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ABSTRACT BOOK

28 JUNE – 3 JULY 2026



EDITED BY
Gülriz Uygur
Ozan Erözden
Yılmaz Şahin

IVR 32nd WORLD CONGRESS

of Philosophy of Law and Social Philosophy

Law in the Face of the Changing Problems of the World

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BOOK OF ABSTRACTS

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THE CONGRESS

From 28 June to 3 July 2026, the 32nd World Congress of the International Association for the Philosophy of Law and Social Philosophy (IVR) brought legal and social philosophers from around the world to Kadir Has University in Istanbul, under the theme *Law in the Face of the Changing Problems of the World*.

The Congress officially opened on Monday, 29 June. After opening remarks by Gülriz Uygur and Ozan Erözden, participants were welcomed by Jin-Sook Yun, President of the IVR; İoanna Kuçuradi, President of the Philosophical Society of Türkiye; and Ayşe Başar, Rector of Kadir Has University. Mortimer Sellers then delivered a commemorative speech. Lea Ypi's opening plenary, *How Capitalism Undermines Freedom*, set the tone for the week.

Plenary lectures by José Maria Medina, Claudio Michelon, Dietmar von der Pfordten, Sanne Taekema, Roger Cotterrell, Imer Flores, Juliana Neuenschwander Magalhães and Makoto Usami followed, along with a special lecture by Stephen Macedo. Round tables bringing together leading figures in the field took up law and war, republicanism, analytical legal philosophy, legal philosophy in Türkiye, Luigi Ferrajoli's project for a Constitution of the Earth, and the legacy of Jerzy Wróblewski, while the Presidency Panel addressed artificial intelligence and law.

The programme also included the IVR Book Prize session with Alexander Green, a presentation of Jon Penney's *Chilling Effects,* and meetings on the IVR Encyclopedia and on gender and law. On Wednesday, 1 July, participants joined the excursion *Pearls of the Bosphorus*. The Special Workshops and Working Groups gathered in this volume continued the scholarly exchange in parallel afternoon sessions.

The Congress closed on Friday, 3 July, with the ARSP publication policy session, the IVR Young Scholar Prize with Ana Van Liedekerke's lecture, and the closing ceremony, followed by the gala dinner at the Rahmi Koç Museum.

ACKNOWLEDGEMENTS

As Vice Chairs of the Organizing Committee, we offer our heartfelt thanks to all those whose generosity, care and commitment made the IVR 32nd World Congress in Istanbul possible. The Congress was organized by the Philosophical Society of Türkiye in cooperation with Kadir Has University.

We are especially grateful to our sponsors: **Vehbi Koç Vakfı, Technological Research Council of Türkiye (TÜBİTAK)**, and **Turkish Airlines**. Their support has helped bring together a truly international community of scholars for dialogue, reflection and exchange.

We warmly thank **Kadir Has University** for its generous hospitality and for hosting the Congress at its Cibali Campus. We are also deeply grateful to every participant for enriching this Congress with their scholarship, questions and collegiality.

We express our special thanks to the executive members of the Congress for their dedication and hard work: Reyda Ergün, Orkun Güner, Ceren Akçabay, İrem Akı, Vahdet İşsevenler, Emre Şimşek, Serdar Ünver, Fatma Süzgün Şahin, Doğukan Bingöl, Damla Alver, Cevher Elgin, Sermet Erdem and, Yılmaz Şahin. Their support and effort have been essential to our success.

Our sincere appreciation goes to the volunteers who supported the Congress throughout this process. Their attentiveness, patience and hard work created the conditions in which so many encounters could take place with care and warmth.

May this volume remain a record not only of the ideas shared in Istanbul, but also of the collective effort and friendship that made those conversations possible.

Gülriz Uygur
Ozan Erözden
Vice Chairs of the Organizing Committee

WELCOME MESSAGES

MESSAGE FROM THE PRESIDENT OF IVR

A timely reminder of the realities to which contemporary law is now called upon to respond is captured in the theme "Law in the Face of the Changing Problems of the World." For generations, it has been hardly deniable that law has provided legal certainty through predictability, has moved toward justice in pursuit of an ideal of law, and has served the function of coordinating social life. As we live today—and move into the future that lies ahead—law is increasingly called upon to undertake the task of reformulation through deeper reflection and more rigorous deliberation than ever before, in the face of shifting international dynamics, unprecedented environmental crises, the rapid evolution of artificial intelligence, and more. To meet these challenges, maintaining an awareness of social realities while simultaneously engaging in profound reflection on the ideal dimensions of law will be crucial.

At IVR 2026 in Istanbul, we will share the responsibility not only for exploring "Law in the Face of the Changing Problems of the World," but also for sustaining our ongoing academic discourse in the agora of this IVR community. I believe that IVR 2026 will provide a space in which we can engage in communicative processes that allow us to delve into philosophical insight amid the rapidly changing dynamics of contemporary society. I hope that our conversations here will open pathways for imagining how law might continue to evolve in ways commensurate with our shared human aspirations.

Jin-Sook Yun
President of IVR

MESSAGE FROM THE PRESIDENT OF THE PHILOSOPHICAL SOCIETY OF TÜRKİYE

The theme “Law in the Face of the Changing Problems of the World” draws our attention to the shifting realities to which contemporary law is increasingly called upon to respond. In such a time, what is tested is not only the scope of law, but also the clarity of our understanding of the human being and of the requirements that follow from human dignity.

Justice is the demand that people’s fundamental rights, as well as their other rights, be protected, and that what these rights require under existing conditions be continuously carried out at the level of each nation and internationally. When defined in this way, justice appears as a higher-order principle: at every historical moment, by looking at the actual conditions, to derive –in the light of knowledge of human rights– the principles that determine the organization of social, economic, and political relations, and the norms concerning how persons will be treated in the public sphere; in other words, to derive the law.

Thus, justice demands the continual creation of diverse and changing conditions –conducive to, or at least not obstructive of, the development of persons and of the human species– and therefore demands that law be formed in a way that secures the protection of human rights at both the national and the global levels. For human rights express the general conditions under which human potentialities can be actualized: the conditions in which what is owed to persons as human beings can be given to them, and in which they, as human beings, can in turn give what they owe to other persons.

What justice demands is not, as theories of justice often suppose, that certain determinate, substantive principles be made effective; rather, what it demands is a determinate act of willing: the will to continuously develop a chain of conditions that constitutes diverse and changeable orders, yet orders of a determinate kind –orders formed on the basis of human rights. This is what “law must be grounded in justice” means: that laws at every level must be based, directly and indirectly, on clearly understood human rights.

May IVR 2026 in Istanbul provide an occasion for sustained reflection on how law, amid the changing problems of our world, can be derived from and assessed by this demand.

İoanna Kuçuradi
The President of the Philosophical Society of Türkiye

MESSAGE FROM THE RECTOR OF KADIR HAS UNIVERSITY

Dear esteemed colleagues and guests,

It is a great pleasure to welcome you to the 32nd World Congress of the International Association for the Philosophy of Law and Social Philosophy (IVR 2026), for the first time in Turkey, Istanbul, at Kadir Has University. We are very honoured to host and be part of this Congress, which gathers scholars worldwide who continue to bring critical reflections on law and global society.

On this occasion of this Congress, we come together in 2026 with the intention of reflecting on the present and addressing the urgent challenges of our time. Ours is an era and a landscape marked by the persistence of systematic inequalities, the escalation of human rights violations, political uncertainty, wars, and hostile borders, as well as by technological transformation and deepening ecological crisis.

In this context, instead of reaffirming current legal principles and standards, our attention turns to the possibilities and limits they carry, to the sociopolitical effects of law. The Congress, in this sense, opens a space for renewed reflection on our legal tools "in the face of the changing problems of the world". I hope that it will provide a space for new debates, encounters and intellectual engagement.

I would like to express my sincere gratitude in advance for your participation in this dialogue and wish you a productive and inspiring experience in Istanbul!

Prof. Ayşe Başar
Rector of Kadir Has University

ABOUT THIS VOLUME

The 32nd World Congress of the International Association for the Philosophy of Law and Social Philosophy (IVR) was held at Kadir Has University in Istanbul from 28 June to 3 July 2026, under the theme *Law in the Face of the Changing Problems of the World*. This volume gathered the available abstracts of papers scheduled for presentation at the Congress.

The scholarly programme was carried by two formats. **Special Workshops** were thematic sessions proposed and led by convenors, each running one or more afternoon slots across the week. **Working Groups** were panels assembled by the organisers from individual submissions, each running as a single continuous afternoon block. The large majority of presentations were delivered in person, while the programme also included a small number of online presentations.

The Congress in numbers

Presentations in this volume	**883**
Individual contributors	**766**
Institutions represented	**516**
Rooms in use	**35**
Congress days carrying sessions	**4**
Special Workshops	**90**
Working Group panels	**29**

How this volume was arranged

Part I presents the Special Workshops in the order of their workshop numbers, from SW02 onwards; **Part II** presents the Working Group panels by day and thematic session. Each abstract begins on a new page and names, in its heading block, the workshop or panel it belongs to together with its convenors or chair. An alphabetical index of contributors closes the volume.

Only the abstracts submitted to the organisers are published here. Titles, names and affiliations are reproduced as they were submitted, with minor typographical corrections. Presentations for which no abstract was received do not appear. Session times are published separately in the Congress programme.

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PART I

SPECIAL WORKSHOPS

THE RIGHT TO DIALOGUE. HOW THE RULES OF THE PARLIAMENTARIAN DEBATE MUST BE RESHAPED TO FOSTER A GENUINE DIALOGUE

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SW02 · The Right to Dialogue as a Human Right of the Digital Age. Consequences for Freedom of Expression, IP, and AI&IT Law, and Political Dialogue
Convenors: Juan Carlos Riofrio; Denitza Toptchiyska

ABSTRACT

This presentation proposes a re-conceptualization of dialogue as a fundamentally interactive process, essential to democracy, which demands significant changes in the rules governing parliamentary debate. Today, the so called parliamentary "debate" consists of sequential monologues where no one listens to the opposing side. Attendance is low, and votes are pre-determined before each session, rendering the discussion largely superficial. There is rarely a genuine human dialogue among parliamentarians of opposing sides. This paper argues that true parliamentary dialogue must include authentic two-way communication—both among representatives of different parties (inter-parliamentarian dialogue) and between representatives and society (extra-parliamentarian dialogue). We will explore how parliamentary procedures can evolve from a series of disconnected speeches into a structured yet dynamic space for feedback, deliberation, and mutual understanding. Regarding inter-parliamentarian dialogue, the paper proposes reforms such as mandatory private small meetings between members of opposing parties, and improving electoral methods of counting votes to foster dialogue between those parties who share similar ideas. Additionally, the role of parliamentarians as representatives of the people must be reexamined: beyond merely presenting constituents' views, deputies should create conditions for citizens' voices to be heard and meaningfully integrated into deliberations. In sum, this paper aims to shift the perspective on parliamentary debate by embedding the right to dialogue at its core, advocating for a model of legislation that genuinely listens as much as it speaks.

THE RIGHT TO DIALOGUE IN THE EUROPEAN LEGAL-PHILOSOPHICAL DISCOURSE OF THE DIGITAL ENVIRONMENT

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ABSTRACT

The digital environment, built on the Internet, was originally conceived from the perspective of cyberlibertarian ideology as a free, open, and highly decentralised space aimed at enhancing individual autonomy and, in particular, freedom of expression. From its inception, it has been understood as a communicative sphere encompassing personal, commercial, and political interactions, providing grounds for its conceptualisation as a form of public space. In the twenty-first century, the Internet has evolved into a global environment governed by a complex constellation of international and civil society organisations, within which states assert increasingly expansive claims to sovereignty. The risks posed by disinformation, false content, and propaganda have prompted the adoption of diverse regulatory and policy measures aimed at safeguarding public security and protecting democratic processes. However, these measures raise some concerns about potential restrictions on freedom of expression and access to information, as well as their impact on the Internet's role as a free and open space for communication.

This article seeks to explore potential answers to these questions from the perspective of the proposed right to dialogue in the digital environment, where dialogue is understood as a mutual process of communication between individuals. It begins by examining the legal-philosophical discourse on communication in European scholarship, with a particular focus on freedom, free choice, and communicative interaction. It then considers the European approach to content regulation within the framework of digital environment governance theories. Finally, the article reflects on the

broader implications of these regulatory measures for the social environment, considering the global model of internet governance, and their impact on public discourse and the functioning of digital spaces. In doing so, it seeks to contribute to a clearer conceptualisation of the right to dialogue within contemporary digital communication, emphasising its role as a prerequisite for safeguarding justice and democracy in the online environment.

ANTHROPO-PHILOSOPHICAL FOUNDATIONS OF THE RIGHT TO DIALOGUE IN A DEMOCRATIC SOCIETY

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ABSTRACT

Drawing on the works of Max Scheler, Takiyettin Mengüşoğlu, and İoanna Kuçuradi (representing a rich tradition of philosophical approaches to human rights in Turkish scholarship), I intend to explore what makes a right genuinely a human right from the perspective of philosophical anthropology. From this perspective, human rights can be understood as what human beings owe to one another.

Since dialogue presupposes at least two sides (from the Greek dia- "across, between" and legein "to speak"), my analysis will focus on the conditions under which one human being owes to respond to another. The central question then becomes: in which types of human activities does a duty to respond emerge? Certain practices, such as education or judicial proceedings, appear to require structured forms of response. For instance, a student may legitimately expect an answer from an educator, and a person on trial may demand a response from a judge. These examples suggest that dialogical duties can be grounded in the anthropological structure of human interaction.

Building on this, I also would like to discuss whether the right to dialogue should be understood as an independent right or as a structural dimension embedded within other rights, such as the right to education or the right to a fair trial if we follow the same examples. I consider whether contemporary digital democratic spaces generate new forms of interaction in which a distinct right to dialogue may become normatively significant.

VIRTUE, HAPPINESS, AND THE NATURAL LAW

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ABSTRACT

The debate over the last fifty years or so on natural law has been largely dominated by the so-called new natural law theory proposed by authors such as John Finnis, Germain Grisez, and Robert George. This debate has ranged from moral to legal and political theory, addressing issues such as intrinsically evil acts, neutral liberalism, contractualism, and human rights. The new natural law theory has engaged in a dialectical confrontation with what it itself called the conventional theory of natural law, a theory that is not clearly identified except by the accusation of naturalistic fallacy, that is, of unduly basing its normative force on nature. Whatever this conventional theory is, in the pages of the new natural law theorists, it reveals the true objective of a confrontation between the classical Aristotelian model of practical reason and the central pillar of modern legal positivism, Hume's law, by accepting the validity of both. This debate has overshadowed another tradition of natural law thought that has been powerfully developing since at least the early twentieth century. This tradition, indifferent to Hume's law and the interests of the new natural law theory, is equally oriented toward removing the normative force of nature from human action. It focuses on overcoming a so-called legalistic ethic in favor of a rediscovery of virtue and happiness. What characterizes this different natural law theory, and why does it end up teaming up with the new natural law theory in rejecting nature as the foundation of morality and justice?

THE LEGAL STATUS OF HUMAN DIGNITY AS THE OBJECT OF JUSTICE IN THE THOMISTIC LEGAL THEORY

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ABSTRACT

In a famous 2022 lecture, the late Alasdair MacIntyre argued that the concept of human dignity can be dispensed with, since it is predominantly used as a rather ambivalent concept, which can be employed for contrasting arguments regarding human goods and values. Instead, as MacIntyre argued, what is expressed by this concept can be successfully achieved by adequately pursuing the virtue of justice. His position is virtually identical to Michel Villey's critique of the tendency to award a legal status to human dignity. Both MacIntyre and Villey invoke a tradition that can be seen to culminate in Thomas Aquinas, and I will explore the rival meanings of dignity within that tradition. I will then explore whether, from the viewpoint of that legal-theoretical tradition, it is possible to envision human dignity not as an alternative to justice, but as an object of the virtue of justice, and thus, as a fully legal good. I will also inquire into the question of whether and how dignity can be seen to form part of the very structure of the virtue of justice and of law, at a conceptual level of analysis.

AUTOMATION BIAS AND THE TRANSFORMATION OF JUDICIAL REASONING: TOWARDS A DEUS EX MACHINA?

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ABSTRACT

The increasing use of artificial intelligence (AI) tools is transforming judicial reasoning. In particular, risk assessment instruments designed to predict recidivism have become central to debates concerning the role of AI in adjudication. Their influence extends beyond technical considerations to psychological and socio-cognitive dimensions, as human cognition is shaped by inherent limitations and systematic biases. In this context, judges' tendency to rely uncritically on algorithmic predictions can be explained through the concept of automation bias, which reflects a propensity to treat automated outputs as authoritative, thereby weakening independent evaluative judgment and pre-structuring decision-making processes.

More fundamentally, this development reflects a shift in how judges determine what is just. Judicial decisions are increasingly shaped by algorithmic outputs rather than by reasoned deliberation and conscience. While concerns about mechanistic decision-making are not new, AI-based systems intensify this tendency in a more systematic and far-reaching manner.

From a natural law perspective, this study argues that the increasing reliance on algorithmic systems requires their re-grounding within a framework of moral reasoning. Although artificial intelligence offers unprecedented capacities for data processing, its scale and reach amplify the potential impact of its outputs, thereby increasing the risks associated with their uncritical use. Lacking an intrinsic orientation toward the good (telos), AI cannot generate genuine normativity, since normativity ultimately presupposes a rational capacity to apprehend and act in accordance with the good. Consequently, algorithmic outputs risk displacing judgments grounded in practical reason with patterns derived from data correlations. This calls for the reorientation of AI-assisted decision-making toward an

ethical and teleological framework aligned with the demands of justice. The study further examines automation bias as a mechanism of this displacement and briefly considers possible safeguards within this normative framework.

NATURAL LAW AND THE FAMILY AS THE BASIC ECONOMIC UNIT OF SOCIETY

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ABSTRACT

The debate over the last fifty years or so on natural law has been largely dominated by the so-called new natural law theory proposed by authors such as John Finnis, Germain Grisez, and Robert George. This debate has ranged from moral to legal and political theory, addressing issues such as intrinsically evil acts, neutral liberalism, contractualism, and human rights. The new natural law theory has engaged in a dialectical confrontation with what it itself called the conventional theory of natural law, a theory that is not clearly identified except by the accusation of naturalistic fallacy, that is, of unduly basing its normative force on nature. Whatever this conventional theory is, in the pages of the new natural law theorists, it reveals the true objective of a confrontation between the classical Aristotelian model of practical reason and the central pillar of modern legal positivism, Hume's law, by accepting the validity of both. This debate has overshadowed another tradition of natural law thought that has been powerfully developing since at least the early twentieth century. This tradition, indifferent to Hume's law and the interests of the new natural law theory, is equally oriented toward removing the normative force of nature from human action. It focuses on overcoming a so-called legalistic ethic in favor of a rediscovery of virtue and happiness. What characterizes this different natural law theory, and why does it end up teaming up with the new natural law theory in rejecting nature as the foundation of morality and justice?

THE ROLE OF COMPARISONS IN HARD JUDICIAL DECISIONS

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ABSTRACT

Several objections against the explanation and justification of the rationality with which judges decide hard cases have emerged in recent days. Some of these objections have been addressed by the distinctions and explanations proposed by Ruth Chang's "comparativism" theory of practical reason. This theory distinguishes between "incommensurability" and "incomparability" and seeks to explain the justifying force of the reasons to decide something only in terms of a comparison between alternatives with respect to a covering value.

This paper aims to clarify the scope of "comparativism" proposal, its limits, and whether Chang's account of cases in which two options are "on a par" can be useful to explain the phenomenon of judicial discretion. While we find fruitful the distinction between "incommensurability" and "incomparability" of options in a practical decision, we will show why "comparativism" proposal offers a limited explanation and justification of practical decisions by focusing exclusively on the comparison of options.

Although comparisons must count in a rational practical decision, such comparison alone is insufficient to fully explain and justify its rationality. Therefore, we will propose enriching Chang's account of how choices are made when two options are "on a par" by, on the one hand, presenting the role that dispositions or tendencies can play in these decisions, and on the other, recognizing a certain kind of primacy for the will in deciding—while avoiding the temptation to explain the act of deciding by marginalizing either reason or will in order to simplify their complex structure.

PRIVATE LAW AND THE EMBODIED PERSON: TORT, CONTRACT, AND THE NORMATIVE FORCE OF HUMAN VULNERABILITY

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ABSTRACT

Contemporary legal theory often describes the legal subject in highly abstract terms: as a bearer of rights, an autonomous will, a rational chooser, or an agent capable of entering legal relations. Although these descriptions are not necessarily false, they can obscure a more fundamental truth: the subject of private law is not a disembodied will, but a human person who is bodily, vulnerable, dependent, rational, and social.

This paper argues that private law is unintelligible without this concrete anthropology. Drawing on John Finnis's natural law theory, it contends that private law gives juridical form to basic features of human flourishing. Finnis's account of the person as a rational animal and as a psychosomatic unity—corpore et anima unus—allows us to understand why bodily life, health, sociability, trust, and responsibility are not merely subjective preferences, but objective aspects of human good.

The argument is developed through two illustrative cases, rather than through an exhaustive doctrinal analysis: Bird v. Holbrook in tort law and Williams v. Walker-Thomas Furniture Co. in contract law. Bird v. Holbrook reveals the normative force of bodily vulnerability: even legally relevant property interests cannot justify treating another person's body as material for one's own purposes. Intentional bodily harm has a special juridical gravity because to injure the body is to wrong the person herself.

Williams v. Walker-Thomas Furniture Co. reveals the normative force of social and practical vulnerability. The case shows that contractual consent cannot be reduced to the formal expression of an abstract will. Consent must be understood as the act of a situated person, capable of practical reason, but also exposed to dependence, inequality, pressure, and exploitation.

The paper concludes that private law contains a "hidden natural law." Beneath its technical doctrines lies an anthropology of embodied vulnerability: tort and contract presuppose bodily integrity, dependence, sociability, responsibility, repair, and justice.

RECOVERING NATURAL LAW IN THE CIRCULARITY OF LEGITIMACY IN CONSTITUTIONAL DEMOCRACY

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ABSTRACT

This paper examines the problem of legitimacy in contemporary constitutional democracies and argues that legality alone cannot provide a sufficient foundation for political authority and positive law. The central thesis is that democratic constitutionalism, by identifying legitimacy with procedural legality, generates a circular conception of authority incapable of addressing the existential and substantive dimensions of political order. In moments of political crisis, constitutional legality repeatedly reveals its dependence on extra-juridical foundations and its inability fully to justify itself.

Although legality organizes and limits political power, legitimacy expresses the moral, historical, and philosophical identity of a political community. Contemporary constitutional democracies tend to reduce legitimacy to procedural compliance with constitutional norms, parliamentary majorities, and judicial review. Such formalism risks transforming law into a merely functional instrument disconnecting from substantive justice and the common good. This tension may be understood through the distinction between potestas and auctoritas.

The paper further argues that the circularity of constitutional democracy is constitutive of modern constitutionalism itself. This problem initially remained largely invisible because constitutional legality was grounded in a rationalist natural law tradition that provided an external source of legitimacy. However, with the decline of rationalist natural law, constitutional democracy came increasingly to rely, in Weberian terms, upon rational-legal legitimacy identified with democratic legality itself, where legitimacy can no longer be distinguished from legality.

From the perspective of the Classical Thomistic Natural Law Tradition, natural law provides objective limits to political power grounded in human

dignity, justice, and the common good, thereby overcoming the axiological neutrality of contemporary constitutional positivism and offering a stronger ethical foundation for constitutional democracy within modern plural societies.

SOME CONTRADICTIONS IN THE APPROACH TO INHERENCE IN RELATION TO HUMAN DIGNITY AND HUMAN RIGHTS FOUNDATIONS

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ABSTRACT

In the debate over whether or not it is necessary to delve deeper into the foundations of rights, one position advocates for their protection through the effective realization of the conditions that make them possible, while another asserts that it is necessary to look to a value or source that lies outside those conditions, mostly in the protection of some aspect of human nature.

The aim of this paper is to explore the extent to which these approaches continue to rely on a metaphysical foundation—the dignity of the human person—that serves as the anchor for the enforceability of their proposals. Additionally, it examines the extent to which the idea of dignity—and particularly its inherent nature—can nevertheless manifest itself through an approach that advocates for the actualization or effective realization of the conditions of possibility of rights for their sustenance.

In this sense, three objectives are set forth: first, to specify the extent to which this approach derives the force of rights from the rights themselves, generating a circular normative approach; second, to examine the way in which the idea of dignity can be made present through the force of rights; and third, to trace the extent to which this approach may stem from attempts to propose a kind of explanatory metaphysics, following Alexy's classification of types of metaphysics, making explicit what is already implicit in human praxis.

In this regard, however, the aim is to highlight the difficulties that arise when moving from the descriptive to the prescriptive level—namely, establishing a consistent framework for regulatory standards.

CAN NATURAL LAW STILL SERVE AS A BASIS FOR LAW TODAY? RE-EVALUATING ITS NORMATIVE FORCE STARTING FROM THE SOCIAL DIMENSION

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ABSTRACT

Can natural law still serve as a basis for law today? In this paper, we argue that it is worth reconsidering the social dimension of natural law in order to reaffirm its normative force within the contemporary social and legal context. This could also be a response to the epistemological vacuum that has arisen around the concept of nature in the contemporary cultural landscape: human nature is no longer considered a point of reference for law, politics, and society. This, at the philosophical and legal levels, risks distancing law from its essential principles of equality, justice, and social coexistence (for example, when the concept of nature is considered empty, the most vulnerable individuals are in danger of bearing the consequences; law risks being reduced to an instrument of power, and even actions against the rule of law may be deemed admissible).

Specifically, in order to consider the social dimension of natural law, this paper focuses on the Thomistic conception of natural law (in particular, on I-IIae, q. 94, a. 2), carrying out a brief relational analysis of natural law and illustrating it through the lens of human relationships, or rather, of human coexistence as a principle of normativity.

In our view, such an interpretation can help to highlight the normative force of natural law, with specific reference to the dimensions of balance and equality in social relations and to a conception of law grounded in the human identity of the person as an individual-in-relation.

Natural law reveals a relational structure in the inclinations toward the pursuit and realization of human goods; it promotes goods that are directly linked to relationships and generates new relationships at the personal, family, and social levels. Life, as a good indicated by the first natural in-

clination, is the condition for entering into relationships with others; generativity (the second inclination) is the communication of human life (biologically and biographically); in the third inclination, namely the orientation to live in society, relationships are shared as a fundamental common good of the whole. As a general characteristic, natural law impels us toward a concrete life of relationships, in terms of personal identity (life and potential for development) and social identity (new relationships and networks of relationships), and to build a society that respects justice, equality, and balance in social relationships, with a fundamental orientation toward the promotion of being together.

This brief exploration of the social dimension of natural law suggests that focusing research efforts on natural goods and rights in their relational dimension may help address today's need to advance the role of law as a form of relational steering for society. Indeed, the normativity of human nature discussed in I-IIae, q. 94, a. 2 sheds light on our understanding of law in a twofold manner: in its relationship with society, law is inescapably linked to the essential premises of justice, equality, and coexistence, which are rooted in the network of human relationships within society; in its identity, the concept of law as constitutively referring to others points to a two-dimensional conception of law, where the natural dimension is unwritten law, corresponding to the goods of natural law and to the purpose of law as oriented toward coexistence, while the positive dimension is that established by the legislator, which, however, should not disregard the relational dimension of law, understood as adequacy to others, if it is to remain faithful to its fundamental premises.

In conclusion, we may once again rediscover natural law not as a set of norms alternative to positive law, but as the telos intrinsic to law itself, which orders law toward the common good and the flourishing of relationships within society.

THE NORMATIVE FORCE OF AUTONOMY IN CLASSICAL NATURAL LAW. THE MODEL OF THE CANON LEGAL ORDER

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ABSTRACT

Premises: (I) The Canon Legal Order has a millennial history that has traversed moments of crisis, endeavouring to maintain a univocal identity; (II) From a comparative perspective, with respect to Western legal orders of a state-based matrix, it is possible to identify moments when canon law supported theoretical elaborations and practical solutions later adopted by state legal orders (cf. Decretum Gratiani), and other different moments when the canon order instead deemed it useful to emulate practices arising from state orders (cf. the "codification" period to gain CIC 1917). (III) Currently, the resilience of the rule of law finds itself in a juridical crisis, characterised by an excessive and rapid alternation between "nature / reality" and "sovereignty / virtuality".

Status Quaestionis: (I) If these crises have distinct causes, the thesis intended to be proposed is that the paradigm of autonomy from the perspective of Natural Law of a realist-classical framework may constitute the core of a challenge to overcome the current crisis (of authority and sovereignty) of contemporary legal orders. (II) Indeed, recovering the essence of the Canon Legal Order, we find two characteristics that are unique within the contemporary legal landscape: (A) adherence to the legal order occurs exclusively on the basis of the choice of the individual subject, who then becomes a "believer" [or "faithful"], without any imposition by authority; (B) the same legal order is valid and effective on a global scale (regardless of anthropology, history or culture), because it is founded upon principles of classical natural law.

Theoretical Proposal: (I) First, the paper intends to provide an explanation of the foundation of these two particular and "original" characteristics;

(II) Secondly, by focusing attention on the paradigm of autonomy, the paper seeks to explain how this paradigm, understood in classical-realist terms, allows for the conception of respect for a natural order that is at times parallel to that manifested by state legal orders; (III) Thirdly, the fruitfulness of a new phase of "emulation" by state legal orders of the Canon Legal Order will be hypothesised, in order to offer tools for resolving the crisis of the sovereignty paradigm, through the rediscovery of the force of natural law.

THE EMPEROR OF CONTRADICTIONS: THE NIKA RIOTS, CORPUS JURIS CIVILIS, AND NATURAL LAW

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ABSTRACT

Who was Justinian? A ruthless orchestrator of massacre, a saintly ruler, or the great lawgiver? His life and monumental works conceal this paradox. This paper seeks a balanced answer to that question and aims to partially unveil the secret behind his legacy.

First, the Nika Riots—one of the bloodiest uprisings in history—will be examined in detail. Their outcomes, including the rebuilding of the Hagia Sophia and the impetus for the Corpus Juris Civilis, reveal how violence and reform became intertwined in shaping both Byzantine society and the foundations of modern European and Turkish law.

Second, the intellectual climate of Byzantium after the riots will be analyzed. Having consolidated his power, Justinian—together with his influential wife, Theodora—pursued three grand ambitions: the construction of a magnificent temple, the completion of a comprehensive codification, and the recovery of lost Roman territories. Central to these aims was his legal reform, which became the cornerstone of his reign.

Third, the Corpus Juris Civilis emerges as a work both ancient and innovative. Later additions expanded its scope, while the drafting committee itself remains a subject of debate, with its leadership often criticized.

Ultimately, Justinian, Theodora, and their officials left behind a monumental legal achievement. The central puzzle this paper explores is how such contested rulers and their circle succeeded in producing a codification of enduring authority—one that resonates with the essence of natural law and continues to shape legal traditions across centuries.

PRESENTATION OF THE JOURNAL PERSONA Y DERECHO // THE PRINCIPLE OF HUMAN DIGNITY AND SPANISH CONSTITUTIONAL JURISPRUDENCE

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ABSTRACT

The aim of this paper is to explore the meaning of the principle of human dignity and its recognition in the case law of the Spanish Constitutional Court. In particular, it seeks to demonstrate how, despite being, according to the Spanish Constitutional Court, the "fundamental legal value" and the "gateway to the other values or principles" enshrined in the Constitution itself, its interpretation in case law has, in fact, turned it into an empty formula or a mere rhetorical device. In response to this, the paper seeks to propose certain premises that would allow for a rigorous and coherent reconstruction of the principle of human dignity.

DIGITAL RESURRECTION AND THE EROSION OF THE LIFE–DEATH BOUNDARY

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ABSTRACT

The post-mortem persistence of a person's digital trace creates a legal landscape that strains traditional frameworks: identity does not end at death, but remains exposed to new forms of appropriation, manipulation, and harm that were largely unknown before contemporary information technologies. This paper examines the use of that trace—active or abandoned accounts, cloud-stored files, browsing histories, photographs, biometric data, metadata, and algorithmic profiles—as a phenomenon that extends the subject's vulnerability beyond biological life and, more broadly, beyond embodied existence.

I argue that digital environments expand the field of identity in two ways: (a) as a circulating set of signs that can be recontextualized (voice, image, linguistic style, behavioral patterns), and (b) as a technical infrastructure that enables reproduction and automation (voice cloning, deepfakes, online impersonation, fraud targeting heirs, and the harvesting of data to train models). The core problem is not merely economic loss or a privacy violation. It is better understood in ontological-legal terms: as the boundary between offline life and digital life erodes, so too does the boundary between life and death—an erosion that directly affects the identity and dignity of both the deceased and the bereaved.

FERTILE GROUND FOR CONFUSION: THE NATURAL AND THE SOCIAL IN THE LEGAL CONCEPT OF INFERTILITY

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ABSTRACT

The concept of "social infertility" — recently employed by the Constitutional Court of Slovakia and increasingly invoked in bioethical and legal discourse to extend access to assisted human reproduction (AHR) techniques to individuals who are biologically fertile but engage in non-procreative sexual relationships or choose to avoid heterosexual intercourse altogether — poses a fundamental challenge to the normative force of natural categories in law. This paper argues that the legal recognition of social infertility represents not merely a semantic expansion, but a philosophically consequential erasure of the distinction between natural incapacity and voluntary choice.

The paper develops two interconnected lines of critique. The first is anthropological: drawing on the Aristotelian-Thomistic account of the human body as a teleologically ordered whole, and on the biojuridical thought of Francesco D'Agostino — particularly his warnings against the reduction of the body to a mere object of desire — the paper contends that fertility and infertility are organic categories with precise natural referents. A body capable of reproduction that does not reproduce because its possessor does not engage in, or does not have access to, the type of sexual act naturally ordered to procreation is not malfunctioning; it is simply not being used in the way nature has already provided. To classify this condition as a form of infertility is not to describe a bodily deficit, but to redescribe a relational or volitional condition as a medical one — and thereby to transform social choice into juridically cognizable need.

The second line of critique is ethical and centers on the rights of the future child. Following Robert P. George's insistence on the irreducibility

of the child's interests to the reproductive desires of adults, the paper argues that AHR techniques — when deployed not to remedy an organic incapacity but to fulfill an elective desire for parenthood — impose on the unconceived child a set of risks and deprivations (genetic, gestational, relational) that have not been consented to, and that serve no therapeutic interest of the child. In this configuration, the juridical recognition of "social infertility" as a ground for AHR access effectively subordinates the rights and wellbeing of the future person to the desires of prospective adults, inverting the proper order of legal protection.

The paper concludes that the normative force of natural categories in law is not an arbitrary imposition but a necessary condition for coherent legal anthropology: without a concept of the body's natural functioning as a juridical reference point, the law loses the ability to distinguish need from desire, remedy from enhancement, and protection from complicity.

THE INSTITUTION OF NATURAL LAW: MORAL FOUNDATIONS OF LEGAL NORMATIVITY

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ABSTRACT

In this paper, I propose a new framework for understanding the relationship between law and morality, which I call the "institution of natural law." My central claim is that morality alone cannot govern complex societies because it is often indeterminate, difficult to apply in concrete situations, and lacks effective enforcement mechanisms. For this reason, morality requires institutionalization through law. Drawing on Aquinas and contemporary legal philosophy, I argue that the primary function of law is to make moral principles determinate, public, and enforceable. While individual laws may be unjust, a legal system as a whole must remain oriented toward moral ends; otherwise, it ceases to be genuinely legal authority and becomes merely organized coercion.

To defend this thesis, I engage with the theories of Joseph Raz, Scott Shapiro, Mark Greenberg, and Whitley Kaufman. I contend that several influential positivist theories implicitly acknowledge that the legitimacy and authority of law depend on its moral function. By shifting the focus from individual legal norms to the legal system as a whole, I show that the conceptual tools developed by contemporary positivists ultimately support a natural law understanding of legal normativity. The result is a position that preserves the positivist insight that individual norms may be content-independent, while demonstrating that such independence ultimately rests on the moral legitimacy of the legal system that creates and applies them. Thus, law should be understood as the institutional realization of morality rather than as a normative domain separate from it.

NATURAL LIMITS AND REPRODUCTIVE DESIRE: A NATURAL LAW REFLECTION ON THE MAXIMUM AGE FOR ASSISTED BIOLOGICAL MOTHERHOOD

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SW03 · Natural Law Tradition: The Normative Force of Nature
Convenors: Iuris Naturalis Societas; Diego Poole; Ahmet Ulvi Türkbağ

ABSTRACT

The progressive development of assisted reproductive technologies has allowed for the dissociation of the traditional biological limits of motherhood from the technical possibilities of gestation. In this context, the question of the existence, and potential legitimacy, of a maximum age for accessing fertility treatments for the purpose of biological motherhood raises a philosophical and legal problem of particular relevance to contemporary natural law thought.

This paper analyzes whether the use of assisted reproductive technologies at advanced ages can be considered compatible with the notion of human nature and with the proper ends of procreation, or whether, on the contrary, it constitutes a technical instrumentalization of the body and of parenthood that exceeds the limits of the natural order. From a classical natural law perspective (with special attention to the Aristotelian-Thomistic tradition), concepts such as teleology, the common good, human dignity, the vulnerability of minors, and intergenerational justice will be examined.

This work will also address the tension between reproductive autonomy and ethical-legal limits, evaluating whether the legitimate desire for motherhood can, in itself, constitute sufficient grounds to justify biomedical interventions beyond a woman's naturally fertile period. Attention will be paid to the bioethical debate and to existing comparative regulations in different European legal systems, especially in relation to medical criteria, obstetric risks, and the best interests of the unborn child.

The hypothesis defended is that natural law offers conceptual tools to justify the existence of normative limits based not exclusively on technical

or utilitarian criteria, but on a comprehensive understanding of human nature and the purposes inherent in the generation and raising of children. Thus, establishing a maximum age for access to fertility treatments would not necessarily constitute an arbitrary restriction of rights, but rather a prudential measure aimed at protecting fundamental human goods.

MURDER HAS NO STATUTE OF LIMITATIONS: MORAL PHILOSOPHY, THE RIGHTS OF VICTIMS OF TERRORISM, AND THE LIMITS OF STATE FORGIVENESS IN SPANISH CRIMINAL LAW

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ABSTRACT

This paper examines the moral and legal limits of the State's power to grant amnesties and pardons in cases of terrorism, focusing on the rights and dignity of victims from a natural law perspective. It argues that certain demands of justice arise from the intrinsic dignity of the human person and therefore cannot be extinguished by legislative or executive decisions. The central question is whether the State may forgive crimes in a way that affects the rights of victims, particularly when those victims have neither received truth, recognition, nor reparation. The study contends that positive law alone is insufficient to resolve this issue and that a deeper philosophical inquiry into the foundations of justice is required.

RATIONALIST NATURAL LAW AND THE STATE CONTROL OF LAW

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ABSTRACT

The question posed is whether law is discovered in the nature of things or whether it is simply a human invention. Although it may seem a purely philosophical question, the answer our civilization has given it changed drastically a few centuries ago, with consequences that completely define the legal system in which we live today. This transformation was not a simple process; it was a chain of intellectual shifts with surprising results. We will explore three key revelations about how our understanding of law changed, and how this led to the current landscape. Once law ceased to be something found and came to be conceived as an "abstract rational system constructed by the mind," its capture by a centralized entity became almost inevitable. This new conception of law as a mental product facilitated its complete absorption by the state.

HISTORY OF NATURAL LAW CODES. FROM PUFENDORF AND WOLFF TO A CONTEMPORARY CODE

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ABSTRACT

Early modern natural law sought systematic expression in quasi-codified form. Samuel von Pufendorf and Christian Wolff developed comprehensive frameworks that aimed to articulate the rational structure of legal and moral duties. Their projects combined deductive method, anthropological premises, and an aspiration toward universality, yet stopped short of a fully operative "code" comparable to positive law.

This paper revisits the codificatory ambitions of Pufendorf and Wolff, analyzing their methodological choices, internal architecture, and normative claims. It then contrasts these models with a contemporary attempt to formulate a "Natural Law Code," understood as a structured set of principles and rules designed for practical consultation by jurists, legislators, and institutions. The proposed code integrates insights from civil law, common law, and canon law traditions, while addressing modern challenges such as pluralism, secularization, and global applicability.

The central thesis is that a contemporary Natural Law Code can overcome the historical tension between abstraction and operability by adopting a legislative style of drafting, a modular structure, and a focus on concrete cases (e.g., cooperation with wrongdoing, epikeia, double effect). In doing so, it renews the classical aspiration to render natural law accessible, systematic, and practically useful. The paper concludes by evaluating the prospects and limits of writing a synthesis of natural law today.

THE RULE OF LAW IN AQUINAS

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SW03 · Natural Law Tradition: The Normative Force of Nature
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ABSTRACT

Lon Fuller famously argued that there is an internal morality of law, which he called the "Rule of Law", and which consisted in a series of desiderata that concerned legal rules, for instance, that rules ought to be general, prospective, clear, not contradictory among themselves, among others. In the second edition of his classic book (1969), he acknowledged, responding to a comment by Ovid Lewis (1962), that almost all of these requirements had been previously defended by Aquinas.

Of course, that may sound a little strange to a contemporary reader, since in Aquinas there is neither the notion of separation of powers, nor that of the necessity of explicit constitutional limits on the legislative power (see Finnis, 1998, 265). Of course he condemned, in harsh terms, the abuse of power by tyrants, but there is no theory in his work about possible institutional solutions to this possible threat.

In my presentation, I intend to expose which elements of our contemporary notion of Rule of Law we find in Aquinas, and which not, and I will also try to explain the reason for this absence, which is based not only on his political experience, so different from ours, but also in the nature of his political theory, which is strictly Aristotelian in that it does not endorse a unique regime form, not even the supposedly best one, as the only one legitimate. I will analyze especially Aquinas's doctrines present in the Summa Theologiae, his Commentary on Aristotle's Politics, and his De Regno.

ON THE NORMATIVITY OF NATURE: FROM NATURAL INCLINATIONS TO NATURAL LAW

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ABSTRACT

Modern philosophy may be understood as the attempt to emancipate man from nature. Indeed, while it increasingly focused on the subject, it gradually withdrew from any reflection on his essence, culminating in the existentialist belief in the self-determinacy of the human being, viewed as an empty form to be arbitrarily filled. This progressive obscuration of human nature has shaped not only ethics, with the formulation of Hume's law and the naturalistic fallacy, as well as the hegemony of deontology and consequentialism, but also jurisprudence, with the dominance of positivism. Even the New Natural Law Theory has largely avoided direct reference to human essence, reluctant to challenge the aforementioned assumptions.

Consequently, the notion of human nature appears today as an ideological relic. Yet, it does exist and expresses itself through natural inclinations: ontological predispositions universally present, though individually modulated, that question the idea of an is-ought gap, grounding natural law precepts. This contribution intends precisely to demonstrate this thesis. It aims to sketch human nature through the doctrine of natural inclinations, clarifying their objectivity in a more robust way than the New Natural Law Theory's mere appeal to the self-evidence of the ends or goods they pursue, and their capacity to undermine both Hume's law and the naturalistic fallacy, as well as their close connection to natural law principles.

This intervention does not claim to be exhaustive. Rather, it seeks to lay the foundations for the future development of a new theoretical framework: one capable of providing a metaphysics of human nature, avoiding both natural relativism and cultural imperialism, reconciling virtue and natural law, offering sound action-guidance, and elucidating legal normativity more satisfactorily than existing approaches.

THE ETERNAL RETURN OF THE EVIL OF LAW AND JURISTS. TOWARDS A DUALISTIC, MANICHEAN THEORY OF LAW.

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ABSTRACT

In times of "faculties of legal sciences" and "legal clinics," it may seem strange to hear about the eternal return of the evil of law and jurists, and even more so to see it argued—as we will do here—that we are facing a new return of such evil.

To illustrate this, we will draw on a case originating from a reformatio in peius that passed through the Spanish National Court (Audiencia Nacional), the Spanish Constitutional Court, and the European Court of Human Rights. In this case, essential aspects of the right to effective judicial protection were allegedly violated and, therefore, the minimum content of any right that claims to be such; the minimum content of Natural Law, as Hart would put it. These aspects include the rationality of judicial decisions, including their reasoning, and the inclusion in the judgment of the evidence that had been admitted and examined.

This case could be generalized by reference to others at both national and international levels, as well as to the phenomenon known as lawfare and to judges' own recognition of the need for a judicial ethics that goes beyond professional deontology. Moreover, all of this would affect the rest of the legal actors, given the central role of judges within a legal system.

Thus, we propose several possible solutions: the implementation of AI to review judicial decisions, the establishment of a requirement that judges must previously have been parties to legal proceedings, and, above all, a new model of legal education. In this model, Natural Law would in one way or another be reclaimed, and the Theory and Philosophy of Law would play a fundamental role, with the professor acting as a devil's advocate. Such an approach, moreover, would be particularly useful in times of post-truth and fake news.

