



MAX PLANCK INSTITUTE

FOR COMPARATIVE PUBLIC LAW
AND INTERNATIONAL LAW

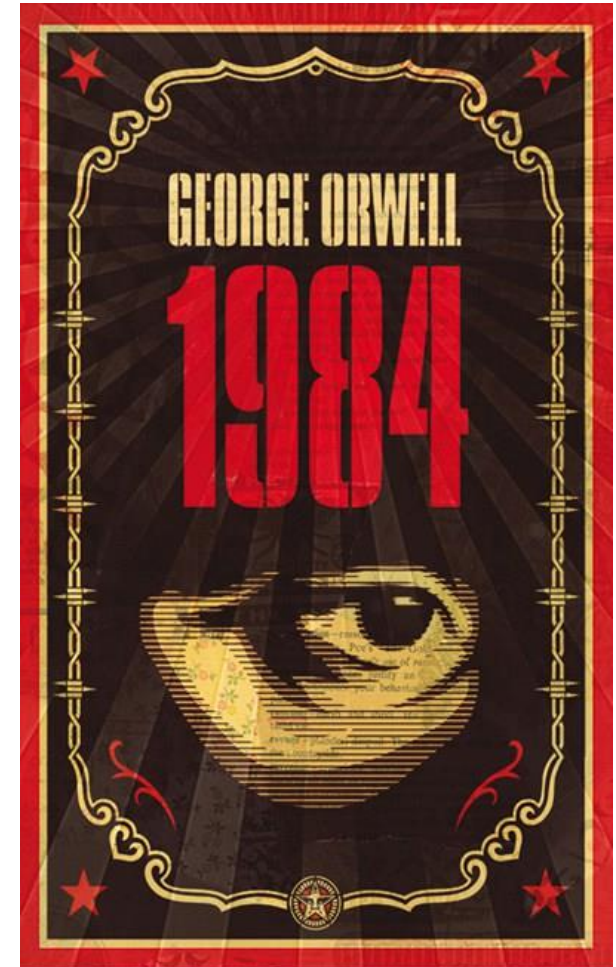


Global Constitutionalism: Crisis or Consolidation?

Waseda University, 13 October 2016

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1. Constitutionalism in Southeast Asia: A Scene from China



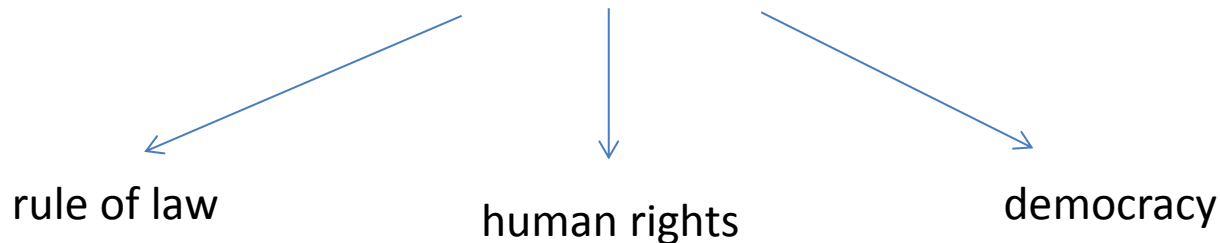
2. International Law in Crisis: How Can It Bear Global Constitutionalism?





3. Global Constitutionalism Defined

- „-ism“ = intellectual framework
- Positive analysis
- Normative analysis
- The constitutionalist “trinity”:



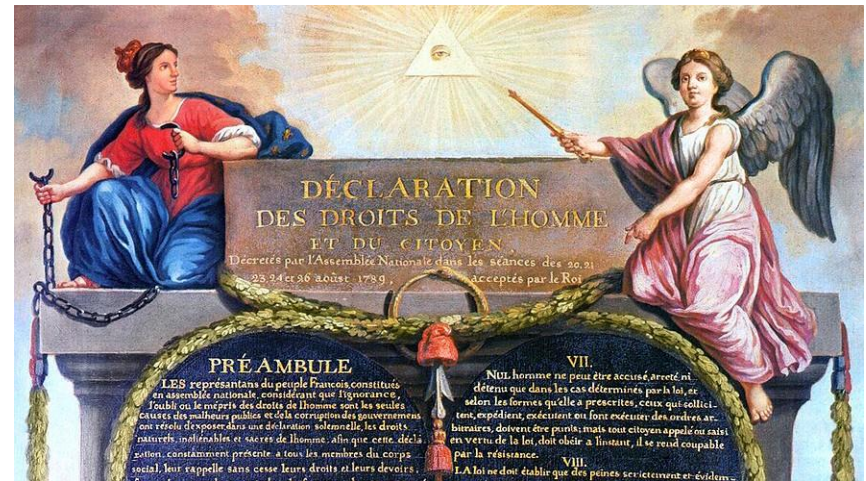
4. The Need to Overcome Eurocentrism

5. Further Key Concepts

a) *Historical constitutionalism*

Art. 16 of the French Declaration of the Rights of Man and Citizens of 26 August 1789:

« Toute société dans laquelle la garantie des droits n'est pas assurée, ni la séparation des pouvoirs déterminée, n'a point de constitution. »



5. Further Key Concepts

- b) Global transformations needed: focus on constitutional functions*
- c) Constitutionalisation: A reversible process*
- d) The multi-level character of global constitutionalism*
- e) Compensatory constitutionalism*

6. Constitutionalist Elements in International Law

The “*acquis constitutionnel*” in international law

a) Sovereignty and humanity

S-word: no Letztbegründung

R2P

6. Constitutionalist Elements in International Law

b) The classic constitutionalist trinity

World Summit Outcome Document 2005

1. The rule of law

“Declaration of the high-level meeting of the General Assembly on the rule of law at the national and international levels” (2012)

2. Human rights

6. Constitutionalist Elements in International Law

3. Democracy

World Summit Outcome Document 2005:

“[D]emocracy is a universal value (...). We also reaffirm that [democracy] does not belong to one state or region (...). We stress that democracy, development and respect for all human rights and fundamental freedoms are interdependent and mutually reinforcing.” (para. 135).

Within international organisations:

- participation
- inclusion
- transparency

6. Constitutionalist Elements in International Law

c) The constitutionalisation of subjects

(1) States

(2) Individuals

(3) International Organisations

(4) Non-governmental Organisations

6. Constitutionalist Elements in International Law

d) The constitutionalisation of legal processes: participation and transparency



6. Constitutionalist Elements in International Law

e) The constitutionalisation of dispute settlement



7. Critique of Constitutionalism

a) Epistemic critique

b) Normative critiques

(1) Eurocentrism

(2) Ultra-liberalism



7. Critique of Constitutionalism

(3) Anti-pluralism

a) Inevitable hegemony?



b) Cultural pluralism

Conclusion

- culture-sensitive
- “realistically utopian” (John Rawls)
- critical