

Workshop

“Knowledge production and Decolonial Approaches to Transformative Constitutionalism”

Max Planck Law Fellow Group, *Communities of Practice and the Transnational Production of Human Rights Knowledge in Latin America*

Max Planck Institute for Comparative Public Law and International Law (Heidelberg)

10-11 December 2024

The general approach: Knowledge production, colonialism and transformative constitutionalism

The colonial project facilitated the expansion of Western knowledge, positioning Western Europe at the center of world history and universalizing European thought as an epistemological project. Indeed, European colonialism and empire have been intimately linked to knowledge production. From the most concrete technological innovations to the most abstract conceptualizations in social theory, the most cherished scientific developments we now credit to Western tradition often find their origins in, often violent, encounters with its non-European others. This is also true for legal thought—and especially for fields of comparative public law, international law, and legal history, as evidenced by the work of two (or even three) generations of legal scholars who have productively drawn from the idioms of postcolonial, decolonial, and subaltern theory to scrutinize the Eurocentric origins of modern law and its histories.

The same decades that were marked by the emergence of the critique of Eurocentrism in public law also witnessed the development of robust literature on the promises of transformative constitutionalism in the Global South—and in Latin America, in particular. Transformative constitutionalism is also a knowledge-based undertaking: law is developed, applied, contested and reproduced by a community through a particular set of practices -- a community of practice that produces legal knowledge and knowledge about the law, and participates in a communicative process that establishes normative expectations that are then fulfilled, or betrayed.

And yet, despite clear resonances between the epistemic critique of Western legal thought and the epistemic agenda of transformative constitutionalism, there has been relatively little cross-fertilization between these two conversations. Our workshop seeks to foster that conversation. We seek to place transformative constitutionalism’s epistemic frameworks in the context of a broader history about the movement and imposition of so-called “modern,” “liberal,” and “Western” legal categories across time and space, particularly in the Global South.

Decolonial transformative constitutionalism

Our workshop seeks to engage in an exercise of thinking about the decolonial possibilities of transformative constitutionalism that could engage with the need to underpin human rights and democracy for all. Taking the critique of Eurocentrism as a point of departure—and not as a destination in itself—, we foreground the role of communities of practice in the reimagination of what a decolonial public law could look like. We argue that these communities actively challenge and reshape dominant legal structures “from below,” using the idioms of international law and comparative public law (including their histories) to build a fairer and inclusive international order. How can we pursue transformative constitutionalism *otherwise*, in a way that is strengthened by the colonial critique of knowledge production?

Creating and mobilizing decolonial knowledge

Our workshop seeks to highlight alternative epistemologies that have been historically marginalized, and to explore how subaltern communities of practice in the Global South have utilized public law for transformative purposes. These insights, moreover, have also been productively mobilized in relation to public law and its histories too. In this vein, we seek to ask: what are we colonially ignoring—either actively or passively—in our current understanding of transformative constitutionalism? What spaces, strategies, and resources can we find in the idiom and practice of transformative constitutionalism that may be helpful to tackle colonial legacies still present in public law (domestic and international)? How could we enrich this transformative constitutionalism through a more careful engagement with knowledges and practices that do not neatly fall into what we understand as “law” in the Western tradition?

Agenda

| | <u>Tuesday, December 10</u> | <u>Wednesday, December 11</u> |
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| 8:30 – 9:00 | 8:30 – 9:00 am Registration (Outside Room 038) | 8:30 – 9:00 am Registration (Outside Room 038) |
| 9:00 – 9:30 | 9:00 – 10:00 am Opening – Room 038 | 9:00 – 10:30 am Panel 4: Constitutions and constituent moments |
| 9:30 – 10:00 | Armin von Bogdandy, Max Planck Institute for Comparative Public Law and International Law – René Urueña, Max Planck Law Fellow – Enrique Prieto Ríos, Universidad del Rosario “Knowledge production and Decolonial Approaches to Transformative Constitutionalism” | Amaya Alvez (Universidad de Concepción, Chile) – “Decolonising the understanding of constitutional developments: The Chilean Constitutional Process 2021-2022 and Indigenous Peoples’ Representation and Inclusion” Marcus V. A. B. De Matos, (Brunel University of London) - “‘I learned it in the streets’: the question for inclusive, transformative and directive constitutionalism in Benedita da Silva’s constituent experience” |
| 10:00 – 10:30 | 10:00 – 11:15 am Panel 1: International Laws Tatiana Cardoso Squeff (Federal University of Rio Grande do Sul, Brazil) - “Is International Transformative Constitutionalism Decolonial? An Analysis from the Recent Jurisprudence of the Inter-American Court in Cases Against Brazil” Noémie Boivin (Université de Sherbrooke, Canada) – “Migration and the Coloniality of Law: An Analysis of “Safe, Orderly and Regular Migration” | Sujith Xavier (University of Windsor, Canada) & Amar Bhatia (York University, Canada) - “Reconciliation through Transformation and Decolonization?” Moderation: Ignacio Perotti Pincirolì |
| 10:30 – 11:00 | René Urueña (Universidad de los Andes / Max Planck Law) - “Data colonialism? Extractivism, digital transitions, and transformative constitutionalism in Latin America” Moderation: Leon Seidl | 10:30 – 11:00 am Coffee break (Outside Room 038) |