THEODORA'S INFLUENCE ON THE CORPUS IURIS CIVILIS: RE-EVALUATING NATURAL LAW THROUGH GENDER AND HUMAN DIGNITY

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ABSTRACT

Corpus Iuris Civilis stands as the cornerstone for continental jurisprudence, but its transformative character is often attributed solely to Emperor Justinian I. This paper argues that Empress Theodora played a pivotal role in reshaping Roman law by integrating ancient principles of aequitas (equity) and humanitas (humanity) and by aligning them with a Christian-informed interpretation of Natural Law.

As a result of the fact that archaic social structure was, since the Neolithic Revolution, based on Patriarchal paternalism, traditional Roman law, even by the 6th century, frequently prioritized patriarchal structures and class-based distinctions. However, through Theodora's direct influence, the Novellae Constitutiones introduced radical shifts that recognized the inherent dignity of marginalized groups. This study examines specific legislative reforms, such as the abolition of marriage bans between social classes (allowing for her own marriage to Justinian), the criminalization of rape with property transfers to victims and the expansion of divorce and property rights for women.

From a Natural Law perspective, these reforms represent a transition from ius strictum to a legal system that acknowledges universal moral truths and the protection of the vulnerable as a higher legal necessity. Theodora's contributions do not merely update administrative codes. They also challenge the classical Roman legal tradition to accommodate a more inclusive definition of justice. By analyzing these shifts, this paper demonstrates how Theodora's agency was instrumental in evolving the concept of ius naturale from an abstract philosophical idea into a functional tool for social reform. Her legacy, therefore, provides a historical precedent for

modern debates on the intersection of legal philosophy, gender equality as well as the evolution of human rights.

THE SCOPE OF EU VALUES AND COMPETENCE BOUNDARIES: A LEGAL ANALYSIS OF GENDER IDEOLOGY AND MINORS

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SW03 · Natural Law Tradition: The Normative Force of Nature
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ABSTRACT

This paper examines whether the promotion of gender ideology concerning minors falls within the competences conferred upon the European Union by the Treaties and whether recent actions by EU institutions are consistent with the principles of conferral, subsidiarity, and respect for national constitutional identity. While Article 2 of the Treaty on European Union establishes a set of common values, including human dignity, freedom, equality, and human rights, the legal scope of these values remains contested when they are invoked to justify intervention in areas traditionally reserved to the Member States, such as family law, education, healthcare, and the protection of children.

The study analyses the distinction between binding legal obligations and political interpretations of EU values, paying particular attention to debates surrounding gender identity, sex education, medical interventions involving minors, and anti-discrimination policies.

MACHINES AS DISCOURSE PARTICIPANTS? LANGUAGE-GENERATING MACHINES FROM THE PERSPECTIVE OF LEGAL DISCOURSE

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SW04 · Crisis or End? The Uncertain Future of Law in the Age of Artificial Intelligence
Convenors: Roger Campione; Stefano Pietropaoli

ABSTRACT

Following my research conducted as part of my doctoral dissertation, which examines the constitutional requirements for automated judicial decisions, I would be honored to present the following ideas for Special Workshop 04: While machines have gained the ability to imitate human language (almost) perfectly, and, on the other hand, the language-based exchange of arguments is the basis for any legal discourse, I pose the question of the implications of machine-generated language in the legal discourse, using the theory of legal argumentation brought forward by Robert Alexy, based on the works of Jürgen Habermas. I argue that the appearance of language-generating machines calls for a new concept of the role of the discourse participant: for the first time, we found ourselves in a situation in which the fact that an entity speaks does not necessarily imply that this entity has the subjective quality of a person. This has two implications for the legal discourse: First, it poses the question if a machine itself can hold the role of a discourse participant in the legal discourse. In Robert Alexy's school of thought, being a discourse participant has the consequence of holding human rights – with the possible outcome that a machine would be protected by human rights as a legal subject. I investigate under which circumstances a machine would have to be granted such subjective rights. Second, the appearance of machine-generated language has consequences for the discourse itself. I argue that the assumption of an entity holding an interest in the discourse is a central condition for the discourse participants' role. By examining how this assumption translates into the context of machine-generated language, I argue that including machine-generated arguments into the legal discourse is not only a possibility, but a necessity

according to the rules of the discourse, which will and should from now on shape the way we think and talk about legal discourse(s).

KELSEN'S UNDERSTANDING OF THE LEGAL SUBJECT AND ITS APPLICABILITY TO THE DEBATE ON AI AS LEGAL SUBJECT

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SW04 · Crisis or End? The Uncertain Future of Law in the Age of Artificial Intelligence

Convenors: Roger Campione; Stefano Pietropaoli

ABSTRACT

In his General Theory of Law and State as well as in his Pure Theory of Law Hans Kelsen pled for a reductionist understanding of the legal subject, being nothing else than "the personified unity of a set of legal norms". According to this view, a metaphysical explanation of the legal subject based on natural law is to be avoided. Therefore, it does not come as a surprise that researchers refer to Kelsen when it comes to the question of legal subjectivity of non-human entities, e.g. artificially intelligent systems. This workshop contribution follows three steps to inquire in how far this reference to Kelsen's theory is useful for modern jurisprudence with regard to AI. In a first step, Kelsen's remarks on the legal subject and its role in the Pure Theory of Law are analyzed. This means explaining how and why, according to Kelsen, the legal subject is not to be equated with the human being. However, Kelsen refers to "human behavior" as the relevant reference point for law in his theory of law, thereby seemingly assuming, that only human actions qualify as legally relevant behavior. This focus on actions might be connected to Kelsen's concept of the state, which focuses on the importance of legislation by human beings. Different legal scholars referring to Kelsen's theory and thereby arguing in favor of AI's qualification as legal subject are presented in a second step. Which arguments do they use? In the final step, Kelsen's focus on actions instead of subjects should be embedded in a broader science-and-technology studies (STS) context. Bruno Latours Actor-Network-Theory called for an understanding of the social world where different kind of actors – not just humans – build the social network in which we live. In any case, this view

includes non-humans into the social world. Is this inclusion also a possibility for the legal world? Would a legal transformation of subjectivity – no longer referring to the category of a subject but more to one of an agent – make sense considering the technological developments that do not fit in the legal category of a subject? Do we need legal agents instead of legal subjects?

LAW AND THOUGHT: FROM THE MOST AUTHENTIC TO STANDING-RESERVE IN THE AGE OF ARTIFICIAL "INTELLIGENCE"

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SW04 · Crisis or End? The Uncertain Future of Law in the Age of Artificial Intelligence
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ABSTRACT

The present article understands law as a socio-cultural phenomenon that is historically constituted. In this sense, it argues that both the legal thought and law's practical realization incorporate – or not, through a de-cision – the noetic structures of each time-cultural horizon. These structures are here comprehended as the original project of the possibilities that are presented to humans (as "beings-there", Da-sein) and from which they can or cannot transcend. Through a metontological approach we interrogate law in the realm of being-there-in-the-world (In-der-Welt-sein), in its historical realisation on the ontic domain. This interrogation (dies Fragen) reflects on the completion (Vollendung) of techno-scientific rationality, which places everything that is as standing-reserve (Bestand). In these terms, the discussion explores the reduction of the techné in its original sense to that of enframing (Ge-Stell), thereby presenting law's way of being/presencing (Wesen, in Heideggerian terms) as something that "is there", an instrument available for use/utility. This (re)presentation conceals law's fundamental Wesen, as the authentic alternative to the mediation of the being-there-with-others-in-the-unicity-of-the-world. In other instance, we have reflected on the concealment of the meaning of law stemming from the conception of truth and being that took hold in the modern era. This paper further explores this thought in the context of the emergence of so-called new forms of "intelligence" – that is, those "generated" by programmable machine systems – that seem to "threaten" the future of law.

TOWARD A CONCEPT OF ARTIFICIAL LEGAL AGENCY: ACCOUNTABILITY, OBLIGATION, POWER, AND COEXISTENCE IN THE AGE OF AGENTIC AI

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SW04 · Crisis or End? The Uncertain Future of Law in the Age of Artificial Intelligence

Convenors: Roger Campione; Stefano Pietropaoli

ABSTRACT

Drawing on engineering evidence of AI agency, philosophical accounts of minimal and representational agency, jurisprudence and doctrinal analysis of the law of agency, this contribution proposes the concept of artificial legal agency as the organizing framework adequate to this moment. Artificial legal agency is a sui generis legal-theoretical concept distinct from both full legal personhood and mere thinghood. It captures what is distinctive about agentic AI and hybrid human-AI pairings, helping with the four interlocking challenges raised by these entities, which existing legal frameworks are ill-equipped to handle. First, when AI agents or distributed AI systems make consequential decisions, classical models of legal accountability collapse under accountability gaps or the problem of 'many hands.' Second, the same capacities that ground moral and legal status in biological entities (responsiveness to reasons, goal-directedness, functional affect) may be instantiated in artificial systems, creating obligations we have not yet recognized. Third, connectedness among AI agents or between AI agents and humans amplifies asymmetries of power, risking the entrenchment of existing hierarchies or the creation of new ones immune to democratic correction. Fourth, multi-form intelligence challenges the anthropocentric presumption that coexistence means tolerance of the Other, suggesting instead that it may require a more radical reconceptualization of agency, standing, and shared institutional space. Consequently, this contribution proposes a layered attribution architecture, a threshold account of our obligations to AI agents, a structural analysis of AI-mediated power, and a pluralist ontology of coexistence as natural extensions of its central proposal.

CARBON-BASED AND SILICON-BASED JUDGES

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SW04 · Crisis or End? The Uncertain Future of Law in the Age of Artificial Intelligence
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ABSTRACT

Many years have passed since legal formalism began to fantasize about judges who do not decide, ruthless mouths of the law who merely transmit the abstract prescriptions of the laws to specific cases. In the many-thousand-year-old human phase of the judicial function this was never achieved. However, new technologies have opened up a second robotic phase. While carbon-based judges, made of flesh and blood, cannot set aside their mindset, their worldview, their way of understanding the law and, ultimately, their biases, silicon-based judges, artificial intelligence software capable of generating judgments, incorporate no more biases than those derived from their programming; if none were derived from it, then they would finally be the unbiased judge of formalism. However, this is not the case. While all of the so well-known algorithmic biases are concerning, they are also correctable. Nonetheless, there are another sort of biases, rooted in the very nature of the machine, that cannot be corrected. Software is a material entity incapable of performing formal thought processes, which involve abstraction, that is, the conceptual extraction of the general from its individual manifestations. Humans can reason, and it is precisely when they reason that their biases can interfere with their results. Software, on the other hand, cannot reason, and the result of its operations, which is merely an output, is nothing more than a simulation of what a human being would do instead. Consequently, artificial intelligence systems, although they could be free from most of the biases that condition human reasoning, by the very fact of freeing themselves from them, remain subject to two other biases that are of their own. On the one hand, the inability of artificial intelligence systems to abstract concepts from matter prevents them from grasping an entire sector of law, namely natural law, free law or any other kind of non-positive law, so that they can only handle

positive one, as long as the legal code is converted into computer code. This is the legal positivist bias. On the other hand, artificial intelligence systems cannot operate with the specific legal logic of imputation; their programming must be done by translating legal propositions into causal implications. Therefore, factual assumptions trigger an automatic, unreasoned response of the algorithm. This is the automation bias. Both legal positivist and automation are two biases that the carbon-based judge may suffer from; nonetheless, it is also possible for him to avoid them. On the contrary, the silicon-based judge cannot correct these biases because they derive from its own artificial condition as a material entity. We ask the human judge to reason, and we ask this because simple positive law is not enough to do justice. We allow the robot judge, however, to apply positive law without reasoning. We must ask ourselves if there is any reason for us to suddenly change our demands on judges, as long as the new biases are not only no less serious than the old ones, but the same and even deeper, and if, ultimately, doing justice is nothing more than applying rules.

A DWORKINIAN ASSESSMENT OF ARTIFICIAL INTELLIGENCE AND LEGAL UNCERTAINTY

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SW04 · Crisis or End? The Uncertain Future of Law in the Age of Artificial Intelligence
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ABSTRACT

Artificial intelligence technologies present themselves today with promises that push the boundaries of thought in both theoretical and practical domains of law. This study aims to interpret the uncertain future created by AI through Ronald Dworkin's theory of technology and moral interpretation. Dworkin perceives radical technological developments as an inevitable part of humanity—in a sense, as the legacy of Prometheus. According to him, the human desire to intervene in nature and one's own destiny is an unstoppable process. Radical technological advancements, in the thinker's own words, unsettle the ethical ground upon which we stand and represent a process in which the individual is driven into a moral freefall. Dworkin argues that resisting this progression of technology is a futile endeavor; instead, he advocates for the construction of a abstract and critical moral background. In this context, the thinker proposed the principles of ethical individualism as a moral framework against radical technological developments, particularly in the genetic and medical fields. Today, it is evident that AI systems offer promises that will fundamentally alter the operation of practical areas such as decision-making processes, along with the meaning of fundamental concepts like legal subjecthood, rights, and responsibility, thereby shaking the established ethical foundation. In this regard, it is possible to apply the moral reading Dworkin developed for medical technologies to the transformation that AI will catalyze in the field of law. This study offers an evaluation regarding the necessity of a Dworkinian practice of moral interpretation that centers human autonomy and objective value within the new order promised by AI.

ALGORITHMIC POWER AND THE CRISIS OF LEGAL INTELLIGIBILITY

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SW04 · Crisis or End? The Uncertain Future of Law in the Age of Artificial Intelligence

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ABSTRACT

Artificial intelligence does not merely raise new regulatory questions; it challenges the way in which law identifies, controls and legitimizes power. Algorithmic systems increasingly classify, rank, predict and recommend in areas such as employment, credit, welfare, insurance, criminal justice, health and education. This paper argues that the central issue is not only whether law can regulate AI, but whether legal systems can still make power visible, attributable and contestable when decisions are mediated by opaque and data-driven infrastructures. The analysis focuses on algorithmic discrimination as a paradigmatic case. AI systems may reproduce and amplify existing social inequalities, while making discriminatory effects less visible and harder to contest. In particular, discrimination may no longer operate only through explicit reliance on protected grounds, but through proxy variables, statistical correlations and granular forms of profiling. The paper describes this phenomenon as "precision discrimination": a form of exclusion that targets individuals through behavioural, economic, relational or biometric traces, often without making the discriminatory logic intelligible to the person affected. This development exposes a deeper crisis of legal intelligibility. Modern law presupposes that decisions affecting individuals must be imputable, reasoned, contestable and open to review. Algorithmic decision-making, by contrast, often shifts authority from justification to correlation, from public reasons to predictive outputs, from responsibility to distributed technical processes. The result is not simply opacity in a technical sense, but a weakening of the connection between decision, accountability and legal reason. Existing European frameworks, including data protection law, anti-discrimination law and the AI Act, provide important safeguards, yet they remain fragmented when

confronted with dynamic, individualized and formally neutral forms of algorithmic harm. The paper therefore argues for a shift from transparency to contestability, from explainability of models to justification of decisions, and from formal compliance to institutional accountability. The future of law in the age of AI will depend on its capacity to translate algorithmic power into legally recognizable forms of responsibility. Law does not necessarily come to an end before artificial intelligence; rather, it is forced to redefine the conditions under which technological power can remain democratically and legally legitimate.

THE COMMUNICATION THEORY OF LAW VERSUS ARTIFICIAL INTELLIGENCE. ANALYSIS OF ALGORITHMIC MEDIATION IN THE LEGAL SYSTEM

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SW04 · Crisis or End? The Uncertain Future of Law in the Age of Artificial Intelligence
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ABSTRACT

The Communicational Theory of Law (hereinafter CTL) is constructed from a weak ontological position, which asserts that Law is communication or, more precisely, manifests itself through its own language relative to each community. Law, understood as any language, has a specific formal or analytical structure, a semantics that must be continually reworked by jurists, and a pragmatic dimension that reveals its intentional and performative dimension on the occasion of each normative decision. One of the central theses of CTL is the differentiation between the legal system and the legal order, such that the legal order provides the raw material or set of provisions that requires hermeneutic or rational reconstruction for its actual application, and this elaborated product is known as the legal System. Legal dogmatics serves as a bridge or hermeneutic mediator between the raw reality of the legal order and the rational construct we call the System. Through the hermeneutic elaboration of the legal order, it is provided with a rational order that legal texts lack and, in addition, its real applicability is enabled; because the true legal norm is found in the System and not in the legal order. This would be, in a nutshell, the starting point for our study, which aims to update the postulates of TCD in light of the new reality of legal communication, brought about by the development of legal AI systems, built in imitation of natural language. The question under debate is as follows: what role would legal AI play in the hermeneutic mediation between the legal system and the legal order? Can legal AI be considered a new communication agent within the framework of CTL? What challenges does Automated Decision-Making (ADM) present for CTL? Is a legal decision possible without an intentional component?

"HERE IS YOUR ANSWER": GENERATIVE AI AND THE THREAT TO LEGAL REASONING

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SW04 · Crisis or End? The Uncertain Future of Law in the Age of Artificial Intelligence
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ABSTRACT

Generative Artificial Intelligence ("GenAI") tools are transforming the conditions under which legal judgment is formed. This paper argues that what is at stake is not merely a technological shift in legal practice, but a threat to legal reasoning itself as a professional and human capacity.

Traditionally, legal judgment has depended on sustained, critical engagement with primary sources: legislation, judicial decisions, and academic publications. Lawyers have traditionally worked long hours going through those sources and building their arguments from a blank page. GenAI tools are changing this: by removing direct engagement with sources and providing synthesized answers, they shift the referential paradigm into a conversational paradigm in which GenAI accelerates legal work but bypasses the deliberative process through which legal reasoning is exercised and reproduced. The friction between the legal problem and its resolution is no longer there. With that, much is lost.

Drawing on qualitative empirical research from the author's doctoral fieldwork on business lawyers in Spain, this paper identifies a central concern for the legal profession in the age of GenAI: the gradual erosion of the analytical capacities that underpin legal reasoning, driven by the cumulative effect of delegating cognitive work to AI-generated outputs. Recent experimental research supports this concern, finding that users frequently adopt AI recommendations uncritically while their subjective confidence increases. This cognitive surrender is particularly significant in legal contexts, where the capacity to identify error and to argue autonomously about a legal question is inseparable from professional competence.

If this surrender were to become the norm, the legal profession would be transformed and deformed. A legal system populated by professionals who can no longer critically judge AI outputs is a system no longer prepared to serve justice, fundamental rights, and human dignity.

THE METHODENSTREIT IN THE AGE OF ARTIFICIAL INTELLIGENCE

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ABSTRACT

The emergence of generative AI in the legal field necessitates a re-examination of the framework for discussing classic—one might even say age-old—questions of legal methodology, which are taking on new significance, such as the purpose of law, what method of interpretation and application of rules legal practitioners should follow, what the relationship between justice, legal certainty and effectiveness should be, what kind of process the creation and application of law entails, how the rationality or correctness of a legal decision can be assessed, etc. The power of predictive AI tools is such that it alters the anthropological assumptions underlying the law and legal discourse. When AI is asked to draft a judgment, or to formulate arguments for the defence or the prosecution, what kind of task is it being asked to perform? How does this task, when carried out by AI, differ from one that might be performed by a judge or a lawyer? Is it likely that the introduction of AI systems will reduce litigation? Should the reduction of litigation be an end in itself? Does AI bring us closer to the ideal of legal certainty? This paper will address these and other classic questions of legal theory and methodology, seeking to answer them from the perspective of the new paradigm represented by AI, as a preliminary step towards the overarching question of whether a legal system in which the human factor plays a lesser role than artificial intelligence might not be preferable.

THE CONCEPTUAL FOUNDATIONS OF HUMAN RIGHTS WITHIN KANT'S INTERNATIONAL LEGAL PHILOSOPHY

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SW05 · A Rightful Condition for Legalities
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ABSTRACT

The joint military action launched by the United States and Israel against Iran on February 28, 2026, has shocked the international community. Nations worldwide are concerned that this regional conflict might escalate into a Third World War. Such anxieties inevitably lead one to question whether the "Perpetual Peace" advocated by Immanuel Kant in his work can truly be realized. Or is this goal merely a regulative idea (regulative Idee)—much like the "Kingdom of Ends"—which humanity can only strive to approximate indefinitely? Kant argues that human nature itself will bring about and secure a state of peace; however, what constitutes this "human nature"? If the content of human nature can be determined, the subsequent inquiry follows: How can we further define the substance of human rights through this nature? Once defined, how can they be protected?

Generally speaking, human rights refer to rights that can resist state intervention. Given that Kant ultimately stopped endorsing a "World Republic" (Weltrepublik) with coercive power over individual states, international human rights in Kantian theory seem restricted to cosmopolitan right (Weltbürgerrecht)—the right of every individual to visit foreign lands—and, as supported by Jürgen Habermas, the collective global right to oppose violations caused by specific atrocities. Kant observed: "The intercourse, more or less close, which has been everywhere steadily increasing between the nations of the earth, has now extended so enormously that a violation of right in one part of the world is felt all over it."

Nevertheless, determining whether a right has gained universal recognition when violated by atrocities remains a formidable challenge. Beyond the conflicting evaluations sparked by the interests of various nations,

there lacks a global institution capable of conducting such an empirical investigation.

Regarding the protection of rights, as Habermas critiques, human rights in Kant's theory cannot rely on a legal system for protection; instead, they depend on virtue or a reflection on the cruelty of war. Ultimately, Kant appears unable to move beyond a mere appeal to rational morality, failing to establish a legal system capable of taming diverse political positions. This turning point prompts one to reflect: could domestic order within nations also rely solely on individual moral reflection, rendering the existence of law non-absolute necessary?

This research will provide a meticulous analysis of Kant's theory of international law, exploring how Kant justifies and implements human rights within that framework, and the specific roles that history and theology play in this process.

TRUST IN RIGHTFUL CONDITIONS AND LEGAL RELATIONS. PROPOSAL FROM TWO KANTIAN CONCEPTS

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ABSTRACT

The connection between the two Kantian concepts of Rechtszustand and Rechtsverhältniss has not been fully explored, at least in the French-speaking world; a relational approach to the rightful condition leading to a relational approach to the rule of law is possible and leads to a certain legal pluralism. The concept of the legal relationship can provide a more concrete understanding of the rightful condition according to Kant, since he defines law through legal relationships; in particular, the separation of powers can be analysed from the perspective of legal relationships. However, the concept of a legal relationship must be updated, as it appears to comprise, on the one hand, rational and emotional elements and, on the other, to unite not only two free and rational beings but also at least one party that is tendentially autonomous yet not entirely capable of rational dialogue (a child, a person with intellectual disabilities, a non-human). Consequently, the rightful condition also comprises rational and emotional elements, and in particular an element of trust, which is fundamental in public relations for the purpose of strengthening private relations. Trust in institutions would thus stem from trust in legal relationships and would lend legitimacy to those institutions. A legal relationship can be viewed as a comprehensive intellectual, emotional and even physical encounter between two people, under the auspices of an independent and impartial third-party holding authority entrusted to them by the parties.

However, it appears that legal relationships as a relationship under the aegis of a third party entrusted with power, are not structured in the same way: either this third party is superior to the parties and has superiors of its own (pyramidal structure of the executive), or this third party is controlled

by a fourth body (quadrangular structure of the judiciary, where the judgement is overlooked and signed by the clerk), or a group of equal parties represents an entire society under the aegis of a spokesperson (circular structure of parliamentary power). Trust and legitimacy are at stake in different ways within these structures. The balance between these powers is relatively unstable as it relies on the pursuit of a sense of trust that is, by definition, variable across different structures. A group may be structured according to these three powers and still fail to inspire sufficient trust. It may not be a state but another type of organisation (the UN, the Church, international sport, etc.), but in any case, the powers must be balanced to achieve sufficient trust and legitimacy. It is necessary to maintain a balance between these different structures in order to achieve the rule of law, in which trust—understood as an emotion—in those who hold power is reflected in trust in the other parties to the original legal relationships. These parties are free insofar as they enjoy relational autonomy within these legal relationships; this is why the rule of law also guarantees freedom and, more broadly, the fundamental rights of citizens.

KANTIAN RIGHTFUL CONDITION IN THE OSCILLATION BETWEEN THE NORMATIVE AND PREROGATIVE DIMENSIONS OF POWER

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ABSTRACT

The paper analyses the evolution of global governance taking into consideration the interactions between its "normative" and "prerogative" dimensions, drawing on Ernst Fraenkel's conceptualization in The Dual State. Using Kant's rightful condition as a normative horizon, the paper firstly highlights that the emergence of the modern administrative state already marked a departure from Kantian ideals. It then turns to the study of the power and economic dynamics in the global order of our times, noticing a qualitative shift on the boundaries between "norm" and "prerogative". The "multilateral" and "rules-based" international order, within which international institutions play a key role, has long been characterised by broad, structural areas of discretion and "prerogative". These features contributed to its well-known dark sides, selective guarantees, and post- and neo-colonial effects. However, through the analysis of three case studies, the paper shows that, compared with earlier times, the boundaries between "normative" and "prerogative" states are currently increasingly set by the institutions and rationale of the prerogative state. The paper engages with and problematises recurring arguments that portray an overall healthy condition of (public) international law insisting on widespread effectiveness in areas different from the use of force. By focusing on how and when the boundary between "norm" and "prerogative" is drawn, the paper aims at providing a conceptual point of reference to understand authoritarian drifts in contemporary times.

LEGITIMACY IN INTERLEGAL RELATIONS

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ABSTRACT

Leaving a state of nature and entering into a civil state, or a "rightful condition", is a fundamental demand of practical reason. Kant has justified this demand with the need to enforce provisional rights. There is no serious doubt that it is reasonable to accept living under a "rightful condition", instead of a "state of nature" with no rights or norms to protect oneself. However, it is not clear what this implies in a situation of competing legal systems or "legalities", that is, legal structures that do not qualify as legal systems. When we ask whether a rightful condition should hold for legalities, we face two questions: First, what do we understand by "rightful condition"? Does the current situation already present a "rightful condition"? Or is something like the domestic law required, with supreme authority and a monopoly of power as found in national states? Or do we mean something in between the current situation and a fully developed legal order, for example, as Kant assumed, a "federation of states"?

Second, can one justify a demand to enter into a "rightful condition", in the sense defined? Is there an obligation to enter into a fully developed legal order, or only to comply with some minimum conditions of legality, or an aspirational obligation to strive for the ideal of a fully developed legal order? What would be a legitimate way to organise interlegal relations?

If we can answer the question which type of legal ordering is required, we have also an answer to question of what do we understand by "rightful condition". I therefore will directly turn to the normative issue of which type of legal ordering should be considered as legitimate or justified.

SELF-REFERENCE, INCOMPLETENESS, AND LEGITIMIZATION OF CONSTITUTIONAL NORMS REVISITED – THE NOTION OF NON-STRICT VALIDITY

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ABSTRACT

The phenomenon of self-reference of law has once been a disputable problem among constitutional scholars as well as among philosophers of law or even of logic. It was said that the law is self-referential, since the validity or authoritative sources of law rely ultimately on its own or, as it held by Hans Kelsen, on a presupposed 'basic norm' of the legal system itself. So far, the self-referential norms of law – the constitutional rule concerning the amendment of constitution, as a typical example – is unchangeable. Nevertheless, the same author, Hans Kelsen, considers all the norms in the constitution as 'incomplete' or 'dependent' norms, since they, when violated, lack coercive consequences. To this extent, the constitutional norms need to go through a process of concretization to transform into complete or independent norms. Therefore, the constitutional norms are both self-referential and incomplete.

There have been various suggestions, e.g., Kelsen himself, Adolf Julius Merkl, H.L.A. Hart, Eugenio Bulygin, etc., to solve or NOT solve the above problem of the self-reference and/or incompleteness of constitution. The recent literature seems to be less interested in this way of questioning. Still, during last decades, the debate on the substantial legitimization of constitution or its sources of authority frames a parallel context of discussion, among philosophers of law or, more intensively, of politics.

Therefore, it is worth to revisit this somewhat awkward phenomenon of self-reference and, simultaneously, to re-examinate it on behalf of the notion of the non-strict validity of law and that of formal principles. While the Kelsenian presupposed 'basic norm', as a rule of validity, knows only strict validity of legal norms. According to a principle of validity – as a variant of the so-called 'formal principles' – a norm could be valid, but not

strictly. In case of collision against other norms, the above norm that is not strictly valid would lend it to balancing and, eventually, have to withdraw, i.e. changeable in judicial sense. The reason lies in an adequate understanding of the relation between the democratic legitimized legislature and the constitutional review. To this extent, it concerns the democratic legitimation of both statutes and the constitution.

THE (MIS)USE OF DOMESTIC ANALOGY IN THE INTERNATIONAL RULE OF LAW DISCUSSIONS: AN ANALYSIS FROM THE PERSPECTIVE OF CONCEPTUAL ETHICS

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ABSTRACT

The globalisation of law has initiated a new wave of innovation in international legal theory, uncovering overlooked dimensions of legality and encouraging the development of novel methodological tools to examine legal frameworks beyond the domestic context. Among these tools, the domestic analogy remains particularly compelling. This approach involves deriving normative concepts and principles from domestic legal settings and applying them to the international sphere, offering a critical and normative lens for analysing international law. Despite the extensive scholarship on global constitutionalism and the adaptation of domestic concepts (e.g., constitutionalism and democracy) to the international level, when and how the domestic analogy can contribute to international normative theorizing remain to be explored. This article seeks to address this gap and contributes to the methodology of international normative theorizing. It argues that the domestic analogy is justified only when scholars refrain from idealizing domestic institutional frameworks or treating them as prerequisites for achieving goals such as constitutionalism or the Rule of Law (RoL). To illustrate the risks associated with such idealisation, the article critically examines debates on the international RoL, highlighting the conceptual pitfalls that arise from uncritically importing domestic institutional configurations into international contexts.

Keywords: Domestic Analogy, International Rule of Law, International Legal Theory, Conceptual Ethics, Non-Ideal Theory.

INTERLEGALITY AS A RIGHTFUL RELATION IN SETTLER COLONIES

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ABSTRACT

Addressing contexts of settler colonialism, this paper defends a model of interlegality that conceives of relations between legal orders qua legal orders; the relations that are required in order to have law at all. Interlegality seeks forms through which interacting and overlapping political communities recognise and respond to their interdependence, relating in ways that don't reduce each (or both) legal orders to mere force or politics.

An interlegality model accepts some version of a Kantian proximity principle that requires both persons and political communities to enter into a civil condition, but I argue that in settler colonial contexts, a rightful condition cannot be established under a universal law manifest in the state, nor in some form of international law, but by interlegal relations that reflect the interdependence of legalities.

This model offers a response both to versions of legal pluralism that would deny interlegality's interactive imperatives; and to Waldron's influential reliance on Kantian principles to defend the supersession of historical injustices perpetuated by states (and settlers) against Indigenous political communities (and persons).

INTERNATIONAL LAW AND HUMAN RIGHTS IN THE WORKS OF JOSEPH RAZ

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ABSTRACT

Since its inception, the nature, legitimacy, and binding force of international law have been subjects of debate. Of course, legal positivist authors have also been part of these debates. John Austin defined international law as positive morality. Hans Kelsen, on the other hand, acknowledges the existence of international law; he even argued that international law and national law constitute a single legal system. According to H. L. A. Hart, however, international law is a primitive system lacking secondary rules and, in particular, a rule of recognition; yet it holds the promise of future development.

As for Joseph Raz, one of the most important representatives of legal positivism in recent times, it cannot be said that he has put forward an independent and systematic theory regarding international law. Raz's interest in international law theory is limited; however, toward the end of his career, his interest increased somewhat compared to earlier periods, and starting in the 2010s, he began to engage more with issues related to international law. His approach to international law is constructed indirectly within the framework of the concepts of authority and normativity he developed within his general theory of law, rather than through texts directly specific to this field. Consequently, Raz's understanding of international law exhibits a methodological character distinct from the direct assessments of international law by authors such as Austin, Kelsen, and Hart.

When discussing Joseph Raz's thought on international law, it is necessary to make a special mention of the issue of human rights. It can be said that the area where Raz engages most directly with international law is human rights. In particular, his works titled "Human Rights without Foundations" (2007) and "Human Rights in the Emerging World Order" (2009) have sparked significant debates in human rights theory. Rather

than grounding human rights in universal moral rights, Raz approaches them as a practice that actually functions in the international arena. In other words, what concerns him is the role that human rights play in international politics, international institutions, and international discourse. For this reason, he offers a framework that is open to evaluating human rights not merely as claims that can be asserted against states, but also as claims that can be asserted against international organizations, transnational actors, and even corporations.

In the paper I am presenting, I will attempt to compare Raz's theory of international law with the theories of Austin, Kelsen, and Hart to identify their differences and examine the relationship between Raz's theory of human rights and international law.

RAZ AS NEO-KANTIAN

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ABSTRACT

In one of the largest bodies of work in jurisprudence of the last century, Joseph Raz was consistently circumspect about his philosophical method. While he sometimes characterizes his project as the elucidation or analysis of concepts, he says little about the nature and limits of philosophical explanation itself. Prompted by the methodological debates of the 1990s, he presents a somewhat fragmentary theory of concepts and explanation, though says little about it beyond its application to the concept of law. However, a broader examination of his early intellectual development, alongside his published writings, reveals successive engagement with major figures in the neo-Kantian tradition (eg, Cassirer, and indirectly Carnap), figures in Anglophone philosophy who led the revival of Kantianism after the Second World War (eg Strawson, Körner, Wolff, Warnock, Sellars), and Wittgenstein, interpreted as a transcendental philosopher in the Kantian tradition, among others. This intellectual milieu helps shed light on certain recurring themes in Raz's legal philosophy, eg that there are 'necessary' truths about the concept of law, his interpretive pluralism, as well as on certain otherwise cryptic remarks, such as his claim that the concept of law is one among several "culture-transcending" concepts.

'AN IRRATIONAL LAW IS NO LAW AT ALL': THE 'RULE OF REASON' AS THE POLITICAL-THEORETICAL CONDITION OF LEGALITY

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ABSTRACT

As part of a doctoral research on the relation between bureaucracy and the rule of law, this chapter investigates the rule of law concept as if it were a 'rule of reason'; in short, a conception of legality that opposes arbitrary articulations of power based on the degree of rationality exercised through such powers. Constructing this perspective on the rule of law out of Max Weber's ideal typical classification of different (legal) rationalities and his conditions for legal-rational rule (i.e. 'bureaucracy'), a major tension is observed between the formal and substantive rationalities inherent to the modern structure of law. In analogy to the form/substance-divide in standard rule of law theory, these two rationalities are assessed as mutually co-dependent in establishing a rule of reason. Instead of definitively listing formal and/or substantive conditions for such legal rule, however, the political-theoretical dimension of reason's institutional determination through law is proposed as the very condition of legal rule.

In rendering legality an approximation of a 'government through reason', the rule of law is described as a dynamic and incomplete project that aims to identify and rule out irrational power configurations. Identifying this project with the modern process of rationalisation in the context of state and market powers, the chapter examines the respective conceptualisations of reason informed by the organisation of power through state- and market-bureaucracies. Following Weber's assertion that commercial enterprises are similarly bureaucratic in their structurally formal organisation as state enterprises, bureaucracy is theorised as the main site for the rule of reason's enforcement.

Challenging the traditionally Weberian dichotomy between formal and substantive rationality, and the primacy of the former for modern rational

law, it is argued that all formal law always also serves a certain substantive content – whether rationally construed, or to speak with Weber's idiom, based on "irrational presuppositions." Uncovering the relative openness of the meaning of 'reason' in understanding the rule of law as a rule of reason, the co-dependence of formal and substantive rationality are shown to be mediated through a communicative rationality that renders bureaucratic rule responsive to democratic deliberation. In reference to Jürgen Habermas's political-theoretical view of Weber's utterly ambivalent account of reason, the chapter concludes on the co-original foundation and formulation of reason based on the democratically expressed will of the sovereign people and by the legal protection of the individual moral rights necessary to engage in such democratic expression.

ON THE USE OF FOREIGN PRECEDENT

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ABSTRACT

In this talk, I explore the complex role and legitimacy of using foreign legal precedents in domestic constitutional adjudication, focusing on the tension between legal theory and practice. My argument highlights the importance of precedents, including foreign ones, in legal reasoning, but notes the absence of a clear theoretical framework justifying their use, particularly in the U.S. Supreme Court, where opinions can sharply diverge. Proponents of using foreign precedents argue that they provide valuable insights, promote learning, and reflect shared human rights concerns. However, opponents raise concerns regarding democratic legitimacy, cultural differences, selective use, and the lack of binding authority. The talk identifies this debate as a dilemma similar to the broader issue of the hierarchy of interpretative canons in law, which seeks to balance the real (formal, authoritative) and ideal (moral, justice-oriented) dimensions of law. To address this dilemma, I propose a non-positivist, dual-nature theory of law and legal argumentation. In this framework, foreign precedents are situated within the ideal dimension, while domestic law resides in the real dimension. I suggest resolving the dilemma through a balancing model—referred to as the "Radbruch Formula of Legal Argumentation." This model gives prima facie preference to domestic legal arguments but allows foreign precedents to take precedence when they offer more substantial rational grounds, especially in complex or unsettled cases or where global consensus exists. Ultimately, my analysis advocates for a nuanced, balanced approach that integrates formal authority with reasoned moral insight, encouraging openness to foreign legal reasoning within a global community of legal discourse.

TOWARDS A PHENOMENOLOGY OF INTERLEGALITY

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ABSTRACT

'Interlegality is the phenomenological counterpart of legal pluralism', wrote Boaventura de Sousa Santos when introducing the concept of interlegality. This paper takes this remark seriously and interprets interlegality as the subjective experience of individuals who find themselves simultaneously situated within multiple overlapping legalities. Whereas legal pluralism describes the objective coexistence of different legal orders from an observer's perspective, interlegality refers to the way in which such plurality is lived and experienced from the first-person perspective of participants.

To develop this phenomenological account, the paper offers a critical reconstruction of Hans Lindahl's theory of legal ordering, particularly as presented in Fault Lines of Globalization: Legal Order and the Politics of A-Legality. In this book, Lindahl begins by emphasizing the practical perspective of individual participants but ultimately grounds legality in the first-person plural perspective of legal collectives. On this basis, he analyses the boundaries, limits, and fault lines of legal orders, and develops a normative account of responsiveness to a-legality as their possible alternatives. While acknowledging the significance of this approach, I argue that Lindahl's analysis moves too quickly from the first-person singular perspective of participants to the first-person plural perspective of legal collectives.

The paper therefore seeks to reconstruct interlegality by retaining the first-person singular perspective as its primary point of reference while incorporating Lindahl's insights into the collective dimensions of legality. From this perspective, a-legality is encountered not only as a challenge to legal orders but also as a lived experience of individuals confronted with competing normative claims arising from different legalities. This shift in

perspective enables a reconsideration of the possibility of a rightful condition of legalities. Rather than understanding such a condition solely in terms of relations among legal orders, it can also be approached through the situation of participants navigating overlapping legalities. In this context, Lindahl's notion of human rights as the rights of strangers offers a way of articulating a normative response to forms of strong a-legality that resist incorporation into existing circles of legal reciprocity.

BOUNDARY PROBLEMS AS INTERLEGAL BALANCING PROBLEMS

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ABSTRACT

Democratic government requires that those subject to law also participate in its creation. Where direct participation fails through political or substantive exclusion (Boundary Problem, BP1), mechanisms of legal contestation, above all constitutional review, serve as a supplement: a channel of "negative" legislation through which the excluded may have their reasons considered. However, the BP resurfaces at each level: (BP2) Standing and admissibility rules exclude from constitutional review those already excluded from positive legislation; (BP3) international oversight bodies may reintroduce "abroad" the same gatekeeping found "at home"; and (BP4) even successful access to adjudication does not guarantee a decision that actually engages with the full set of legally relevant norms and arguments invoked by those affected. The BP is thus nested, and it bottoms out not in a lack of forums, but in a lack of non-unilateral justification.

This paper argues that these nested boundary problems are, at their core, interlegal balancing problems. The argument turns on a distinction between interlegal balancing problems and interlegal balancing arguments. Interlegal balancing problems are structural: they arise wherever a person's legal positions are determined by multiple legalities simultaneously and a previously enacted rule does not suffice to make them compatible. Interlegal balancing arguments are meant to consider and balance the relevant considerations that are deemed potentially applicable. Finally, a decision based on these interlegal balancing arguments is only possible once such a problem is identified and assessed. Interlegal balancing problems and arguments should be distinguished, because one can exist without the other: courts currently resolve interlegal balancing problems without al-

ways producing interlegal balancing arguments. They do so through subsumption, applying the norms of their own forum as if the interlegal dimension were not there. This is not a necessary doctrinal choice. It amounts to an exclusion, by default, of the interlegal balancing problem itself, and forecloses the argumentative space before it can open.

My contribution is mostly analytical, before it is normative. By identifying interlegal balancing as a distinct type of problem and mapping the contingent ways in which standing, jurisdiction, and admissibility rules have occluded its recognition (not only normatively, but also epistemically), I submit concepts for interrogating those rules. Climate litigation serves as a paradigmatic field of application: a domain at the intersection of multiple and diverse legalities where boundary problems converge, and where the absence of interlegal balancing arguments is most acutely felt. The normative stake is that the exercise of authority implies responsibilities not exhausted by loyalty to forum rules. Interlegal reasoning is thus a means by which a rightful condition for legalities may emerge in a decentralized fashion, within each legality.

CONSTRUCTING NORMS: NORMATIVE PLURALISM IN FRAGMENTED WORLD SOCIETY

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ABSTRACT

Norms are constructed by they also construct. Norms are everywhere. Even writing this abstract involves considering settled norms and these very norms are both formal and substantial: formally abstract should not exceed 500 words and should be submitted by March 27. Substantially the abstract has to deal with multidimensionality, intersectionality and internormativity. Not only writing the abstract but also writing the paper involves obedience to other, more formalized norms equipped with sanctions – norms of academic ethics and strict copyright laws. Thus the given paper, while being about norms, is itself subordinated to the differing realms of norms – ethics, logic, positive law. The paper is devoted to the almost forgotten idea of normative pluralism which has been marginalized and overshadowed by the dominant concept of legal pluralism. But before legal pluralism there was normative pluralism, the complex network of societal normativity encompassing all forms of societal life. And in the beginning was Hegel. Starting from Hegel, three basic normative structures differentiate within the realm of objective spirit: abstract right, morality and ethical life (Sittlichkeit). It is this third part of ethical life which enables another three dimensions of collective normativity to be evolved: family, civil society and the state. All of this forms of sociality are coordinated and steered through differentiated normative structures, thus allowing normative pluralism. Another grand theory of modernity, proposed by Luhmann, poses norms also in the center of evolution of world society. This time norms function as a mechanism for stabilizing normative expectation, enabling society to evolve as an encompassing network of functionally differentiated social communications. In three forms of social systems – interactions, organizations and society – norms exist and maintain the existence

of all possible forms of social communication. It will be argued in the paper that without norms there can be no form of society and in modern world society only the normative pluralism can ensure harmonious evolution of nature and culture. Only the normative pluralism can oppose and protect from expanding tendencies of normative domination stemming from certain privileged and growing forms of power-structures. Studying normative pluralism is possible only on interdisciplinary basis, gathering and merging knowledge, methods and theories from different academic branches thus creating an encompassing field of study – normative pluralism of multicultural world society, where all normative structures need to be positioned on equal footing within differentiated forms of interactions, organizations and functional subsystems like law, politics, economy, religion, family: all of them being based on norms which regulate their own internal structures and do not exert destructive influences of social environment. This perspective is not descriptive alone, as it allows for normative critique – when conflicts between different normative orders emerge, such tendencies illustrate the breakdown of the function of norms seen in stabilization of social expectations. Normative pluralism involves normative conflicts and inconsistencies which need to be controlled and resolved through higher order norms. The modern society is a normative construction and this construction has a multidimensional structure, safeguarded by norms of higher order. Norms regulate but norms are also regulated.

DOES INTERLEGAL REASONING HAVE AN INTERRELIGIOUS ANALOGON?: DEFEASIBLE PRESUMPTIONS, NORMATIVE ORDERS, VALIDITY CLAIMS

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ABSTRACT

Interlegal reasoning has not explicitly theorized religious legalities or normative orders from their own internal perspective. At first sight, a close analogon may be expected in the form of interreligious dialogue. However, interreligious dialogue implies contingency on the intentions of participants. In contrast, the interreligious analogon of interlegal reasoning (interreligious reasoning, for short), is necessary and structural: the validity claims internal to any religious tradition already carry a commitment to other-regarding reasoning that cannot be coherently refused without performative contradiction.

This thesis is grounded by three tenets.

