into the democratisation of the EU, the situation has even aggravated – which was once described as a ‘democratic deficit’, today becomes already the democratic ‘default’.

And which (negative) lessons can be drawn from the democratisation of the most ‘politically advanced’ trade regime for other forms of regional trade integration, or for that matter the global trade regime?

A COMPARATIVE LOOK AT SELECTED GROUNDS OF JUDICIAL REVIEW IN PUBLIC AND PRIVATE SECTOR (ABSTRACT FOR ANTWERP CONFERENCE)

HAMERNÍK Pavel (Academy of Sciences, Institute of State and Law)

The judicial review in modern era controls the acts of the executive, resp. governmental power at national level or even at international level like EU system of judicial review. Another piece to mosaic of judicial review is brought by private sector. In some cases in private sector there are decisions which also affect public interest and livelihood of individuals. This brings the question whether the source or the nature of activities are relevant for use of judicial review mechanism. We can speak about horizontality of protection of human rights too. Are there variations of

judicial review in this sense concerning the control of the legality and procedural fairness? This presentation brings in description of various cases of judicial review at national or European level, including specific question of above mentioned horizontality. For example Council of Europe and UNESCO countries de facto delegated (or gave up) powers to rulemaking and policymaking in doping to experienced sports associations which adopted World Anti-Doping Code and provisions of this Code affect the stakeholders and participants in area of professional sports. In other words, the judicial review seems to be at a direction that State action is not exclusively at stake but other models of control develop. We witness variations of judicial review in national or European level.

TENSIONS BETWEEN JUDICIAL REVIEW AND DEMOCRACY. A DELIBERATIVE APPROACH

ÁLVAREZ Aída Araceli Patiño (Università degli Studi di Milano)

The relationship between democracy and judicial review is indeed immersed in a major theoretical issue. The problem that pervades discussion is determining exactly the way law – in particular constitutional law - and politics relate to each other. Therefore, considerable tensions rise between constitutionalism and democracy on the one hand and between the various ways of achieving these ideals in political institutions and practices on the other.

Theories about judicial review must reconcile two propositions, i.e. courts must maintain the supremacy of the constitution as positive law without inhibiting democracy. This tension between law and democracy can be grouped into two types: a conceptual and an institutional one. This paper deals with and elaborates on the tension at the institutional level, particularly the one between democratic representatives vs. constitutional judges. This tension describes the way judicial review thwarts the will of the majority when it declares as unconstitutional laws or acts issued by democratic representatives. This objection rests on three premises, namely: the judges' lack of legitimacy, the assumption that the court has the 'last word' and the subjectivity of judicial interpretation.

The available literature in both legal and political constitutionalism indicates that the reconciliation or co-existence of both sides of these tensions seems to depend more on the understanding of democracy. Finally, it is concluded that deliberative democracy seems to be a plausible theory that can defuse this apparently unresolved theoretical tension because it locates the activity of judges not in the centre of the political system, but as one that interconnects personal and public autonomy.