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| 11:00 - 11:30 | <p>11:15 – 11:30 am Coffee break (Outside Room 038)</p> | <p>11:00 – 12:30 pm Panel 5: Histories, stories, knowledges</p> |
| 11:30 - 12:00 | <p>11:30 am – 1:00 pm Panel 2: Inclusion/exclusions Carolina Bejarano (Max Plack Institute for Comparative Public Law and International Law, Germany) – “A Historical Account of Racial Dispossession in the Colombian Caribbean: From the Colonial Legal Paradigm to an Agonistic Use of Law” Oscar Guardiola Rivera (Birkbeck College, University of London, UK) – “Illuminations and Fanon” (online). Germán Sandoval (Universidad Nacional Autónoma de México) – “Decolonizing inequality: accelerationism and international populism as a war machine”</p> | <p>Juan Pablo Scarfi (Catholic University of Chile) – “Forging Anticolonial Republics in Imperial Wars: The Rise of the Idea and Practice of Anti-colonial Peace in Latin America” Fernanda Frizzo Bragato (Universidade de Vale do Rio dos Sinos, Brazil) - “Can Law Be Decolonial? Epistemic Limits and Possibilities for Challenging the Coloniality of Law” (online) Enrique Prieto-Rios (Universidad del Rosario, Colombia) - “Epistemic Challenges in International Law: The race between the Calvo and the Hull doctrines”</p> |
| 12:30 - 1:00 | <p>Moderation: Izabella Vergara</p> | <p>Moderation: Daniel Quiroga Villamarín</p> |
| 1:00 - 2:00 | <p>1:00 – 2:00 pm Lunch (Main floor, MPIL)</p> | <p>12:30 – 1:30 pm Lunch (Main floor, MPIL)</p> |
| 2:00 - 2:30 | <p>2:00 – 3:30 pm Thomas Duve – Director, Max Planck Institute for Legal History and Legal Theory</p> | <p>1:30 – 3:00 pm Conversation</p> |
| 2:30 - 3:00 | <p>“Knowledge Production, Epistemic Communities and Epistemic Justice. A view from global legal history” Moderation: René Urueña</p> | <p>Lewis Gordon – Board of Trustees Distinguished Professor and Global Affairs and Department Head - University of Connecticut, USA Title: “Freedom, justice, and decolonization” Moderation: Lina Céspedes</p> |
| 3:00 - 3:30 | | <p>3:00 – 3:30 pm Coffee break (Outside Room 038)</p> |

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| 3:30 - 4:00 | 3:30 – 4:00 pm Coffee break (Outside Room 038) | 3:30 – 5:00 pm |
| 4:00 - 4:30 | <p>4:00 – 6:00 pm</p> <p>Panel 3: Law, land, and the territorial</p> <p>Marcio Staffen (Universidade do Vale do Itajaí, Brazil) – “Delineation of Indigenous Lands in The Brazilian Supreme Federal Court and the Decolonisation of the Concept of Possession”</p> <p>Priscilla Joca (Toronto Metropolitan University, Canada) - “Decolonizing FPIC: Dialogues with Indigenous Protocols and the International Human Rights System Toward Justice-Oriented Pluralistic Legal Paradigms”</p> <p>Anastazia Tataryn (University of Waterloo, Canada) - “Lack of care for life and community in economic and market priorities” (online)</p> <p>Moderation: Juan Pablo Gómez</p> | <p>Final discussion and closing remarks</p> <p>Enrique Prieto & René Urueña</p> |
| 4:30 - 5:00 | | 5:00 – 5:30 pm |
| 5:00 – 5:30 | | Walk to the restaurant (20 min) |
| 5:30 – 6:00 | | 5:30 – 6:30 pm |
| 6:00 – 6:30 | 6:00 – 7:00 pm | <p>Dinner</p> <p>BräuStadel</p> <p>Berliner Str. 41, 69120 Heidelberg</p> |
| 6:30 – 7:00 | <p>Dinner - Family photo</p> <p>(Main floor, MPIL)</p> | <p>Open discussion and networking session day 2</p> <p>MPIL</p> |
| 7:00 – 7:30 | <p>Open discussion and networking session day 1</p> <p>MPIL</p> | |

Photographs will be taken during the event for public relations purposes of the Max Planck Institute for Comparative Public Law and International Law and the Max Planck Society. In case of questions, please contact datenschutz@mpil.de