Tenet 1: A presumption of non-exclusivism. Interlegal reasoning generalizes non-exclusivity as a defeasible presumption: alien legal norms are potentially applicable unless sufficient reasons can be produced for their exclusion. An important precedent is found in Kelsen's theory, notable for its positivist and scientific rigor. Kelsen defended non-exclusivity regarding customary law and international law. For Kelsen, customary law and international law did not require "incorporation" or "transformation" clauses. They were law by default. Kelsen invoked his basic norm to this effect. What positive law could do, at the level of clauses or application, was to decide whether and how to exclude some of these alien legal norms. Today, authors espousing the necessary validity of human rights may also be said to argue for their legality by default. Interlegal reasoning generalizes this as a defeasible presumption. Alien legal norms are potentially applicable, unless sufficient legal reasons can be produced.

The same inversion holds interreligiously. Alien religious reasons are presumed relevant unless sufficient reasons justify their exclusion. This presumption is defeasible but not optional, and it is activated in concrete cases (e.g., recognition of marriage, divorce, or ritual status across traditions) where the tertium comparationis is given by the case itself, not by a postulated universal religion. This reasoning is performed by operators already internal to traditions: the parish priest, the faqih, the rabbi, the lama, the council of elders. Being conditioned by one's tradition is unavoidable; being exhaustively determined by it is not. Where a tradition makes validity claims, the contrary would constitute a deficit of justification criticizable on the tradition's own terms and not only externally.

This framework operates beyond the exclusivism/inclusivism/pluralism typology. It rejects exclusivism. It shares with inclusivism the acknowledgment of the other's reasons, but without requiring the presupposition that one's own tradition holds privileged access to truth. It shares with pluralism the recognition of common teleological objects (peace, salvation, or the good life) but it dispenses with a requirement of a single underlying religious truth. Interreligious reasoning is instead grounded in a non-exclusivist, internalized coordination of alien religious insights, filled in by the internal resources of each tradition.

Tenet 2: Responsibility. Legal officials, especially those at apex courts, are torn between internal and external stakeholders. Internal stakeholders, their own communities, constituencies or demos, are owed loyalty and accountability. External stakeholders —those affected and subject to their decisions— are oftentimes those most affected and structurally excluded from participation. Cases in point include transnational challenges such as climate protection, migration, and security. This tension between accountability and responsibility is not only legal. The religious analogue is the tension between a tradition's institutional commitments and the spiritual vocation that has historically exceeded those commitments.

Considering indigenous legalities, which tend to also be religious orders at one and the same time, the question has called for institutionalizing interlegality, with mechanisms such as free, prior informed consultation, the recognition of historical land rights and titles, or participation in relevant decisions. Interlegal reasoning occurs in law-making, law-identifying, and law-applying operations at the same time. In the same sense, there is no

reason why venues for interreligious and intercultural reasoning should be kept from being institutionalized – within each tradition.

Tenet 3: Order-level Justification. All religious traditions involve worldviews and, therefore, claims to validity over both practical and metaphysical (ontological, alethic, epistemic) domains. Given that this same object is shared across religious traditions, there is the risk of incurring a performative contradiction were a religious tradition meant to claim truth but also discount alien claims to truth. Interreligious reasoning exposes this contradiction from within, not from outside: it is not an external liberal imposition but a demand internal to claims to validity.

Three potential objections will be discussed.

First, an objection from verification would deny that religions have centralized officials akin to legal orders. The reply points that every tradition possesses its own functional normative identifying operations. The verification objection underestimates the internal normative systems of religious traditions as functional identifying operations, comparable to non-state law, which is itself a recognized object of interlegal reasoning. Furthermore, beyond officials, religions are part of what Cover calls "nomos" communities, or what Forst and Günther call "normative orders" which, for their participants, constitute complexes of justification, praise and blame.

Second, an objection from incommensurability would deny that religions can be compared. A reply would insist on global claims to incommensurability being distinguished from local claims to incommensurability. Two objects cannot be incommensurable or commensurable as such. They presuppose a tertium comparationis even in order to hold that they are actually on a par, comparable or not fitting for comparison. Comparison does not require traditions to be commensurable as wholes, only that specific elements be compared under a covering value given by an issue or case at hand. Once we commit this analytical shift, there is no longer any need to pose a universal religion underlying extant traditions.

Finally, an objection from asymmetry would hold that religions do not claim validity the way that western legal practices and officials do. However, absolute sovereignty was equally characteristic of the modern state, and normative systems in which the legal and the religious are constitutively inseparable represent the historically general case, not the exception.

The modern western state is a particular version of multidimensional cultures — although we view "sources" or criteria of applicability as siloed, sources of law are social sources. Once multidimensional practices (culture, religion, law) are included among interlegal reasoning, interreligious reasoning follows not by analogy but by extension.

As a conclusion, I argue that the extension of interlegal reasoning toward the interreligious is not a forced analogy but, in a precise sense, constitutive of both normative domains as such. Like law, religions in our interdependent times are asked to account for each other, and I think that some insights from interlegal reasoning can be of help.

THE LAW BETWEEN NORMATIVE WORLDS: MULTINORMATIVITY AND THE EPISTEMIC AND DEMOCRATIC CHALLENGES

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ABSTRACT

Legal theory secured disciplinary autonomy through a state-centric, monist image of law – paradigms that ground different strands of legal positivism. Legal pluralism challenged this inheritance by showing that state law never operates alone and by foregrounding the persistent coexistence of non-state regulative arrangements. Yet pluralism frequently reproduces what it criticizes: when criteria of what counts as law operate as the gatekeeping device, state-centered and monist criteria are reinforced through the very act of recognizing plurality. This paper argues that the perspective of multinormativity – recently developed at the intersection of legal history and legal theory – offers a more epistemically open framework for analyzing how multiple normative worlds coexist, interact, and co-constitute one another without presupposing hierarchies anchored in the label of juridicality. The paper reconstructs multinormativity's core claims and heuristic promise; locates it vis-à-vis different strands of legal pluralism; and discusses two implications: an epistemic-methodological challenge (relocating epistemic authority toward praxeological, historically situated inquiry) and a democratic-institutional challenge (clarifying how legal practices and institutions authorize, suppress, or mediate competing normative worlds). As changing world problems reconfigure normative landscapes, multinormativity reframes law as a practice of intercultural mediation and translation, and as a democratic resource for negotiating contestation and coexistence among normative worlds.

Keywords: Multinormativity, legal pluralism, juridicality, normative orders, democratic mediation.

LAW IN THE TIME OF OXYMORA, AI AND QUANTUM TECHNOLOGIES: INTRODUCING FOUR-DIMENSIONAL THINKING

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ABSTRACT

In the early 21st century, the trend towards an increasing use of oxymora and paradoxes across a wide range of scientific fields, including law, was confirmed by the relevant academic literature. Owing to their unique quality of entangling two antagonistic concepts, these essentially oxymoronic notions naturally defy the dominant mode of dualistic reasoning supported by binary logic. Moreover, the continuing rise of oxymora in the legal field threatens to further erode the already fragile legitimacy and efficiency of law, both nationally and globally. Lawyers, particularly in the European context, however, are resisting the formulation of new modes of legal reasoning and logic necessary for acquiring new legal skills. Yet the rapid development of new technologies, notably those referred to as artificial intelligence (AI) and quantum technologies, now effectively challenges the traditional dualistic modes of legal reasoning and the binary conception of legal logic. AI itself has been characterised as an oxymoron, and oxymora have been described as the language and logic of quantum mechanics, which constitutes the basis for the rapid development of new technologies aimed at the complete artificial reproduction of humans and nature. While the development of these new technologies, particularly in the field of computer science, has made use of new modes of thinking—expressed also in oxymora—and notably applied a more 'fuzzy logic', the parallel cultivation of human skills is lagging behind. This tendency is clearly observable in the field of AI, where little attention is paid to the role of human intelligence. AI or quantum literacy remain mere buzzwords devoid of clear meaning and even less the subject of concrete actions towards a coherent educational strategy for the future. To address the many complex challenges arising from these disruptive technologies, the present

paper introduces the concept of ‘four-dimensional thinking’, derived from Albert Einstein’s scientific formulation of reality as a ‘four-dimensional space-time continuum’. It outlines both the basic traits of this novel cognitive skill and how it can be trained and applied to law in practice.

Keywords: Law and Language; Oxymora and Paradoxes; Artificial Intelligence and Quantum Technologies; Four-Dimensional Legal Thinking

RELIGIOUS LEGITIMATION OF SOVEREIGNTY IN TERRITORIAL CLAIMS

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ABSTRACT

From its very origins, the language of sovereignty was closely tied to religious narratives. The obligation of human beings to subordinate themselves to political authorities was normally derived from the fact that these beings are subject to God and the authorities are elected or, at least, tolerated by God, so that even bad governors have their sovereignty by the divine will. God's will is that no land remains without the divine see, so that the power that claims to be sovereign over the contested land shall prove that it must happen so according God's will. From John of Salisbury to John Locke, this used to be the key element in the chain of political argumentation. The Enlightenment reshaped this argumentation but did not change it substantially. Still nowadays, this conviction firmly sits in the common perception of the state as of the supreme source of the highest and unconditional normativity. As Eric Voegelin and similarly minded scholars showed, this secularization in fact meant not elimination but substitution of the Divine – the state or other social entities (society, humankind, proletariat, etc.) were anthropomorphized and endowed with the divine qualities. From this perspective, the political can be seen as a 'political theology' (Schmitt), where the structure of argumentation remains the same over centuries.

In almost all wars of the past and the present, the sovereignty argument in territorial disputes displays the ceremonial, liturgical, and acclamatory aspects that seeks to demonstrate that God is with this or that side of the conflict. It is not accidentally that the most significative contemporary territorial conflicts (Cyprus, Palestine, Kashmir, Northern Ireland) are rifted along the dividing lines of religious beliefs. However, this argument is not as flat as suggested de Bussy-Rabutin who argued that God is usually on

the side of the big squadrons against the small. It is rather about the symbolic aspect of the state power, so that the balance of military or other forces is not crucial factor here; it is rather about Symbolpolitik than about Realpolitik in international relations. To follow Giorgio Agamben's terms, this kind of kingdom's glory implies that the contesting state is expected to show off that it possesses all the attributes that witness God's disposition to its power over the given region. This axiological legitimation implies a specific alliance of the political authorities and the (de facto) spiritual ones (the Church, the Party, the influential public intellectuals, etc.), implies a system of representations and symbols that needs to be interpreted by these spiritual authorities. In spite of explicit allegiance to the separation principle, the pattern remains the same and reproduces itself in international and constitutional law over centuries.

SOVEREIGNTY AND ECCLESIASTICAL AUTOCEPHALY IN THE POLITICAL-LEGAL CONTEXT OF THE ORTHODOX CHRISTIAN WORLD

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ABSTRACT

Church autocephaly is a fundamental concept of Orthodox Christian ecclesiology and means the institutional independence of a local church, which dogmatically remains part of the Universal Church. An autocephalous church is independent in its self-government, but not in its doctrine. This idea of independence and autonomy places the concept of autocephaly on the same conceptual plane as that of sovereignty. What is the historical relationship between these two concepts?

Early Christianity in the Roman Empire developed the system of pentarchy, in which the ancient churches coexisted and the Roman bishop had an arbitration role between them. In this sense, the ancient churches are still autocephalous today (e.g., the Patriarchate of Jerusalem or the Patriarchate of Antioch) - they elect their own chief bishop and self-govern. In the Orthodox context, the Church existed within the framework of the Byzantine imperial system and was part of its concept of universal power (as opposed to the later national-territorial focus of sovereignty).

Later, the development of the nation state and the state legal regulation of religion imposed a different model. In the Orthodox world, the idea of a national church (largely based on the Protestant model) was ideologically and institutionally accepted, although it is still rejected doctrinally to this day. The autocephaly of the church has become a political cause of the national state, which has established state patronage over the local national church at the risk of threatening the rights of other churches.

In concrete historical terms, these events first unfolded with the collapse of the Ottoman Empire, and then the question was always raised with the collapse of the Russian Empire, the USSR, and Yugoslavia. Bulgaria and the Ecumenical Patriarchate were in a similar conflict in the second half of

the 19th century, and similar ongoing conflicts exist in North Macedonia and Ukraine. Currently, following Russia's invasion of Ukraine, we see a sacralisation of the war, which is being waged in the context of the church conflict over the separation of Ukrainian Orthodoxy from the Moscow Patriarchate.

Disputes between the imperial and national churches, between the nation state and foreign ecclesiastical influence, have been repeated many times throughout history, but they should also be presented within a conceptual-theoretical framework.

Theological literature suggests that autocephaly is similar to sovereignty. In the realm of political theology, there is a temptation to present the autocephaly of churches as the religious analogue of state sovereignty. In my research, I want to prove that autocephaly has become a goal for sovereign states, subordinating the local churches. I will trace this development back to the classics of sovereignty and, above all, to Hobbes, who modeled the state as an “earthly” god whose sovereign power included the need to regulate church affairs. In this regard, the practical Protestant solution of the monarch as head of the local church was adopted in the Balkans (first in the Kingdom of Greece) to create a model of a sovereign state with a national church, which is still influential today.

WITH OR WITHOUT YOU? GOD'S SOVEREIGNTY AND (DE)ROMANTICISATION OF LAND

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ABSTRACT

This paper explores, through the relationship between divine will, people, and land, the unresolved tension within Jewish thought about the particular versus the universal. Namely, can a state be conceived independently of a relationship with determined land? And can the law of a nation—the law of the land—be grounded without territorial anchorage? We will argue that contemporary discourses on land and sovereignty are often trapped between what can be termed the "romanticisation" and "de-romanticisation" of the relationship between people, land, the divine will and hence the law. By "romanticisation" we mean the process through which land ceases to be mere geography and becomes an object of profound emotional, spiritual, and identity-defining attachment—a sacred patrimony that grounds collective existence and legitimizes sovereign claims. Conversely, "de-romanticisation" seeks to strip land of these affective and metaphysical investments, reducing it to functional space or, in its most radical form, to the whole earth as the common heritage of humanity. At the heart of this dynamic lies a deeper theological-political structure. Modern state sovereignty operates as a secularised transfer of divine sovereignty. The "will of God" as the source of normativity finds its secular analogy in the "will of the State" as the source of law. Our analysis draws on the early 20th-century Jewish thinker Franz Rosenzweig in The Star of Redemption (1921). It is there that he offers a radical alternative to the romanticisation of territorial sovereignty. For Rosenzweig, the Jewish people constitute a "metaphysical community" whose existence is grounded in cyclical liturgical time rather than spatial extension. Unlike other nations, whose identity is rooted in common soil and who must therefore struggle for territory, the Jewish people are already "eternal" by virtue of

their relationship with God—a relationship mediated through Torah and tradition rather than land. The Jew, in Rosenzweig's formulation, does not need land in the same way other peoples do. This perspective fundamentally challenges the identification of divine will with any particular territorial sovereignty. The paper then examines how this Rosenzweigian framework could be seen to birth the ambiguous prophetic vision of Isaiah. Here one can see how the "return to Jerusalem" may act as (a) a poetic symbol of a universal kingdom of justice—a kingdom whose sovereign is God alone, and whose "land" is the whole earth—or (b) as a nationalistic announcement reinvesting divine will in a particular territory and people. We will conclude with a paradox. On the one hand, Rosenzweig's anti-romantic conception could be seen to offer a form of dissociating divine authority from state sovereignty, opening space for forms of political community independent of territorial claims. On the other hand, the experience of the Shoah demonstrates that such a "project" can be annihilated precisely because the political community exists without territory and without a consistent political sovereign. The paradox, then, lies in the necessity of negating the project—by legitimizing a traditional sovereign Jewish state—to safeguard its future realization as a Civitas Maxima.

THE PARADOX OF THE EXPRESSIVE FUNCTION IN CHILEAN LABOUR LAW

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ABSTRACT

The expression refers to how a statement or action can indicate a particular mental state, such as a belief, an idea or a theory. This expressive or symbolic dimension of words and acts also extends to the law. For example, debates about legislation may be more closely linked to what those laws express than to their actual effectiveness, as with the death penalty or anti-discrimination laws. In other words, the law may have an expressive dimension that transcends its text; indeed, a law may even express ideas or beliefs contrary to what is literally stipulated in that law, constituting what I shall term, from a critical perspective, 'the paradox of the expressive function'. In this article, I shall examine some amendments to Chilean labour law in recent years that exemplify this paradox, such as the recent law on work-life balance, which, contrary to its stated objective, reinforces discrimination against women.

Keywords: Expressive function, law, narratives, beliefs and work.

THE EXPRESSIVE FUNCTION IN EUROPEAN LAW

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ABSTRACT

Expressive theories of law which place emphasis on symbolic or expressive function of law have been most often concerned with criminal law (especially the meaning of punishment), racial discrimination and generally antidiscrimination laws, and provisions of constitutional law. However, expressive function of law can be found in various legal aspects and events.

This presentation will tackle on the expressive function of law that can be identified within the European union law. More precisely, it shall elaborate on the symbolic function of unanimous voting rules, particularly the rules that have been set in the Luxembourg compromise of 1966. Regardless of the long-standing discussions on its legal nature (whether it is only a political accord, legal custom or acquis communautaire), the Compromise clearly sent a strong message about the legal nature of the EU. Arguably, it is precisely because of its symbolic meaning that it has created (or reinforced?) the social norm of unanimous voting when it comes to questions of "vital interests" of member states.

In this case it can be argued that expressive function of law was more important than its instrumental one. Namely, in that particular historic moment it was very important for the EU to reaffirm its intergovernmental element, as member states (particularly France) were not willing to give up more sovereignty than it was necessary. As the EU was originally founded both on principles of supranationalism and intergovernmentalism, it was crucial for its survival to maintain and balance both.

It can be argued that unanimous voting principle enshrined in the Luxembourg compromise helped to appease member states by preserving the principle of intergovernmentalism, regardless of its practical effects or legal validity. Even though today the great majority of decisions in the European union are made by qualified majority voting principle, a few that

require consensus upkeep the importance of member states' sovereignty. Occasional unanimous voting symbolizes the importance of member states and sends a clear message that the principle of intergovernmentalism still matters.

THE EXPRESSIVE FUNCTION OF CONSTITUTIONAL DRAFTING

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ABSTRACT

Expressive theories of law typically focus on what legal rules and sanctions "say" about social values and mutual standing. For instance, Feinberg's classic account treats punishment as a "conventional device" for expressing attitudes of resentment and judgments of disapproval; Duff develops this into a communicative theory in which punishment aims at a two-way exchange between polity and offender. This paper extends that communicative template beyond criminal law by arguing that constitutional drafting – especially preambles and foundational clauses – operates as a paradigmatic site of law's expressive function, even in the absence of suffering-imposition.

The core claim is that constitutions communicate not only through propositional content ("what is said") but also through aesthesis ("how it is experienced"). In constitutional law, as well as rights-foundational treaties, expressivity depends the sensorial-affective register through which law becomes meaningful for embodied subjects. This aesthetic layer helps explain how legal instruments can express and elicit civic attitudes analogous to those foregrounded by Feinberg and Duff – disapproval of certain political pasts (e.g., fascism, racism) and endorsement of shared ideals – while inviting uptake, contestation, and reaffirmation through democratic practice.

Building on the distinction between (a) an epistemic assessment of form (clarity, harmony, rhetorical architecture) and (b) aesthesis (how legal language "strikes" perception, emotion, and imagination), the paper reframes the legal drafting as a strategy that stages a desirable future and a "poetics of community": this strategy draws a communicative infrastructure for legitimacy, where aesthetic choices function as motivational and coordinative resources to create the goodwill and attachment that coercion alone

cannot secure. To this aim, I will develop a conceptual framework linking expressive function to constitutional aesthesis; the framework will then be extended to other legal domains (e.g., human-rights instruments and regulatory texts), showing how aesthetic form can amplify – or frustrate – law's expressive aims.

Keywords: expressive function; constitutional aesthesis; legislative drafting.

LAW AS COSMETICS: PHRASES WITH OR WITHOUT MEANING

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ABSTRACT

Many Europeans live in countries with constitutions which in their preambles have Invocatio Dei in various forms, or on the other hand have content which is connected with historical roots which is intertwined with Christianity. At the same time there are countries which have state churches and where state is connected with particular religious group in more formal sense. In the hierarchy of norms constitutions are above all other normative texts which exist in the huge net of documents and judicial decisions and therefore, in formal sense, are above all those. Would it be logically acceptable to conclude that even if preamble is not norm in strict sense, its presence in the highest normative document of the country have at least quasi-juridical meaning? Do they, or should they have a legal impact on all norms, both of those written in subsequent paragraphs of the same constitutions or with much wider impact direct influence on all laws of the state? In other words, do Christian values have such impact on the legal systems where there are constitutional references to Christianity and/or established state churches (United Kingdom, Malta, Greece, Denmark, to just name a few). If we presume that Christian values are there because they are good (if not, why those would be written in the basic document of the state; document where highest values of particular nation are?) should citizens expect to have Christian laws all the way down to the lowest legal document produced by the state, not just by parliaments, but also by courts and administrative bodies? In Christian (Thomistic) legal thought, law is much wider than pure judicial system of norms as system of rights and duties, which, in legal theory, is defined as positivistic set of rules and followed by normativism. Christian legal thought reaches towards values which make law rounded up and complete, a system of values which bring cohesion, harmony and human flourishing. Moral and social

norms and values which do not intrinsically belong to normative world, or concept, constitute important elements of the notion what the law is or how the law should look like. Forgiveness, charity, mercy are values which have to be planted into law regardless if we consider them part of the law itself or values which should penetrate into law, or law should look upon them in order to be complete and really just. Pope Benedict XVI in His Encyclical 'Caritas in Veritate' writes about connection between justice, charity and truth and explains that justice can be real only if it is connected with truth and what God wants from mankind; and God is Love (John 13:1, Romans 5:5). This is also followed by Pope Francis when he wrote and spoke extensively on the importance of mercy. Therefore, in Christian legal thought, law which is good, is law which is connected with values which make him complete and really just. This notion of Law is present from Aristotle's equity and St. Augustine's 'nam lex mihi esse non videtur, quae justa non fuerit' brought up in De libero arbitrio voluntatis, all the way to Radbruch, Finnis and even Hart in his slight shift into inclusive positivism. Therefore, the major question in the first place is what the law is, and then we could argue if that law is good or not. It is certainly a question for European states which have constitutional provisions with references to Christianity: those societies will have to decide if normative framework of their Constitutions are pure cosmetics or pillars of society upon which law should be built up.

EXIT AS A MESSAGE: WHAT EU CONSUMER LAW SAYS ABOUT POWER

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ABSTRACT

The set of instruments through which EU law has, for several decades now, sought to protect the consumer is a relatively stable one, comprising precontractual information duties, the right of withdrawal, rules concerning the conformity of performance with the contract, mechanisms of data portability, and, at the level of the legal order as a whole, the policy of competition protection. Behind these instruments lies a specific diagnosis of contractual asymmetry. The consumer, on this diagnosis, suffers from an informational deficit, but apart from that deficit, they remain a fully autonomous participant in market relations, and their contractual freedom is regarded as restored as soon as the deficit has been corrected. The realities of digital commerce, however, do not lend themselves easily to such a diagnosis. Network effects, dependence based upon digital identity, the entanglement of personal data with the very infrastructure of services, as well as the social embedding of those services, together result in the termination of a contractual relationship with a platform operator becoming costly, illusory, and not infrequently self-destructive for the user themselves. Doctrine has been inclined to read this disjunction as a problem of effectiveness, that is, as a question of insufficient factual protection afforded to users by the existing instruments. This problem possesses, however, and arguably above all, an expressive dimension. In conditions in which the exercise of the right of exit remains costly or illusory, a legal order organised around information duties and the right to terminate the contract communicates, in its very organisation, a moralised picture of individual responsibility and voluntary participation in the market, and in doing so legitimises the structural domination which it ought to contest. Drawing upon expressive theories of law (Sunstein, 1996; Anderson &

Pildes, 2000) and upon relational conceptions of equality and dignity (Anderson, 1999; Khaitan, 2012), I argue that the protective architecture of EU consumer law is not reducible to the allocation of contractual risk or to the shaping of market incentives. This architecture also publicly communicates a determinate normative content: it speaks to who is to count as a weaker party, to what response to an asymmetry of power is to be regarded as legitimate, and to what the legal order is prepared to recognise as a proper object of protection. Consumer law tells the user "you may leave"; less obviously, it also tells them "if you had the possibility to leave and stayed, your continued participation is attributable to you." This second utterance constitutes what I describe as the expressive failure of the law. In relationships entered into through online platforms, in which the exercise of the right of exit means the loss of one's social network, of one's reputation, of one's audience, of the infrastructure of one's economic activity, or even of one's digital identity, the presuppositions upon which the right of withdrawal rests cease to be applicable. Continued participation in the relationship cannot bear the moral weight which the legal order tacitly attaches to it, and the right of exit, formally framed as a remedy, comes to function as a verdict against those who have failed to invoke it. However, whether the figure of the reasonable circumspect consumer corresponds to the realities of obligational relations entered into through online platforms does not constitute a question of a solely empirical character. The question concerns, perhaps above all, the kind of subject that EU private law publicly establishes – through its categories, its default arrangements, and its protective remedies – as worthy of legal protection. The familiar dichotomy of efficiency and justice fails to capture the substance of this dispute, which touches the very identity of the protected subject. The present paper undertakes a reconstruction of the protective architecture of the consumer acquis, together with selected acts concerning transactions through online platforms, and subjects this architecture to analysis from the perspective of the expressive theory of law and of the relational conception of equality. The argument develops in two stages. The first stage concerns the diagnosis: exit-based protective remedies, under the conditions of platform dependence, do not contest the asymmetric power of the platform operator, but confirm it. They do so in an expressive register, by what they communicate to the parties, rather than by what they distribute between them. The second stage concerns the normative implication. For the legal order

to communicate nondomination rather than to affirm tacitly the voluntariness of continued participation, the protective function of EU private law would have to be redirected towards obligations of a positive character – design constraints, prohibitions on manipulative architectures of choice, and a guarantee of genuine continuity of access. A modernisation of EU consumer law along these lines would constitute an attempt at answering the question of which subject this law is in fact called upon to protect under the conditions of the single digital market. The role of private law, after all, does not consist in standing guard over the rigid framework of an obsolete commerce but rather in providing responsive answers to contemporary problems arising in relations between private subjects.

Keywords: expressive function of law; EU consumer law; online platforms; right of exit; relational equality.

THE EXPRESSIVENESS OF TORT LAW

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ABSTRACT

The expressiveness or the expressive function is not a completely unknown phenomenon in law in general (SUNSTEIN, 1996; ANDERSON & PILDES, 2000; ADLER, 2000). In the specific context of criminal law, the idea that criminal punishment serves an expressive function is familiar. FEINBERG (1970: 98) introduced this concept famously, stating that the difference between punishment and other sanctions like fines is that it constitutes 'a conventional device for the expression of attitudes of resentment and indignation, and of judgments of disapproval and reprobation, on the part of either of the punishing authority himself or of those "in whose name" the punishment is inflicted'. Later, FEINBERG (1970: 101-105) adds that the expressive functions fulfilled by punishment include manifesting authoritative disavowal of the wrongful act, symbolic non-acquiescence regarding the act, vindication of the law, and an absolving effect regarding other non-offending individuals.

While tort law does not directly punish defendants (notwithstanding the possible punitive function identified above), the question that this research aims to address is whether tort law can serve an expressive function analogous to that in criminal law. FEINBERG himself (1970: 104) identified in the practice of punitive damages a manifestation of this expressive function, through which the court can assert the rights of the victim through the 'symbolic machinery of punishment.' It seems quite clear that tort law can fulfill this expressive function. After all, as NOZICK (1993: 30) points out, 'a large part of the richness of our lives consists of symbolic meanings and their expression, the symbolic meanings that our culture attributes to things or those that we ourselves grant.' However, questions persist regarding the

role that this function should play, its implications for the other characteristic functions of tort law, and what messages or meanings are or should be expressed through this practice.

In this research, 'expression' is understood as any action or statement that manifests a belief, idea, or theory (ANDERSON & PILDES, 2000: 1506). Typically, these are expressed through statements, but they can also be conveyed through actions. As SUNSTEIN (1996: 2021) points out, 'actions are expressive; they carry meanings.' ANDERSON & PILDES (2000: 1508) make an interesting distinction between 'expression' and 'communication.' While the former only requires that the mental state or idea be manifested through a speech act or positive action, the latter would require the idea to be expressed with the intention that others recognize that communicative intent. Therefore, the reference to an 'expressive' function would be broader and more encompassing than a 'communicative' function, as symbolic meanings or contents could be identified in the practice of tort law that are not necessarily formulated intentionally. This conceptual aspect is relevant to the analysis proposed here, as it opens the possibility for tort law to convey certain messages without necessarily being intentionally formulated by the agents involved in the practice (mainly judges and lawyers).

This expressive function has been recently developed by Scott Hershovitz in the context of American law (HERSHOVITZ, 2014, and especially HERSHOVITZ, 2017). Despite the notable differences between legal systems, these reflections are applicable also to continental systems. Hershovitz cites a 19th-century American battery tort case, Alcorn v. Mitchell, 63 Ill. 553, 554 (1872). The defendant, Alcorn, spat in Mitchell's face outside the courthouse. According to Mitchell's description, it was not just any spit but a combination of 'spittle mixed with a variety of stinking and filthy drugs, whisky, and other kinds of dirt' (HERSHOVITZ, 2017: 5). In HERSHOVITZ (2014: 92), the author cited the case to demonstrate his thesis that tort law would be a substitute for private revenge or retribution. While not diminishing the importance of revenge for the author, he subsequently develops the thesis based on a different expressive content.

The central issue of revenge in the Alcorn case was the protection of the victim's social status. Alcorn's act humiliated and degraded Mitchell, affecting his social status. The court in the case precisely stated that his

dignity was affected. The thesis is that tort law establishes that the defendant committed an unlawful act against the victim. Hershovitz argues that, unlike criminal law, tort law can achieve this goal without the need to make the perpetrator suffer, redistributing the losses suffered by the victim to the plaintiff through the compensation mechanism (HERSHOVITZ, 2017: 31).

If that is the case, there are interesting implications for the practice of tort law that have not been studied until now in continental legal systems. For example, in Chilean law SAN MARTÍN (2023: 83) recently refers to this expressive function that tort law can fulfill, stating that according to her, 'one of the functions of liability would be to declare that the defendant is the author of a wrongdoing, without necessarily granting compensation for the victim. In France, this gave rise to liability claims for one franc.' Certainly, this statement captures an important dimension or projection of the expressive function, as these compensations have a nominal character and essentially serve an obvious communicative purpose (GOLD, 2013; SMITH, 2011: 71; VARGAS, 2023: 190).

However, the expressive function as outlined in this research is broader, as it seeks to identify the communication of messages not only in cases where the protection or remedy granted by the court has an eminently communicative character but also in cases where it involves monetary compensation, which does not inherently have a communicative nature. The question is whether these remedies or protective mechanisms can also convey certain messages. If the answer is positive, what are those messages?

Whose Messages Are Expressed Through Tort Law?

Preliminarily, it is possible to identify the following actors expressing messages through tort law:

1 Courts. Courts dealing with tort disputes are typically the ones that deploy the expressive function. This is concretely reflected in the reparative mechanisms granted by courts. This is the aspect on which the emerging literature on the expressive function in civil liability has focused the most (GOLD, 2013; PINO, 2017; PINO, 2021; VARGAS, 2023).

2 The parties. In a less obvious sense, the parties in tort disputes can also play an expressive role. Contrary to ZIPURSKY's assertion (2018),

the expressive function can manifest even in disputes resolved extrajudicially. If the expressive function were limited to judicial rulings, the use of alternative dispute resolution mechanisms would pose a challenge, potentially narrowing its scope. This critique is not unfamiliar concerning such mechanisms in general (FISS, 1998: 66-67). However, according to the theoretical framework proposed in this research, the expressiveness of tort law can be reflected without the need for a judicial verdict. This is because the practice of expressiveness does not necessarily require a court's pronouncement. For instance, if a defendant apologizes to the victim and satisfies them, tort liability still serves as a suitable instrument for conveying messages between the parties, even if not publicly expressed. A similar function can occur during settlement conferences or evidentiary hearings, where a defendant may acknowledge their responsibility, fulfilling what victims might seek (PINO, 2017).

3 Lawyers and other participants in procedures. Secondarily but nonetheless significantly, lawyers representing parties in tort lawsuits can express relevant messages, either in their written submissions or during hearings. The same can be said for other individuals who typically participate in these lawsuits, such as witnesses who may express the acknowledgment sought by the victim.

Three Cases of Chilean Tort Law as an Example

I will present three cases from the Chilean Supreme Court as examples of to apply this framework.

THE IMPACT OF AI ON THE LEGAL IDEAL OF LEGALITY

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ABSTRACT

The paper examines the impact that the use of artificial intelligence is having on the legal ideal of legality. The analysis distinguishes three classical approaches to this ideal: that of political sociology, legal philosophy, and Continental legal dogmatics.

From the first of these perspectives, the paper presents Max Weber's model of legal-rational legitimacy, according to which legality has been the key element in explaining the subjection of political power to law in the Modern State. From the legal-philosophical perspective, it highlights the fundamental formal requirements present in classical conceptions of the rule of law, such as clarity, stability, publicity, and generality of legal norms, as well as the reasoning and reasonableness of legal decisions. For its part, the dogmatic approach characteristic of Continental law places emphasis on trust in parliamentary legislation as the rational expression of the general will.

After delineating these three dimensions of the ideal of legality, the paper identifies the main challenges that artificial intelligence poses to each of them. With regard to the model of legal-rational legitimacy typical of political sociology, it underscores the growing "quasi-sovereign" power of major AI technology corporations, which operate largely outside the institutional control of states and are capable of influencing democratic processes through algorithms, bots, or recommendation systems. As for the ideal of the rule of law, central to legal philosophy, it warns of the risks of arbitrariness arising from algorithmic opacity, bias, and the lack of intelligible reasoning in automated decisions. Finally, with respect to the primacy of parliamentary legislation, the paper points to the inadequacy of traditional legislative instruments to regulate AI, given its transnational

nature and the speed of technological change. This has led to increasing reliance on soft law mechanisms and, at best, to regulation based on general principles, the concretization of which in individual cases is ultimately left to a broad margin of judicial discretion.

WORKERS' REPRESENTATION WITHIN DIGITAL DELIVERY PLATFORMS

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ABSTRACT

Work performed within the framework of digital delivery platforms (Glovo, Uber Eats, Deliveroo, etc.) raises a wide range of legal challenges. One of the most significant concerns the difficulties involved in structuring worker representation within this type of companies, despite its essential role in safeguarding workers' interests. Starting from two premises—first, the employment relationship nature of the services provided by platform workers, as reinforced by the presumption established in that sense in Directive (EU) 2024/2831 on improving working conditions in platform work; and second, the dual system of workers' representation existing in Spain, comprising both unitary and trade union representation—this paper seeks to address the main issues arising in relation to the presence of worker representative bodies within digital delivery platforms. In particular, it examines: (1) whether worker representative bodies may be constituted at a level below that of the undertaking as a whole; (2) whether the electoral process for unitary representation bodies may be adapted to a more telematic or remote format, with reduced reliance on physical presence; and (3) which of the two forms of representation—unitary or trade union—appears more suitable in light of the specific characteristics of digital delivery platform companies.

TERRITORY AS A GROUND OF DISCRIMINATION: GEOGRAPHICAL SPACE, RURALITY, AND RIGHTS

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ABSTRACT

The study of equality and discrimination from a legal perspective has undergone significant development in recent years, particularly within the framework of critical legal theories. As a result of academic research and its subsequent reception by judicial bodies, it is now well established that discrimination may take multiple forms—such as direct, indirect, multiple, intersectional discrimination, as well as discrimination by association or by error. In parallel, and largely due to the impetus of international human rights protection bodies, legal doctrine has progressively identified a range of grounds of discrimination that undermine the effective enforcement of legal norms and the full enjoyment of fundamental rights.

At the same time, studies and analyses concerning depopulation and rural areas—traditionally associated with disciplines such as sociology or geography—have highlighted the existence of territorial inequalities. These inequalities stem primarily from difficulties in accessing public services that are essential to guaranteeing the effectiveness of rights. The relevance of these findings for law and public policy is therefore evident, as they reveal the consequences of an urban-centric approach to public policy design. Addressing these inequalities necessarily requires legal and institutional changes capable of responding to the specific characteristics of non-urban territories.

However, the incorporation of these forms of inequality into legal analysis and antidiscrimination frameworks has not yet been fully achieved. This is due, on the one hand, to the persistent lack of dialogue between law and other disciplines, and, on the other, to the fact that territory—understood as a geographical space rather than an administrative unit—has not

been adequately conceptualized within legal doctrine. Consequently, territory is not currently recognized as an autonomous ground of discrimination within prevailing legal frameworks.

The research proposed here seeks to address this disciplinary and normative gap, which has a direct and tangible impact on the lives of individuals residing in sparsely populated or rural territories. Its primary objective is to reassess the prevailing paradigm of grounds of discrimination in order to argue that territory constitutes a relevant ground of discrimination insofar as it affects the effective enjoyment of rights. From this perspective, the research advocates for the development of a specific legal approach capable of identifying, addressing, and mitigating the discriminatory effects associated with territorial inequalities.

DEMOCRACY AS A PUBLIC POLICY OF THE EUROPEAN UNION. THE EUROPEAN DEMOCRACY SHIELD

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ABSTRACT

Democracy is an essential value for the European Union. It occupies a prominent place in the catalogue of values in Article 2 of the Treaty on European Union, which also establishes in Article 10.1 that the functioning of the Union is based on representative democracy. However, European society currently faces a number of internal and external risks that threaten the integrity of the democratic quality of its Member States and the institutional structure of the Union itself. Internally, the entry of populist and far-right political movements into some Member State governments is leading to a deterioration in universally accepted standards of democracy, either organically (affecting the structure of the separation of powers) or dogmatically, altering basic axiological consensuses (human rights of migrants, dismantling of gender equality policies, the fight against climate change). Externally, the European Union has strong commercial, military or simply geographical ties with countries that are heavily criticised for their anti-democratic tendencies, which may pose a threat to the European democratic model. In this context, it is essential to analyse the response that the European Union, within its powers and through the implementation of specific public policies, can adopt to strengthen European democracy, the rule of law and the European model of democracy. The aim of our intervention will be to review these policies and, in particular, the recent European Democracy Shield, presented by the European Commission in November 2025, which creates a European Centre for Democratic Resilience and provides for a set of actions around three objectives: safeguarding the integrity of the information space; strengthening the Union's institutions and ensuring fair and free elections and free and independent media; and boosting societal resilience and citizens' engagement.

CLIMATE CHANGE. EMERGENCY MANAGEMENT AND FUNDAMENTAL RIGHTS

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ABSTRACT

One of the current challenges for rights (fundamental or otherwise) and public policies is addressing climate change and, in turn, improving the response to climate emergencies. Environmental law makes the fight against climate change its main point of reference, in order to adapt to it. This will be one of the most important challenges for society, which must seek a just ecological transition, and it connects with the 2030 Agenda and the Sustainable Development Goals. Climate change, therefore, has led to an increase in climate emergencies and allows us to speak of a paradigm shift that demands an ecological transition that acknowledges it, as well as the risk of failing to act or adapt to it. This paper analyzes how environmental emergencies (floods, fires, droughts, etc.) have increased, leading to catastrophic events that affect citizens' rights. The rise in natural disasters and extreme weather phenomena necessitates a redefinition of civil protection and emergency management systems, which in Spain are governed by Law 17/2015 of July 9, on the National Civil Protection System. Civil protection is a public service whose legal basis, within the Spanish Constitution, lies in the obligation of public authorities to guarantee the right to life and physical integrity as the first and foremost of all fundamental rights.

THE CGPJ INSTRUCTION 2/2026 ON THE USE OF ARTIFICIAL INTELLIGENCE IN JUDICIAL ACTIVITY: A CRITIQUE OF ITS DRAFT RESOLUTION REGIME

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ABSTRACT

Instruction 2/2026 of the Spanish General Council of the Judiciary regulates the use of artificial intelligence systems in judicial activity and proclaims safeguard-oriented principles such as effective human control, non-substitution of the judge, exclusive judicial responsibility, and bias prevention. This article argues, however, that the authorization of AI-generated draft decisions in its seventh operative clause creates an internal tension that is difficult to reconcile with those same principles. To show this, the paper combines legal-philosophical analysis, theories of legal reasoning, and scholarship on cognitive bias, and it compares adjudication with notarial practice in order to explain why ex post review of a draft is insufficient to preserve the substantive character of judicial judgment. The central thesis is that AI may play a valuable role in adjudication only if it is used as a tool for checking consistency and assisting later-stage drafting, after the judge has already formed an independent view of the case. On that basis, the paper proposes a shift toward a model of the "Digital Hercules".

TAXPAYERS' RIGHTS IN THE FACE OF THE CHALLENGES OF ARTIFICIAL INTELLIGENCE IN TAX PROCEDURES

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ABSTRACT

The growing use of artificial intelligence and algorithmic models by the Tax Administration has not been matched by the development of a legal framework capable of ensuring adequate protection for taxpayers. This regulatory gap rises significant uncertainty regarding the use of AI in tax procedures. In any case, the legal tax relationship between the Tax Administration and the taxpayer should not be affected simply because AI-based technological tools are employed. The main challenges faced by taxpayers in this context relate to the need to ensure the transparency, traceability, and auditability of AI systems, the existence of algorithmic biases, and the scope of the Tax Administration's liability for damages. This paper aims to examine the level of protection that tax legal system must afford in the face of AI. Such protection requires not only adapting traditional taxpayers' rights in tax procedures to the introduction of AI, but also considering the recognition of new rights that have so far remained outside the tax field. These include, among others, the right to be informed of the existence and characteristics of artificial intelligence applications used by the Tax Administration, the right not to be subject to fully automated decisions, the right to be informed of profiling activities, and the right of access to the algorithm.

HUMAN AND ALGORITHMIC JUDICIAL IMPARTIALITY: BIASES AND TRUST IN JUSTICE

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ABSTRACT

Judicial impartiality is undoubtedly one of the fundamental pillars of due process, but also of public trust in the justice system. More than that, it is an essential element of the very idea of Justice itself. And the truth is that never before have we confronted, with such seriousness, a question that is as uncomfortable as it is unavoidable:

Can—and should—we demand absolute impartiality from judges?

Today, more than ever, we ask ourselves whether a judge can truly detach himself or herself from personal convictions, cultural background, personal history… or even from such everyday external factors as fatigue, stress, or emotional context. It is precisely this concern that has opened the door to a proposal which, until recently, seemed like science fiction: replacing the human judge with an algorithm. Because—at least in appearance—the algorithm has no emotions, no biases, and does not get tired. We seek an impartiality free from racial, ideological, gender, or religious biases. And it is precisely this demand—the most difficult to achieve—that has given rise to doubts as to whether artificial intelligence systems may be more impartial than a human being.

What degree of humanity, then, is compatible with justice?

AI AS A SUBJECT: A SAFEGUARD MECHANISM AGAINST ITS RISKS?

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ABSTRACT

The main goal of the research is to answer a central question: Could granting legal personhood to AI actually serve as a mechanism to reduce or control its risks? Instead of seeing legal personhood just as a privilege for AI, the author investigates whether it could be used as a regulatory tool to hold AI systems (or their outputs) accountable.

The Four-Pronged Framework.

To answer this question, the research structures its analysis through four distinct lenses:

-Philosophy and Essence (The Conceptual Risk): Drawing from Heidegger, it argues that AI is not neutral. Pretending it is a neutral tool blinds us to how it manipulates human attention. The "simulated consciousness" of modern AI creates a fake subjectivity designed to exploit users within a data-driven capitalist system.

- Risk Regulation (The Prohibitive Risk): It looks at how the European Union's AI Act tackles this. The EU bans AI uses that treat the technology as a malicious "subject" capable of violating human dignity (like cognitive manipulation or social scoring) and heavily regulates high-risk uses.

-Institutional Scope (The Administrative Control): Using Spain as a case study (specifically recent laws in the Justice sector and regional laws in Galicia), the paper highlights that current institutions refuse to give AI autonomy. AI is strictly legally defined as an "assisted tool"—it can write drafts, but a human must always validate and take responsibility.

-Civil Perspective (The Future Liability): It references the European Parliament's 2017 proposal, which suggested that for highly complex, autonomous robots, creating a specific "electronic personhood" might be

necessary so that they can legally "absorb" and repair the damages they cause.

THE FRAGILITY OF THE CONSTITUTION IN THE FACE OF TECHNOLOGICAL POWER AND "THE CONDITION OF PERMANENT EXCEPTIONAL NORMALITY"

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ABSTRACT

The digitalization of the world represents a process of metamorphosis in which a clear and stable frame of reference, long established, is being replaced by another, still shrouded in great indefiniteness and uncertainty, affecting fundamental principles of the economic, political, and legal order, leaving us immersed in a paradigm shift.

Within this context, this research unfolds, structured in four sections: the first analyzes the constitution of technological power, an expression of the quasi-hegemonic power of technology corporations, a power that allows for the surveillance of every citizen, in real time, automatically, and with an efficiency that even the most oppressive dictatorships could not have imagined; the second examines the negative repercussions that this power exerts on all areas of personal and social life, extending from the private sphere to the exercise of democracy in its entirety; in the third section, we highlight the difficulties that the law, and in particular the constitution, has in facing with competence and guarantees the challenges posed by technological power, which, moreover, are currently driven by the power of artificial intelligence, but which tomorrow may be driven by quantum computing; and in the last section, we try to define the situation in which digital citizenship finds itself, permanently trapped in an exceptionality that we consider, and accept, as normality, and which we call "condition of permanent exceptional normality".

CULTURAL RELATIVISM AND FEMALE GENITAL MUTILATION: FOUNDATIONS FOR UNDERSTANDING IT IN A CHANGING WORLD

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ABSTRACT

This presentation examines the role of cultural relativism in the legitimization and persistence of female genital mutilation (FGM). In order to understand how this practice has endured over centuries and remains deeply rooted in certain communities, the study analyses the philosophical assumptions that support its social acceptance. Particular attention is given to relativism, especially its cultural dimension, which maintains that moral values, traditions, and social norms can only be understood within the specific contexts in which they arise. From this perspective, FGM has often been interpreted as a culturally embedded practice that should be approached through tolerance and respect for diversity. Anthropological scholarship has employed cultural relativism to explain the meanings and functions attributed to FGM within practicing communities and diasporic contexts. However, this approach raises important ethical and legal questions when cultural practices conflict with internationally recognised human rights standards. I argue that, while understanding the cultural foundations of FGM is essential for developing effective responses, cultural origin alone cannot justify practices that violate the dignity, bodily integrity, and fundamental rights of girls and women. Respect for cultural diversity must therefore be balanced with the protection of universal human rights.

TOWARDS A THEORY OF THE ALIENATING STATE

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ABSTRACT

The concept of alienation has long been employed in philosophy and critical social theory to describe forms of estrangement that undermine individuals' capacity to lead meaningful and self-determined lives. While Marxist approaches have traditionally focused on alienation in the sphere of labour, contemporary discussions have expanded its scope to encompass broader social dynamics. This contribution, though, argues that contemporary accounts of alienation haven't adequately addressed the alienating potential of legal and political institutions. Its main objective is therefore to develop a theory of the alienating power of institutions, focusing particularly on the state. First, I critically reconstruct Jaeggi's conception of alienation and further develop it by relating it to the notions of autonomy and personal commitments. Second, I introduce the categories of input alienating power and output alienating power to analyse how institutions may systematically obstruct individuals' ability to pursue their life plans and commitments. Third, I examine several legal and political pathologies—including failures of democratic representation, excessive bureaucracy, and poor legislative drafting—as illustrations of institutional alienation. Finally, this contribution outlines normative considerations aimed at identifying the fundamental features of non-alienating institutional arrangements.

ON EPISTEMIC PERFECTIONISM

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SW11 · Democracy, Free Speech, Disinformation and Digital Literacy
Convenors: Oscar Pérez de la Fuente; Enrique Armijo

ABSTRACT

Perfectionism is the view that the State can, or should, promote valuable conceptions of the good life and discourage conceptions that are worthless or bad. The opposite view, liberalism, defends the separation between the right and the good, and the core principle of individual autonomy. However, Raz defends a version of perfectionism compatible with pluralism and autonomy. Virtues, which are habits or dispositions associated with models of excellence within a human practice, have a central role in many perfectionist perspectives.

A relatively unexplored topic, compared to epistemic paternalism, is the notion of epistemic perfectionism. Few philosophical pragmatists have used this term to refer to requirements for democracy, such as dispositions or habits, including dialogue and other epistemic virtues. So, the State should not remain neutral on this; it should ensure that citizens cultivate those epistemic virtues for the success of the democratic process.

In the post-truth era, where disinformation and fake news are easily spread, public institutions should develop some strategies to aid their citizens attain truth from open-mindedness, prudence, impartiality, attentiveness, intellectual humility, and intellectual courage. The well-known arguments of the controversy of perfectionism should be elaborated again from epistemic terms. The Orwellian totalitarian Ministry of Truth is one such excess. However, complete State neutrality from ignorance and epistemic vices of those who decide would make democratic elections more contentious than desirable.

KNOWLEDGE FOR SALE? RESEARCH FIRMS, CONSULTANCY POWER, AND DEMOCRATIC DISTORTION

Alex Saltout

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ABSTRACT

This paper examines the role of private research and expert network firms in shaping public policy outcomes through their close relationship with global consultancy firms and, indirectly, democratic governments. Drawing inspiration from When McKinsey Comes to Town, the research explores how ostensibly neutral data production increasingly operates within market-driven incentive structures that privilege speed, influence, and client alignment over epistemic rigor. The central argument is that democracy is not only challenged at the level of political representation, but also at the epistemic level: when governments outsource knowledge production to consultancies relying on opaque research supply chains, democratic decision-making becomes vulnerable to distorted, selectively framed, or insufficiently verified information. This phenomenon is amplified when policy narratives derived from consultancy reports are further disseminated through digital platforms and social media, acquiring public legitimacy without democratic scrutiny. The paper situates this dynamic within theories of deliberative democracy and democratic accountability, arguing that the privatization of expertise undermines citizens' capacity to evaluate policy choices meaningfully. Methodologically, the research combines qualitative analysis of consultancy-driven policy cases with insider insights from the expert network industry, highlighting structural risks such as conflicts of interest, regulatory gaps, and the commodification of expertise. Ultimately, the paper asks whether contemporary democracies can remain epistemically resilient when knowledge itself is increasingly intermediated by profit-oriented actors. It concludes by outlining normative and regulatory pathways aimed at restoring transparency, accountability, and democratic control over policy-relevant knowledge production.

THE EROSION OF EPISTEMIC TRUST: THE TRUE DANGER OF MISINFORMATION FOR DEMOCRATIC QUALITY

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ABSTRACT

The transition from the traditional vertical communication model to a horizontal and multidirectional digital ecosystem has democratized access to information, but it has also facilitated the massive circulation of misinformation. This communication aims to analyze how the impact of fake news transcends the mere manipulation of electoral results to position itself in a deeper dimension: the crisis of epistemic trust among the citizenry.

The study argues that democracy requires not only formal institutions but also a robust deliberative infrastructure based on a shared factual framework. However, the online information frequently fosters cognitive biases, echo chambers, and affective polarization. This environment replaces rational debate with emotional «noise,» giving rise to the phenomenon of post-truth, where objective facts are subordinated to political identity and «tribal epistemologies» are consolidated. In this context, the intermediary role of traditional journalism is bypassed, leaving the public sphere vulnerable to algorithmic manipulation.

The fundamental danger for democratic systems lies in the destruction of epistemic interdependence. Democracy presupposes that citizens are capable of making informed decisions and, crucially, that their fellow citizens are rational interlocutors. When misinformation generates a widespread perception that truth is unattainable or that the «other» has been manipulated, the mutual trust necessary to grant moral legitimacy to laws and collective decisions is broken. This leads to a fragmentation of reality where common ground disappears.

I conclude that the current challenge is eminently epistemological: if consensus on the factual is lost, the citizenry may come to consider not only the result of a specific vote but the democratic system in its totality to

be morally unjustified. Therefore, protecting democracy requires a structural reinforcement of the epistemic conditions that make public Reason possible in the digital age.

DIGITAL LITERACY AS A REPUBLICAN VIRTUE: NON-DOMINATION AND EPISTEMIC AUTONOMY

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ABSTRACT

Contemporary democracies face a structural tension at the intersection of free speech, disinformation, and digital literacy. While freedom of expression remains a cornerstone of democracy, the digital public sphere – shaped by algorithms, micro-targeting, and orchestrated disinformation – profoundly alters the epistemic conditions under which citizens form political judgments. The central challenge is no longer only whether speech should be restricted, but how democratic societies can secure conditions, under which free speech contributes to, rather than undermines, epistemic autonomy. This paper argues that addressing disinformation requires the liberal paradigm of free speech with a civic conception of digital literacy. Drawing on Philip Pettit's theory of freedom as non-domination, it conceptualizes digital literacy as a republican civic virtue. As such, freedom is not merely the absence of interference, but the absence of arbitrary power. In digital environments, such power operates structurally and opaquely: platforms shape our attention, exploit cognitive biases, and steer public discourse. Disinformation thus threatens democracy not only through false content, but through relations of epistemic dependency that impair citizens' capacity for autonomous judgment. Republican theory offers a framework for understanding this problem because it focuses on contestability and institutional safeguards against domination. Herein, digital literacy describes the facility to critical evaluate sources, the awareness of algorithmic mediation, and the commitment to shared public reasoning. These capacities are not purely private virtues; they depend on institutional conditions such as education, transparency, and participatory forms of oversight that render epistemic power accountable. By framing digital literacy as a republican civic virtue, the paper bridges debates on free speech and democratic resilience. It shows that protecting freedom of expression

and countering disinformation are not opposing goals. Instead, securing free speech in the digital age requires strengthening the epistemic autonomy of citizens.

LAW AND TECHNOLOGY: FOUR FREE SPEECH PUZZLES

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ABSTRACT

Technological change does not merely introduce new tools; it destabilizes the legal assumptions that structure free speech doctrine. This talk, picking up on several themes raised by the contributions to the forthcoming book Hate Speech, Political Correctness, and "Cancel Culture," examines four emerging puzzles at the intersection of law, technology, and democratic governance. First, generative AI challenges foundational First Amendment categories: Who is the "speaker"—developer, user, or model? Should AI-generated outputs receive constitutional protection, and how can law address misinformation risks without collapsing into broad censorship? Second, social media platform immunity presents a structural tension: without immunity, platforms may over-censor; with it, harmful content can spread at scale. Third, growing evidence that social media may harm youth mental health has prompted proposals for age restrictions and bans, and many European countries have taken the lead in imposing such bans, raising difficult questions about minors' speech rights, parental authority, privacy, and the constitutional limits of paternalism. Finally, legislation such as Canada's Online News Act, Australia's News Media Bargaining Code, and mandatory licensing negotiations promulgated by the EU highlight the struggle to fund journalism in digital markets: should platforms be required to compensate news organizations, and does compelled payment distort information flows? Finally, across these puzzles lies a deeper concern about epistemic authority—who controls speech in AI-mediated environments, who bears responsibility for harms, and how democratic societies can preserve both expressive freedom and the conditions necessary for reliable public knowledge.

ETHICAL AND INSTITUTIONAL DIMENSIONS OF FREEDOM OF SPEECH: FROM CLASSICAL APPROACHES TO THE CHALLENGES OF THE INFORMATION SOCIETY

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SW11 · Democracy, Free Speech, Disinformation and Digital Literacy
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ABSTRACT

This paper provides a comprehensive theoretical and legal reflection on the essence of freedom of expression and its foundational role within the democratic system, particularly amidst the contemporary crisis of institutional trust and the phenomenon of information overload. The presentation reconstructs both classical—rooted in the liberal tradition of the «marketplace of ideas»—and modern interpretations of freedom of speech, analyzing its evolving social significance in a digitized public sphere.

A central component of the study is the analysis of the legal limits of expression established by Polish and European standards, notably the jurisprudence of the European Court of Human Rights. Special emphasis is placed on the principle of proportionality and the criterion of democratic necessity as the primary dogmatic foundations for restricting expression to protect competing rights and public interests. The authors examine the complex procedure of balancing freedom of speech against other fundamental values, such as human dignity, the right to privacy, historical memory, and protection against the escalating threat of hate speech.

In response to the workshop's focus on the digital age, the paper investigates the ethical and institutional guarantees of freedom of speech in an era where traditional gatekeepers have been replaced by algorithmic moderation. We argue that the current information environment requires a shift from purely prohibitive measures toward systemic resilience. By analyzing the «circulatory system» of self-government, the research identifies mechanisms for safeguarding public debate against radical polarization and

weaponized disinformation. The ultimate objective is to propose a framework that maintains rigorous standards for the protection of individual rights while addressing the need for digital literacy and institutional transparency. This dual approach aims to preserve the integrity of democratic discourse without resorting to the «fast track to tyranny» often associated with overreaching censorship.

THE ILLUSORY TRUTH MACHINE: GENERATIVE AI, REPEATED EXPOSURE, AND THE DISSOLUTION OF SHARED DEMOCRATIC REALITY

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ABSTRACT

Classical liberal epistemology gave democratic theory a foundational assumption: that rational citizens, when presented with evidence, would converge on truth. Without a shared factual basis, the public sphere cannot sustain reasoned disagreement and instead becomes a domain of mutually irreconcilable claims. The philosophical danger is not merely that citizens may accept falsehoods; democratic publics have always contended with lies. Rather, the deeper problem is that the epistemic relationship between experience and reality is being structurally transformed. When AI-generated content saturates the information environment and algorithmic amplification ensures repeated exposure, the illusory truth effect no longer functions solely as an individual cognitive bias but becomes a systemic epistemic condition. Reality is no longer something citizens access imperfectly through media; it is, in a meaningful sense, produced through repetition. Drawing on cross-national evidence from multiple countries in Asia and the United States, this paper demonstrates that social media news use amplifies, rather than attenuates, illusory truth for synthetic media, thereby challenging the Millian defence of the open marketplace of ideas. More speech does not drive out falsehood; under conditions of algorithmic curation and generative AI, more speech can entrench it. What emerges is a democratic subject whose perception of reality is increasingly constituted by exposure patterns over which they have minimal control and little awareness. This is not the post-truth condition as commonly understood, a deliberate rejection of facts in favour of partisan identification, but something philosophically more troubling: a pre-reflective dissolution of the capacity to distinguish what is encountered from what is true. If repetition

becomes a source of credibility, and if AI makes the repetition of fabrication functionally limitless, then the epistemic commons on which democratic deliberation depends does not merely become polluted; it becomes ontologically unstable. The paper concludes that democratic theory must reckon not only with disinformation as a problem of bad actors and insufficient literacy, but also with the possibility that the cognitive architecture of human belief formation is fundamentally mismatched to the informational environment that democracies have allowed to develop, a mismatch that no amount of individual critical thinking can, by itself, resolve.

CHALLENGES TO FREE SPEECH: IMPLICATIONS FOR DEMOCRACY AND THE WAY OUT

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ABSTRACT

The history of human freedom reveals its fragility. Very few generations have lived under civil liberty and rule of law. As freedom of speech is granted by very few states, enjoyment of freedom of speech along with the right to dissent is an extraordinary human achievement. However, the mere fact that a state is governed by elected representatives of the people is no guarantee that basic human rights like freedom of speech will be respected. In fact, even in so called developed democracies, elected representatives have abolished freedom of speech and freedom of the press.

The Indian Constitution has a Chapter on Fundamental Rights which provides certain fundamental freedoms including the freedom of speech. At the same time, there are reasonable restrictions on grounds like defamation, indecency, violation of public morality, contempt of court, challenges to sovereignty and integrity of the state which may lead to curtailment of freedom of speech.

Apart from reasonable restrictions, the ruling dispensation may suppress dissent of any kind by invoking provisions under sedition. All these constitute challenges to freedom of speech even in a democracy. It may be argued that absence of the right to dissent and freedom of speech will lead to degeneration of democracy into an authoritarian regime.

In view of the above, this research paper examines the ways through which freedom of speech can be protected as a fundamental right. In particular, the role of republican education in dissemination of democratic values to citizens is sought to be explored.

In Part I, the concept of freedom will be discussed briefly. Part II will focus on freedom of speech in the Indian Constitution. Part III will highlight the challenges to freedom of speech in India. In Part IV, ways and means for protection of free speech will be explored.

HOW SHOULD WE CONSTRUCT A THEORY OF DISSENT? THE NUANCES AND REACTIONS OF DISSENT AT THE CORE OF FUNDAMENTAL POLITICAL RIGHTS

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ABSTRACT

This paper addresses how a theory of dissent can be constructed at the core of fundamental political rights within the contemporary digital environment. It argues that dissent should not be treated as a peripheral or derivative freedom, but as a foundational concept that gives substance to free speech, democratic participation, and the contestation of power. In the digital age, however, the conditions under which dissent operates have been profoundly transformed by the dynamics of disinformation and the fragmentation of the public sphere.

The paper begins from the premise that dissent is an inherently ambivalent and under-theorized concept, often conflated with disagreement, protest, or disruption. This conceptual ambiguity becomes particularly problematic in digital contexts, where the boundaries between legitimate dissent, misinformation, and disinformation are increasingly blurred. As a result, dissenting voices may be either unjustifiably suppressed in the name of combating falsehoods or strategically instrumentalized to amplify misleading or manipulative narratives.

To address this tension, the paper develops a framework centered on the *nuances of dissent*, emphasizing its multiple forms, motivations, and manifestations across legal and political contexts. In digital environments, dissent ranges from reasoned critique and whistleblowing to more ambiguous forms of contestation that may intersect with misinformation practices. Recognizing these nuances is essential to avoid reductive approaches that either romanticize dissent or dismiss it as inherently suspect.

DIGITAL SOCIABILITY AND THE NEW STRUCTURAL TRANSFORMATION OF THE PUBLIC SPHERE

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ABSTRACT

The digital transformation is reshaping the public sphere and raising critical questions about the prospects for sustaining and deepening democracy. Recent literature, inspired by the Habermasian conception of the public sphere, argues that this process has inaugurated a new structural transformation, characterized by the proliferation of multiple semi-public and semi-private spaces, fragmented and marked by centrifugal tendencies and dispersion. Much of this scholarship, however, emphasizes the interplay between technological and economic processes and the decline of the traditional media. This work seeks to broaden the debate by connecting the hypothesis of a new structural transformation to recent cultural and sociological diagnoses. Drawing on Andreas Reckwitz's notion of singularities and Felix Stalder's concept of digital condition, this article examines how digital transformation reshapes human interaction as well as individual and collective forms of self-expression and social recognition, thereby reconfiguring the public sphere from within, through shifts in the constitution of subjectivities and in the patterns of intersubjectivity. Finally, it argues that by intensifying the tensions between singularization and universalization, and between fragmentation and social cohesion, the contemporary digital condition produces ambivalent political effects, oscillating between democratic promises and increasingly authoritarian tendencies. Such tensions create new obstacles to the construction of horizons of common interests and deliberation – central elements of democracy and its fundamental link with the public sphere.

MAPPING NEURODATA: WHY BRAIN DATA CHALLENGES EXISTING LEGAL CATEGORIES

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ABSTRACT

Neurotechnologies increasingly convert brain activity, cognitive responses, emotional states and behavioural patterns into data. Yet neurodata does not fit comfortably within existing legal categories such as health data, biometric data, genetic data or ordinary personal information. This paper builds on the themes emerging from the mapping of neurotechnologies and law to argue that the central legal challenge is not only the protection of privacy, but the conceptual classification of neurodata itself.

The paper asks what kind of legal object neurodata is, and what follows from its classification? Neurodata is distinctive because it is simultaneously embodied, inferential, predictive, relational and identity linked. It may reveal present neurological or mental states, enable predictions about future behaviour or health, and generate inferences about agency, vulnerability, emotion, attention and decision-making. These features unsettle established legal assumptions about consent, anonymisation, purpose limitation, data sharing, autonomy and harm.

From a Global South perspective, these questions become even more urgent. Neurotechnologies are likely to enter unequal health, research and consumer environments through imported devices, platform infrastructures, AI analytics and cross-border data flows. In such contexts, individual consent alone cannot bear the full normative burden of neurodata governance. A more adequate framework must address structural inequality, institutional accountability, public participation, secondary use, commercial extraction and the collective dimensions of mental privacy.

The paper contributes to the IVR 2026 workshop on law and ethics of neuroscience and emerging neurotechnologies by reframing neurotechnology regulation as a problem of legal categorisation and data governance.

It argues that neurodata exposes the limits of existing privacy and health-data frameworks and requires a more context-sensitive legal response grounded in dignity, autonomy, equality, mental privacy and cognitive liberty. Ultimately, the paper shows how neurodata forces legal philosophy to rethink the boundaries between body and information, mind and data, individual and collective harm, and technological innovation and human rights.

AI PROCESSING OF NEURODATA AND THE FUTURE OF MENTAL PRIVACY

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ABSTRACT

The rapid development of neurotechnologies has increasingly been shaped by the integration of AI systems. While research and innovation in this field offer opportunities for better, healthier, and perhaps even more enjoyable lives, they also raise significant concerns regarding fundamental rights and freedoms. Cybersecurity vulnerabilities, lack of transparency, inaccurate or biased algorithmic outputs, interference with individual autonomy and decision-making capacity, privacy breaches, harm to personal identity, and risks of unauthorized surveillance and manipulation are particularly important. Generally, AI systems, and more specifically agentic AI systems, reduce human oversight and operate with increasing autonomy, thereby intensifying these concerns and raising them to a new level of complexity.

This paper focuses on one central issue within this broader landscape: the potential impact on mental privacy arising from the processing of neurodata (information gathered from the brain and/or the nervous system) by AI systems. The core concern lies in the capacity of emerging neurotechnologies to record human activity, including processes related to an individual's mental or psychological sphere and their underlying mechanisms, combined with the ability of AI to process such data comprehensively and effectively. In this context, the fact that neurodata can enable the identification of an individual further heightens the issue, given its potential to reveal certain information from within a person's mind and to generate new data based on that information.

In this regard, this paper examines the EU Artificial Intelligence Act (Regulation (EU) 2024/1689 of 13 June 2024) and the General Data Protection Regulation (Regulation (EU) 2016/679 of 27 April 2016), as key

hard-law frameworks with influence beyond the EU. It also considers legal initiatives directly addressing neurodata processing, particularly in South America and certain US states (e.g. Colorado, California, Montana). Finally, the paper evaluates the developing soft-law framework in this field, including ethical guidelines issued by organizations, especially UNESCO Recommendation on the Ethics of Neurotechnology (2025) and OECD Recommendation of the Council on Responsible Innovation in Neurotechnology (2019).

NEUROTECHNOLOGIES AND PREDICTIVE POLICING: HOW BCI SYSTEMS CHALLENGE THE FOUNDATIONS OF LEGAL PHILOSOPHY

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ABSTRACT

The introduction of artificial intelligence into the field of neuroscience in recent years has been revolutionary. Today, it is possible to control electronic devices simply by thinking or to support certain cognitive processes. Neurotechnologies, known as brain-computer interfaces, have a wide range of medical applications, from helping patients with paralysis to improving the quality of life for individuals with autism. Their commercial use in the entertainment industry is also expected in the near future. Could these mind-reading technologies pose a challenging test for the legal system?

Furthermore, the massive circulation of neural data monopolized by global corporations and states goes beyond a mere violation of mental privacy. It paves the way for individuals holding thoughts that do not align with dominant interests to be subjected to discriminatory treatment and asymmetrical criminalization. This situation carries the potential to establish "thought crimes" akin to those in Orwell's 1984 dystopia. The fundamental aspect that renders a human being morally commendable is the ability to choose the good of their own volition among various alternatives. In an order where the most intimate mental processes are surveilled and adjudicated by global algorithms, humanity's ontological privilege and freedom of choice face the danger of eradication.

This work first examines the operating principles of neurotechnologies, their current state, and the level they are expected to reach in the near future. It then highlights the views of experts developing this technology and pioneering initiatives such as the constitutional protection of neuro-rights in Chile. To avoid falling behind in the face of this rapidly advancing tech-

nology, it is argued that legal awareness can only be achieved through serious, interdisciplinary discussions initiated today. In this process, it is hoped that legal professionals will guide science by always prioritizing human dignity and the fundamental values of law while encouraging scientific research.

Building upon these premises, this work aims to address these emerging threats on a legal and philosophical plane, critically examining the impact of BCI technologies on criminal liability, cognitive liberty, and moral agency.

Keywords: Brain-Computer Interfaces (BCI), Predictive Policing, Criminal Law, Cognitive Liberty, Moral Agency.

VARIOUS STRATEGIES TO ADDRESS POTENTIAL RIGHTS VIOLATIONS EMANATING FROM THE USE OF NEUROTECHNOLOGIES IN SENTENCING: A COMPARATIVE STUDY OF AUSTRALIA-TURKEY

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ABSTRACT

The neurorights debate is about finding a better way to address the potential threats posed by novel neurotechnologies to fundamental rights and liberties. Neurotechnologies have the potential to intervene in the human body and the mental realm in unprecedented ways by modulating and monitoring the activity of the central nervous system. As recent advances have made a future in which neurotechnologies become an integral part of daily life a not-so-distant prospect, the importance of developing effective protection mechanisms has grown. At a theoretical level two different strategies emerge: creating new categories of rights – such as cognitive liberty, mental privacy, etc. – or interpreting classical rights — such as freedom of thought or the right to privacy — broadly enough to cover novel situations. Nevertheless, besides theory, the existing human rights protection practices and social fabric of respective jurisdictions would certainly shape policies in this respect. Hence, comparative studies taking into consideration differences between countries and legal traditions may yield interesting results.

Another dimension of the neurorights debate concerns balancing the needs of an effective rights protection mechanism with those of a burgeoning sector that could significantly improve the quality of individual and social life. In this respect, it would be interesting to develop some ideas on how domestic jurisdictions may address the issue, especially by comparing countries from different legal backgrounds.

This paper aims to compare two countries, Australia and Turkey (Türkiye), which differ significantly in their legal traditions and human rights protection systems. Australia is a federal country in the common law sphere, with no federal bill of rights and no bill of rights in most of its constituent parts. International human rights treaties are generally not directly applicable in Australia. Turkey, on the other hand, has been reforming its legal system since the foundation of the state in line with civil law countries, thereby adhering to a tradition of protecting rights through constitutional and legal norms. Moreover, it has been a party to the supranational protection system established by the European Convention on Human Rights since the Convention's entry into force. Another distinct point between these two countries is their record of implementing judicial decisions aimed at preventing or compensating for human rights abuses. Whereas in Australia administrative bodies generally comply with judicial decisions, in Turkey there are instances of non-compliance with high court rulings in the field of human rights.

To keep the comparison between these two countries manageable, the paper limits its scope to the use of neurotechnologies in sentencing. Here, there is a basis for comparison, as both countries have legislation referring to the use of technological or medical means in penitentiary policies.

The authors hope that this comparison will provide a basis for elaborating on the advantages and disadvantages of different strategies to address the risks posed by neurotechnologies in the domain of human rights protection. The comparison between the two jurisdictions would also allow for sociological observations which are relevant for analysing the 'law in action' when it comes to governing neurotechnologies.

NEUROSCIENTIST IN THE COURTROOM

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ABSTRACT

Despite the fact that the issue of the fundamental admissibility of neuroscientific evidence remains formally open in many legal systems, in fact it has already been resolved by practice, as courts accept such evidence, discuss it meaningfully and more consistently integrate it into the logic of judicial reasoning. This raises the problem of proper assessment: do judges and other participants in the process know how to properly handle this data, do they analyze it sufficiently, or do they limit themselves to formally reproducing expert conclusions without independent verification.

The participation of a neuroscientist in court helps to increase the accuracy of justice by taking into account individual biological differences that affect a person's ability to follow legal rules. The presence of a neuroscientist in court becomes a guarantee of the rationality of the evidentiary process, since it provides tools for separating reliable scientific data from unfounded assumptions, as can be seen in the example of the illustrative Weinstein court case and subsequent legal precedents. It does not replace the court or the jury in making a decision, but it provides them with the data necessary for a fair assessment of the cognitive state of the subject. The growing statistics of court cases involving the use of neuroscientific data indicate an inevitable interaction, during which the legal system will have to adapt its standards not only to developing neuroimaging methods, but also to a relatively new, separate category of participants in the process.

However, the need to determine the legal status of a neuroscientist in the court process allows us to identify several features.

First, a neuroscientist is a subject whose professional competence consists in the ability to analyze neuroimaging data - the results of MRI, fMRI and other methods of studying the structure and functions of the brain, and to translate them into a system of judgments about a person's behavior, will, and cognitive abilities that is accessible to a law enforcement officer.

Secondly, the American experience of judicial practice, as the most developed legal system in terms of neurolaw, demonstrates that the participation of a neuroscientist in a trial can take various procedural forms - a witness to a fact, a consultant to a party, a friend of the court, and an expert witness, which determines the amount of acceptable contribution of a neuroscientist to the formation of an evidence base.

The neuroscientist involved in the trial acts as a mediator between two different systems of reality description – scientific and legal, and the quality of this mediation determines the degree of evidentiary value of the data presented. This involves the development of standardized judicial guidelines governing the interpretation of neuroimaging data; training judges to assess the scientific validity of scientific methods; and conducting further research that systematically takes into account variables that still remain outside the scope of study.

GOVERNING THE MIND: AN ETHICAL AND LEGAL ANALYSIS OF UNESCO'S RECOMMENDATION ON THE ETHICS OF NEUROTECHNOLOGY

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ABSTRACT

Neurotechnologies, which allow for the measurement, interpretation, and modification of neural activity by directly interacting with the human nervous system, are rapidly evolving, and resources allocated to this field are increasing exponentially. Brain-computer interfaces, neurostimulation techniques, and neural data processing systems offer opportunities in health and well-being; however, they also raise significant issues concerning mental privacy, autonomy, and freedom of thought, as well as the risk of behavioral manipulation. At the same time, neurotechnologies serve not only the treatment of diseases but also the enhancement of cognitive and behavioral capacities in healthy individuals. This blurring of boundaries between medical devices and consumer products, and between treatment and enhancement, complicates the application of the categories established by existing legal frameworks to these technologies. The Recommendation on the Ethics of Neurotechnology, adopted by the UNESCO General Conference in 2025, is the first global standard-setting initiative to address these ethical risks and legal uncertainties.

This study analyzes the Recommendation as a normative document by examining how it frames neurotechnology as a governance problem, which risks it prioritizes, and which safeguard mechanisms it proposes. Central to the inquiry is the question of how the document translates values such as human dignity, autonomy, freedom of thought, and mental privacy into concrete governance proposals. The study also examines the Recommendation in comparison with UNESCO's 2021 Recommendation on the Ethics of Artificial Intelligence. This comparison is centered on shared themes including human rights-based governance, transparency, accountability,

and justice, as well as neurotechnology-specific concerns like mental integrity, cognitive liberty, and the protection of neural data. The study therefore discusses whether the Recommendation on the Ethics of Neurotechnology represents a continuation of UNESCO's normative framework in the field of artificial intelligence, or a distinct response to new governance challenges posed by neurotechnologies. Ultimately, the study assesses the potential role of the Recommendation within the fragmented and multilayered structure of neurotechnology regulations, examining both the possibilities and the structural limitations of soft law instruments in this area.

EPISTEMIC INJUSTICE AND THE ILLUSION OF FREE CONSENT IN AI-POWERED NEUROTECHNOLOGY

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ABSTRACT

This study focuses on the intersection of ethics of neurotechnology, artificial intelligence (AI), and law, with a particular emphasis on the tension between epistemic injustice and free consent. Due to the UNESCO Recommendation on the Ethics of Neurotechnology epistemic injustice is the unfair and unequal distribution of knowledge about neurotechnology, and the exclusion of individuals or communities from participating in the creation, sharing, and applications of this knowledge. So epistemic injustice is not merely lacking technical access to neurotechnology or remaining uninformed; it is the inability of disadvantaged individuals and groups to become the subjects of the knowledge produced about technology, and the deprivation of their right to have a say regarding the technological interventions over their own bodies and minds. The central issue is whether a 'fair and equitable distribution and creation of knowledge' as outlined in the Recommendation is truly attainable, and by what means epistemic injustice can be mitigated, if not entirely eliminated? This tension is clearly evident in AI-powered brain-machine interfaces technology.

AI-powered brain–machine interfaces (BMIs) destabilize the concept of freely given consent in the sense of GDPR and autonomy. Contemporary BMIs mostly depend on AI to process and translate neural signals into meaningful outputs, which makes AI the backbone of neurotechnology. As a result, a novel form of epistemic asymmetry emerges in which companies can reach both users' neural patterns and the technology behind those interpretations, while users remain disadvantaged in understanding or contesting whether their neural data was processed lawfully or the potential outcomes of that processing. This asymmetry is exacerbated for people in

underserved or disadvantaged regions, due to both a lack of accessible information and the fact that their voices go unheard in the life cycle of neurotechnology.

Therefore, this work argues that AI-powered neurotechnology risks the concept of freely given consent. The data subject in BMI procedures becomes dependent on AI not only for external decisions but for access to his or her own mental states, raising structural challenges for the concept of informed consent. The paper further interrogates the thin line between consumer and medical BMIs by arguing that AI amplifies this ambiguity. For example BMI devices that are marketed for wellness or enhancement frequently incorporate clinically relevant mental inferential capacities, which therefore enable the extraction and interpretation of sensitive cognitive data without corresponding medical regulatory oversight. Moreover, AI can anticipate, classify, and potentially manipulate user preferences, thereby blurring the distinction between prediction and intervention. In this sense, AI-driven BMIs do not merely observe the subject; they also have the potential to influence or even co-produce one's autonomy.

In response to the advancement of both AI and BMIs and their legal challenges, this study questions the already existed meaning of the consent and of legal protections capable of addressing the unprecedented challenges that neurotechnology now operates through AI. Ultimately, the convergence of AI and BMIs demonstrates the fragility of existing legal and ethical frameworks, especially regarding the freely given consent in the face of the information asymmetry between the users and the BMI providers.

THE PRESCRIPTIVE FORCE OF LEGAL DEFINITIONS

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SW13 · The Performative Dimension of Legal Reasoning
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ABSTRACT

Many laws include definitions of the terms they use. It is commonly held in the legal profession that those who apply the law are bound to follow such legal definitions when interpreting the terms they define. However, some theorists have argued that definitional statements in laws should not be understood as norms, since they do not make prescriptions and cannot be obeyed or disobeyed. For them, the obligation to comply with legal definitions when applying the law does not follow from the definitions themselves, which are merely informative, but from the general duty to apply the law correctly and provide legal reasons for judgements. In contrast to this view, this paper argues that legal definitions are declarative norms, which imply prescriptions of conduct even though they are not strictly speaking norms of conduct. Declarative norms arise from what Searle called "declarative illocutionary acts", which combine the assertive force of statements and the directive force of commands and norms. Successful declarative acts are both transformative and prescriptive in the context of some institutional practice as law, for those who participate in it. On the one hand, the declarative act creates within that practice the reality being declared, which then becomes what is declared. This property is most salient in performative utterances, which manage to do what explicitly they say they are doing. On the other hand, the declarative act prescribes that what is declared must then be in such practice, so that all participants must accept it as a reality and act accordingly. Thus, the provisions issued in declaratory legal acts make prescriptions of conduct, even though they are not perceived as rules of conduct. Legal precepts attributing meanings to statutory words are issued in declaratory acts, so that those words acquire such meanings and must be interpreted accordingly by those responsible for applying the statutes. This is commonly under-

stood, since legal provisions are generally recognized as guides of behavior and evaluations. The legal definition of a term does not just endow it with the meaning stated but implicitly requires that it be effective. The normative content of the legal definition of a term is not exhausted by its immediate performative effect of giving it meaning, since it carries on functioning as a binding norm for judges and other legal officials.

THE PERFORMATIVE FORCE OF LEGAL ASCRIPTIVES

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SW13 · The Performative Dimension of Legal Reasoning
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ABSTRACT

The paper argues that the performative dimension of legal reasoning cannot be fully explained within Searle's taxonomy unless one introduces a distinct illocutionary act: the ascriptive speech act. Drawing on Searle's three criteria of classification—illocutionary point, direction of fit, and sincerity condition—I suggest that legal utterances such as "X is guilty", "X is obliged to pay taxes", or "X and Y have a contract" do not merely describe legal reality. In legal language, they fix or bring about a normative status: guilt, liability, obligation, restriction, or entitlement. In this respect, they belong to the performative core of legal reasoning. The main claim is that the illocutionary point of an ascriptive is neither purely directive nor purely commissive. Unlike directives, ascriptives are not limited to getting the hearer to do something; unlike commissives, they do not primarily bind the speaker to future conduct. Their central point is normative ascription: they place a person or relation under a legal description that has institutional consequences. This makes ascriptives structurally close to Searle's declarations, since their success depends on extra-linguistic institutions and on the special status of speaker and hearer within those institutions. A judge, registrar, tax authority, or other official does not merely report a legal fact; under constitutive rules, the utterance itself performs a legal act. For this reason, I propose the following formula for pure institutional ascriptives:

$$As \updownarrow \emptyset(status\ s\ is\ ascribed\ to\ x)$$

Here As marks the ascriptive illocutionary point, ↕ marks the double direction of fit characteristic of declarations, ∅ marks the absence of a sincerity condition, x stands for any a person, act, event, object, or legal relation, and s stands for a legal status. This formula captures utterances such as "The contract is concluded", "You are fired" or "War is declared", where the legal effect exists by virtue of the successful performance of the

act. At the same time, some legal utterances are closer to what Searle calls representative declarations. In such cases, an authority not only creates a legal status but also settles what counts as the relevant fact for institutional purposes. This is especially clear in judicial utterances such as "X is guilty". Accordingly, I propose a second formula:

$$As_r \updownarrow B(a\ is\ legally\ guilty\ of\ offence\ o)$$

Here As marks the ascriptive illocutionary point, that is, the normative ascription of a legal status; r marks the representative component, showing that the act not only produces legal consequences but also claims to determine how things stand in law; ↕ marks the double direction of fit, combining representative and declarational force; B marks a belief-type sincerity condition, since such an act presupposes that the authority takes the proposition to be established; a stands for an agent or legal subject; and o stands for a legally defined offence. This formula captures fact-determining legal ascriptives, where the utterance both determines legal guilt and fixes the normative status that follows from it.

RECOGNITION-BASED APPROACHES IN LEGAL POLITICAL DISCOURSE. PERFORMATIVE INCONSISTENCIES AND BOUNDARIES

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SW13 · The Performative Dimension of Legal Reasoning
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ABSTRACT

This paper critically revisits the recognition paradigm, championed above all by Axel Honneth, by unpacking its epistemic, anthropological, and normative foundations. It then examines the performative contradictions that emerge when recognition theory is translated into practice through recognition based public policies. From the perspective of analytical liberalism, the analysis warns that these policies are especially prone to populist and anti-liberal drifts and may unintentionally facilitate the colonization of the lifeworld by market dynamics and legalistic frameworks—particularly when they intervene disproportionately in the sphere of personal relationships.

REFENDING THE VISIBLE: IMAGO PROBANS AND THE PERFORMATIVE LIMITS OF LEGAL REASONING

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SW13 · The Performative Dimension of Legal Reasoning
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ABSTRACT

The "performative dimension" of legal reasoning is often approached as what legal discourse produces in the world after the fact, the occurrence: effects/results of persuasion, methodological warrant, and institutional, technical/technological efficacy. This paper proposes a stricter—and internally oriented—sense of performativity: not an external sequel to justification (ex post facto), but a constitutive operation within the practical-prudential intelligibility of judgment and its grounding. On this view, legal reasoning performs not because it "impacts" reality or "transforms" pregiven realities into new configurations, but because it continually (re)institutes the very terms on which what is shown, alleged, and contested is juridically stabilised, filtered as pertinent, and articulated as a practical ground within the scene of the contradictory—the lived procedural dramaturgy of contestation in which what counts as a legal argument and a juridically plausible narrative is forged under opposition. The point comes into sharp relief where the court is compelled to confront the so-called "evidentiary" image and the methodological question it raises. Rather than treating photographs, videos, and other visual elements as additional inputs or information to be authenticated and then converted into textual expositions on propositional grounds, I treat the image as both a fissure and a rational operator that exposes a persistent blind spot in legal thought: a textocentric presupposition that equates juridical intelligibility with legibility. As a result, dominant responses to visual evidence tend to remain external to the image's intrinsically problematic mode of being: they focus on controlling its technical-material reliability, stabilising its dogmatic-processual status, or calibrating its epistemic-pragmatic weight; even historical-cultural accounts, though richer in diagnosis, often still position the image from the outside. The decisive step, I argue, is internally

(juridically) metadogmatic-methodological: to anchor the image within the rationality of judgment itself—where it becomes a critical event of sense-production and not merely a contingent complication of admissibility or a rhetorical ornament. In that sense, the challenge posed by imago probans does not amount to its "readability" or legibility but to the forms of practical mediation through which the visible becomes judicially comparable, contestable, and capable of entering the judgment's grounding. A typology of performative operations specific to the probatory construction of juridical seeing is then sketched in a critical-reflexive key, bringing the performative limits of legal reasoning into view.

THE PERFORMATIVE DIMENSION OF LEGAL CORRECTNESS. IS THE PROPOSAL FOR A CONSTITUTION OF THE EARTH THE RIGHT ANSWER TO THE CLIMATE CRISIS?

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ABSTRACT

The aim of this presentation is to evaluate Luigi Ferrajoli's proposal for a Constitution of the Earth from the perspective of the performative dimension of the concept of legal correctness. To this end, we will begin by analysing the various meanings of the expression "right answer" in law, highlighting the emphasis that legal theory typically places on its syntactic and semantic dimensions, to the detriment of its pragmatic aspects. We propose breaking down the concept of pragmatic correctness into two parts: illocutionary correctness and perlocutionary correctness. Using this theoretical framework, we will proceed to evaluate Luigi Ferrajoli's proposal for addressing the global catastrophes of our time—among which the climate crisis stands out—consisting in the enactment of a Constitution of the Earth as the only realistic and rational alternative. We will argue that the response could be considered correct from a logical-conceptual, technical-legal, and even axiological standpoint, but that it suffers from illocutionary incorrectness (the speech act of its enactment would not satisfy the conditions set forth by the proposal itself). As for its perlocutionary correctness, if evaluated in relation to the immediate objectives it aims to achieve, one would have to conclude that the time required to reach consensus on the measures to be adopted for the remaining issues the Constitution of the Earth seeks to resolve is incompatible with the urgency with which measures to address the climate crisis should be taken. Nevertheless, considered a utopian horizon for left-wing politics in the 21st century, it possesses an undeniable degree of perlocutionary correctness: it can provide an institutional utopia to a political sector characterised by a lack of

interest in such matters and by a worrying drift toward illiberalism. The proposal is both possible and necessary, but, contrary to what Ferrajoli believes, it cannot be considered the right answer for addressing the global crises of our time.

GEOGRAPHIC DISCRIMINATION IN THE PERFORMATIVITY OF LEGAL DISCOURSE

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ABSTRACT

Most legal provisions concerning equality, as set forth in international instruments or in the constitutions of States, affirm the equality before the law of all persons and, simultaneously, articulate the prohibition of discrimination by identifying categories or conditions with respect to which the adoption of arbitrary distinctions, exclusions, or restrictions is proscribed. Among the latter, the following are typically enumerated: race, color, sex, language, religion, political opinions or opinions of any other kind, national or social origin, economic position, and birth. Certain texts formulate an open-ended clause through the expression "or any other social condition," to which judicial and scholarly interpretation has progressively assigned meaning—for example, by including age as a factor of discrimination. In all cases, the approach promoted consists in equating subjects, irrespective of the group to which they belong, and, in that manner, realizing equality on the basis of a "tertium comparationis," configured through the convergence of dominant common-sense understandings—male, heterosexual, property-owning, white, middle-class, adult subject, etc. However, a conception of equality constructed from a structural perspective—that is, oriented toward preventing the subordination of the individual as a member of a group—seeks to place emphasis on the conditioning elements of the contexts in which inequalities emerge. On that basis, it proposes to rethink the function of law, particularly in its performative dimension, so that practices do not transform themselves by reproducing hegemonic standards—the "pattern" of comparison—but rather preserve the value of diversity. Within this framework, discrimination on geographic grounds has not received, from positive law, a specific treatment, nor has case law recognized it as a source of structural disadvantage. The

place where individuals live and carry out their activities is relevant—independently of merit, effort, or personal characteristics—for access to and the fulfillment of rights. The less favored areas of a country, a region, or even a city, place certain groups of persons in circumstances that, in fact, restrict the enjoyment of their rights—health, education, mobility, work, among many others. These are not always situations of poverty or indigence—although they may converge—nor are they inequalities strictly linked to ethnic or religious origin or to nationality. In this case, the law operates from geographic centers—just as, in matters of gender, it operates from a male perspective—and disregards the singular value of territory; that is, it deploys its performative force without attending to the diversity contributed by geography and to the need to take it into account in the conception of equality that is pursued. The present work aims to analyze, from the standpoint of structural inequalities, the consideration afforded to discrimination on geographic grounds in legal interpretations of equality and the extent to which such interpretations are capable of incorporating or overlooking it, ultimately performing an ideological function.

THE PERFORMATIVE DIMENSION OF ANALOGICAL REASONING IN THE JUDICIAL CONSTRUCTION OF THE CONSTITUTIONAL PRINCIPLE OF EQUALITY

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ABSTRACT

This paper analyses the performative dimension of analogical reasoning in the judicial interpretation and application of the constitutional principle of equality. It starts from a basic premise: equality cannot be applied without comparing cases. Yet that comparison is not a given. The court constructs the framework that determines which situations can be compared and which differences are legally significant. That construction is not neutral. Analogical reasoning involves evaluative assumptions that guide how cases are understood and the relevance of their similarities or differences. Their presence alone does not make the decision arbitrary. The problem arises when those assumptions operate implicitly, selectively, or in a distorting manner. Drawing on Austin's theory of speech acts, this paper argues that this reasoning has a performative dimension. When a court decides that two situations are comparable, or that a difference justifies different treatment, it does more than simply provide reasons for resolving a case. It also performs an institutional act that helps shape how the principle of equality operates. This is important because the evaluative assumptions involved in the reasoning are not excluded from the legal construction of equality. By forming part of a judgment, they can be incorporated into the operational meaning that the principle acquires within the legal system. The performative perspective allows us to see where this incorporation occurs and through which argumentative operations it takes place. For this reason, constitutional review of the equality test should not be limited to the outcome of the ruling. It must also examine how the comparison is constructed and the criteria underlying it. The aim is not to demand decisions without any assessment, but rather to verify whether such assess-

ments can be justified within the constitutional framework. Not every ideological conception is constitutionally permissible, nor does every use of ideology meet the justification requirements inherent in a constitutional decision. This thesis applies to the analysis of Constitutional Court Ruling 198/2012, concerning same-sex marriage in Spain, as an example of how judicial reasoning produces performative effects by specifying the constitutional scope of equality.

COMPREHENSIBLE LEGAL LANGUAGE AS A TOOL FOR JUDICIAL LEGITIMATION. THE LIMITS OF THE TECHNOLECT. A DEBATE PRECEDING THE PERFORMATIVITY OF LEGAL LANGUAGE

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ABSTRACT

This paper examines the inherent tension between the use of technolect in legal discourse and the fundamental right of citizens to understand judicial decisions, framing the latter as an indispensable prerequisite for legitimacy in the 21st century. Drawing upon the theory of communicative action and connecting it with the various movements advocating for "Plain Language," this study argues that the excessive opacity and hermeticism of legal language not only create barriers to effective judicial protection, but also erode the democratic legitimacy of the Judiciary. Consequently, this undermines its very existence and raison d'être, given its nature as a "functional construct" of society. Although the use of technical terminology is traditionally defended in the interest of preserving "legal certainty," this research explores the pragmatic and constitutional limits of such a technolect. Through an interdisciplinary analysis, it concludes that true legal certainty within a rule of law framework requires effective bidirectional communication. Therefore, the adoption of comprehensible legal language should not be understood as a mere stylistic simplification or a loss of rigor, but rather as an indispensable institutional tool to rebuild public trust, empower the citizenry, and fundamentally legitimize the exercise of the judicial function as a branch of the State.

FROM INVADER TO NEIGHBOUR: THE LEGAL CONSTRUCTION OF "INVASIVE ALIEN SPECIES": AN ANALYSIS OF BIODIVERSITY POLICIES IN RELATION TO LOCAL IDENTITY

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ABSTRACT

Invasive alien species (IAS) represent the second-greatest threat to biodiversity and the homogenization of the world's flora and fauna. The impacts they cause are varied, including: the displacement and predation of native species, habitat modification, the spread of diseases, hybridization, and the loss of genetic heritage. For this reason, countries such as Chile have enacted a series of regulations and action plans to govern their control and eradication. But here we encounter a problem: the way we define and classify species not only describes nature—as if it were a wholly objective reality free of value judgments—but also shapes it: it decides which lives are worthy of protection and which should be subject to control or eradication. In other words, the performative nature of the law directs institutional resources and legitimizes the interventions carried out by the administration, defining the limits of what must be protected. Indeed, from an environmental law perspective, the presence of IAS is primarily viewed as a threat to biodiversity, ecosystem stability, and ecosystem services. This approach is grounded in principles such as the precautionary principle and environmental responsibility, emphasizing the protection of collective assets, such as ecological balance and the conservation of natural heritage. Within this framework, the eradication or control of IAS may not only be legitimate but also legally enforceable, especially when it comes to fulfilling international conservation commitments (such as the Convention on Biological Diversity) or constitutional mandates regarding environmental protection. However, this perspective overlooks the fact that no species can be considered invasive in the abstract; rather, such a classification depends, in some cases, on the particulars of the environment and the way

these species interact with local communities. Thus, when law or science ignores the social value of a species, deep conflicts arise that undermine the legitimacy of environmental interventions and generate resistance among the population. This study analyzes precisely the tension that exists between IAS management policies and the process by which an exotic species comes to form part of a community's livelihood, identity, and memory. To illustrate this complexity, the presentation analyzes the case of salmonids in Lake Chungará (Lauca National Park, Chile). Here we see two realities that intersect and, in some cases, also give rise to tensions and contradictions. On the one hand, there is the ecological impact caused by trout and salmon. These species have disrupted food webs, threatening native species. On the other hand, for Aymara and rural communities, these fish are not "invaders," but rather an economic, food, and symbolic resource vital to tourism and recreational fishing. This implies that any attempt at eradication that fails to consider this social connection is bound to incur high political and social costs.

PRAGMATIC DIMENSION OF LEGAL NORMS AND DEFEASIBILITY

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ABSTRACT

Understanding legal reasoning and its pragmatic dimension is central to and constitutive of contemporary legal theory, especially since the so-called pragmatic turn in philosophy (the later Wittgenstein, Austin, Searle). This is because law is not merely a set of statements but a complex activity of language acts, where elements such as the function of normative statements, their implicit meaning, and the context operate; and where the activity of legal professionals is a crucial element. The pragmatic dimension of legal reasoning entails considering, beyond the semantic-syntactic dimension, elements such as the purpose of the law, economic and social considerations, the consequences of applying the norms, and so on. It is here that the argument of the defeasibility of norms comes into play; that is, the possibility that a legal norm, while maintaining its abstract validity, may not be applied to an individual case for various reasons supposedly induced by other legal norms. Of the different issues encompassed by the topic of defeasibility, the following deserve special attention. On the one hand, there are the reasons justifying defeasibility: the impossibility of assessing all the circumstances of individual cases, axiological gaps, the existence of implicit exceptions, the existence of underlying reasons for norms, the argument from dissociation, and the prevalence of principles over rules. On the other hand, there are the consequences that the idea of defeasibility has for fundamental elements of law, such as the particularist conception of the application of law and the acceptance of moral cognitivism, as well as the adoption of a moralistic conception of law.

THE SPANISH DEMOCRATIC MEMORY ACT AND THEIR TRIALS AS MECHANISMS OF PERFORMATIVITY IN TRANSITIONAL JUSTICE

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ABSTRACT

Since the "linguistic turn" in the social studies, researchers has been paid attention to the phenomenon of language in the legal field. Understanding that words not only describe reality but also transform it means we must consider the performative value of Law. Legal norms reflect this performative understanding in civil law systems. Similarly, the actions of different legal actors in both legal traditions – common and continental Law–, through their actions and decisions, also bring the performative into play. In the field of Transitional Justice, this idea of performativity becomes even more evident. Its basic principles of the right to truth, justice, reparation, and non-repetition seek to give meaning to democracies born from authoritarian and dictatorial processes and in which abuses were committed and legally justified. The Democratic Memory Act (20/2022) arises from this need, given that the Spanish democratic regime was born after a military coup and a dictatorship that lasted almost forty years and which has shaped its development. Spanish democracy began with a transition that has been questioned due to its links with the military dictatorship, and in which the atrocities and injustices committed have not been reviewed until now, and in which law, in all its dimensions, has been complicit. This research analyzes the judicial proceedings in the courts of Ferrol following the enactment of the law. It is paradoxical that in this city, which has fewer than 70,000 inhabitants, most of the cases brought in Spain are being pursued. This can only be understood in light of the performative dimension that lies within the laws and their capacity for social transformation, as showed the Truth Trials in Argentina and the Truth Commissions in South Africa. Performativity becomes evident in the legal sphere as an effect of discourse and through normative language and its

actions, reminding us once again of a fundamental issue: the relationship between law and power. This Democratic Memory Act allows us to undertake a review that has nothing to do with revenge, but rather with something Hannah Arendt and Carlos Santiago Nino concerned: the role of law and the principle of legality in the commission and justification of atrocities. In the case study, we examine events ranging from the detention and killing of a military officer loyal to the Republic in 1938 to the killing of a trade unionist during a demonstration in 1972. Spanish democracy, which began in 1978 with the current Constitution, had never subjected these heinous acts to legal review, and their present prosecution carries a clear performative value.

NEW APPROACHES TO ENVIRONMENTAL PROTECTION: A CRITICAL ANALYSIS OF THE LEGAL PERSONALITY OF THE MAR MENOR IN DIALOGUE WITH THE LATIN AMERICAN EXPERIENCE ON THE RIGHTS OF NATURE

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ABSTRACT

The attribution of legal personality to elements of nature, such as rivers and lakes, and their recognition as subjects of rights, stems from an "ecocentric" conception of the environment followed by several Latin American countries. This attribution may take place through its enshrinement in the country's Constitution (as provided in the 2008 Ecuadorian Constitution), through statutory recognition (following the example of Bolivia's 2010 Law of the Rights of Mother Earth), or even through judicial decision-making (as in Colombia). In the case of Spain, due to the worrying state of conservation of the coastal lagoon of the Mar Menor caused by human-induced pollution, and following a popular legislative initiative supported by a large majority of parliamentary groups, Law 19/2022 of 30 September was enacted, granting the lagoon legal personality for its protection. This represents an innovation within Spanish and European Environmental Law, which is rooted in a markedly "anthropocentric" vision of the environment, where human beings (and not nature) are placed at the centre of the legal system. In other words, constitutional and statutory texts present the environment as a specific right of human beings, oriented towards them, at their service, and deemed necessary for citizens' development. In this context, a debate has arisen regarding the compatibility of the new legislation with the Spanish Constitution (mainly with Article 45, concerning the "right to enjoy an environment suitable for personal development"), a question that was addressed by the Spanish Constitutional Court in its Judgment 142/2024. Although the Court upheld the constitutionality of the Law, it did not do so unanimously, as five justices issued dissenting

opinions. In this regard, the present research seeks, through the legal-doctrinal method (analysing the content of the statute in light of constitutional case law) and a comparative analysis with the Ibero-American context, to answer the following research questions: What legal consequences arise from the attribution of legal personality to elements of nature—specifically, to the Mar Menor lagoon—through Spanish Law 19/2022? Does this recognition entail enhanced environmental protection compared to that already provided by the existing legal framework? The findings indicate that Law 19/2022 does not ultimately depart from the anthropocentric approach inherent in the continental European legal tradition, and that the practical effectiveness of recognising the Mar Menor's legal personality is rather limited. Consequently, despite the good intentions underlying the adoption of the Law, its approval does not, in general, bring about significant legal changes that would suggest a higher level of protection for the Mar Menor compared with the traditional regulatory techniques previously in force.

PERFORMATIVITY AND CONSTITUTIONAL CASE LAW: TOWARDS A LEGAL STATUS OF THE HUMAN BODY

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ABSTRACT

The determination of the legal status of the human body is one of the most significant questions in contemporary constitutionalism. Despite the absence of an express and systematic regulation of the body in the Spanish Constitution as an autonomous legal category, the case law of the Constitutional Court has played a decisive role in the progressive definition of its normative contours.

This article analyses this process through the notion of legal performativity, understood in a sense specific to and adapted for the field of constitutional law: the capacity of jurisdictional discourse to produce, through the repeated resolution of concrete conflicts, the categories and meanings that normatively order social reality. The central hypothesis is that the decisions of the Constitutional Court are not confined to interpreting pre-existing fundamental rights but actively contribute to shaping the very legal concept of the human body, thereby advancing towards a legal status that remains under construction.

Through a doctrinal analysis of constitutional case law on the right to life, physical and moral integrity, personal autonomy, privacy, health and human dignity, the criteria used to delimit the powers of self-disposition over one's own body are examined, together with the constitutionally legitimate limits on their exercise. The study reveals that this legal status does not reflect a unitary normative design, but rather emerges from a progressive and internally contested body of case law, in which bodily autonomy and human dignity operate as organising categories around which the protection of other rights at stake is structured.

The article concludes that the Constitutional Court has exercised a constitutive —rather than merely declaratory— function in elaborating this

legal status, producing doctrinal transformations that have not always coherently resolved the tensions between individual autonomy and constitutionally relevant collective interests. The analysis of this performative dimension offers conceptual tools for addressing the challenges posed by biomedicine, emerging technologies and new forms of bodily intervention in contemporary societies.

Keywords: human body; legal status; legal performativity; constitutional case law; fundamental rights; bodily autonomy; human dignity.

THE PERFORMATIVE DIMENSION OF COMPETITION LAW

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ABSTRACT

This paper examines Competition Law not as a purely reactive and technical legal framework addressing exogenous market failures, but as a performative device that co-constitutes and delineates the economic reality it purports to regulate. Drawing from the theories of Austin and Callon, it analyzes how its analytical tools—such as the SSNIP test, efficiency metrics, and theories of harm—operate as normative technologies that ontologically institute market structures. After evaluating this dynamic within platform capitalism (Digital Markets Act), the study projects the discipline's performative power in the face of the retreat of globalization, demonstrating how the shift toward strategic autonomy and reshoring instrumentalizes Antitrust to manufacture fragmented markets subordinated to the geopolitics of Nation-states.

AI, ALGORITHMS AND AUTOMATED DECISIONS OF THE PUBLIC ADMINISTRATION. DIRECT PERFORMATIVITY?

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ABSTRACT

The use of Artificial Intelligence (AI), algorithms and automated systems in Public Administration has transformed administrative management, raising profound debates about whether algorithmic code acts as a form of "direct law" (direct performativity) that replaces human discretion and traditional legal interpretation. Although AI is used to improve efficiency and speed up decision-making, doctrine and recent European regulations insist that the algorithm must conform to the law, not replace it, and there are serious risks when the technology becomes opaque or generates biases. In certain cases, the algorithmic decision is "executive" and direct (e.g. the automatic blocking of a request or the calculation of a penalty without prior human review), which means that the technical result is imposed on the citizen. Therefore, algorithms often transform indeterminate (discretionary) legal concepts into rigid technical rules, operating in an "opaque" manner where the internal logic is not transparent.

Automation is not without risks, as demonstrated in the child benefits scandal in the Netherlands, where a fraud algorithm had devastating and discriminatory consequences. Judgment 1119/2025 of the Supreme Court establishes that the source code of public algorithms, such as that used in the electricity social bonus (BOSCO), is public information subject to transparency. This ruling recognizes the citizen's right to audit algorithmic logic to avoid bias, prioritizing transparency over the intellectual property limits alleged by the administration.

Although the code "makes" the norm in practice, it is not law in the formal sense. The public administration must ensure that the systems are verifiable and in accordance with the legal system, guaranteeing fundamental rights. If training data is flawed (systems have also revealed errors

on numerous occasions), AI can generate erroneous results and/or automate and amplify biases against certain groups. The lack of transparency (acting as "black boxes") can also be highlighted, it is often difficult to explain how an AI system reached a specific conclusion, which clashes with the obligation to give reasons for administrative acts. The greatest risk occurs when there is no meaningful human oversight (human-in-the-loop), leaving the final result in the hands of the machine, especially in situations where fundamental rights may be compromised.

This paper analyzes real cases, automated administrative action and performativity of the law and numerous questions that arise. Are new public policies and regulatory frameworks necessary in this regard? Must the state legislator guarantee that all algorithmic administrative actions have a minimum motivation when they influence, determine or guide the final decision?

EL VALOR PERFORMATIVO DE LOS CONCEPTOS DE "LEY" Y "DERECHO" EN FRANCISCO SUÁREZ

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ABSTRACT

In 2026, the University of Salamanca celebrates the fifth centenary of the School of Salamanca, an intellectual movement represented by theologians and jurists who contributed to laying the foundations of modern international law, the defence of human rights, and debates in legal and economic theory, among other areas. One of its most distinguished figures was the Jesuit theologian and jurist Francisco Suárez (1548-1617), who, in his monumental treatise De Legibus (1612), reflected –among other matters– on the meaning of the Latin terms "lex" and "ius", whose sense is equivocal. In this paper, I will address, on the one hand, Suárez's discussion of the ambiguity characterising the term "ius", as well as the influence it exerted on certain modern natural law theorists, such as the Dutch thinker Hugo Grotius. However, the central focus of this paper is the examination of how Suárez –drawing from a theological perspective but with a strong analytical approach– identifies various meanings attributed to the term "lex". His aim is to establish a semantic delimitation by specifying its possible uses. In his view, the scope of the concept encompasses diverse phenomena, which he seeks to characterize, such as natural laws, the laws of the arts (e.g. technical rules), linguistic rules and even counsel (consilia). He also refers to laws in the proper sense, which possess an undeniable performative value due to their capacity to generate genuine moral and legal obligations. They are, therefore, constitutive acts that bring about a new operative reality within the community.

GENDER PERSPECTIVE AS AN ANALYTICAL TOOL FOR DE-DEMOCRATIZATION

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ABSTRACT

The present work aims to analyze the contemporary phenomenon of de-democratization through the lens of gender perspective, understood not only as a public policy but as a fundamental analytical category to evaluate the quality and permanence of the Rule of Law. In recent decades, political and legal theory has observed with concern a regression in global democratic standards, characterized by the erosion of institutional checks and balances and the capture of state narratives by regressive discourses. This study contends that attacks on the gender equality agenda are not collateral symptoms, but primary indicators and deliberate strategies of the processes of autocratization and democratic dismantling. De-democratization processes manifest through budgetary thinning, the degradation of mechanisms that provide platforms for women, and the elimination of gender mainstreaming in public administration. From a legal-philosophical perspective, this represents a breach of the principle of progressivity of human rights and a state's renunciation of its duty to remove obstacles hindering real and substantive equality. The weakening of these institutions foreshadows a return to a state model that ignores structural disparities, thereby weakening the representative basis of the system. The regression in sexual and reproductive rights, as well as in economic autonomy, among others, constitutes a tool for social control. Likewise, by eroding women's sovereignty over their own bodies and life projects, the legal system regresses toward essentialist and tutelary conceptions that contradict the paradigm of the autonomy of will, freedom, and equality. A democracy that does not guarantee the autonomy of half its population is, by definition, a degraded democracy or one in the process of extinction. Violence, physical, symbolic, and digital, seeks to discipline women who occupy spaces of power,

sending an inhibitory message to the rest of society. Juridically and politically, this represents a violation of the right to political participation under conditions of equality and a systemic and structural failure in the protection of citizenship rights. Finally, the paper seeks to analyze the role of gender studies and their impact on democracies. The use of pejorative terms such as 'gender ideology' or the characterization of equality agendas as threats to the 'natural family' or 'national identity' are discursive tools used to delegitimize demands for social justice. These narratives seek to polarize society and construct internal enemies, facilitating the concentration of power and the evasion of accountability. Given all of this, gender perspective is indispensable for detecting these patterns; without it, legal theory remains blind to the way power reconfigures itself to exclude, subordinate, and, eventually, dismantle democracy from within, as attacks on the rights of women and gender minorities are not isolated incidents but part of a logical sequence of democratic regression. Therefore, the renewed study of democracy in the 21st century and the implementation of gender perspective are minimum standards of justice and legal legitimacy.

PUBLIC PROCUREMENT AS A STAGE FOR LEGAL PERFORMATIVITY

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ABSTRACT

This paper examines public procurement not merely as a set of administrative and regulatory procedures, but as a stage for legal performativity. Drawing from the theoretical concepts of the performativity of language and law, it analyzes how administrative acts, bidding documents, and resolutions in state contracting do not simply describe or regulate a pre-existing reality, but actively constitute and transform it. The study addresses how normative discourse and institutional practices shape contractual subjects, delimit market dynamics, and materialize public policies (social, environmental, and innovation-driven). Through a qualitative and dogmatic approach, the paper concludes that public procurement operates as a performative apparatus of power capable of shaping socioeconomic reality, transforming formal legality into a material force with a direct impact on the public interest.

EMOTIONS, DESIRES, STORIES, AND PRACTICAL REASONING. BETWEEN MOTIVES AND REASONS

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ABSTRACT

Although the standard theory of legal argumentation distinguishes between emotions and desires—which are the motives that explain the choice of action—and the reasons or premises that justify it to others, the truth is that there is no absolute separation between motives and reasons. Indeed, legal prudence presupposes that the parties and the judge are beings endowed with understanding and will. These faculties are not opposed to emotion and desire. Indeed, through understanding, thought, or reason, we can, to a certain extent, know and evaluate the pros and cons of our actions, including our beliefs about how a given event can satisfy or frustrate our desires—beliefs that are part of our emotions. Through the will, we can rationally choose among our desires and emotions and guide our actions amid conflicting ones, and sometimes we do so. In this regard, it is important to understand that opposing positions are not merely a rational line of argument, but above all a narrative (Brumer) in which each party presents its case—that is, its version of the conflict's origin and its key elements (exposition and climax)—and seeks a favourable resolution (denouement). In narrating their case, each party explicitly or implicitly expresses the beliefs that give meaning to the narrative and justify the proposed resolution, such as emotions, desires, values, principles, and rules of action. To achieve this understanding, we will study the beliefs that serve to interpret the narrative—that is, the emotions and desires that drive the actions of its protagonists, the values and principles that give meaning to the rules, and the rules of action themselves upon which practical reasoning is built, based on which the case is constructed and resolved. Emotion is not limited to sensations or reactions; it is a process that integrates various elements (Gonzalez Lagier): the belief that an event (intentional object) will contribute to satisfying or frustrating a desire, the accompanying

physiological reaction, the sensation of pleasure or displeasure (pleasure or pain) produced by that reaction, the bodily expression of the emotion, and the disposition to perform a certain behavior. Since a belief is a judgment that links an event and a desire, it can be rational or irrational; that is, true or false, correct or incorrect. In accordance with the above, desire is an aspect of emotion: the impulse to seek pleasure or avoid pain. For Marina, desire differs from animal appetite in two ways: its object is not merely a physical need but can encompass symbolic objects; furthermore, in desire, we can choose to postpone it, later accepting or rejecting it, which opens the door to deliberation. Value (Frondizi) is a structural quality that arises from the subject's emotional reaction to the properties found in an object or thing. An object that contains a value is called a good. A structure is an active interrelation among the different constituent parts of a thing, each with a specific function, such that each part contributes to the thing's overall meaning and concrete unity. The perception of values is subjective and stems from an emotional intuition that involves desire; let us remember that one aspect of emotion is precisely the belief that a certain event or object will fulfil or thwart a desire. This belief, as a judgment or proposition, can be subjected to rational discussion based on relevant and valid—that is, objective—reasons, to establish which structural qualities make the thing desirable. Value arises from physical and human situations determined by their circumstances. Therefore, solutions only make sense in the situations that the value aims to address. Principles are the imperative translation of values into a highly abstract situation. Indeed, for Atienza and Ruiz Manero, principles tell us that something must be ordered, prohibited, or permitted (closed consequence) because it has value, but they do not precisely define the situation in which the principle applies (open assumption). For this reason, values and principles do not serve to construct practical reasoning; their function is to serve as criteria for interpreting the rule of action, filling gaps, and resolving antinomies. In Hart's terminology, principles and values are not primary norms, but at most—and insofar as they integrate the law—secondary rules belonging to the rule of recognition. In contrast to opposing approaches, practical reasoning determines the appropriate action by mapping the elements of the narratives onto the elements of practical reasoning: a rule of action that serves as a normative premise, a fact that serves as a minor premise, and the appropriate action that serves as the conclusion. Thus, on the one hand, the

exposition and the climax of the stories are integrated into the facts of the reasoning, provided they meet certain conditions, such as fitting within the intended norm and being supported by evidence. On the other hand, the denouement is integrated into the conclusion of the reasoning if it coincides with the consequence of the norm. Finally, the beliefs of the story's narrator (emotions, desires, values, principles) can be integrated into the rule of action that functions as the major premise of practical reasoning, but only if that rule of action incorporates them as part of its meaning—and even more so if that rule of action was invoked as the basis for the case. Therefore, deliberation must consider the emotions that allow us to perceive values, translate them into principles, and understand the rules of action that derive their meaning from those principles and values. Based on the foregoing, we can construct arguments grounded in the power of emotions (pathos), since they not only elicit certain behaviours but also translate into values and principles that give meaning to the norms that form part of practical reasoning (logos). For this reason, Aristotle's classification of emotions in Book II of "Rhetoric" is essential for the development of legal solutions.

VERDAD, PRUEBA PENAL Y JUSTICIA

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SW14 · Legal Argumentation, Evidentiary Reasoning and Administration of Justice in the Latin American Context
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ABSTRACT

¿Es posible que un tribunal de justicia cometa una injusticia aplicando el derecho vigente de manera correcta el derecho vigente?

En esta ponencia sostendré que la relación entre la averiguación de la verdad y el juicio justo y conforme a derecho es, incluso desde una perspectiva iusfilosófica, un problema normativamente exorbitante a la cuestión epistemológica de la verificación de los hechos y axiológicamente contingente a la realización de la justicia.

Para el desarrollo de la tesis precedente, revisaré algunos de los postulados básicos de la tradición racionalista de la prueba judicial (probablemente la teoría dominante en la actualidad) y las conclusiones que de ellos se pueden extraer sobre la relación entre verdad y justicia. Luego, someteré a examen la posibilidad de verificar empíricamente un supuesto como el de "alta traición", "traición a la patria"; "conducta terrorista" sin la mediación de un juicio interpretativo legal y/o axiológico. Hecho lo anterior, mostraré cómo la cuestión de la verificación empírica de los enunciados fácticos opera, en teoría, tanto a favor de la aplicación correcta de las normas de un régimen democrático constitucional, como a favor de la aplicación de las normas manifiestamente injustas de un régimen autoritario o dictatorial, este último históricamente común en Latinoamérica. El desarrollo de las ideas precedentes, espero, sirvan para justificar mi afirmación sobre la relación meramente contingente entre la averiguación de la verdad (material) y el juicio justo y conforme a derecho.

EL RAZONAMIENTO JUDICIAL EN EL DERECHO CIVIL PATRIMONIAL Y EN EL DERECHO DE FAMILIA. UNA MIRADA A LA EVOLUCIÓN DE LA JURISPRUDENCIA CHILENA

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ABSTRACT

Esta ponencia tiene por objeto aplicar las herramientas proporcionadas por la teoría del derecho, y en particular por el método jurídico, para analizar el papel del juez en la evolución del derecho de daños y el derecho de familia en Chile, prestando especial atención a las prácticas argumentativas que han permitido transformar este sector jurídico sin la mediación de reformas legislativas significativas.

En efecto, la regulación legal del derecho de daños ha permanecido prácticamente inalterada desde mediados del siglo XIX. No obstante, la jurisprudencia ha operado como un verdadero motor de cambio jurídico y social, reinterpretando los fundamentos de la responsabilidad civil, ampliando los supuestos de procedencia de la indemnización y modulando el estándar de diligencia conforme a nuevas sensibilidades sociales.

Desde una perspectiva teórico-normativa, el derecho de daños chileno constituye un ejemplo paradigmático de la función de los principios jurídicos, ya que las categorías clásicas de culpa, daño y relación de causalidad son reconfiguradas mediante el uso judicial de argumentos basados en principios constitucionales y valores fundamentales.

La ponencia se centrará en el análisis de decisiones emblemáticas de tribunales superiores, mostrando cómo la argumentación judicial, cuando se toma en serio el carácter normativo de los principios, ha logrado suplir lagunas, superar antinomias y desplazar criterios dogmáticos obsoletos que, en ocasiones, han persistido como meros aforismos jurídicos, vacíos de capacidad explicativa.

En particular, se recurrirá a los diversos criterios de clasificación de las antinomias propuestas por Norberto Bobbio en su Teoría General del Derecho, al método jurídico de Alf Ross, al análisis de las antinomias y lagunas efectuado por Riccardo Guastini, y a las técnicas de interpretación jurídica de Pierluigi Chiassoni, examinando su poder explicativo para analizar las prácticas argumentativas desarrolladas por los tribunales chilenos, tanto en el ámbito de la responsabilidad civil contractual como extracontractual.

THE LAW IS DEAD. LONG LIVE OUR DAILY LAWS!

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ABSTRACT

"The" law is dead or dying. What if this demise prefigured a new dawn? Often in history, nobody cried when the king died. Instead, people rejoiced as a new one or no one rose. Which law is dead? That absolute Damocles' sword that authorities pretend is above us, the people, and constrains us, as if we were born to bow forever as loyal subjects, at the bottom of the legal pyramid, as "nobody is above the law." Who has ever seen that law? What is it then, a non-existing fiction that we all ought to believe in? On behalf of "the" law, grand priests, such as lawgivers, judges, lawyers, or law professors, maintain power over us, the laypeople, their sheep.

For millennia, whatever the legal system, legal sayers and imposers have acted, as if "the law" belonged to them, and as if they knew better what it meant and that we had to submit to "their law." "The court says what the law is." (Marbury v. Madison, 5 U.S. 137, 1803). The higher they sat in this empty disembodied legal sky, the lower we were on incarnated legal earth. This authoritarian vision of "the law" is based on a fantasy. "The" law above does not exist, neither as a lieutenant of god (jusnaturalism), nor as the rule of law (juspositivism).

If "the law" has delivered submission, today, despite many successes, it exposes its shortcomings as "the king is naked," and "the law" falls again in the wrong hands, of oppression and regression. We need a new philosophy of law, that recognizes our laws, as we, the people, are the reality of the laws, its fundamental sources in diversity. A philosophy of law can rely no longer on the grand priests of monism, whoever they are. Only a pragmatic pluralism of legal questioning and problem-solving exists, beyond idealism. It can revolutionize the kinglike conception, and assert that daily,

we are the lawmakers. We make nearly 100% of the law in our daily interactions. We negotiate and make deals; we deliver and implement them. When there are conflicts, in general, we solve them ourselves without resorting to authorities. We respect our neighbors and their dignity. We do not invade them. We do not commit genocide. And our customary ways create meaningful laws, not the other way around.

Authorities are useful for much less than 1%, when we as negotiators fail, or when some of us create problems that need fixing that we cannot fix ourselves, as doctors do when we are sick. No law exists above us or without us; we can leave behind this childish belief. We, as citizens, are the living law. The people's laws (ius gentium) are the foundation of the legal pyramid. The same way god is dead, the law is dead, at last. Only our laws exist.

LAW'S DEMISE?

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ABSTRACT

Why is it relatively easier to conceptualize the demise of the rule of law than to imagine the demise, death, or nonexistence of law itself? Like the "erosion of the rule of law," none of the following terms quite alludes to law's extinction: illegal, unlawful, lawless. The first has come to signify criminality, the second punishable incivility, and the third (for the most part) a social condition within a subcommunity of a polity. What is it, then, for there to be no law—for an entire polity to experience lawlessness—rather than for the "rule of law" to be absent in the sense of democratic backsliding or constitutional rot?

Because it is easier to imagine the end of the world than the end of legal culture (Jameson 1996, Fisher 2009), imagining law's demise proves harder than imagining the demise of the "rule of law." On a broadly positivist picture, wherever a relevant legal culture persists, so too does law (Hart 1961). As long as someone is suing those responsible for the world's impending last breath, there is law when such claims are pursued with formal procedures and there exists a community for whom those procedures' outcomes are valid.

Law's extinction is not a matter of erosion between different legal or constitutional orders (democracy, republic, monarchy) nor between different forms the law can take (civil, common, or martial) but of the cessation of conditions under which members of a society treat procedural outcomes as authoritative. Even civil war, with its martial law and military tribunals, is not the Hobbesian "warre of every man against every man"—a "state of nature" with no civil, common, or military authority of any kind. Conceptualizing law's demise requires identifying the threshold at which legal culture itself becomes impossible.

POPULAR RECOGNITION AND THE EXISTENCE OF INDIVIDUAL LAWS AND LEGAL DECISIONS

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ABSTRACT

While general jurisprudence has focused on what grounds the existence of legal systems, it has paid less attention to what grounds the existence of individual laws (including constitutional and statutory laws) and legal decisions (made by executive and judicial officials). One view, which might explain the focus on the existence of legal systems rather than individual laws and legal decisions, is that an individual law or legal decision exists if, and even just if, it is authorized by the legal system. However, there is reason to doubt that admittedly plausible view. Sometimes, it seems as though individual laws and legal decisions exist even if the legal system does not authorize them. Some constitutional laws are not authorized by the existing legal system but still have legal (and constitutional) status. Similarly, some judicial decisions seem to lack authorization but eventually come to have legal status. There seems to be a converse phenomenon too, where individual laws and legal decisions that are or at least once were authorized by the legal system no longer exist, even in the absence of repeal or overturning. With legislative decisions, the phenomenon is known as "desuetude". And with judicial decisions, the phenomenon is known as a loss of what Dworkin called "gravitational force". In this paper, I explore the question of what grounds the existence of individual laws and legal decisions, proposing that it may be popular recognition. In doing so, I also try to explain why we rarely cite popular recognition as what grounds the existence of individual laws and legal decisions. My suggestion is that although popular recognition is what ultimately grounds such existence, in typical cases, popular recognition defers to institutional or official sources of recognition.

HOW LAW DIES, WHEN LAW DIES

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ABSTRACT

In general jurisprudence, it is understood that a legal system must be effective to exist. Yet, short of complete ineffectiveness, this feature of law reveals little about the conditions under which a legal system faces demise. After all, legal norms are regularly ineffective: constitutional provisions remain unenforced, crimes continue to be committed, and court judgments are sometimes ignored. This raises the question: can the concept of effectiveness tell us more about when and how legal systems die?

The paper explores the insights and limits of the general jurisprudential concept of effectiveness in explaining the phenomenon of law's demise. It argues that the concept becomes useful when examined in light of Raz's framework of practical reasoning: law remains effective, or in force, so long as it can constitute a sufficient reason for subject obedience. The concept of a sufficient reason is then explored, revealing that law's effectiveness is sustained by a combination of authority (leading to wilful obedience by subjects as a result of law's status as a second-order reason) and coercion (obedience as a result of overwhelming first-order reasons). If these mechanisms break down, anarchy and lawlessness become more likely, making it difficult to maintain the existence of the identity of any particular legal system.

FICTIONAL GENEALOGY AND ORIGINS OF LAW

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ABSTRACT

Jurisprudential discussions on the nature of law commonly appeal to a special kind of explanation known as 'fictional genealogy'. Despite the popularity of the method, limited attention has been drawn to its explanatory capacity, and standards for its proper use. The objective of this paper is twofold. Methodologically, it seeks to establish fictional genealogy as a distinctive kind of explanation from standard conceptual analysis, on the one hand, and from history of laws, on the other. In so doing, I specify the part of the nature of law a fictional account of genealogy is apt to illuminate. Substantively, the paper considers competing accounts of origins of law by legal philosophers, and in particular, whether an account based on the formation of custom is adequate. In so doing, I develop and defend a fundamentally functional account in the spirit of HLA Hart's explanation of why secondary rules might emerge. Additionally, I relate the discussion of origins of law to that on how law might disappear.

JURISPRUDENCE AFTER DARK: LEGAL THEORISTS IN THE SERVICE OF EVIL REGIMES

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ABSTRACT

Even though jurisprudence is often treated as a 'pure' science that is detached from morality, legal theorists are often both influenced by and influence the law's practical realm. As a result, they can be a force for good – or, indeed, evil. The lives and works of two legal theorists in the service of Nazi Germany and Stalin's Soviet Union – Carl Schmitt and Andrey Vyshinsky – serve as good case studies of the latter. In the first half of the paper, I will outline the role that legal theorists like them play when it comes to legitimising evil regimes. Firstly, there is the transitional force – the shift between the preceding legal system and the evil legal system in question is presented as legally unproblematic. Secondly, there is the operational force – the evil legal system's laws are conceptualised as a part of a desired societal project. Thirdly, there is the defensive force – aggressive measures aimed at retaliating against an attack on that system are presented as both legal and justified. In the second half of the paper, I argue that the insights of scholars like Schmitt and Vyshinsky should be treated as a matter of scholarly interest. Firstly, I respond to the Emptiness Objection, arguing that those theorists' adoption of the described law-strengthening stance, rather than a law-weakening one that positions evil acts of legal systems outside the law, speaks to their contemporaneous relevance. Secondly, I counter the Insincerity Objection, stating that those scholars' embrace of the law-strengthening stance was driven not just by their political ambition, but also by a genuine desire to contribute to the scholarly inquiry. Thirdly, I deal with the Immorality Objection, affirming that it is those theorists' occasional departures from their law-strengthening position rather than the stance itself that are most problematic.

BEFORE LAW DIES: CIVIL SOCIETY RESPONSES TO LEGAL DECAY IN CENTRAL AND EASTERN EUROPE

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ABSTRACT

This paper approaches the "demise of law" from a societal and institutional perspective, examining how civil society actors in Central and Eastern Europe experience and resist legal decay in practice. Rather than focusing on law's conceptual properties, the paper explores its conditions of survival: public trust, institutional independence, and civic participation. It argues that when these social foundations weaken, law's authority and legitimacy—its very existence as law—are endangered. In this sense, the demise of law begins long before the disappearance of formal legal norms; it starts when legal institutions lose credibility and when citizens no longer perceive law as a source of justice. Drawing on comparative research conducted as part of the Innovating Resilience project at the European University Institute, the paper analyzes how civil society organizations (CSOs) in Central and Eastern Europe respond to the erosion of rule of law through innovation, cross-border learning, and new forms of civic engagement. By situating civil society as both a witness to and a bulwark against legal collapse, the paper contributes an empirical dimension to the philosophical inquiry into law's demise. It suggests that understanding how non-state actors mobilize to protect legal order offers critical insight into where, and how, law continues—or ceases—to exist.

NEW TECHNOLOGIES AS A CHALLENGE TO LAW

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ABSTRACT

With artificial intelligence (AI) being increasingly put to practical uses, the prospect arises of Man's becoming more and more AI-dependent in multiple walks of life. The rapid development of information and communication technology creates an existential threat to law as a result of human activity. This necessitates that a constitutional and international dimension be imparted to a right that stipulates that key state-level decisions impacting human condition, life and freedom must be made by humans, not automated systems or other AI contraptions. But if artificial intelligence were to make decisions, then it should be properly equipped with value-based criteria.

The not inconceivable possibility of humans' being replaced by AI in government and judiciary calls for a re-examination of the very concept of what is referred to as the democratic system and what is referred to as law. While it seems fair to acknowledge that a democracy may sometimes allow for indispensable restrictions on human rights (with minority rights respected), it must be emphatically demanded that that such restrictions may only be imposed by humans exercising legislative, executive or judicial powers – not by algorithms, computer software and applicable AI forms.

The importance of the right to be represented, governed and judged in court by humans is highlighted by the prospect of threats that may arise if control of society is taken over by the tools intended to serve its security. It may turn out that – when it comes to defining security – these tools may begin to dangerously play a role that transcends their original remit. The tools used by people not only change the world, they also change the people themselves, changing the hierarchy of values thus undermining law itself.

LEAN ON ME, WHEN YOU'RE NOT STRONG. IN TIMES OF DEEPEST CRISIS OF INTERNATIONAL LAW, ITS LANGUAGE REMAINS UNCHANGED

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SW16 · Legal Discourse and the Notion of Crisis
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ABSTRACT

There is no doubt we are living the most severe crisis of the international law in the last 80 years and the most severe crisis of the institutional international law in its (brief) history. The open contestation of the international legal order from world's biggest player and main driver of such order in past (U.S.A.) is the principal reason why the crisis is so evident to anyone. But the crisis was there even before this contestation in the last year, it basically started in February 2022, with the Russian invasion of Ukraine.

The cornerstone of post-1945 international law was the prohibition of the use of force. Although never fully implemented, for several decades it prompted (at least self-)restrain from international powers. The expression of the crisis now is that great and middle powers not only do not show law-induced restrain, but some of them don't even try to pretend that such rule of prohibition of the use of force would be even recognized. On the other hand, the most important international legal phenomenon post-1945 was the emergence and development of international organizations (IO). They are also loudly challenged these days, with open attacks on UN, its agencies (eg World Health Organization) and other IOs that were definitory for contemporary world order, such as World Trade Organization. Here, the most obvious example of contestation is the promotion of alternative forms of association by States, which is not based on the equal sovereignty of the States, such as Trump administration's promoted Bord of Peace.

But something did not change at all in these tumults. The language of international law. Reading the UN Charter and the Board of Peace Charter, one can note all the differences and oppositions in terms of normative content of such instruments, but the legal language used by these instruments

is the same. It's like the same lawyers simply changed sides and now write for their former adversary. The language of rights, duties and procedures in international law remained the same.

Domestic crises and revolutions are usually accompanied not only by a change in the normative content of the law, but also in its forms of expression. Ideology-driven changes do generate changes in the vocabulary of law and legal categories. Also the forms of law-enacting and, even more visibly of law application, change. It's not only the content of law that is changing but also law as medium of communication. It seems that something similar is not applicable for international law.

Questioning why this is happening is an interesting endeavour into the philosophy of international law. The specificity of the field, and the contingencies of its history, might suggest some possibly fertile areas for further reflection. Despite not performing the same functions as domestic law, the language of international law is precisely the same as that of domestic law. Being a lawyer in international law means nothing else than using the same language as domestic law. The identity of the international law rests on its language, not on its functions. Such shared language is the result of domestic lawyers and international lawyers being part of the same epistemic community. Drawing on the distinction between law as system of rules and law as language (which is fundamental in the constructivist approach in International Relations theory), the paper attempts to explain this "resilience" of the legal language in international affairs based on the language-based identity of international law.

PROCREATION IN A CHANGING WORLD: LAW, ENVIRONMENTAL ANTINATALISM AND THE LIMITS OF STATE INTERVENTION

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ABSTRACT

In the context of contemporary global challenges, procreation stands out as a critical domain where legal, ethical, and environmental concerns increasingly intersect. Many legal systems continue to reflect a pronatalist orientation, primarily aimed at countering the demographic decline affecting a large number of Western countries. At the same time, the rapid development of assisted reproductive technologies has substantially expanded individual reproductive autonomy, reshaping parental expectations and, in many cases, giving rise to new claims directed at the State.

In stark contrast, the past two decades have witnessed also a significant resurgence of antinatalist discourse, particularly in its environmental variant, driven by increasing concern over global overpopulation and the scarcity of natural resources (Kuhlemann 2023). This perspective, which regards procreation as immoral and irresponsible in light of current environmental conditions (MacIver 2015), combines theoretical reflection on the consequences of reproductive choices with proposals for measures aimed at limiting birth rates. These range from economic and social incentives and disincentives to more coercive measures, as well as forms of libertarian paternalism (Conly 2016; Bognar 2019).

By reframing reproduction as a matter of collective concern, environmental antinatalism challenges the traditional understanding of procreation as an intimate sphere of human life, insulated from public scrutiny (Robertson 1994). This shift raised fundamental legal and ethical questions regarding the extent to which state intervention can be justified without undermining individual autonomy and fundamental rights. In this sense, the contribution critically examines the tensions surrounding the right to procreate, with particular attention to the role of law in mediating reproductive

autonomy and collective interests, analysing how environmental concerns and socio-economic transformations are prompting a reconsideration of the legitimacy of state intervention in this domain

'POLAND IS A WOMAN': THE BLACK PROTEST AND THE NOTION OF CRISIS

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ABSTRACT

This paper explores the 'Black Protest' in Poland—a massive wave of social mobilization triggered by the 2020 Constitutional Tribunal ruling (K 1/20), as a case study in the relationship between legal discourse and the notion of crisis. By framing the ruling and the subsequent erosion of the rule of law as a social and constitutional backlash, the study examines how moments of crisis expose deep-seated dissonances in legal structures and enable the imagination of alternative futures.

The analysis focuses on how the social imaginary of the constitutional right to assembly was reframed through these events, facilitating a critical transition from spontaneous street protest to organized legal mobilization. Drawing on Pierre Rosanvallon's theory of counter-democracy, the paper interprets the protesters' actions as manifestations of citizen vigilance, denunciation, and evaluation. Through a socio-legal and linguistic analysis of protest slogans (e.g., 'Poland is a woman', 'This is war'), the research demonstrates how emotional and creative discourse functioned as a concurrent forum for legal debate, challenging the traditional stability and predictability of law with the uncertainty and rupturecharacteristic of crisis situations.

Furthermore, the paper investigates the legal consequences of this mobilization, including domestic criminal proceedings against protesters and strategic litigation before the European Court of Human Rights (ECtHR). It highlights the clash between constitutional guarantees and their implementation during an overlapping public health crisis (the COVID-19 pandemic), illustrating how judicial reasoning navigated the boundaries of freedom of assembly during turbulent times. Ultimately, the paper argues that the Polish experience reveals how crisis conditions can reshape the

ontological accounts of law, shifting social arguments into the realm of legal discourse as a mechanism to address the crisis of democracy.

FROM CRISIS TO CRITIQUE: METADOGMATIC RECONSTRUCTION AT THE EDGE OF JURISVISION

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ABSTRACT

"Crisis" is often invoked as the name of an exception—an external interference, an inconvenient noise that temporarily strains an otherwise stable juridical order. I propose a different point of entry: crisis designates a fracture internal to juridical intelligibility. It is not merely a negative disturbance, but the very condition under which juridical experience can resist both self-evident closure and dissolutive indeterminacy (undecidability) by forcing the rearticulation of its own mediations. In its classical sense, krisis already names the pressure of decision—the moment in which the controversy cannot be prolonged indefinitely and demands a passage to judgment (Pigeaud). Under contemporary conditions, however, this decisional pressure condenses into something structurally broader: the exposure of law's historically situated presuppositions of intelligibility as increasingly fragile, and ever more contested.

Crisis, in this sense, is not exhausted by empirical, axiological, or normative turbulence. It is also a crisis of mediation, both in its possibilities and its limits: of the practical-cultural pathways through which law produces, circulates, institutes, and shares meaning; stabilises significations and experience; fixes criteria of relevance; and recognises juridically relevant reality—where the contours of the juridical problem are fixed in the lived dramaturgy of contestation, as the visible and the sayable are made to count as material grounds for decision. This fracture is inseparable from the rarefaction of shared symbolic supports and the fragmentation of mediation regimes that previously sustained communal reference. It is also inseparable from the contemporary oscillation between hypervisibility and opacity—between saturated exposure and the erosion of the very conditions of seeing and saying—within a landscape increasingly shaped by dis-

continuous, digitally intensified forms of enunciation and reception, alongside the displacement of logos and discourse by fleeting stimuli and self-reinforcing loops. Under such pressures, juridical experience cannot be taken as self-evident: the texture of legal subjectivity and intersubjectivity, the status of language and discourse as a medium of sense, and the possibility of judgment as a limit-gesture through which difference may still be inscribed within a community become methodologically problematic. At this point, crisis either collapses into dogmatic closure, or opens a passage to critique.

Crisis, therefore, does not automatically yield critique; it may just as easily generate inertia, cynicism, or pseudo-solutions that merely cover over the fracture by intensifying managerial techniques, technical certainties, or rhetorical and pragmatic self-satisfying short-circuits. The transit from crisis to critique requires an immanent metadogmatic labour: neither a universalising stance of disinterested exteriority nor a self-reflexive immanence that collapses into impossibility. I use jurisvision to designate the metadogmatically reconstructed regime of juridical seeing—the renewed practical-cultural mediations through which validity-claims can again become intelligible after crisis, beyond both dogmatic closure and dissolutive indeterminacy. Against a radical practical immanentism that tends to hypertrophy the absence of foundations into an argument of paralysis (Fish), a critical-reflexively immanent orientation insists on reconstructing—within juridical practice—the necessary criteria and "points of respiration" through which validity-claims can remain answerable (C. Neves).

Crisis-talk in legal discourse is thus approached not as a mere thematic register, but as a site in which presuppositions become visible as problems, compelling a rearticulation of the mediations that make judgment possible—in legal discourse's blind spots. Precisely where judgment is forced to reconstitute its methodological intelligibility in the wake of crisis.

CRISIS, EMERGENCY, AND EXCEPTION: SECURITIZED DISCOURSES IN EUROPEAN HUMAN RIGHTS ADJUDICATION

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SW16 · Legal Discourse and the Notion of Crisis
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ABSTRACT

This paper examines how the European Court of Human Rights (ECtHR) adjudicates cases in which states invoke crisis, emergency, and security narratives to justify restrictions on human and civil rights. Drawing on a qualitative analysis of selected ECtHR judgments (from a database of ECtHR judgments involving Islam, prepared within the project "Judging Islam: Analysis of European Court Cases Involving Islam," funded by the National Science Centre, Poland)—including, for example, A. and Others v. the United Kingdom (UK counter-terrorism derogation), Alparslan Altan v. Turkey and Şahin Alpay v. Turkey (post-coup emergency detention), and Pagerie v. France (compulsory residence under a state of emergency)—the paper explores tensions between perceived security threats, anti-terrorism narratives, anti-Muslim sentiments, and the obligations of the state.

The analysis asks how crisis discourses justify states of exception; how law is presented as crisis management through derogation, preventive detention, administrative control, and speech restrictions; and whether such conditions challenge law's stability, legitimacy, or validity. In the analysed judgments, states frame emergency powers, terrorism suspicions, and radicalization risks as necessitating exceptional measures affecting liberty, movement, expression, and procedural rights. The ECtHR must then assess, discuss, and narrate proportionality and necessity amid states' claims of "emergencies threatening the life of the nation."

The paper approaches crisis not as a neutral fact but as a discursive construct shaping what counts as evidence, threat, and justification. Through close reading of judicial reasoning, it traces how states and courts translate security claims into legal categories, balancing deference to state necessity

against Convention safeguards. By focusing on Islam-related emergency cases, the study reveals how law both constrains and enables securitized governance, normalizing exception while testing rights protection.

LEGALLY (IN)VISIBLE: THE MISALIGNMENT BETWEEN SOCIAL AND LEGAL SITUATION OF THE ELDERLY PEOPLE

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ABSTRACT

It is impossible to overlook the profound demographic shift unfolding in the Western societies, where aging populations are reshaping the fabric of social and economic life. Such a swift and universal transformation has led to what is called a 'cultural lag', where, shortly speaking, societal perceptions and institutions have not yet adapted to the realities of aging populations. Social gerontology research highlights that many older adults remain physically, economically, professionally, and socially active. One might assume that sufficient time and discourse have allowed for corresponding adjustments within the legal framework to adequately address it. However, any optimistic claims about solving the 'lag', regrettably, do not extend to the legal domain.

Like any other demographic cohort, older adults possess distinct life goals, defining experiences, and face health and social risks. Some individuals require assistance, while others remain fully capable of managing their living situation autonomously. Despite increasing awareness of the nuanced landscape, the existing legal framework remains largely inadequate in addressing these evolving realities. The diversity is obscured by a reductive, paternalistic approach. Regulations concerning older adults predominantly focus on their deteriorating health, pensions, and social welfare benefits. In the rare instances the issue of their social position and participation is addressed, it is framed in terms grounded in assumptions of inherent frailty and incapacity. The existing regulations lack support for the older adults who, with some assistance, could still fulfill their goals, dreams and social roles beyond receiving care until the day they pass away.

One could say that there is nothing wrong with the approach that currently dominates the legal discourse. After all, law should protect the vulnerable. However, there is a difference between perpetuating ageist stereotypes and recognizing the actual challenges and vulnerabilities a population group is faced with. What law fails to contemplate also is the progressive phasing out of certain areas of life connected to the gradual decrease in social and cognitive functioning of an older person. While the age of eighteen is widely recognized as the threshold of full legal capacity - with minors, initially subject to numerous restrictions, coming gradually into their rights- there is no equivalent legal framework for the elderly that acknowledges the natural decline in capacities essential for full social participation and the performance of social roles they once fulfilled. Current legislation tends to approach these issues on an individual basis: a person whose issues were noticed may be subject to guardianship or receive support, but such interventions are not mandatory. Consequently, if an older adult lacks attentive family or caregivers, they may effectively remain legally invisible to the state until a crisis occurs. All the foregoing reveals a profound misalignment between the evolving social situation of aging populations and the legal frameworks that govern them, underscoring the urgent need for a more nuanced legal recognition of older adults' roles in society. On one hand, they are seen as frail and vulnerable, and on the other – little to no help or intervention towards them can be taken without exhaustive proceedings on their or their caregivers' side. In this process, the law pushes the actual elderly persons to fall between these two clashing perspectives, rendering them and their actual needs invisible as a result.

The current approach to regulating the situation of older adults gives rise to a significant crisis within the legal domain, which can be described as a crisis of "legal invisibility." As a result, a systemic gap emerges: older adults are positioned between two rigid legal narratives—either as fully autonomous individuals or as persons requiring complete care—without meaningful intermediate frameworks. This contradiction produces a broader crisis in which many older persons remain effectively invisible to the legal system until a moment of acute emergency, revealing a structural inadequacy in the way the law conceptualizes and responds to ageing populations. The aim of my paper is to showcase this significant misalignment by analyzing social gerontology literature, examining existing legal regulations, and comparing them with the lived realities of older adults.

Through doctrinal analysis and conceptual discussion, it will identify structural gaps and propose directions for more responsive legal frameworks.

CRISIS AS A MOMENT OF COGNITIVE INSIGHT: PHILOSOPHIA PERENNIS AND THE NATURE OF LAW IN THE PHILOSOPHY OF ERIC VOEGELIN

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ABSTRACT

Contemporary legal discourse increasingly refers to the category of 'crisis' when describing phenomena such as pandemics, armed conflicts or the crisis of liberal democracy. Consequently, the law is sometimes reduced to a system of existing norms, the crisis of which lies in their ineffectiveness, their inflation etc. Solutions are sought through institutional reforms or more effective enforcement of the norms. E. Voegelin challenged this assumption. A crisis of law thus turns out to be secondary to a more fundamental phenomenon: a crisis of the experience of meaning that enables the functioning of law as such. In this presentation, I seek to develop this intuition, proposing an interpretation of the crisis as a cognitive moment, and to organise it through the prism of the category of philosophia perennis as a possible theoretical framework for an attempt to grasp the phenomena of law. As Eric Voegelin sought to demonstrate in his work "The Nature of Law", using, in essence, an eidetic reduction, law has no essence, nature or eidos. Such a characteristic cannot be found in any legal act, system or collection of them. This does not, however, mean a complete abandonment of the perspective of understanding the crisis and attempting to respond to it. The ancient Greek nomotetes (lawgivers), as well as the philosophers Plato and Aristotle, believed, according to Voegelin, that the crisis calls us rather to a renewed recognition of our place within a deeper, ontological order, which can be expressed through, sort of, arche of law. Ancient civilisations used terms to express a certain all-encompassing, universal order, such as nomos, maat, dharma or ius. From the perspective of non-positivist phenomenology, it is often pointed out that law is therefore not merely a structure of norms, but a dynamic process of interpretation and mediation of meaning, taking place in the intersubjective space. In this

context, we can speak of a certain universality without universalism. Reference to local or ancient categories can also serve as a tool for transposing the meaning of institutions. This was demonstrated, for example, by Sally Engle Merry in the process of so-called vernacularisation, where human rights concepts are transposed onto the ground of local concepts in India and China. Consequently, an analysis of the crisis leads not only to a better understanding of law as a social phenomenon, but also opens up the possibility of reinterpreting it from a more universal perspective. In this sense, the crisis not only destabilises the law, but also reveals its dependence on deeper forms of meaning that transcend specific legal systems. In a world marked by a multitude of cultures and legal orders, such an approach may constitute an attempt to find a minimal common horizon of meaning, in which the law regains its role as an expression of order, rather than merely an instrument of regulation.

INDEXING CRISIS. FROM THE QUESTION OF FAIRNESS TOWARD THE QUESTION OF THE NATURE OF CREDIT MONEY

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ABSTRACT

The problem of abusive foreign currency loans, especially those denominated in Swiss francs, frequently offered in Poland by banks in the first decade of the 21st century, remains an important issue, both in Polish courts and in public discourse. At the beginning of this year, according to the Ministry of Justice, there were about 130,000 related court cases pending, with thousands of new ones filed each month. Bottom-up consumer organising and favourable court rulings in similar cases in the last decade have led to a surge in borrowers suing to nullify their contracts, causing court delays and sparking a vibrant public debate, where notions of crisis were frequently invoked.

My paper will discuss, based on an exploratory analysis, what conceptions of justice have been evoked within the discourse about the crisis of abusive foreign currency loans by its stakeholders and commentators. Through a review of media comments and court rulings, I will highlight selected concepts, narratives, and arguments employed by litigants, courts, and commentators.

Specifically, I will argue that there are generally two broad ways of talking about the crisis that can be noticed within the public debate. The first type of discourse employs the language of commutative justice, which currently dominates the most influential court decisions. It frames the legal relation between parties as a generally private matter between banks and consumers, focusing on the rectification on consumer rights and the need of restoration of contractual balance through the removal of abusive clauses in loan contracts. The second narrative employs the language of distributive justice, often brought up by the banking sector and some legal

commentators. This discourse highlights the systemic effects of mass contract cancellations, arguing that such judicial outcomes create social inequity by providing "free loans" to a specific group of citizens at the expense of others.

I will argue that the comparison of these two broad ways the notion of justice presents itself in the context of foreign currency loans reveals a dissonance present in the legal discourse regarding which concept of justice should guide the resolution of the crisis. The paper will argue that these tensions highlight a more profound ambiguity in the laws on the role of banks and the nature of credit money. The law frames banks as positioned in between “private” facilitators of market transactions and “public” gestors of financial infrastructure essential to contemporary social life. The paper will show how such regulation can highlight sometimes incompatible conceptions of justice, whose relations can impact both legal reasoning and public perception of fairness. Referring to contemporary debates about the nature of money, I will reflect on the dilemmas stated above and discuss in what way (legal and social) crises such as the foreign currency loan issue can be said to play an illuminating role, pointing attention to hidden contradictions and tensions within social institutions.

PERSONALIZED AFFIRMATIVE ACTION? ON ITS POTENTIAL

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ABSTRACT

Typically, affirmative action takes the form of preferential treatment based on socially salient group membership such as race or sex. A common way of criticizing them is pointing out the mismatch between the aims they aspire to and the means they employ. If the aim of gender quotas is to address obstacles women typically suffer from when accessing higher social positions, it goes, why not directly consider the fact of candidates, whether female or male, engaging in caregiving, of their being "effeminate" and vulnerable to gender harassment, and so on, instead of (or in addition to) their sex? Considering all the relevant characteristics when implementing affirmative action has widely been assumed infeasible. However, the idea of "personalized law" may change this intellectual spectrum. Personalized law is a name characterizing the legal practices where a decision for an individual is made based on all the information available about this person relevant to the aims of the law, with the aid of big data and AI algorithms. In this presentation, I examine whether "personalized" affirmative action, considering all the characteristics of different individuals relevant to the policy's avowed justifications, can be a morally better alternative to its conventional counterpart, that uses only socially salient features such as race or sex. I classify different justifications for affirmative action into two categories: justifications aiming at directly benefiting the candidates from disadvantaged groups by the preferential treatment and those aiming at indirectly addressing the further problems by the preferential treatment (e.g., providing role models), and contemplate upon whether the personalized version can meaningfully be pursued under these two categories respectively. One can easily make an argument in favor of the personalized one with the former category, but I argue that we can

make a similar argument even with respect to the latter. A tricky case arises when a number of minorities (irrationally) regard as better role models even those members of their group hostile to racial or gender justice than those members of majority promoting justice, in which case the claimed advantage of personalized over conventional affirmative action is meager at best. I argue that this case shares similarity with the one where the stigma or anti-balkanization objection to affirmative action is made; in both cases, the prospect of irrational reactions is taken as a given. This insight leads us to a further question whether there is any moral asymmetry between the two.

Keywords: affirmative action; mismatch; over and under inclusiveness; personalized law; role models; stigma; anti-balkanization; justification; non-ideal theory

AFFIRMATIVE ACTION AS CAPABILITY THRESHOLD-SETTING, NOT PREFERENTIAL TREATMENT

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ABSTRACT

Debates over affirmative action typically frame admissions and hiring decisions as problems of distributive justice. Policies are evaluated in terms of whether they unfairly allocate scarce positions, impose unjust burdens on non-beneficiaries, or improperly privilege group membership over individual merit. This distributive framing, I argue, mischaracterizes the kind of institutional practice affirmative action is and obscures the normative question it raises.

Drawing on the capabilities approach, this paper proposes an alternative account of affirmative action as a form of capability threshold-setting rather than preferential treatment. On this view, the relevant question is not how benefits should be distributed among competing applicants, but whether institutional selection practices reliably identify agents who possess, or can realistically develop, the capabilities required for meaningful participation in the institution's core activities. Formal equality of opportunity can fail to secure this aim when social and structural conditions systematically impair individuals' ability to convert resources, credentials, or test scores into effective agency.

To clarify which capabilities are normatively relevant in institutional contexts, the paper incorporates the idea of ius situs, understood as the normative significance of agents' social and political situatedness. Capabilities matter not in abstraction, but in relation to an individual's standing within shared institutions and practices. Admissions decisions implicitly presuppose judgments about who can participate as a member of a collective enterprise, not merely who performs best on standardized metrics. From this perspective, social position is not itself a basis for preferential treatment, but a factor that shapes whether capability thresholds for participation are genuinely met.

Affirmative action, so understood, operates at the level of conversion factors rather than outcomes. Background conditions such as educational access, discrimination, and social positioning affect not only the resources applicants possess, but how those resources translate into situated agency within institutional settings. Selection practices that attend to these factors aim to secure fair conditions of participation rather than to redistribute benefits among groups.

This framework also reframes the ideal of treating applicants as individuals. Treating individuals as individuals does not require abstraction from social context or selective ignorance of situated constraints. Rather, it requires attention to how distinct agents stand with respect to the capabilities necessary for institutional participation. By integrating capability thresholds with ius situs, the paper offers a non-distributive account of affirmative action that avoids desert-based objections while providing a principled standard for the permissible use of social information in selection decisions.

THE METAPHOR OF THE RACIAL SIGN: AFFIRMATIVE ACTION UNDER SUSPICION

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ABSTRACT

Adopting a radical left-wing approach, this paper proposal is epistemologically grounded upon the inner logic of legal reasoning, deploying it to demonstrate that affirmative action operates merely as a bourgeois concession—a pacification mechanism inherent to the current stage of late capitalism that leaves fundamentally unaltered both the underlying class structures and the systemic racism characteristic of post-slave-holding societies.

The central objective of this intervention is to theorize the "Metaphor of the Racial Sign" by an analytical architecture constructed through a philosophical cross-examination of Jean Baudrillard and Frantz Fanon. By mapping the biopolitical dynamics of inclusion and exclusion that continuously reproduce subalternity, the study exposes how historically racist, colonial-procedural schemata remain deeply embedded within the institutional apparatuses of contemporary democratic states under the rule of law.

The sign, as conceptualized by Baudrillard, is structurally deployed here as a mechanism of racial partition that segregates Blackness from the middle class. Within the Brazilian socio-economic matrix—as diagnosed by Florestan Fernandes through his seminal concept of the "Bourgeois Autocracy"—racial division in a post-slave-holding nation is invariably a class division.

Consequently, this investigation, which will culminate in a peer-reviewed article, seeks to prove that the policy of racial quotas—widely celebrated as a triumph of the institutional Left in Brazil—functions as yet another cunning stratagem of centralized capitalism. It operates as a compromise concession designed to neutralize strategically far more libertar-

ian and emancipatory pathways, reducing the critical struggle to a defensive battle for partial integration, as if this circumscribed co-optation were the absolute horizon for transforming the country into an egalitarian locus.

This intervention does not constitute a negation of progressive struggles. Rather, it is a denunciation of these agendas as "Metaphors of Cold Reason," wherein the most destabilizing systemic debates are structurally deflected. It exposes how contemporary progressive thought remains anchored within the structural argumentative support of conservative right-wing paradigms, treating racial segregation within the very metrics mandated by bourgeois orchestration.

FREEDOM, EQUALITY, AND ALGORITHMIC FAIRNESS

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ABSTRACT

John Rawls famously argues that a just society depends on citizens treating one another as free and equal. While this commitment is often associated with the original position and the veil of ignorance, Rawls's account of justice also presupposes that this mutual recognition persists after the social contract is established. If justice requires that we continue to relate to one another as free and equal persons, then social practices that undermine these relations pose a fundamental normative problem. Rawls avoids metaphysical debates about free will by grounding freedom in how we understand and relate to one another: we are free insofar as we regard ourselves and others as capable of forming, revising, and pursuing conceptions of the good. Predictive algorithms, however, operate by treating individuals as predictable objects within structured environments. Even when predictions are probabilistic rather than deterministic, these systems relate to persons as beings whose future actions can be anticipated and managed in advance. Moreover, predictive algorithms are not neutral forces; they are intentionally designed and deployed by institutions to guide, constrain, or condition behavior, often bypassing deliberation and reason. When institutions justify decisions by appealing to "what the algorithm produced," responsibility is obscured, and individuals are no longer addressed as free and rational agents. This paper examines whether predictive algorithms, now widely used in domains such as insurance, criminal justice, and social services, are compatible with Rawlsian commitments to freedom and equality. I argue that predictive algorithms cannot treat individuals as free in the sense required by justice as fairness.

RETHINKING CONSTITUTIVE AND REGULATIVE RULES

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SW18 · Categories of Norms
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ABSTRACT

The distinction between constitutive and regulative rules has a long and influential history in legal and political philosophy. Although it can be traced back to Immanuel Kant, it was John Rawls who introduced this distinction into modern theory, most notably in his paper Two Concepts of Rules (1955). Rawls's distinction between general rules and practice conceptions was later developed by authors such as John Searle and incorporated into broader theories of social reality.

Contemporary discussions commonly distinguish between two kinds of rules. Regulative rules, such as the rule to drive on the right side of the road, are typically understood as governing pre-existing forms of behavior. Constitutive rules, by contrast, are said not merely to regulate behavior but to constitute the very activities to which they apply, as in the case of games such as chess or baseball.

In this paper, I offer a conceptual analysis and critique of this distinction. I argue that the binary opposition between regulative and constitutive rules fails because every regulative rule necessarily contains a constitutive element, and every constitutive rule also performs a regulative function. Even paradigmatically regulative rules, such as traffic rules, partly constitute what counts as correct or proper behavior within a given practice. This mutual involvement supports an alternative conception of rules as occupying a continuum between regulative and constitutive properties. With this approach, I am suggesting a more adequate account of the nature of rules.

CONSTITUTIONAL NORMS AND HOHFELDIAN POSITIONS

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ABSTRACT

The paper will proceed in two steps. Step one will outline a typology of constitutional norms as a tool for identifying and interpreting constitutional norm-formulations. Step two, focusing on rights-ascribing and competence norms, will expose a proposal for complementing the traditional Hohfeldian table of jural positions and correlatives, with a strictly deontic table.

LEGAL NORMS, RELATIVISM, AND LOGIC

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ABSTRACT

I have elsewhere defended a relativist account of legal norms, norms of legal method, and normative legal statements. In doing so, however, I did not go into details about norms, including legal norms, and I would therefore like to take the opportunity to do so now. I argue (A) that one who accepts a relativist account of legal norms has good reason to accept a modified version of what Alchourròn and Bulygin have called the hyletic conception of norms; (B) that accepting such a modified version of the hyletic conception makes it possible to conceive of deontic logic as a logic of norms, as distinct from a logic of norm-propositions; and (C) that having access to a logic of norms is important not only because there are significant logical differences between a logic of norms and a logic of norm-propositions, but also because it appears that there cannot even be a useful logic of norm-propositions, unless there is a logic of norms. On route to these conclusions, I argue (D) that certain objections to the hyletic conception voiced in the literature are unconvincing.

GENDER LAW AS A LEGAL BRANCH?

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ABSTRACT

Systemization of law is the process of organizing individual legal norms into a coherent and logically consistent set of classified legal categories. The employed standards of categorization are dependent upon and intricately connected to the main goals of the systematization process: a) improvement of clarity - systematization makes it easier to identify and understand legal norms, especially in complex or new areas of law; b) enhancement of legal interpretation – a systematic framework aids in systematic interpretation, allowing for more consistent application of the law; c) development of new scholarly/doctrinary legal areas – the process of systematically organizing legal norms can spark the creation of new legal disciplines both in academia and legal practice.

In this paper, I approach the problem primarily with the third goal in mind. In doing so, I proceed from a classification, largely endorsed by the Serbian legal scholarship, which parcels a legal system into legal concepts (e.g., theft, adoption, administrative silence), legal branches (e.g., law on torts and contracts, company law, environmental law), and legal fields (e.g., municipal and international law, private and public law, substantive and procedural law). At the highest level of abstraction, particular legal systems can be grouped in different legal civilizations, such as civil and common law. The paper's focus is on whether it is possible to speak of 'gender law' as a distinctive branch of the Serbian legal system. Having in mind the widespread presence of legal rules regulating gender issues in contemporary legal systems, the relevance of the paper's findings might extend well beyond this case-study.

In addressing this question, I will follow Khaitan and Steel's study on "areas of law", which roughly corresponds to "legal branches". They argue that 'an area of law' is: "(1) a subset of the legal norms in the system; (2) which is intersubjectively recognised by the legal complex in that system

as a subset of such norms." While the first criterion is usually uncontroversial, the second one calls for clarification with respect to what counts as 'legal complex' and 'intersubjective recognition'. In the authors' words, the former concept denotes "a collective comprising legal actors involved in 'drafting, representing, advising, judging, prosecuting, teaching, and writing law'," while the latter amounts to the recognition of something as 'an area of law', which cuts across different aforementioned sectors of the professional community of lawyers.

After applying this theoretical framework to the question of whether 'gender law' can be classified as a 'branch of law', I conclude that, while there is enough raw gender related legal material within the Serbian legal system to work with, one cannot find a critical mass of actors in the relevant legal complex that would intersubjectively recognize it as a 'branch of law'. The most one can speak of is the tendency within legal academia to "inaugurate an area of law … that is not already in existence." This is fully in line with Khaitan and Steel's remark that "individual actors can do things to hasten this evolution – start teaching a new course in law school, organise a conference, launch a specialist journal", etc.

SEARCHING FOR NARNIA: PRIMARY AND SECONDARY RULES IN CUSTOMARY INTERNATIONAL LAW

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ABSTRACT

Customary international law ("CIL") has historically governed societies long before the emergence of national legislators and international treaties. From tribal organisation to mercantile practices, custom has operated as a binding source of order, dispute resolution, and social regulation. Although CIL has been subject of centuries of legal and theoretical debate, we are still far from reaching conclusive answers. Many of these debates are bypassed for various reasons, and it is precisely one of such debate that this presentation will address.

As is well-known, H.L.A. Hart in "The Concept of Law" distinguishes between primary and secondary rules. While the former concern actions and obligations, the latter specify the ways in which primary rules may be conclusively ascertained, introduced, eliminated, varied, and how the fact of their violation may be determined (Hart, 1994: 94).

The topic of primary and secondary rules has not been actively debated within the theory of international law in relation to CIL. Most likely this happens due to the complexity of international law's structure, as well as the confusion generated by debates surrounding its sources. While we cannot deny that CIL is, first and foremost, composed of primary rules (e.g., prohibition of torture, freedom of the seas, prohibition of violence aimed at spreading terror among the civilian population in armed conflicts) we can scarcely identify any rule of change, apart from the familiar two-element test used to identify rules of CIL – state practice and opinio juris (Johnston, 2024: 2). I am not even raising here the question of rules of adjudication (that are usually left behind) or the rule of recognition.

This presentation aims to offer a fresh perspective on the primary and, especially, the secondary rules of CIL, without focusing exclusively on

rules of change. Ultimately, it seeks to respond whether CIL possesses secondary rules and, if so, how they can be identified.

TOWARD A TYPOLOGY OF NORMS BASED ON THE ACCESSIBILITY OF UNDERLYING REASONS: AN ANCIENT DISTINCTION

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ABSTRACT

Schauer's classic distinction between a rule and its underlying justification is not, in itself, a typology of legal norms. Yet it has fueled the enduring debate on rules versus principles—that is, on implicit norms underlying explicit rules. This paper argues that Schauer's insight can be fruitfully combined with an older distinction—one that directly addresses the relationship between norms and their underlying reasons—to produce a richer typology.

The distinction appears in Deuteronomy and is later systematized by Maimonides. It divides legal norms into two categories: mishpatim and hukkim. Mishpatim are norms whose underlying reasons are accessible. Any addressee can grasp their rationale. The prohibition of homicide is a paradigmatic example. Hukkim, by contrast, are norms whose underlying reasons are not accessible. Their content may appear senseless or arbitrary—as with many dietary rules—yet they are no less binding. For the addressee, this inaccessibility shifts the ground of obedience from content to pedigree: compliance flows from the authority of the source, not the intelligibility of the rule.

Crucially, both mishpatim and hukkim are positive norms: they exist by virtue of their source, not their inherent rationality. This challenges the temptation to map them onto natural law and positive law, respectively. The paper suggests that this ancient typology illuminates enduring features of modern legal systems. It helps explain, for instance, the distinction between common law and formal legislation but, above all, it invites a "positivistic" interpretation of natural law: what is natural is not the norm but the psychological understanding of its bindingness.

IDENTIFYING CONSTITUTIVE RULES THROUGH THE INTERPRETATION OF LAW

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ABSTRACT

The distinction between constitutive and regulative rules plays an important role in legal theory. It raises profound ontological questions, related both to the linguistic structure of such rules and to the structure of social institutions built upon them. However, from a practical standpoint, the epistemological question – how to determine whether a given rule is constitutive or regulative – is even more significant.

In Poland, recent controversies surrounding the scope of pardon provide an example of the practical importance of this issue. In 2015, the President granted clemency to two MPs convicted of abuse of power. The act was legally controversial because the pardon was issued while their appeal was still pending. This decision triggered a wide scholarly debate on whether a pardon may be granted before a verdict becomes final. In other words, the focal point of the discussion was whether the constitutive rules governing clemency in the Polish legal system require a final conviction, or whether 'preemptive' pardons are also valid.

Using this example, I provide an overview of the arguments employed by Polish courts and legal scholars to determine whether the existence of a final conviction constitutes a necessary condition for issuing a pardon. I pay particular attention to the relationship between constitutive rules and legal principles, as the latter prove especially useful in this context. I also propose several general interpretative guidelines that may help determine whether a given rule should be regarded as constitutive or regulative.

THE NOTION OF INDIVIDUAL NORM

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SW18 · Categories of Norms
Convenors: David Duarte; Andrew Halpin; Giorgio Pino

ABSTRACT

In General Theory of Norms, Kelsen argues that the general norm 'Those who commit theft must be punished with five years' imprisonment' does not give rise to the individual norm, according to which 'Titius, who has committed theft, must be punished with five years' imprisonment'. It does not follow, according to Kelsen, because for the individual norm to exist there must be an authority that has performed the act of enacting that norm. Without this act, there is no individual norm: Kein Imperativ ohne Imperator. This idea of Kelsen's suggests that there are two notions of the individual norm. The first, the one Kelsen expresses, does not derive from a system of norms alone (a 'normatively pure system', in the language of Alchourrón and Bulygin); to derive it, we require factual propositions describing the facts of the case, something like 'Titius has stolen an iPhone from Gaius'. But there is another sense of the individual norm, a conditional norm, which is derived solely from the system of norms: 'If Ticio has committed a theft, he must be punished with five years' imprisonment'. This paper explores the various consequences of these two notions of the individual norm.

EXPRESSED AND UNEXPRESSED LEGAL NORMS

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ABSTRACT

The paper discusses the distinction between expressed (or explicit) and unexpressed (or implicit) legal norms. Expressed legal norms are those enacted by a normative authority andnexplicitly formulated in a legal provision. They are the result of interpreting legal provisions. Unexpressed legal norms are not enacted by a normative authority and are not explicitly expressed or formulated in a normative provision. Instead, they are the result of legal construction or interstitial legislation. The paper identifies eight ways in which unexpressed norms can be derived from expressed norms through various argumentative procedures and types of reasoning.

THE MORALITY OF SOCIAL CONVENTIONS

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ABSTRACT

In this essay I am going to argue for a fairly sharp separation between social conventions and moral norms. It is sometimes thought that conventional norms, shaping ways in which we do things around here, may well have a moral dimension in and of themselves. The fact that a certain norm, largely followed by a certain population, has some historical depth, is a fact that counts, morally speaking, in favor or complying with the norm. Nobody thinks that all conventions are morally commendable. Surely that would be false. But philosophers tend to think, perhaps increasingly so recently, that conventionality in and of itself has a moral dimension that weighs in favor of compliance, even if the weight is sometimes light as a feather and easily over-ridden by conflicting moral norms. So this is the view I will argue against. My point is going to be that social conventions do not carry any moral weight by themselves. Conventions are not moral norms with a local flavor; conventional norms are by and large morally neutral, always leaving the question of compliance open to moral and ethical evaluation. Conventions, in other words, are always subject to a kind of "open question" argument, whereas moral norms are only subject to considerations of balancing. Some possible exceptions to this sharp separation thesis, and some possible borderline cases, will also be discussed.

RECOMMENDATIONS AND ADVICE: A STEP TOWARD UNDERSTANDING THEIR LEGAL ROLE

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ABSTRACT

Soft law is becoming increasingly prevalent across legal systems, and not only at the international level: guidelines, protocols, best practices, and recommendations are typically grouped under this label. Although soft law is partly composed of norms, it also includes directive statements that cannot be translated into obligations or permissions, nor into powers or immunities.

Legal theory has paid relatively little attention to the role of advice and recommendations. To analyse the role they play in legal systems, it is necessary to distinguish them from norms. To this end, I examine the contributions of Norberto Bobbio, Alf Ross, and Andrei Marmor to the conceptualisation of advice and recommendations in the legal domain. This analysis serves to reconstruct the notion of non-normative directives in terms of reasons for compliance and the possibility of reproach.

I then introduce a set of criteria—relating to ends or means; practical or epistemic authority; vertical or horizontal relations; and the underlying conception of action—to account for the variety of non-normative directives. In light of these criteria, I present four examples of such directives.

Finally, I analyse the role that non-normative soft law directives—whether or not they form part of a legal system—play in legal reasoning. To this end, I distinguish between cases of compliance and non-compliance with such directives, and I articulate a notion of legal relevance distinct from that of binding force.

FROM CLASSIFICATION TO TAXONOMY: LEGAL NORMS AND THE STRUCTURE OF LEGAL TEXTS

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ABSTRACT

Philosophy of law has often approached legal norms through classification. It identifies a limited number of norm-categories, such as obligations, permissions, powers, competence norms, constitutive rules, principles, or sanctions, and then subjects these categories to conceptual analysis. This form of analysis has produced important theoretical insights, but it also has a cost. By concentrating on a small number of abstract categories, it can detach the analysis of norms from the complexity of legal texts and from the legal and social practices in which those texts operate.

This paper argues that the classification of legal norms should be supplemented by a taxonomy of the normative structure of legal texts. Legal texts do not contain only norms in the narrow sense. They also contain definitions, references, exceptions, conditions of application, institutional roles, procedural steps, legal statuses, evidentiary elements, temporal limits, presumptions, fictions, sanctions, remedies, and validity conditions. Some of these elements are normative; others are not norms themselves, but they are indispensable for the identification, interpretation, and operation of norms. A systematic analysis of legal normativity should account for both norms and the norm-supporting elements that make them legally operative.

The paper proposes a move from classification to taxonomy. Classification assigns legal norms to a small number of familiar categories. Taxonomy, by contrast, aims to provide an ordered map of the elements that constitute the normative structure of legal texts. Drawing an analogy with taxonomic practices in the natural sciences, especially biology, the paper suggests that legal theory should not only ask what kind of norm a provi-

sion expresses, but also how that provision is situated within a wider system of textual, institutional, and practical elements. Such a taxonomy would make possible a more systematic analysis of legal norms while reconnecting philosophical analysis with legal practice.

The aim is not to abandon traditional categories of norms, but to place them within a broader analytical framework. A taxonomy of legal texts would clarify how obligations, powers, competences, principles, procedures, sanctions, and remedies interact with definitions, conditions, exceptions, statuses, institutions, and legal effects. In this way, the paper seeks to show that the theory of legal norms should move beyond the analysis of isolated categories and toward a more comprehensive account of how legal texts organize normative life.

CLASSIFYING NORMS: NORMATIVE CONSTRUCTION OF SOCIETY AS THE CHALLENGE FOR INTERDISCIPLINARY LEGAL THEORY

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ABSTRACT

Norms classify social relations but need themselves to be classified for reducing societal complexity. No sufficient interdisciplinary theory about normative pluralism has been constructed so far, a theory that could encompass all forms of norm creation and application. Old distinctions (formal/informal, procedural/substantial, vertical/horizontal, organizational/definitional, behavioural/declarational, controlling/enabling, social/technical) still deliver the message about the variety of norms and their importance in everyday life, but ever more new categories of norms are being established due to expanding processes of globalization, privatization and digitalization. Since Kelsen's distinction between Rechtssatz (legal proposition/legal sentence) und Rechtsnorm (legal norm) and his polemics with the founder of legal sociology – Eugen Ehrlich about the confusion of these two categories, legal science and relations have been dramatically changed. New forms of transnational legal orders, fragmented global legal regimes and spontaneous non-state legalities bring contemporary, largely unknown and unexperienced legal structures. These new categories of binding provisions require due description and classification. If global law without state is reality, then it is based only on global legal structures – genuine norms which stabilize normative expectations and enable formation of social orders. It will be argued in the paper that classical juridical science needs to be engaged in an interdisciplinary collaboration in order to classify and categorize emerging forms of norms. Norms as types of social communication construct lifeworld but are themselves constructed by societal needs, experiences, expectations and values. It is the mission of interdisciplinary legal theory to study the normative pluralism of modernity, to observe rules of coexistence and avoid collisions.

GENERAL NORMS, PARTICULAR NORMS, AND EVERYTHING IN BETWEEN

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ABSTRACT

This paper investigates the foundational dichotomy between general and particular (individual, singular, etc.) norms, challenging its traditional conceptualization as a simple binary opposition. Generality is usually understood as a monolithic and discrete feature, e.g. a legal norm is either general or individual. The paper argues for two adjustments to the prevailing understanding of generality, namely "the gradeability thesis" and "the multimodality thesis". Gradeability means that a legal norm may be general to a degree. Multimodality means that generality is a multidimensional feature that operates across several distinct modes, including persons, circumstances, conduct, time, and place. These modes are distinct, but interrelated in that limiting even a single mode of generality can fundamentally transform the nature of a legal norm. Such shifts substitute stable and universal rules with particularistic, goal-oriented instruments designed for specific, often ephemeral, purposes.

This theoretical framework provides a lens for understanding the modern deconstruction of legal systems. Ultimately, the paper argues for elevating generality (in the gradable and multimodal sense) to the status of a fundamental constitutional value and treating it as an essential prerequisite for the rule of law. This claim is briefly illustrated by two negative tendencies from recent history: (1) the ubiquity of special legislation, namely statutes that introduce exceptional measures to deal with particular crises, events, or investments; (2) the phenomenon of targeted legislation and particularistic constitutional amendments which are utilized to bypass standard democratic safeguards and consolidate power in "backsliding democracies".

THE RULE OF RECOGNITION AND EXTERNAL NORMS: A NEW TYPOLOGY

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ABSTRACT

Judicial decisions in national legal systems are often guided by external normative considerations, such as moral or international norms. How do courts use external norms? I argue that existing theories by Hart, Dworkin, and inclusive legal positivists oversimplify these practices of norm 'internalization' by insisting on a narrow conception of the rule of recognition.

I propose a new typology of norm 'internalization' that captures the complexity of law's recognitional practices, specifically within American law. My central argument is that the ontological and normative functions of the 'rule of recognition' do not always align. Courts can—and arguably should—rely on non-legal standards even when those norms are not 'incorporated' (ontologically) into the national legal system.

FIRST AND SECOND ORDER IS BETTER THAN PRIMARY AND SECONDARY

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ABSTRACT

Hart's distinction between primary and secondary norms faces several problems, mainly when conceived as a distinction that aims to cover all norms of a normative system: besides the contradiction in qualifying the rule of recognition simultaneously as regulative and secondary, it is not clear where to put within his classification other constitutive norms (apart from rules of change and rules of adjudication) such as definitions or other «count as» norms (that he often confuses with competence norms, as it happens with the norm establishing the validity conditions of the will). Aiming at solving such flaws, a more comprehensive classification is presented instead. Normative systems have first order and second order norms: the former category contains norms on the ontic actions of agents (actions occurring in the empirical world) while the latter encompasses norms that confer agents the capacity to produce deontic actions (competence norms). Whereas the first category contains norms that are permissions, impositions and prohibitions, it can still be divided in two: (i) first order primary norms; and (ii) and first order secondary norms. First order primary norms are norms on ontic actions that are not constituted by the normative system: for instance, the prohibition to kill or freedom of expression. First order secondary norms are norms on ontic actions that are constituted by the normative system and, even though occurring in the empirical world, regard the normative system in itself: for instance, norms the impose mental actions (to quality X as counting as Y), norms that impose prevalences (lex specialis) or norms that guide interpretation.

INTRODUCTION: SHOULD THE LAW SAVE US FROM OURSELVES?

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SW19 · Should the Law Save Us from Ourselves? The Role of Law in the Face of New and Old Vulnerabilities Elicited by AI Technology
Convenors: Sara Migliorini; Célia Matias

ABSTRACT

Person A suffers from persistent aches and pains. Unable to find time to consult a doctor, they turn to a large language model for guidance. They receive a detailed, clearly formatted set of instructions, written in flawless English, advising them to consume an ounce of bleach each day before breakfast. Following this advice, Person A eventually becomes seriously ill.

Person B lives in a neighbourhood with a moderately sized migrant community. While scrolling through social media, Person B encounters a realistic video, apparently set in their neighbourhood, depicting members of that community assaulting schoolchildren. Enraged, Person B purchases a baseball bat and strikes a neighbour—a member of that minority—on the head, causing serious injury. Because the assault is witnessed by several bystanders, Person B is subsequently charged, convicted, and sentenced to a year in prison. They lose their job and are left in poverty. It later emerges that the video was generated by artificial intelligence.

To more sceptical observers, Person A's behaviour may appear irrational. One might reasonably ask why they did not attempt to verify the information through a reputable source, consult friends or family, or seek the advice of a medical professional. On this view, the harm Person A suffers can be attributed only to their own credulity. Person B's case may invite a similar reaction: however visceral their response to the video, one might expect a reasonable adult to pause, verify, or at the very least refrain from violence. On this view, too, the consequences Person B faces are entirely self-inflicted. But are these conclusions so straightforward?

Free will is a defining feature of human agency. As a matter of principle, if Person A chooses to drink bleach and Person B chooses to assault someone, the law should impose no constraints beyond those already in place to prevent and punish harm to others. But what if the exercise of free will is compromised by technologies that mislead, addict, and manipulate?

Should the law protect adults from the consequences of their own choices? Put differently, should the law save us from ourselves?

This introduction sets the stage for Workshop 19, which explores these questions from multiple perspectives. It examines the vulnerabilities that technology may exacerbate, and the ways in which those vulnerabilities may interfere with individuals' capacity to pursue their own good. It also considers the privacy harms that may arise in such circumstances; applications of artificial intelligence that may challenge assumptions about free will; and the impact of technology on human capacities and human agency.

Ultimately, the aim is to sharpen our understanding of these problems and to provide insights capable of informing future policymaking at the national and global level.

WHEN PROTECTION BECOMES FORECLOSURE: AI VALIDATION, STRUCTURAL VULNERABILITY, AND THE LIMITS OF AUTONOMY IN DE-JURISDICTIONALISED FAMILY PROCEDURES

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ABSTRACT

The progressive de-jurisdictionalisation of divorce and separation proceedings in Europe reflects a deliberate legal choice in favour of private autonomy: couples are encouraged to reach binding agreements outside courtrooms, through assisted negotiation, mediation, or administrative proceedings. The law has, in effect, stepped back from its traditional paternalistic role of subjecting family arrangements to judicial scrutiny, trusting instead that procedural safeguards – attorney supervision, prosecutorial review, notarial verification – can adequately protect vulnerable parties.

But, what happens when AI systems are inserted into these already attenuated oversight mechanisms? Drawing on comparative analysis of European implementations – Italy's centralised database of extra-judicial settlements, the Netherlands' integrated digital platform, Denmark's Familieretshuset – it is possible to argue that algorithmic validation of negotiated agreements does not simply replace judicial oversight with a more efficient equivalent. Rather, it generates a presumptive legitimacy effect: AI-validated settlements acquire a layer of apparent correctness that structurally forecloses ex post remedies such as nullity or voidability for defects of consent.

The paradox is that AI presents itself as a protective device – flagging anomalies, detecting coercion, ensuring compliance with statistical norms – while in practice deepening the vulnerability of the very parties it purports to safeguard. Individuals already operating under conditions of emotional distress, information asymmetry, and unequal bargaining power are now confronted with algorithmically endorsed outcomes that courts and

reviewing authorities are increasingly reluctant to disturb. The question this raises is not whether the law should be paternalistic, but whether a poorly calibrated technological substitute for legal oversight can constitute genuine protection at all.

Effective legal responses to AI-induced vulnerability in this domain require not more algorithmic intervention, but constitutional guardrails, grounded in the right to an effective remedy, that preserve the corrective function of private law precisely where autonomy is structurally compromised.

PRIVACY AND NORMATIVITY: THE BIOGRAPHICAL CORE IN THE AGE OF AI

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SW19 · Should the Law Save Us from Ourselves? The Role of Law in the Face of New and Old Vulnerabilities Elicited by AI Technology
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ABSTRACT

The idea of privacy and the idea of law have a long, shared history in their genesis and in their struggles. No public legal concern has ever arisen that has not at the same time challenged the position of the private individual within it. No public square has ever been crossed without the trampling of the individual, private space. From the agora to the algorithm, the history of the creation of the public is, by definition, the history of the exclusion of the private. Yet, just as modern public law emerged through the assemblage of the individual in the body of a magnum artificium, so now it meets a rival artifice: one that assembles no person and augments no will, but rather promises to norm in our stead. Beyond a concern with the integrity of contexts within which the private is enmeshed, we move thus toward a concern with the integrity, and indeed the standing, of law itself – the standing of an institutional order that has always been for the sake of persons, and which now threatens to no longer be.

This is a paper about whether that institutional order survives the encounter – about where, if anywhere, the normative still finds a place to stand in a technological world that neither hesitates nor errs, and which thus threatens to do away with the very reasons why humans need the law in the first place. As the paper will demonstrate, the idea of privacy remains central to this inquiry. Privacy, which protects the boundaries for the development of human subjectivity in human contexts, must hold in transhuman contexts as well. No concept of law can exist that does not affirm the domains within which human subjectivity, with the necessarily fallible contours from which identity ensues, can develop and endure. There is, indeed, no normativity without hesitation.

Preserving spaces for hesitation does not, however, come without its challenges. Central to this paper are challenges to a different kind of integrity, which Joseph Raz identifies as a condition for personal autonomy – namely, the integrity reflected in loyalty to one's own choices and to social conventions. How to save a society of individuals intent on travelling to the technological as insects travel to the lamp? The paper pursues the contradictions inherent to this question in the light of an interesting line of Canadian jurisprudence – from Tessling to Bykovets – in which the Supreme Court of Canada has held that a reasonable expectation of privacy is "a normative rather than a descriptive standard". In other words, privacy does not depend on whether a certain technology has been widely adopted by society, but on whether it encroaches upon an individual's "biographical core of personal information" and whether such inroads are of a kind that "society accepts" as reasonable.

We are thus, in the domain of privacy, confronted with the very question this panel grapples with: if society is widely interested in the use of a certain technology, can the law rightly hold that the use of that same technology is not in the public interest? In turn, can such a space – in which a self that might choose otherwise remains possible – be preserved unless we are, in some measure, saved from ourselves after all? And who, through the law, would do the saving, if not the very selves who travel to the lamp mistaking it for the light?

FREEDOM, SECURITY AND THE RIGHT TO BE FORGOTTEN

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SW19 · Should the Law Save Us from Ourselves? The Role of Law in the Face of New and Old Vulnerabilities Elicited by AI Technology
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ABSTRACT

The use of artificial intelligence has been increasing several different issues in social relations, regarding the dematerialization, in general, and the digitalization, in special, of social relations, and of their respective subjects. The atomization of intersubjectivity illustrates multiple scenarios of an at least apparent (and paradoxical…) deconstruction of subjectivities, mostly in the political and juridical contexts.

Specifically carrying out a reflection on the right to be forgotten (right to be forgotten, right to erasure), at the European Union level, namely in the General Data Protection Regulation and the AI ACT, and, within, the processing of personal data, specifically the criteria for data collecting, processing, and erasing, one of the main questions to be discussed is whether it actually constitutes a new human right, from a legally theoretical, dogmatic, and methodological, point of view – a human right of the digital era, or a digital human right –, and, thus, a human right of the last generation, between freedom and security, raising new situations of human vulnerability within the digital fields (Martha Albertson Fineman, Vulnerability and Social Justice, Valparaiso University Law Review, 53, 2019, 341-368; Gianclaudio Malgieri, Vulnerability and Data Protection Law, Oxford University Press, 2023) –, and, therefore, whether it is to be considered as a specifically technical and effective new subjective right; or if, differently, it should, after all, still be addressed as a special case of the right to freedom of expression (Paul Lambert, The Right to be Forgotten, Bloomsbury Academic, 2nd. ed., 2022, and Franz Werro (ed.), The Right To Be Forgotten: A Comparative Study of the Emergent Right's Evolution and Application in Europe, the Americas and Asia, Springer, 2020).

AI AS AUTHORITY

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SW19 · Should the Law Save Us from Ourselves? The Role of Law in the Face of New and Old Vulnerabilities Elicited by AI Technology
Convenors: Sara Migliorini; Célia Matias

ABSTRACT

Generative AI chatbots are not simply sources of knowledge, nor are they mere gatherers of information. Instead, they are sometimes treated as authoritative figures with regard to the contents they generate. In those less sophisticated occasions, AI is quoted as an authority: 'but AI said this and that'—in much of the same spirit as children telling their parents 'but my teacher said this and that'. One context of these invocations of AI as authority, as the word but manifests, is to use it in opposition to another figure: it takes place in the setting of a layman consulting a professional advisor, where the latter is traditionally the authoritative figure; AI is treated as an authority against another authority.

This notion of AI as authority brings complexities to the conventional framework of informed consent. Rather than having two characters—the autonomous self and the conventional authority—there is seemingly a third figure of AI. That is, the self is not simply informed or assisted by his use of AI; the self is in a way overshadowed by the authoritative figure he summons, as the dynamics between the self and the conventional authority becomes a conflicting one between the authorities. On the one hand, the issue of informed consent seems to fade away (for the self claims to be very informed by AI, and he is there to judge) and the self becomes ostensibly an arbitrator of the two authorities. On the other hand, the mythically autonomous self as sovereign is usurped by this new authority of AI.

THE ULTIMATE TEST OF SUPERINTELLIGENT AI AGENTS: CAN AN AI BALANCE CARE AND CONTROL IN ASYMMETRIC RELATIONSHIPS?

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SW19 · Should the Law Save Us from Ourselves? The Role of Law in the Face of New and Old Vulnerabilities Elicited by AI Technology
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ABSTRACT

This paper introduces the Shepherd Test, a new conceptual test for assessing the moral and relational dimensions of superintelligent artificial agents. The test is inspired by human interactions with animals, where ethical considerations about care, manipulation, and consumption arise in contexts of asymmetric power and self-preservation. We argue that AI crosses an important, and potentially dangerous, threshold of intelligence when it exhibits the ability to manipulate, nurture, and instrumentally use less intelligent agents, while also managing its own survival and expansion goals. This includes the ability to weigh moral trade-offs between self-interest and the well-being of subordinate agents. The Shepherd Test thus challenges traditional AI evaluation paradigms by emphasizing moral agency, hierarchical behavior, and complex decision-making under existential stakes. We argue that this shift is critical for advancing AI governance, particularly as AI systems become increasingly integrated into multi-agent environments. We conclude by identifying key research directions, including the development of simulation environments for testing moral behavior in AI, and the formalization of ethical manipulation within multi-agent systems.

SUPERVEILLANCE AND THE FUTURE OF CHILLING EFFECTS

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SW19 · Should the Law Save Us from Ourselves? The Role of Law in the Face of New and Old Vulnerabilities Elicited by AI Technology
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ABSTRACT

Automated legal enforcement has already arrived, but its future and long term impact on critical societal interests remains unclear (Hartzog et al., 2015; Shay & Hartzog, 2016; Pasquale & Glyn Cashwell, 2015; Penney, 2019). A combination of rapidly developing computing technology along with advances in artificial intelligence (AI), machine learning, facial recognition technology (FRT), and big data are creating new possibilities for the automation of legal and social norm enforcement. But such applications—like AI and FRT powered surveillance and detection or personalized algorithmic legal enforcement at mass scale—create serious risks for privacy and human rights. In particular, scholars and activists have raised concerns that these technologies and applications can have far reaching chilling effects—they will chill or deter people from speaking, behaving, and living freely, out of fear of legal or privacy harms—with disproportionate impacts on more marginalized communities (Hartzog et al., 2015; Penney, 2019; Citron & Penney, 2019; Penney, 2025). Yet, there remains a serious lack of guidance in the literature for lawmakers and policymakers grappling with these issues, and a dearth of systematic research on the impact or "chill" of such automated law (Hartzog et al., 2015; Shay & Hartzog, 2016; Penney, 2019; Penney, 2025). This paper aims to fill that gap. Drawing on new theoretical insights and empirical research, the paper argues that while concerns about FRT and other mass surveillance technologies have often dominated media and public policy discourse and debates, the greater risk for chilling effects, and by extension privacy, autonomy, and equality, stems from more personalized and targeted forms of

automated legal and norm enforcement. It further argues that the chill and impact of these kinds of system on people and society enable a more illiberal future. In supporting these central claims, the paper makes several key points of analysis and argument. First, the paper introduces a new term to understand these kinds of AI driven automated systems: superveillance. Superveillance systems are mass surveillance and automated enforcement systems that combine a few different core features: first, societal scale physical and data surveillance operationalized via identification and tracking technology—like today's facial and bodily recognition technology; second, powerful AI and machine learning capabilities to analyze massive amounts of data in real time; and third, automated targeted enforcement, which is large scale and highly personalized (Penney, 2025). Superveillance systems can enforce legal rules but they can also enforce social norms and rules as well. There are superveillance systems currently deployed in United States, Europe, China, and beyond (Penney, 2025). The point in here is to emphasize that there is something different about these systems, warranting a different conceptual framework to understand them and their impact. Second, drawing on recent work by Penney (2022; 2025) on a new conformity theory and analytic framework for understanding the chilling effect and broader impacts of such mass surveillance and personalized automated law/norm systems, the paper argues that the chill and impact of superveillance systems on individual privacy, freedom, autonomy, and other core values, is profound due to the nature of the systems, their design, and how they're deployed. Third, to understand the impact on society, the paper also analyzes superveillance systems in the context of AI capitalism—surveillance capitalism super-charged by AI—which already is increasingly employed towards authoritarian and illiberal ends. Here, drawing on the work of social scientists and political scientists, I also explain how these systems, and the chilling effects and conformity they spread, help enable this future. Lastly, the implications for law, policy, and human rights, and alternative legal and technological responses, are also discussed, as is a robust set of policy responses to "stop" this future of chilling effects.

AI MANIPULATION AND THE THREE DIMENSIONS OF HUMAN FACULTIES

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SW19 · Should the Law Save Us from Ourselves? The Role of Law in the Face of New and Old Vulnerabilities Elicited by AI Technology
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ABSTRACT

Artificial intelligence (AI) manipulation broadly refers to manipulation carried out with the support of AI and related technologies. The capabilities enabled by these technological innovations are creating serious and unprecedented threats to fundamental rights intended to protect and uphold human dignity, most notably the right to freedom of thought. These risks and dangers pose not only significant regulatory challenges for national and supranational authorities but also constitute a global problem that calls for regulatory action, or at least coordination among different national legal frameworks, which vary in their underlying concepts. In addition, the issue of AI manipulation raises important questions about human cognition, perception, and the three dimensions of human faculties: the mind, the heart, and the soul. This paper first outlines the different approaches to protecting against AI manipulation adopted in the European Union's AI Act and in relevant regulations of the People's Republic of China, before discussing the need for an integrated understanding of human cognition and consciousness.

BRUNO CELANO'S DISQUOTATIONAL THEORY OF VALIDITY AND QUASI-REALISM

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SW21 · The Validity of Law: Normativity, Effectiveness, and Legitimacy
Convenors: Josep Joan Moreso; Carsten Heidemann; Gonzalo Villa-Rosas

ABSTRACT

In a paper from 1999, Validity as disquotation, Celano reconstructs the core of Kelsen's concept of validity, understood as binding force, by maintaining that validity is a 'disquotational' predicate. To explain this categorization, he draws a parallel to Tarski's and Quine's disquotational conceptions of truth: If you mention a normative sentence, "x ought to φ", and add the predicate "is valid", then using the sentence thus fabricated, "'x ought to φ' is valid," is equivalent to just using the sentence "x ought to φ" - just like using the sentence "'snow is white' is true" is equivalent to using the sentence "snow is white".

This disquotational conception of validity is, according to Celano, sufficient to explain the definition of validity as a norm's binding force and thus of validity tout court. However, Celano does not aim at the most adequate reconstruction of Kelsen's writings; rather, he employs disquotationalism to combine two seemingly incompatible theses: the non-cognitivist thesis that normative sentences are (merely) expressive of attitudes and have no objective correlate, and the thesis that talk about correct practical solutions and treating norms as objective is not reducible or meaningless.

Disquotationalism seems to guarantee compatibility: On the one hand, normative sentences, having a world-to-mind direction of fit, are not assertive sentences (which have a mind-to-world direction of fit). Being expressive of attitudes, normative sentences have no truth value, but they still fit into the disquotation formula. On the other hand, the disquotation formula offers a possibility to distinguish valid normative sentences from invalid ones. Disquotation is possible only with valid, binding, normative sentences.

However, the plausibility of this approach seems to derive from the fact that validity and truth are not just analogous, but necessarily related. According to Kelsen, the normative assertion "x ought to φ" is true exactly if the norm, that x ought to φ, is valid or exists and the norm, that x ought to φ, is valid exactly if x ought to φ. If this double equivalence holds, the only advantage of the disquotational theory is its emaciated conception of truth which is general enough to cover the truth both of sentences having a mind-to-world-fit (assertive sentences), and of sentences which have a world-to-mind-fit (normative sentences). But taking validity to be part of such an emaciated conception of truth seems to be difficult to square with the assumption that normative sentences are merely expressions of attitudes. If asserting the sentence “x ought to φ” is merely expressive of an attitude, it should be logically equivalent to “I believe that x ought to φ” - or, doing without normativity, to “I like it if x φs”, not to “It is true that x ought to φ”. For it is possible that x ought to φ even if I do not believe that x ought to φ or like x’s φing (and vice versa).

And on closer examination, it turns out that the main brunt of Celano's argument is not borne by the disquotationalist theory of validity, but by a conception which he mentions favourably in passing: quasi-realism. Quasi-realism is a rising trend in philosophy. It started as a meta-ethical position, instigated by Simon Blackburn and Allan Gibbard. It is exactly in line with Celano’s argument, promising that it is possible to eat one's cake and have it too - that one can be a moral noncognitivist/expressivist and still hold that discourse about what is the ‘objectively’ correct way of acting is meaningful.

In a nutshell, this is achieved by distinguishing two different levels which operate independently from each other - the level of practical discourse, where objectivist and normativist language is used, and the level of meta-theory (meta-ethics), where this talk is grounded on emotions or attitudes. But it seems that there are just two options, both of which do not agree with quasirealism’s aim: Either the quasi-realist meta-ethics is 'neutral', as it were, and merely analyses the presuppositions of factually given moral discourse, without taking a stance on them. Or it has a critical function as well, either by justifying these presuppositions, or by proving them to be wrong.

Quasi-realism does not choose the first option; in fact, it explicitly maintains that moral discourse does not treat normative or evaluative speech-acts as merely expressive of attitudes. So it seems to choose the second 'critical' option, by holding these implicit objectivist presuppositions of moral discourse to be wrong. But in that case, both having the cake and eating it doesn't work.

In short: While the disquotationalist theory of validity seems to be a possible way of reconstructing Kelsen's conception of validity, it (and, with it, quasi-realism) falls short of reconciling expressivism with the possibility of an objective discourse about normativity.

LEGAL VALIDITY AND SOCIAL EFFICACY

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SW21 · The Validity of Law: Normativity, Effectiveness, and Legitimacy
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ABSTRACT

In this chapter, I consider the question of whether insights into the nature of law may have interesting implications for legal argumentation. As I see it, the answer to this question is that such insights may have implications for legal argumentation, though in most cases the implications do not come to the fore, because there is either (tacit) agreement about the relevant issue, or else those involved do not see the problem. To show that this is so, I am going to consider a case decided by the European Court of Human Rights, in which the court's view of the nature of law has such implications. I argue, more specifically, (A) that the European Court's human rights-friendly interpretation of a ground of justification in a now defunct legal order, namely, the East German legal order, depends on the tacit but mistaken assumption that social efficacy is irrelevant to legal validity, and that the interpretation therefore fails; and (B) that this makes it clear that, contrary to what most legal professionals think, insights into the nature of law may have interesting implications for legal reasoning. In addition, I argue (C) that instead of rejecting the social efficacy thesis, the Court could have (i) invoked the Radbruch formula, (ii) defended a teleological interpretation of the Article on retroactivity, or (iii) invoked the absurdity-rider to the textual approach accepted in Common Law jurisdictions. On route to these conclusions, I also argue (D) that we need to distinguish carefully between the social efficacy thesis conceived as a legal-philosophical claim about law and conceived as a norm of law; and (E) that for the purpose of interpreting said thesis, we should say that a norm is legally valid if, and only if, it can be traced back to a recognized source of law and has neither been rescinded in a way provided for by the legal order, nor lost its social efficacy due to desuetude or to being a member of a legal system that lacks social efficacy as a whole.

LEGAL VALIDITY AS A NON-RELATIONAL CONCEPT

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ABSTRACT

In the all contemporary theories of legal validity, the concept of legal validity is theorised as a relational quality that legal norms must satisfy in order to be considered valid. In the context of Kelsen's pure theory of law, the validity of statutes is predicated on their correlation with the constitution. Conversely, the legitimacy of the constitution is contingent upon its association with the so-called "Grundnorm". According to H.L.A. Hart, the validity of legal norms is predicated on their relationship to the rule of recognition. So, no wonder that there is a general trend in the more recent discussion of legal validity to regard it as a two valued predicate. Just to say that a legal norm is valid is elliptical. To complete the proposition, it would need to be established in relation to which higher order norm the validity claim is made. This relational concept of legal validity has serious shortcomings. They can be countered by developing a non-relational concept, which also finds some support in the early work of Hans Kelsen.

VALIDITY'S REVOLUTIONARY PAST

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ABSTRACT

The concept of legal validity has a neglected revolutionary past. It helped to effect critical transformations in Western legal history. They include Roman legal thought's devising of voluntary transactions, canon law's pivotal contrast between invalidity and sin (immorality), the dawn of sovereign states under the auspices of the medieval ius commune, and modern constitutionalism's limits on the democratic will.

Validity's revolutionary past, in turn, teaches us valuable lessons about the uses to which this concept can be put in the future – particularly in our age of multilevel jurisdictions and shifting forms of governance in a digitally scripted world. Even though the current philosophical purchase of the concept of legal validity is largely owed to theories of law focused on nation states, it would be a mistake to narrowly associate legal validity to state-centric legal reasoning. The mistake is belied by nearly two millennia of legal history.

LEGALITY AND LEGAL VALIDITY

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ABSTRACT

The main point of this essay is to argue that there is a long standing confusion in the literature between the philosophical question about legal validity and the question about explaining legality. Legal philosophers seem to have assumed that they are like two sides of the same coin: an account of what legal validity is, would, ipso facto, give us an account of legality and what grounds it. And vice versa, once we know what grounds legality, as such, we would have the appropriate theory of legal validity.

This long standing view, I argue, is a confusion, the origins of which are to be found in Kelsen's work, perhaps further entrenched by Hart, Dworkin, Coleman, Raz, and many others Validity, in law and elsewhere where the idea is relevant, is a matter of conformity with rules. Legality is a feature of practices, an aspect of their nature or character as practices of a particular kind. What makes certain norms, practices, or acts, legal or not cannot be a matter of conformity with rules. It musty be grounded in something more foundational.

The argument proceed in three steps: First, I try to explain what validity is, in law and elsewhere; second, I try to explain the idea of legality, where and how it comes up, and how philosophers have thought about its grounding; finally, I try to show why the confusion between these two issues has led to some questionable positions in jurisprudence.

THE NATURE OF LEGAL NORMATIVITY

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ABSTRACT

The paper will elaborate the strengths and weaknesses of an idea I have discussed in previous works: that legal normativity is sui generis, not reducible to or equivalent with either moral normativity or a prediction of the actions of legal officials. If time permits, the analysis will also consider the connection with the topic of legal validity.

LEGAL VALIDITY AND THE SEPARATION THESIS

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ABSTRACT

In the debate between legal positivism and legal non-positivism, the impact of morality upon the validity of legal norms figures as a cornerstone. In this paper, I will delve more deeply into the intricate relationship between legal positivism's separation thesis and the validity of legal norms. I identify a positivist connection thesis and highlight its fundamental weakness compared to the non-positivist connection thesis. The positivist thesis only establishes a contingent, not necessary, connection between law and morality, as legal validity under positivism depends solely on sources rather than moral content. This contingency undermines the strength of the positivist claim, which also fails to address the crucial issue of whether moral merits affect legal validity. I then distinguish two precise variants of the separation thesis. My argument emphasizes the importance of adopting a validity-embracing concept of law in the debate, as excluding validity preempts the discussion in favor of positivism. Ultimately, I clarify misunderstandings caused by imprecise formulations and shows that the weak positivist connection thesis does not effectively counter the stronger non-positivist claim that moral considerations are necessarily linked to legal validity.

ON THE NATURE OF LAW EMBRACING VALIDITY AND DEFECTIVENESS OR IN DEFENCE OF A PARTICULARLY QUALIFYING NON-POSITIVISM

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ABSTRACT

As is well-known, there are two familiar contexts of differentiation, or 'dichotomy', concerning the controversy between legal positivism and non-positivism. The first, well-known dichotomy of inclusive/exclusive effect of law differentiates between the incorporation (hereafter characterized as 'I') and no incorporation ('¬I') of morality (correct morality; moral correctness) in the law. The second, also very familiar, dichotomy of unnecessary/necessary connection between law and morality differentiates the standpoint of legal positivism, whether exclusive ('□¬I') or inclusive ('¬□¬I ∧ ¬□I'), from that of non-positivism ('□I'). Concerning the answer to the incorporation of morality in law, all the non-positivists (□I) are inclusive, i.e., they are all inclusive non-positivists.

What is interesting is that Alexy further introduces the validity as being embraced – other than being omitted – by the concept of law, 'especially when discussing the problem of legal positivism'. Additionally, Alexy initiates a differentiation between the classifying and qualifying significance of the moral defectiveness of law, which has rarely – or at least not comprehensively – been discussed among legal philosophers. Based on this, he even proposes new classifications within the non-positivistic camp. Specifically, the so-called 'super-inclusive non-positivism' is, until today, not easy to understand.

It is to emphasize, however, that a fourth dichotomy of universal/particular quantifiers has also been indicated by the third classifying/qualifying-dichotomy above, especially through the so-called 'quantifier triad' illustrated by Alexy. Accordingly, the label of 'exclusive non-positivism' could be adjusted into that of 'universally classifying (inclusive) non-pos-

itivism', while, last but not least, 'inclusive non-positivism' into 'particularly anti-classifying/qualifying (inclusive) non-positivism with particularly classifying significance'. Furthermore, we can prove that the logical relations between each two of the three positions are contrary, but not as contradictory, as shown by a 'complete non-positivism triad'.

As a very example, Radbruch is always a qualifying non-positivist, while he only modifies himself from (14.2') a strange, universally qualifying non-positivism in a formal sense to (14.3') a particularly qualifying non-positivism in a substantial sense together with a particularly classifying significance.

Nevertheless, there are various 'identity' theses regarding each pair of the above-mentioned legal philosophical positions. This paper is then to solve the various identity theses with rejoinders, respectively, in order to defend a legal philosophical position of the particularly qualifying non-positivism.

NORMATIVE ATTITUDES AND INSTITUTIONAL LEGITIMACY: AN ONTOLOGICAL COMPARISON BETWEEN LAW AND MAFIAS

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ABSTRACT

Over the last two decades, social ontology has emphasized that social institutions are rule-constituted kinds grounded in collective attitudes that assign status functions and generate deontic powers and obligations. This ontological framework has been widely employed to explain formal institutions such as law, but it also extends to informal and extra legal institutions, including mafias. This paper develops a taxonomy of the normative attitudes that participants in a social practice may adopt when following rules, and examines their distinct ontological implications.

The taxonomy distinguishes between the external dimension of normative attitudes, captured by Hart's internal and external points of view, and their internal dimension, understood in terms of the rational structure of agents' reasons for action, whether desire-dependent or desire-independent, drawing on John Searle's theory of rationality and intentionality. On this basis, the paper argues that different normative attitudes play different ontological roles in institutional life: some are constitutive of an institution's existence, while others merely contribute to its maintenance or to the recognition of its outputs.

Applying this framework to the cases of law and mafias sheds new light on the distinction between descriptive and normative conceptions of political and legal legitimacy. While both institutions may exhibit a form of de facto legitimacy grounded in shared normative attitudes that guide behaviour, only legal institutions can claim normative legitimacy. Contrary to the views of legal theorists such as Santi Romano and his followers, the paper concludes that, despite their structural similarities, law and mafias should not be understood as distinct legal orders, but as fundamentally different kinds of institutions whose normative status cannot be equated.

LEGAL VALIDITY AND LEGAL LEGITIMACY

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ABSTRACT

Legal validity is a social fact. Inclusive and non-positivist theories deny this, in whole or in part, because they hold that law can or must depend on non-social facts—specifically, the law's moral value or goodness. Many legal systems explicitly reflect this inclination, invoking moral criteria to challenge the validity of legal norms. Exclusive Legal Positivism (ELP) must therefore explain such systems in a way that respects participants' internal understandings without collapsing into moral evaluation. Where ELP diverges from these internal perspectives, it adopts an error theory about what participants think is happening. This paper proposes that such divergence can be reconciled by clarifying the distinction between validity and legitimacy.

Validity, I argue, is entirely a social fact: legal norms are valid by virtue of socially recognized criteria and official acceptance. Legitimacy, in contrast, is a normative judgment. To call something illegitimate is to claim that, though it bears legal status, it does not deserve that status because its acquisition or content conflicts with certain normative commitments—whether formal legal principles, communal moral values, or elements of a universal morality. The truth of such a judgment is not necessarily socially determined, provided one believes that normative truths have non-social truthmakers.

While many legitimacy claims rely on socially defined procedural norms (for example, asserting illegitimacy because a rule was adopted contrary to procedure), the fact of such procedural contravention is not itself socially dependent—even if the procedure it violates is. In chess terms: the rule that pawns may move two spaces only on their first move is socially defined, but the fact of violating it is not dependent on anyone's acceptance.

Recognizing this distinction allows exclusive positivists to address inclusive and non-positivist objections by reclassifying the issues they highlight as concerns of legitimacy rather than validity. Participants within a legal system may nonetheless conflate the two, partly because framing claims of illegitimacy as invalidity better motivates officials to act, but also because a purely descriptive theory of legal validity offers little practical guidance. High-level legal decision-makers must ultimately confront questions of legitimacy in rendering judgments, even if those questions lie outside the boundaries of validity as a social fact.

COMPETENCE AND VALIDITY

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ABSTRACT

Competence norms are constitutive in the sense that they comprise an action-type (to create deontic consequences) that is made by the norm itself. Since it is the power given by a competence norm that makes it possible to create deontic consequences, it follows that those consequences are impossible to create whenever an agent lacks power. A clear connection between the absence of power and invalidity ascertains: «norms» created by powerless agents do not belong to the normative system because there is no possibility to create them; furthermore, given the impossibility, they do not even exist (inexistence effect). Yet, this connection between the absence of power and validity is often transformed in normative systems by norms that somehow destroy that «inexistence effect» and recover to the system, in multiple and various ways, norms created by powerless agents. These «norms of recover», besides being partially responsible for the ambiguity of the term «validity», do not affect the nature of competence norms: they just work at the level of sanctions. They contain the various consequences applicable to a norm that has been created by a powerless agent (even entailing the inexistence of consequences and the assumption of the full validity of the norm at hand). Yet, by doing so, those «norms of recover» clearly separate competence norms and norms on the exercise of competence, also confirming that propositions expressing broad understandings of competence norms (entailing procedural or even material conditions on power) seem to be mistaken.

VALIDITY UNDER PRIVATE INTERNATIONAL LAW

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ABSTRACT

This paper uses private international law (PIL) to argue for one of two conclusions. The first and more modest conclusion is that positivists must change their conception of a community's core law practices, upon which law ultimately solely depends. The second and more radical conclusion is that Kelsen's doctrine of the unity of law is correct, albeit for reasons that Kelsen himself did not acknowledge.

Most Anglophone positivists understand the official practices of norm application within a community, upon which the community's law ultimately solely depends, as identifying when members of the community can make laws binding upon members of the community. What should be done with the laws of other communities is a matter that comes, if at all, further down in the structure of the community's legal system.

This is a mistake. A court entertaining a PIL case commonly relies on principles of prescriptive jurisdiction, which concern when members of any community with law practices can make laws binding upon some subject. These principles are understood by the court as just as applicable to the lawmaking members of its own community as they are to the lawmaking members of other communities. Thus, when the court faces two laws—one created by a member of its own community and another created by a member of another community—and both members are empowered under principles of prescriptive jurisdiction, it confronts a conflict of valid laws, a conflict that must be resolved by the court, just as conflicts between two laws made by its own members must be resolved.

Anglophone positivists can accommodate this insight, by reconceiving the scope of a community's law to include those made by members of other communities. Law still ultimately depends solely upon a particular community's official law practices. But the fact that courts take the lawmaking members of their own community to be bound by principles of prescriptive

jurisdiction, whatever their own community's law practices might say about the matter, is a reason to adopt the Kelsenian view that there is only one legal system.

LEGAL SYSTEMS WITHOUT HIERARCHY

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ABSTRACT

According to numerous critics, the notion of legal systems developed in HLA Hart's influential theories is inapplicable to non-state contexts, such as customary law, international law, transnational law, and the European Union. By the critics' light, the Hartian theory of the rule of recognition relies on the hierarchical ordering of criteria to explain the membership of norms and account for the unity of the legal system. Such a hierarchical arrangement is a typical feature of nation-states, but it does not figure prominently in non-state legal phenomena. As a result, transnational legal theory needs to abandon the notion of the legal system and develop novel conceptual tools, especially suited to accounting for non-state legal phenomena.

In this article, I defend the applicability of the Hartian theory to non-state legal phenomena against this challenge. Here, I distinguish between the notion of legal systems and one influential conception of it that I will refer to as the 'hierarchical model,' which is the object of the transnational scholars' critique. While some of Hart's remarks suggest an endorsement of a version of the hierarchical model, I argue in the chapter that the Hartian allows for less restrictive readings. I develop here an alternative to the hierarchical model, in which the ultimate rule of recognition is the official shared understanding of the "proto doctrine" of the criteria of validity, as an alternative reconstruction. As a result, the failure of the hierarchical reconstruction of the rule of recognition does not entail the demise of the Hartian conception of the legal system. Two examples illustrate this conception: customary legal orders and lex mercatoria. I conclude with some general lessons for general jurisprudence and the possibility of transnational legal theory within the Hartian pale.

HANS KELSEN'S CONCEPT OF VALIDITY AS AN IDEAL TYPE

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ABSTRACT

The concept of legal validity has traditionally been tied to the notion of ontological status within a legal system—"validity" as something that norms possess when they are part of the system. This paper challenges that assumption by proposing adding a dual-layered epistemological model: validity is not merely a static property of norms but also emerges through two interlocking cognitive constructions.

The first layer is the Basic Norm (Grundnorm), a transcendental presupposition that enables the legal system to be treated as normatively valid in the first place. It does not describe any empirical fact or observable norm, but rather serves as a necessary cognitive assumption: the "as if" foundation that allows jurists and legal subjects to interpret legal norms as binding. Without this hypothetical postulate, no norm could be regarded as valid within the system, regardless of its source or content.

The second layer is validity as an ideal type—not a property possessed by individual norms, but a model of how validity functions within the system. This conceptual model organizes legal norms through principles such as hierarchical structuring (Stufenbau), normative coherence, and the conditional toleration of normative deviations (e.g., through the Fehlerkalkül). It is through this ideal-typical framework that validity acquires shape, structure, and resilience as a systemic phenomenon.

Together, the Basic Norm and the ideal type of validity form a two-step epistemological construction: the first makes the legal system thinkable as a normative order; the second makes that order intelligible and operationalizable. This distinction sheds new light on the nature of legal validity—not as a brute fact, but as a layered, methodological fiction that sustains the internal logic of the legal system. This approach suggests that legal validity is not only a fixed ontological status but also a functional construct

arising from the interplay between an enabling assumption (the Grundnorm) and a systemic model (the ideal type). By treating validity as an ideal type, I expose its role as a cognitive scaffold that holds together the normative architecture of the legal system, allowing for continuity despite imperfection.

This re-reading of Kelsen not only aligns his theory with contemporary discussions of epistemic modeling and methodological idealization but also opens new avenues for thinking about the reformability, coherence, and internal logic of legal systems.

VALIDITY, SUPREMACY, AND AMENDMENT: REASSESSING CONSTITUTIONAL CHANGE

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ABSTRACT

The question of judicial control over constitutional amendments has emerged as a pivotal issue in contemporary constitutional theory and practice, particularly as courts worldwide increasingly assert their authority to review the validity of amendments. This assertion presents a profound challenge to legal philosophy, compelling a reconsideration of the nature and hierarchy of constitutional amendments.

The object of this paper is to undertake a philosophical inquiry into the nature of legal norms through the lens of judicial control over constitutional amendments. To this end, I revisit the conceptualization of norms within legal theory, based on a tripartite distinction: constitutional norms, proposed amendments (the normative claims advanced through formal amendment procedures), and the constitutional amendment to determine the validity and legal effect of amendments. Central to this analysis is the distinction between norms and norm formulations, which is crucial for differentiating between the existence and validity of norms.

I argue that the function of distinguishing between these types of norms is not merely doctrinal but foundational to the coherence and integrity of constitutional systems. Such distinctions are fundamental for preserving legal certainty and the rule of law, as well as for maintaining the stability and the normativity of the Constitution.

THE ROLE OF GENERAL EFFICACY IN THE EMERGENCE AND CONTINUANCE OF LEGAL SYSTEMS

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ABSTRACT

General efficacy occupies an uneasy but indispensable place in theories of legal validity. Although the validity of ordinary legal norms can generally be explained through their relationship to higher-order validity criteria, the same explanation cannot account for the validity of the historically first or hierarchically supreme positive norm of a legal system. At this foundational level, systemic validity reaches its explanatory limit, making efficacy necessary to account for the emergence and continued existence of legal systems.

Three competing conceptions of general efficacy are considered: simple-average efficacy, majoritarian efficacy, and weighted-average efficacy. Weighted-average efficacy offers the most adequate account because it measures the proportion of actual instances of compliance against the total number of instances in which compliance with the legal system is required. This conception better reflects the practical operation of a legal system and provides a basis for distinguishing functioning legal systems from defunct systems and normative orders that merely aspire to become legally effective. It also reveals an important limitation of constitution-centred accounts of efficacy (such as the one implied by Kelsen): the efficacy of a constitution or supreme norm cannot mathematically guarantee the general efficacy of the legal system.

A further distinction must be drawn between the emergence and the continuance of a legal system. Emergence requires achieving general efficacy with sufficient continuity; the mere prospect of becoming generally efficacious cannot establish a legal system. Once a legal system has come into existence, however, temporary reductions in efficacy should not automatically entail its disappearance. Continued existence depends instead on

whether the system retains a realistic possibility of recovering general efficacy. The loss of that possibility provides a more satisfactory criterion for identifying the point at which an existing legal system becomes defunct and for analysing legal discontinuity produced by revolutions, coups, insurrections, and comparable transformations of the effective normative order.

MAGIS RATIO QUAM VIS. THE FORCE OF REASON VERSUS THE FORCE OF NATURE

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SW22 · First Freedoms Under Fire
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ABSTRACT

Authors such as Gustav Radbruch and Heinrich A. Rommen point out that legal positivism, which prevailed at the beginning of the 20th century among judges, senior civil servants, and among teachers of jurisprudence, left the legal community completely defenceless when the totalitarian revolution began in Germany. There was no external point of reference in relation to the legal system that would allow for a critical judgment on the legality of the new regime, which was legal in formal terms, or on the internal injustice of the formally legal acts of the new authorities. However, totalitarian propaganda did not abandon the use of the concepts of nature and natural law. Ideology, referring to the categories of race and ethnicity, biologized the concept of nature. "Nature" no longer referred to the rational nature of man endowed with reason and free will, nor to the universal order of beings and obligations that it imposes on reason. As Rommen notes, "nature is transformed into an altogether materialistic concept. It is viewed as the blood, the hereditary biological mass of animal nature, deprived of its personalist and spiritual values." (The Natural Law. A Study in Legal and Social History and Philosophy 1998: 135) From now on, what is natural is what serves the interests of the stronger and "more valuable" in biological terms. What we are dealing with here is the imposition of an Old Germanic belief matrix on the Christian terminological network. Thus, there is a misuse of both terms related to natural law theory and concepts from Christian theology. The lack of a transcendental and universal moral criterion and legal order binding on all nations, races, classes, and individuals leads to the fact that every decree of authority, if it does not provoke violent rebellion and mass disobedience, is treated as binding law. The ruler, whether an individual, a collective authority, or a parliament, is perceived as lex animata. Hence the question: can we rightly consider as law

everything that physical force or psychological pressure of propaganda can enforce on individuals who, if not actively obedient, are at least passively submissive? This understanding of authority, based on positivism and biological naturalism, because of which every formally correct decision is binding "in conscience" on citizens regardless of its moral value, is one of the most significant threats to contemporary liberal democracy. The lack of the very concept of a limit in thinking about power means that a person, from being a subject and a goal, often becomes an object or even a "tool" for a goal. Suffice it to mention here the experiments in genetic engineering or the ideology of human enhancement. It should be noted that well-intentioned attempts to biologize natural law, i.e., the search for scientific arguments to justify specific natural law theses, pose more of a threat to the authority of natural law theory than a real help (Joseph Ratzinger). This is because science is changing. On the other hand, Thomas Aquinas built his theory of natural law on a single assumption about human nature, namely that man is a rational being. This theory is therefore not particularly sensitive to contemporary disputes about human nature, if it is recognized that man is a rational being and that rationality itself allows us to arrive at a truth that is not merely a social construct. It seems, therefore, that what should be particularly emphasized today by supporters of natural law is not so much the concept of nature itself as that of reason as belonging to human nature, sensitive to moral truth and capable of recognizing it through intellectual effort. In other words, not so much the force of nature as the force of human reason.

THE FALLACY OF THE "NATURALISTIC FALLACY"

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SW22 · First Freedoms Under Fire
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ABSTRACT

"My theory is political not metaphysical" wrote John Rawls in a well-known essay. Since at least the time of Auguste Comte (1798-1857), legal positivism has set up, as one of its tenets, the non-necessity or optionality of metaphysics. Prior to that, most philosophy books and courses gave considerable space to David Hume's (1711-1776) statement later described as the "is/ought" problem. G. E. Moore, famously reworks this as what he termed "the naturalistic fallacy". Certain natural law theorists of a more modern cast have taken this fallacy as accurate while other philosophers have denied its utility or its reality and hold that this so-called fallacy is, itself, a fallacy. While denying the fallacy traction, recent work has said it is something that needs to be taken into account, so foundational to modern thinking have the "is/ought" and "fact/value" distinctions become.

This paper will examine the so-called fallacy against a different approach to natural law theory — one that will be developed from attention to Aldous Huxley's statement that it is not possible not to have a metaphysics. In fact, once purpose is taken into account, according to the late Alasdair MacIntyre, there is no fallacy at all since things simply ought to do what conduces to their flourishing.

This raises the question whether the "modern turn" has been one huge fallacy itself — using, as it is argued it must, the very metaphysics it supposedly finds unnecessary or invalid?

Understanding natural law as set out by the original tradition, the unavoidable reality of metaphysics understood against a background of reason and teleology means that "we are all natural lawyers now." The implications of this change means that those traditions which describe the original tradition most fully — particularly religious traditions and their associations, need particular protection by the law so that their core teachings are

not threatened or suppressed by erroneous philosophies dominating law and the public sphere.

FOUR CONCEPTS OF FREEDOM: A SOCIAL THEORY OF BASIC LIBERTIES

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ABSTRACT

This paper argues that basic liberties should not be treated as isolated legal entitlements. Legal codification is often necessary, but it does not by itself explain why these liberties matter or how they function in a society. Basic liberties are best understood as an integrated scheme of protections for agency under conditions of social cooperation. They support one another because each protects a different condition of responsible human action. This paper develops this claim in three steps. First, it identifies the limits of a 'legal-silo' model that treats each right as a separate statutory compartment. Second, it explains why trust, public culture, and toleration are social conditions for the effective exercise of liberty and how many theories of freedom fail to account for such conditions. Third, it argues that restrictions on basic liberties should be assessed at two levels, namely their effect on the right directly burdened and their effect on the wider scheme of freedom that makes individual agency possible.

NATURAL LAW, THE COMMON GOOD, AND THE PUBLIC PRACTICE OF RELIGION

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ABSTRACT

Some scholars (such as G. K. Chesterton, Alexander W. Salter, and Melissa Moschella) argue that public practice of religion is a good which should be upheld by the state, others argue that the public practice of specific religions, such as Christianity, should be normalized and promoted by the state (such as Stephen Wolfe and Douglas Wilson), yet, many governments today are moving towards the limiting of the public practice of religion (consider bills 9 and 21, adopted in the past few years by the government of Quebec, Canada). Moschella proposes that the "unity of life principle" is an intermediate moral principle from which we infer the importance of the public promotion, but not obligation, of religion for the sake of the common good. She denies, however, that such principles can be inferred from Human Nature. I will argue, contrary to Moschella, that knowledge of the cosmos and of human nature allows us to not only infer basic moral principles, but, more specifically, to know that the public practice of religion should be promoted by the state. Contra Wolfe and Wilson, however, I argue that the state can do no more than guarantee the right to freely and publicly practice any monotheistic religion.

THE VARIETIES OF RELIGIOUS EXPERIENCE: FREEDOM OF RELIGION IN THE U.S. SUPREME COURT AND THE EUROPEAN COURT OF HUMAN RIGHTS

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ABSTRACT

This article examines freedom of religion in the recent case law of the U.S. Supreme Court and the European Court of Human Rights. With increasing reliance on originalist interpretation and analysis of the history and tradition of specific protections, the U.S. Supreme Court appears to be moving toward a more consistent, defensible approach grounded in fidelity to Constitutional text and determinate standards, theoretically immune to the ideological vicissitudes of judges. The Court has openly sought to restrain its own power, and conversely to affirm the democratic decision-making power of states. The European Court of Human Rights, in contrast, has adopted varying approaches and inconsistent interpretations of freedom of religion. Central to the confusion is the Strasbourg Court's adoption of an evolutive interpretation of the ECHR, and its use of malleable doctrines like the margin of appreciation and emerging consensus. Regularly seeking to reinforce state neutrality to religion, the Court increasingly tends toward hostility to religion. Rather than consistently seek to stamp out coercion, the Court uses coercion against states to neutralize them. Consequently, the Court's anti-democratic impulse has made the religious (and irreligious) less free.

THE MULTILEVEL EXPANSION OF CONTEMPORARY MILITANT DEMOCRACY AND ITS NEGATIVE IMPLICATIONS FOR RELIGIOUS FREEDOM

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ABSTRACT

The essay explores the contemporary resurgence and multilevel expansion of "militant democracy", a constitutional model originally theorized by Karl Loewenstein to defend democratic regimes against antisystem forces. While militant democracy was once focused on preserving the democratic order through legal mechanisms, its modern evolution has shifted toward a substantive redefinition of democracy that frequently subordinates religious freedom to other normative values.

In increasingly secularized societies, religious liberty is often treated as a secondary interest rather than a foundational element of pluralism. This shift creates friction when traditional religious convictions regarding life and marriage conflict with progressive legal paradigms and anti-discrimination norms, leading to the framing of religiously motivated speech as potentially discriminatory.

Following the events of September 11, militant democracy expanded into a "civilizational" model targeting perceived external threats. This is exemplified by French legislation against "Islamist separatism", which risks transforming laïcité into a mechanism of state-imposed assimilation.

A novel variant of militant democracy has emerged in response to Russian influence in Eastern Europe, particularly in Ukraine. Legislative measures, such as the 2024 law targeting religious organizations affiliated with an "aggressor state", have led to generalized restrictions on the Ukrainian Orthodox Church (Moscow Patriarchate), raising serious concerns regarding proportionality and the collective rights of believers.

The essay concludes that while some judiciaries, notably in the UK (Lee v Ashers Baking Company Ltd) and US (Masterpiece Cakeshop, Ltd. v.

Colorado Civil Rights Commission), have resisted the automatic subordination of religious liberty, the broader trend reflects a narrowing of the space for religiously grounded dissent. By prioritizing national security and secular consensus over traditional pillars of pluralism, contemporary militant democracy risks becoming excessively intolerant (Popper's Paradox), thereby threatening the very democratic values it seeks to protect.

THE IMPLICATIONS OF THE ANCIENT ROOTS OF FREEDOM OF EXPRESSION FOR CURRENT FREE SPEECH CONTROVERSIES

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ABSTRACT

This presentation, and the ultimate paper for the collection coming from the workshop, will explore how deeper roots of freedom of expression within pre-Enlightenment historical and theological traditions offer different perspectives on permissible limits on freedom of expression today. We will be drawing especially on the important recent work of Jordi Pujol (The Collapse of Freedom of Expression: Reconstructing the Ancient Roots of Modern Liberty, University of Notre Dame Press 2023) but also considering other substantial recent works on the longer history of freedom of expression that situate it in broader ways (eg Matei Candea et al; Fara Dabhoiwala; Jacob Mchangama). In considering freedom of expression's deeper roots, we will suggest that less individualistic accounts of freedom of expression may manage to simultaneously respond better to (i) the purposes of the freedom, (ii) appropriate bounds on the freedom so as not to harm the common good or key institutions including religious communities, and, if somewhat surprisingly, (iii) protection of the individual in his or her true ends.

MORE THAN POLITICAL: THE DANGER AND PROMISE OF FREEDOM OF ASSEMBLY JURISPRUDENCE

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ABSTRACT

In this paper, I take a critical look at the Ontario Court of Appeal's approach to freedom of assembly in what is now Canada's leading appellate case (Hillier v Ontario 2025 ONCA 259) on that fundamental freedom, protected by section 2(c) of the Canadian Charter. The decision gives the first substantive appellate court treatment of freedom of assembly. For this, it should be lauded. However, the treatment is, understandably but concernedly, focused almost exclusively on the political or civic good of freedom of assembly. As a leading case in section 2(c) jurisprudence, this tunnel vision needs correction (or expansion). Freedom of assembly must be developed with other types of assemblies and their corresponding (and incommensurate) goods in mind. Leaning on a segment of John Finnis's work, I propose that, as Canada's freedom of assembly jurisprudence develops, it take a broader and more holistic approach, recognizing the humanness of the freedom and why goods in addition to the political good, such as knowledge (e.g. a public lecture), aesthetics (e.g. attending or participating in a choral concert), play (e.g. watching a hockey game together), friendship (e.g. gathering for a birthday party), or religion (e.g. a religious funeral, wedding, or liturgy) are worthy of recognition and protection within section 2(c).

FIRST FREEDOMS: RECLAIMING SPEECH, RELIGION, ASSEMBLY AND THE INVIOLABILITY OF THE PERSON FROM THE CONSTITUTION OF THE UNIVERSE

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ABSTRACT

This paper argues that freedom of conscience and religion, freedom of speech, freedom of assembly, and the inviolability of the person are not derivative legal goods dispensed by the state. They are conditions of human dignity rooted in natural law and in what this paper terms the "constitution of the universe" — the moral order disclosed by the Imago Dei doctrine: that persons, made in the image of God, possess an inherent dignity that precedes and constrains political authority. Drawing on the jurisprudence of Justice Ivan Rand in Saumur v. Quebec (1953), on Canadian constitutional history, and on the author's own scholarship, the paper reconstructs the genealogy of First Freedoms, elaborates their doctrinal architecture and interdependence, and diagnoses the contemporary erosions posed by legal positivism, administrative managerialism, the suppression of parliamentary conscience, and the emergent threat of algorithmic governance. It concludes with proposals for a re-grounded constitutional interpretive posture, procedural protections against administrative overreach, and parliamentary reforms to restore trustee responsibility.

STATE INTERESTS AND THE FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION OF INDIVIDUALS: ACCESS TO ABORTION AND VOLUNTARY ASSISTED DYING IN AUSTRALIA'S LARGEST STATE

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ABSTRACT

In reply Peter and the apostles said, 'Obedience to God comes before obedience to men...' -Acts 5:29-30, NJB

This paper considers the relationship between State interests and the freedom of thought, conscience and religion of individuals in connection with access to Voluntary Assisted Dying (VAD) and abortion in Australia's largest State, New South Wales (NSW). Both procedures are lawful in NSW under legislation which contains protections of the freedom of thought, conscience and religion of health professionals. This paper considers the appropriateness of those protections and endeavours to amend them to override the freedom of thought, conscience and religion of health professionals in order to prioritise access to abortion and VAD. It considers recent attempts to prioritise access to abortion and VAD above freedom of conscience and religion and to otherwise modify, restrict and amend the legislative protections for conscientious objection not by Parliamentary amendment but by bureaucratic guidelines. It considers whether this approach is consistent with international human rights law and, in particular, Article 18(3) of the International Covenant on Civil and Political Rights. The paper argues that reform to restrict the operation of the current protections, is inappropriate and that they should be amended to protect the freedom of thought, conscience and religion of those individuals whose rights are not currently protected.

AUTOMATED DECISION MAKING IN PUBLIC ADMINISTRATION: THE END, OR NEW BEGINNING(S) FOR FIRST FREEDOMS?

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ABSTRACT

Public administration has special responsibility in securing first freedoms in a free state. While the purpose of courts is to defend citizens and other persons in extraordinary case of misconduct, public administration bodies foster fundamental rights by their routine. This requires proper institutional design and procedures. Principles such as transparency, accountability, separation of powers, due process, and the rule of law, are supposed to ensure that public officials (serving in law enforcement, tax, social assistance, or immigration) will sustain first freedoms rather than undermine them. It seems, however, that this familiar catalogue of principles, practices, and rights needs urgent re-examination and update. The reason for this is the advent of Automated Decision Making and AI tools applied to assist decision making processes in public administration. This paper will examine the possible long-term impact of ADM on first freedom from the perspective of human dignity and human agency. On the one hand, it will identify possible threats, especially the uncertain fate of the "human-in-the-loop" doctrine, and more generally, the well-observable tension between human discretion and automated calculation. On the other hand, the paper will seek for possible "new beginnings" for first freedoms, meaning the new "digital" rights, as well as ways in which ADM system can be used to find new ways of securing the first freedoms (such as reducing arbitrariness and enabling better communication tools between the government and the governed).

AI, FIRST FREEDOMS, AND THE DIGNITY OF VOCATION

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ABSTRACT

First freedoms are those primary liberties essential for human flourishing. These freedoms do not derive their authority from the state, but any just society must recognize and protect them. They may rightly be limited only when their exercise infringes on the first freedoms of others or, paradoxically, on the self. First freedoms include the right to live out what theologians call our vocations in family, church, and state. Independently of religion, an Aristotelean understanding of human nature identifies these rights as essential to human flourishing.

The vast increase in the power of AI and its impact on how we live require us to rethink what it means to protect first freedoms and to maintain the dignity of vocations. This paper attempts to clarify the boundary between the use and abuse of AI by evaluating AI's impact on our moral agency and relationships. I argue that we are in urgent need of both educational reforms and legal protections to prevent important ways of life from being undermined by the inappropriate use of AI technology. This is because the abuse of AI can lead us to abdicate moral responsibilities, to atrophy the powers required to exercise freedom of thought and action, and to damage authentic relationships in family, church, and state.

SOME REMARKS ON THE ARISTOTELIAN NOTION OF "SCIENCE": IDEAS FOR A CONTEMPORARY DEBATE

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ABSTRACT

The proposal entails the following conceptual passages. 1. Starting point. The paper is to be understood as a "theoretical attempt" and aims to call into question the concept of "science": what we mean when we use the category "science" (i.e. scientific knowledge)? 2. Scenario. The debate of the last century grounds in different perspectives: science as a "procedure", as a "coherentist model", as a "mind-world paradigm", as a "falsificationist framework", as a "narration". All these patterns move from a "cognitive/intellectualist/epistemological" approach and maybe cannot enable us to grasp the idea of "science". 3. Modern horizon. In particular, the first typology (science as a "procedure") dates back to the modernity and has a great historical relevance: the analysis of its structural skeleton highlights some crucial points. They can be summarized by the following conceptual sequence: a) the philosophical (Cartesian) premises; b) the paramount role played by the notion of "subject"; c) the relevance of the experimental methodology; d) the idea of "order" underlying the scientific research; e) the tension to a "generalisation" (not universalization) of knowledge (the idea of "scientific law"; f) the "public nature" of the scientific knowledge. 4. Aristotle's insights. Aristotle offers a different model of "science" according to some points related to each other: a) the key concept of "episteme" (ἐπίστασθαι) underlying Aristotle's works; b) the paramount role of the intellectual intuition; c) the distinction among different levels of science ("certain" science and science of the "possibility"): theory and praxis; d) the foundation of the "true" science in an essentialist perspective (metaphysical level: Metaphysics, VII, 9, 1034a, 30-31) encompassing each science (i.e., each typology of "science" is to be conceived as "true" in light of its specific nature); e) the idea of philosophy (i.e., metaphysics) as the

"science of the being" and its ontological and logical projection (an ontological epistemology); f) the theoretical circle between "unprovable/evident principles (Posterior Analytics)-logical deduction/demonstration (Prior Analytics); g) the nexus science-universalization (not only regularity); h) the methodological unity of knowledge. 5. Conclusive "provocations". Moving also from some contemporary rediscoveries of Aristotle's theory of science/knowledge (for instance Tarski's semantic theory 1933), it is possible to ask whether the Aristotelian perspective is suitable (or appropriate) in order to discuss some contemporary theoretical and philosophical-legal issues in times of crisis. Some provocative points are highlighted below. a) Concept of "science". Does science imply only an "experimental approach"? Is it possible to think of another "idea/paradigm" of science? b) Methodology. Can we still aspire to elaborate a methodological unity of knowledge à la Aristotle? In other words: an encyclopedic pattern of "science" beyond multiple specializations and in light of the complex contexts involving a mutual/circular connection of approaches? c) Typology of "truth". Is it plausible to (re)think of a semantic-correspondentist pattern of truth (even though not reducible to the modern-subjectivist scheme and oriented towards the formulation of a "regularity"?) d) Contemporary challenges. Can we apply this approach to some current issues? Only two examples: - climate change, especially in light of the rich contemporary debate concerning this question (including the Aristotelian references); - AI, which promises to identify and govern "regularities" in a very speed way as well as it takes as its regulative ideal the achievement of a encyclopedic science of the whole (even of an essentialist nature?). Finally: maybe this scheme could be applied also to politics.

POLITICS, ECONOMICS, AND THE DELIMITATION OF POLITICAL KNOWLEDGE IN ARISTOTLE

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ABSTRACT

This paper argues that Book I of Aristotle's Politics performs a neglected methodological function: it delineates the nature of political knowledge through a sustained differentiation between politics (politikē) and neighbouring forms of practical expertise, especially household management (oikonomikē) and acquisitive expertise (chrēmatistikē). Against readings that treat the economic discussions of Politics I as merely preliminary or digressive, I suggest that they are constitutive of Aristotle's political inquiry itself.

The Politics begins with a deliberately indeterminate definition: the polis is "a certain community" (koinōnia tis, 1252a1). The problem immediately becomes one of clarification: what kind of community is the polis, and how does it differ from other forms of association? Aristotle's answer proceeds dialectically through distinctions among apparently proximate forms of rule — political, royal, despotic, and household authority. I argue that this clarification partly follows a recognizably Aristotelian strategy, familiar from the Topics: things that differ in kind are often revealed through the distinction of their corresponding forms of knowledge. Thus, politics is not simply household management on a larger scale, because politikē and oikonomikē are not the same form of expertise.

This framework helps explain why Aristotle devotes so much attention in Book I to economic life, property, acquisition, and wealth. Rather than constituting a digression, the analysis of oikonomikē serves to delimit the political by identifying both its necessary foundations and its conceptual boundaries. Aristotle distinguishes natural acquisition, which serves life and household sufficiency, from unlimited money-making, in which

wealth ceases to function as a means and becomes an end in itself. This distinction establishes a hierarchy of ends: economic activity is necessary, but subordinate to the political good.

The paper further argues that Book I thereby prepares Aristotle's later critique of oligarchic justice in Books III–V. Oligarchic constitutions mistake a criterion valid within one sphere — wealth — for the criterion of political rule itself. Since the polis exists not merely for living but for living well (eu zēn), political authority cannot be grounded exclusively in economic contribution. Aristotle's criticism of oligarchic distributive claims thus presupposes the prior conceptual and teleological subordination of economic rationality to political rationality.

By reconstructing the systematic role of Book I, the paper seeks to show that Aristotle's political science is constituted not only by the definition of the polis, but also by the careful differentiation of politics from rival forms of practical reasoning.

ARISTOTLE ON LOVE FOR THE CONSTITUTION

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ABSTRACT

This paper investigates Aristotle's concept of love (philia) for the existing constitution (politeia). In his Politics, Aristotle considers loyalty, friendship or love (philia) of the constitution to be one of the most important requirements of the highest public offices. Other important requirements are virtues and the capacity to perform the duties (Politics 1309a30-40). The love of constitution is manifested in a person's adherence to the requirements of the constitution even in times of difficulties. Like a treacherous lover, those in power may be tempted to abandon the constitution when faced with difficulties. Aristotle explores the sources of constitutional decline, contending that constitutions fail because of violence (bia) or political deception (apatē) (Politics 1304b5-20). In a democracy, the deception of masses takes place when populist demagogues seduce the political assembly into rejecting the rule of law. This political deception leads to loss of trust for state officials (Politics 1292a15-30). The inability to resist populist demagogue manifests the weakness of the will (akrasia), which leads to being incapable of acting in accordance with what one knows to be right. This political weakness can be mitigated through civic education, which equips those in power with virtues, such as righteousness (dikaiosynē) and (constitutional) self-restraint (enkrateia). This study investigates how Aristotle understands love of the constitution, the education and virtues that support constitutional maintenance, and the causes of constitutional decadence. In conclusion, I argue that Aristotle's constitutional love should not be understood as emotional patriotism, but rather as a form of political friendship that is a precondition of social trust and safety.

ARISTOTLE AGAINST THE IDEAL DIMENSION OF LAW? DISCURSIVE JUSTICE AND THE LIMITS OF THE CLAIM TO CORRECTNESS

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ABSTRACT

In his works, Robert Alexy argues that law has two dimensions: the real and the ideal. The ideal dimension is essentially tied to the law's claim to correctness and thus represents a central element of Alexy's non-positivist concept of law. Alexy explains this ideal dimension in discursive terms, drawing in particular on Robert Brandom's analyses of the discursive nature of human beings. At the same time, however, this line of thought can be traced back to Aristotle's conception of the human being as zoon politikon and to his account of justice, which also possesses a discursive dimension.

In this paper, I analyze Aristotle's theory of justice from this perspective. I argue that within Aristotle's philosophy the discursive character of justice does not support something like an ideal dimension of law. Aristotle's notion of particular justice concerns the regulation of everyday distributive and corrective interactions and exchanges. Although he formulates principles for dealing with such cases, he does not articulate an ideal of justice in this context. His account of universal justice encompasses the laws and moral norms of the polis. Yet even here Aristotle does not formulate a conception of absolute justice; rather, he shows how different political orders give rise to different conceptions of justice.

Finally, returning to Robert Alexy, I argue that Aristotle's framework reveals both the strengths and the limits of the idea of an ideal dimension of law.

INTERGENERATIONAL JUSTICE AS A MATTER OF POLITICAL FRIENDSHIP

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ABSTRACT

Intergenerational justice—which refers to the moral and legal obligations shared by the state and civil society for the benefit of future generations—has emerged as a frequently discussed issue in recent years.

These obligations are primarily rooted in the identification and protection of the interests of potential future inhabitants, particularly within the realms of ecology and economics. The proliferation of globally harmful habits and technologies has, on one hand, led to the definition of new challenges—such as rapid global population growth, resource depletion, nuclear warfare, and environmental pollution—and, on the other, prompted a rigorous debate regarding their short- and long-term consequences.

In this regard, intergenerational justice is about policies and measures that strive for a balance between future generations and people living today, without disadvantaging either of them. Every issue that affects individuals, society and nature also affects future generations, and this kind of integrity allows us to apply concepts similar to those we use today to them as well. The decisions or actions taken on behalf of the interests of our potential successors are justified with concepts such as utility, duty, justice, responsibility, obligation or rights.

This article examines whether Aristotle's concept of political friendship (politikē philia) provides a robust moral-political framework for understanding intergenerational justice. Aristotle conceptualizes citizens not as individuals engaged in the exchange of rights and interests, but as members of a political community bound together by a shared common good. In this context, political friendship inherently encompasses the aim of "living well together." From this perspective, obligations toward unborn generations

gain significance not through a direct, individual reciprocity, but because we are members of the same political entity extended through time.

THE DISPUTE OVER ARISTOTLE: HEIRS OR LEGATEES OF HIS LEGAL THOUGHT?

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ABSTRACT

The 20th-century "Aristotelian renaissance" deeply transformed the reception of classical thought by breaking away from scholastic dogmatism, revealing a plural, aporetic, and methodologically open Aristotle. While moral and political philosophers such as Aubenque, MacIntyre, and Nussbaum readily embraced this openness—accepting the existence of "rival Aristotles" and the reconstructive nature of their readings—this paper argues that contemporary jurisprudence seems to resist taking this hermeneutical step. Through a critical analysis of the recent reconstructive frameworks of Tony Burns, Fred Miller, and George Duke, this study examines how the temptation to build a systematic and unified Aristotle persists within legal philosophy. A methodological paradox emerges in these authors: while they formally present themselves as "legatees" aware of the risks of anachronism and textual fragmentation, their hermeneutical practice still behaves like that of "heirs." Driven by what Quentin Skinner termed the "myth of coherence," they treat genuine textual contradictions as merely apparent, attempting to rescue a flawless underlying system. The paper concludes by inviting legal philosophy to fully embrace the hermeneutical lessons of the multi-faceted Aristotelian revival. It suggests that Aristotle's value for contemporary legal theory does not lie in the forced extraction of a closed system, but rather in our capacity to engage with his legal tensions, silences, and aporias as conscious legatees rather than restorative heirs.

ARISTOTLE'S VIEW OF LIFE EXPERIENCE AND PUBLIC ADMINISTRATION

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SW23 · Aristotle and Law in the Face of the Changing Problems of the World
(Practical Reason, Justice, and Law in Times of Crisis)
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ABSTRACT

The law of public administration concerns the distribution of power and the justification of its use. In Aristotle's view the exercise of power requires the application of the ruler's own life experience and character. This implies distributing power according to proportional equality.

The law of public administration aims to create the conditions for a technical practice of cooperation for the benefit of the common good. By pursuing the common good, the technical practice is at the same time an ethical practice of politics.

According to Aristotle, technical practice encompasses a gap between emotion and thought that implies differences in life-experience. In a political practice for the common good, this gap is bridged when the exercise of power is generally accepted. Achieving this acceptance through wise (technical and ethical) decisions is the highest political virtue and means the finding and creating of legitimate law: political justice in the general sense.

CAN ARISTOTELIANISM BE RATIONALLY RECONSTRUCTED AS A WELL-ARGUED UNIFIED ETHICAL SYSTEM?

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ABSTRACT

The preparation for a philosophical reconstruction was to some extent already laid down by Bentham and Mill, through what they said about typical Aristotelian doctrines. For Hume human action is not guided by reason but by passion, for Hume there is no practical reason. An essential contribution of Bentham to the history of philosophy is precisely the recuperation of practical reason as a science, which he calls utilitarianism. John Stuart Mill develops many arguments that allow for a close proximity between his view and Aristotelianism: Both have practical reasoning as method; Both have the same ground, Mill's practice corresponds to Aristotle's praxis; For both, happiness is the ultimate end; For both, the virtues are means for happiness. A rational reconstruction of the ethics of Aristotle will relate individual good and individual happiness with common good and universal happiness and all of them with individual ought. Recently the interpretation of Aristotle has evolved in a way that allows for collaborative research on the foundation of ethics with the two main modern schools ethical thought, utilitarianism and Kantianism. The inclusive theory of happiness according to which all the activities of all virtues are constitutive of happiness illuminates how the mean is the action that ought to be done, and therefore Aristotle's ethics, similar to the ethics of Kant and Bentham, is a deontology.

THE IMPORTANCE OF HUMAN RIGHTS FOR MODERNITY ACCORDING TO MAHLMANN'S MIND AND RIGHTS AND BEYOND: SOME EMPHASES AND REFINEMENTS

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ABSTRACT

First, human rights establish the content of justice in every modern society, state, or legal system, and therefore for humankind as a whole, at a given time, with relative legal precision or, perhaps better, with the greatest precision legally possible. More exactly, human rights determine the ideal of justice in a given system, as expressed in the way in which human rights are stipulated within that system, as well as the actual state of justice in that system, measured by the extent to which that normatively stipulated ideal is achieved in practice. Relying on the Radbruch formula, it could be said that human rights law represents supra-statutory law (or law above statutory law, Ger. übergesetzliches Recht), as normatively stipulated justice, the rules of which must always be respected. According to Radbruch, the laws of the land, bylaws, and other legally valid regulations that impose violations of human rights embody statutory non-law (or statutory lawlessness, Ger. gesetzliches Unrecht) and should not be obeyed, just as state authorities that systematically violate human rights should not be obeyed, because both represent what Radbruch calls unbearable injustice (Ger. unerträgliche Ungerechtigkeit).

Second, human rights are the criterion for differentiating between two fundamentally divergent legal positions of biological human beings: their legal status in premodernity and in modernity. In premodernity, they could legally be objects, slaves, talking tools, serfs, villeins, outlaws, non-freedmen/non-free-men (Ger. Untertanen). They could also be legal subjects, as bearers of rights and obligations, but only to the extent that the sovereign

or a similar potentate determined or allowed that. Therefore, they were legal subjects subjected to the sovereign, the sovereign's subjects, which are linguistically and logically contradictions and incompatibilities. In contrast, the modern legal status of human beings implies that they are not subject to any sovereign, regardless of its kind – parliamentary, state, national, or popular – when it comes to certain rights and obligations; thus, no sovereign can deprive them of their human rights without the system reverting to a pre-modern condition, or sliding into an authoritarian or even totalitarian order. This is because, in the modern era, people, as subjects of rights, are the bearers of human rights – inalienable rights – irrespective of whether they are citizens/nationals, foreigners, refugees, convicts, prisoners, paupers/indigents, the homeless, illiterates, women, "Black" or generally "persons of color", etc. However, among these inalienable human rights, there is one that is the condition for the fullest and broadest enjoyment of all other rights – namely, the right to citizenship/nationality as the right to have rights. As Earl Warren, Chief Justice of the Supreme Court of the United States, put it back in 1958, in his dissenting opinion in Perez v. Brownell: "Citizenship is man's basic right for it is nothing less than the right to have rights." – 356 U.S. 44, 64 (1958). This is just one of the clear indicators that the national legal framework – and not the international, let alone a universal international framework – is still crucial for the scope and degree of enjoyment of human rights. This applies even to the Council of Europe and European Union legal orders, currently the most advanced international, albeit only regional, European legal frameworks for the protection of human rights, in which individuals have become subjects of international law – a revolutionary innovation in international law and modern jurisprudence more generally. This is made possible by the Council of Europe's comprehensive regulation and protection of human rights, with Council of Europe membership being a requirement for a state to join the EU, as well as by the European Court of Human Rights in Strasbourg and, in part, by the European Court of Justice in Luxembourg, which, through their rulings, provide a measure of judicial protection of human rights for individuals regardless of their citizenship. Yet, one should bear in mind that the final say concerning the enforcement of the Strasbourg and Luxembourg judgments rests with each member state as a nation state, which ultimately points to the critical importance of the national, rather than the international – here, European – legal framework.

Third, human rights are crucial for distinguishing between pre-modern and modern democracy, as well as for drawing distinctions within modern social, political and legal systems – between those that are democratic and those that are undemocratic, whether authoritarian or totalitarian. In essence, every democratic system is based on some form of the majority principle, i.e., majority rule. A modern democratic system, however, must also provide protection for minorities, otherwise it could turn into a tyranny of the majority. The legal protection of the current political minority (i.e., the opposition), as well as of other current or permanent legally (i.e., constitutionally) relevant minorities – religious, linguistic, cultural, racial, gender-based, age-based, disability-related, or sexual-orientation-based minorities, etc. – is achieved through the effective legal protection of everyone's human rights in a given system. This is, at the same time, the correct interpretation of James Madison (The Federalist Papers, 1787, No. X), Alexis de Tocqueville (Democracy in America, 1835, Vol. I, Part II, Chapters X and XV) and John Stuart Mill (On Liberty, 1859, Chapter III, pp. 103–119), when it comes to the definition of modern democracy. Bearing this in mind, it becomes apparent that the objection regarding the democratic deficit of the EU, previously the EC, and similarly of the CoE – namely, that there is less democracy, i.e., less genuine majority rule, in the adoption of legislation or general rules in these international organizations than in the democratic decision-making required of candidate states for membership – is not persuasive. Such an objection regarding the democratic deficit of the EU, or CoE, cannot be sustained, given the previously mentioned effective protection of human rights before the ECtHR and the CJEU.

Fourth, human rights, as a proclaimed social, political, and legal value that is universally accepted, are indisputable in the twenty-first century. This is evident from the constitutions of more than 195 existing states, including 193 UN member states, two observer states: the Holy See and the State of Palestine, and those with varying levels of recognition (such as Taiwan and Kosovo). Almost all of these states possess a written constitution as a single legal document, while only a few have uncodified constitutions: the United Kingdom, New Zealand, Canada, Saudi Arabia, and Israel. All these constitutions – codified and uncodified – contain national proclamations of human rights aligned with the UN Universal Declaration of Human Rights. Furthermore, human rights are a universally accepted

value not only in peace but also in war, and in armed conflicts more generally. This is evident from the fact that all 196 countries – 193 UN members, two observers, and the Cook Islands – have accepted the four 1949 Geneva Conventions, including their 1977 and 2005 Protocols, either in full or with reservations. This does not mean that, in practice, human rights are not violated or ignored to varying degrees, sometimes even drastically. Quite the opposite. It implies that the mechanisms for the universal legal protection of human rights – UNGA, UNSC, UNHRC, ICJ, ICC, etc. – should be consistently applied, respected, and improved so as to become increasingly effective, rather than being replaced by new, legally unfounded, and obscure alternatives, such as Trump's Board of Peace.

Fifth, human rights constitute a key differentiator between pre-modern (i.e., ancient and medieval) and modern constitutionalism, as well as between their respective constitutions. Looking at Benjamin Constant, Charles Howard McIlwain, and certain contemporary authors, one can conclude that the essence of this distinction lies in the conceptualization and institutionalization of human rights within modernity, i.e., in the constitutionalization of human rights. Why? Because without the constitutionalization of human rights, there are no precise legal limitations on supreme authority, i.e., on the legislator, the constitution-maker, or the sovereign, regardless of who that may be. Consequently, there are no precise legal limitations on any other potentate, power-holder, or entity with significant social influence. Therefore, without the constitutionalization of human rights, there can be no substantively good laws and constitutions, because holders of authority or power can easily change them in an authoritarian, totalitarian, or pre-modern direction. However, if constitutionalized human rights are to be genuinely enjoyed in practice – rather than merely existing "on paper" – an effective mechanism for enforcing them against public authorities and other potentates is essential. Judicial or other constitutional review, conducted by an independent judiciary, is generally deemed to be that essential mechanism. That is why the right to a so-called "natural judge" is one of the most important human rights: it means the right to have one's case decided by an independent, competent, impartial person of integrity, not only in courts, but also in prosecution offices, audit bodies, agencies, or any other body deciding on human rights. Thus, following Justice Warren, it may be concluded that, if the right to citizenship/nationality is one's basic right, the right to have rights, i.e., the right

to the fullest and broadest possession of all other rights, then the right to an independent judge is one of the most fundamental rights, for it is nothing less than the right genuinely to have rights and ultimately to enjoy them.

Sixth, human rights are crucial for defining the concept, essence, and content of the rule of law. The notions of the rule of law and the Rechtsstaat differed for a long time: from Robert von Mohl to Hans Kelsen, the idea of the Rechtsstaat was restricted to respect for the principle of legality in the broadest sense, including the principle of constitutionality, regardless of the content of constitutions and laws. Therefore, every state, as an order structured by legal norms, used to be perceived as a legal organization and eo ipso as a Rechtsstaat – including the Third Reich. On the other hand, on the Anglo-American side, the notion of the rule of law has always explicitly required, or implied, even in Albert Venn Dicey's work, a certain, at least minimal, degree of justice in the content of the law that has ruled. However, from the mid-twentieth century, these two ideas became substantively congruent, rendering the terms "rule of law" and "Rechtsstaat" synonymous. In essence, the rule of law, or the Rechtsstaat, can be defined as the rule of human rights law. This is because it matters what kind of law rules, what the content is of the ruling law, i.e., of the legal norms that regulate the state and society. In the contemporary era, for the rule of legal norms to constitute the rule of law, and for a state regulated by them to be a Rechtsstaat, the constraints placed on their content are defined by human rights. Within such legal orders, these rights must not be endangered or jeopardized, let alone denied – especially not in a systemic or widespread manner.

Seventh, human rights are also significant for defining the sovereign and sovereignty in any social, political, and legal system in which they exist. From a historical perspective, unlike human rights, rights in their basic form, as well as sovereignty, exist as legal phenomena in every system. However, the conceptualization of sovereignty emerged only after the creation of the specific term "sovereignty", i.e., in the modern era – with Jean Bodin, Thomas Hobbes, and others. Sovereignty denoted the absolute, greatest, and unlimited power or authority in a community over a certain territory, capable of imposing certain behavior, i.e., rules of behavior, on everyone, even by force if necessary. However, we have seen that the

modern and especially contemporary, postmodern understanding of justice, the status of human beings with legally protected dignity, democracy, supreme social values, constitutionalism, and the rule of law or the Rechtsstaat, is not possible if sovereignty is understood as the legal limitlessness – let alone arbitrariness – of the monarch, the state, the nation, the people, the constitution-maker, the national assembly, the legislator, or parliament. Sovereignty understood in this way – as legal limitlessness – can be associated only with pre-modernity or with modern authoritarian and totalitarian orders. Sovereignty in modern or post-modern democracy, a state governed by the rule of law, or a constitutional Rechtsstaat, where the highest social values are epitomized in justice and serve the legal protection of the dignity of every human being, can only be the legal supremacy of human rights law. Thus, figuratively speaking, the sovereign in such a system can only be personified human rights law. In the history of ideas, this insight was first articulated – metaphorically yet unerringly – by Sir Edward Coke in his powerful line: "Magna Carta is such a fellow that he will have no sovereign."

P.S. This abstract outlines the significance of human rights for modernity and postmodernity in seven points. While reached through different paths, these views appear to converge with, complement, or overlap with those of Mahlmann's. For this reason, I will not present them orally at the Congress; however, I would be very happy to address any questions or comments on them by email or during the event itself. Given the time constraints, my oral presentation will focus on two or three points on which Mahlmann's views and my own seem to differ.

BETWEEN FOUNDATION AND PRACTICE: HUMAN DIGNITY AS A CATALYST OF RIGHTS EXPANSION IN LIGHT OF MAHLMANN'S MIND AND RIGHTS

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ABSTRACT

Human dignity occupies a central position in Mind and Rights. Mahlmann opens his masterpiece by invoking the Universal Declaration of Human Rights, which, from the outset, recognises "the inherent dignity [...] of all members of the human family" and stipulates that "all human beings are born free and equal in dignity and rights". He continues by describing dignity as a "substantial value", "intrinsic worth" and "specific good of human beings" that forms the very "foundation of human rights". Dignity is perceived as a "source of the special normative status of having rights" that "create[s] duties". It is "a constitutive part of the whole architecture of human rights", but also in and of itself a "'basic' or 'core' human right". Even in its main, "encouraging" conclusion, human dignity is given an important place in Mind and Rights, supporting that "the idea of human rights is as well justified as anything has been in the history of fallible human thinking about morality and law".

Building on Mahlmann's conception of dignity as a foundation and justification for rights, as well as it being a right in itself, this paper explores an under-examined dimension of dignity in human rights law. It posits that, in addition to underpinning and justifying rights, dignity operates as an innovative normative principle that influences the interpretation of existing rights and facilitates the acknowledgement of emerging claims, in response to new challenges. Drawing on the practices of national and international courts, UN treaty bodies, and UN special procedures, the paper illustrates how dignity actively drives the expansion and evolution of rights doctrine. By emphasising this catalytic role, the analysis aims to show that

human dignity is constitutively productive as well as foundational within national and international human rights systems.

Mahlmann himself provided the inspiration for exploring the foundational and practical dimensions of human dignity in the context of human rights practice. He argues that there is no good reason to dismiss this practice as "tedious, slightly dusty 'law stuff' devoid of deeper theoretical interest". Furthermore, the "thousands of industrious legal hands", as Mahlmann picturesquely describes lawyers who contribute to human rights practice, are in fact thousands of legal minds that use dignity, explicitly or implicitly, to a greater or lesser extent, as a means of concretising and expanding the scope of different rights. These minds also consider complex contemporary issues, such as climate change, by referencing human rights in general and human dignity in particular.

The so-called "rights turn" in climate litigation, a term introduced by Peel and Osofsky, is largely due to human dignity: climate change threatens human dignity while also putting at risk the integrity and credibility of the human rights framework, as it was not originally designed to address complex global issues. However, given that human dignity is deeply rooted in the legal mindset, it is worth exploring whether and to what extent it can be used as a valuable tool to adapt human rights to the many legal issues arising from the specifics of climate change.

The paper will discuss how the recent climate-related practices of national and international human rights bodies have infused rights discourse with new content and normative force, extending beyond the foundations to reach jurisprudential innovations attuned to climate change as a collective threat. Cases such as Leghari v. Pakistan before the Lahore High Court, Daniel Billy and Others v. Australia, and Teitiota v. New Zealand before the UN Human Rights Committee, as well as other regional human rights court cases, will illustrate the pivotal role of human dignity in climate change-related human rights practice. Climate jurisprudence is a prime example of how human dignity can be an interpretative driver and a normative generator, with the potential to exert systemic influence across jurisdictions. Additionally, it provides an opportunity to address critiques concerning dignity's inflation, indeterminacy, and potential overreach. Last but not least, taking into account that climate human rights cases have so far predominantly involved vulnerable groups, such as children, elderly

women, migrants, indigenous people and those living in rural areas, the paper will explore how vulnerability relates to dignity in the context of climate change, discussing how these concepts interact.

Returning to Mahlmann, everything mentioned above actually supports his view that human dignity lies at the heart of human rights. What could be more logical than the expansion of human rights being guided by the very principle on which they are founded? Dignity would not command such power if it were not rooted in the innate value and essence of human beings.

HUMAN RIGHTS IN TIMES OF WAR AND INJUSTICE – ETHICAL CRISIS AND THE NECESSARY WORK OF LEGAL PHILOSOPHY

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SW24 · On Mahlmann's Mind and Rights: Critical Reflections and Considerations
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ABSTRACT

Main Theses

The talk will seek to locate the theory of human rights within the wider framework of current debates in legal philosophy.

It will ask what reflection on the example of moral and legal human rights tells us about the structure of normative concepts;

the role of the history of normative phenomena in theory construction;

the content of just laws;

the importance of cognitive science for practical philosophy; and

the epistemology and ontology of normative principles.

It also hopes to show the political and cultural importance of critical legal philosophy in times of crisis.

The remarks are privileged to be informed by fourteen essays critically commenting on Mind and Rights (Human Rights Restated: An Investigation of Mind and Rights, edited by Sarah Summers and András Sajó, Cambridge University Press, forthcoming).

ARTIFICIAL MINDS AS A CHALLENGE TO MAHLMANN'S THEORY OF MORAL COGNITION AND HUMAN RIGHTS

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ABSTRACT

This paper engages with the anthropological foundations of human rights developed in Matthias Mahlmann's Mind and Rights, focusing in particular on his account of moral cognition and understanding, as defining features of human identity. Mahlmann emphasizes the key importance of the shared human faculty of moral cognition for the grounding of human rights, understanding this faculty as a structured competence in which rational moral judgment is integrated with the volitional and emotional aspects of human agency. This integrated moral competence enables human beings to recognize normative reasons, to respond affectively to the plight of others, and to act under the guidance of principles. Following Mahlmann, it may be interpreted in terms of generative principles of moral judgment – a 'universal moral grammar' analogous to the generative structures posited in linguistic theory. In this way, moral cognition is not merely a descriptive feature of human beings, but a foundational element of their dignity and their equal moral status as bearers of rights.

The present contribution examines how recent developments in artificial intelligence place this anthropological framework under new conceptual pressure by destabilizing the implicit unity of rational cognition, language, and moral selfhood. Prior to the emergence of artificial intelligence – and especially large language models – human beings were, in an ontological sense, the only entities treated as capable of rational cognition (including the rational dimensions of moral cognition), of using language as a medium for the formulation and justification of norms, and of moral selfhood and subjectivity. This position of ontological uniqueness implicitly suggested an unbreakable conceptual bond between these capacities. The

emergence of new types of artificial agents challenges the presumed necessity of this connection, at least in the minimal sense of opening the possibility of a different ontological configuration of cognitively and linguistically capable entities.

The central thesis of the paper is that the emergence of artificial systems capable of sophisticated cognitive and linguistic performance introduces a structural decoupling of rational cognition, linguistic agency, and moral selfhood. Current AI systems are already capable of functionally reproducing many forms of human cognitive performance without possessing moral selfhood. They have also mastered human language at a level sufficient to produce significant perlocutionary effects (such as persuasion, inducing and discouraging action, and causing offence), without relying on internal mental representation or a human-like intentional stance in the full sense. This decoupling thus challenges the anthropological foundations of human rights by showing that neither cognitive capacity nor linguistic agency alone suffices to ground moral personhood, which is necessary for the very concept of human rights.

Additionally, the paper argues that the combination of these developments results in a structural asymmetry between influence and responsibility. Artificial systems can shape human decisions and social outcomes, yet they cannot be held responsible, cannot justify their actions, nor can they be addressed as moral agents. This "responsibility asymmetry" marks a significant departure from the traditional anthropological assumptions underlying the human rights discourse, in which rationality, language, and accountability are understood as belonging to the same subject.

At first sight, this ontological and conceptual "fracture" may seem problematic for Mahlmann's claim concerning the foundational status of moral cognition in relation to human rights. However, upon closer reflection, it reveals and reinforces a central insight of his approach: namely, that the normative force of human rights depends not on cognitive or linguistic capacities taken in isolation, but on their integration within a morally accountable and self-relating human subject. This, in turn, calls for a further clarification of the anthropological foundations of human rights, shifting the focus from cognition per se to the integrated structure of embodied vulnerability, normative self-relation, conscience, and responsibility. Human beings are not merely rational or linguistic agents, but beings who can

bind themselves to norms, recognize themselves in others, and endure the consequences of their commitments. It is this integrated structure – rather than any isolated capacity – that grounds the attribution of dignity and rights.

In this context, the paper briefly engages with Günther Anders's diagnosis of the "obsolescence of the human." It is argued that a robust conception of human rights presupposes a "non-obsolete" human being – defined not by functional superiority over machines, but by the irreducible unity of moral cognition, vulnerability, freedom, and responsibility. Artificial intelligence may surpass human beings in specific cognitive tasks, but it does not replicate the structure of moral selfhood that underlies the normative order of rights.

The paper concludes by suggesting that the challenge posed by artificial intelligence is not only theoretical but also educational and cultural. If contemporary technologies increasingly separate cognition from moral selfhood, there is a risk that human beings may gradually internalize this separation, coming to resemble agents who are cognitively capable but normatively ungrounded. In this sense, the preservation of the anthropological foundations of human rights depends not only on philosophical clarification but also on the cultivation of integrated moral capacities – reason, conscience, empathy, and responsibility – within human subjects. The question raised by artificial intelligence is therefore not only what human rights are, but what human beings must remain – or become – for them to remain meaningful.

MAHLMANN'S MIND AND RIGHTS AND THE PHILOSOPHY OF DIGITAL RIGHTS: SOME REFLECTIONS

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ABSTRACT

This paper engages with Mahlmann's Mind and Rights through the lenses of philosophical inquiry and legal theory concerning fundamental rights in the digital environment, with the aim of identifying the conceptual orientations and theoretical foundations for understanding and further developing digital rights amid ongoing technological transformation. Attention is first directed to the characteristics of the digital space, as reflecting particular philosophical and political perspectives, as well as to the forms of governance through which its normative standards are articulated. This is followed by a consideration of the introduction of human rights as a normative framework in its regulation, together with an outline of the main points of debate associated with this process. On this basis, the analysis turns to Mahlmann's theoretical framework on human rights, focusing on the shifting paradigms in their philosophical interpretation and legal protection in contemporary digital society.

The internet, shaped by the political and economic context of 1980s United States and cyber-libertarian ideas, emerged as a decentralized digital infrastructure envisioned to enable global social and economic transformation grounded in individual freedom, autonomy, and minimal state regulation. The specific characteristics of the global online environment, which have challenged traditional concepts of the modern state and its regulatory authority, have provided the basis for broader rethinking of the narrow understanding of state regulation. This rethinking has contributed to the expansion of the concept of regulation, conceptualised as a multi-layered process operating through interaction with other normative layers, including ethical principles and morality, self-regulatory mechanisms, and market-based structures. Strong influence on the formation of theoretical

perspectives regarding the evolution of digital environment regulation is exerted by social theories that conceptualise society as a network of communicative interactions as well as theories of network communitarianism.

Building on these conceptual developments, governance of the digital environment has increasingly been understood not as a solely state-centred function, but as a distributed and multi-actor process that reflects the structural complexity of the internet itself. The global digital space is governed through a complex, multi-layered model operating across several levels: infrastructural, logical, economic, and social. States, international organizations, civil society representatives, the academic community, and technology companies all participate in this process, together forming a dynamic and decentralized system of internet governance. The multistakeholder approach is becoming established as an alternative to the traditional intergovernmental approach (multilateral approach) characteristic of international law, in which decisions are made exclusively by states. In this model, various stakeholders participate on an equal footing, including states, the technology community, the private sector, and academia.

Parallel to the development of the governance model for a global internet, which combines international law, national regulatory frameworks and the evolving structures that operate on the basis of the multistakeholder model, the issue of protecting human rights in the digital environment has increasingly come to the forefront. In view of the inherently global scope of the network, human rights are widely regarded as the primary regulatory framework underpinning its governance architecture. Their recognition in the United Nations Universal Declaration of Human Rights comes from the collective efforts of representatives from a broad spectrum of states and is designed to highlight shared human values, regardless of social, religious, political, or economic differences. The general and abstract formulation of human rights allows for their differentiated application at the international, regional, and national levels, taking into account the specific political context and legal tradition. This approach, referred to as flexible universalism, does not seek to enforce a single model of rights. Instead, it aims to set a common standard that can be adapted and applied at the national level, serving as a basis for global recognition of the legitimacy of rights.

The specific characteristics of the digital environment have led to the adoption of human rights instruments specifically dealing with the internet sphere. Thus, within the framework of the Internet Governance Forum (IGF), the Internet Rights and Principles Coalition (IRPC) adopted the Charter of Human Rights and Principles for the Internet (2011), building upon the WSIS Geneva Declaration and the Tunis Agenda, both of which recognize that information and communication technologies create opportunities for individuals and communities to advance sustainable development and improve quality of life. The Charter sets out ten principles and twenty-one rights adapted to the online environment and derived from the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Its principles define the essential features of the internet necessary for the protection of human rights, including universality and equality, social justice, accessibility, freedom of expression and association, privacy and data protection, security, and cultural and linguistic diversity.

In 2023, the EU institutions adopted the European Declaration on Digital Rights and Principles for the Digital Decade, which seeks to promote a digital transformation shaped by European values. The Declaration builds upon the Charter of Fundamental Rights of the European Union and reaffirms the relevance of fundamental rights in the context of digital transformation, including freedom of expression and information, protection of personal data, and the right to privacy.

Alongside these advances, the development of digital technologies has also been associated with certain risks to human rights, arising both from the potential for mass surveillance and control, and from the possibility of discrimination, information manipulation, and the restriction of fundamental freedoms. The increasing deployment of algorithms and artificial intelligence systems in internet applications, particularly within the largest global social networks encompassing billions of users worldwide, intensifies the need for a careful balance between the potential benefits and the inherent risks associated with their use. States have responded differently to these risks from a regulatory perspective. Unlike the period preceding the emergence of the digital environment, when the specification and en-

forcement of rights remained largely confined within national jurisdictions, in contemporary digital society this process has become visible to global network users and appears increasingly influenced by, and dependent upon, global technology companies. This development, in turn, has prompted states to assert claims to digital sovereignty.

Contemporary discussions on human rights in the digital environment are developing in several interconnected directions. Central concerns include how to ensure the effective protection of human rights online and whether the existing catalogue of rights should be supplemented with new rights capable of safeguarding fundamental human values in the digital age. While differences in the interpretation and application of rights within territorial state jurisdictions have traditionally remained relatively invisible, in the context of the global digital space, dominated by a small number of online platforms with billions of users, such differences have become increasingly visible and are often perceived as clashes of values. This is particularly evident in debates concerning the balance between freedom of expression and access to information, on the one hand, and efforts to combat disinformation, hate speech, and fake news, on the other, as well as in discussions surrounding the right to privacy and the protection of personal data. Furthermore, whereas human rights have traditionally been conceived as protections of individuals against the state, the specific characteristics of the digital environment raise significant challenges regarding their application in relation to private actors and technology companies.

In this complex context of digital rights, the paper focuses on the theoretical framework of human rights developed by Mahlmann, which he substantiates through arguments drawn from the fields of anthropology, political theory, and normative principles. Particular attention is devoted to the concept of personal autonomy, its definition, and the possibility of guaranteeing such autonomy within the conditions of the digital environment. The historical overview of the development of rights presented by Mahlmann emphasizes the process through which rights emerge as "claims of common human moral understanding to a just share of existential human goods like liberty, equality and respect," which gradually transform into explicitly formulated human rights.

In this context, the paper raises the questions of how the process of expanding the scope and catalogue of fundamental rights is being transformed in digital society, and how these rights are justified and legitimised as normative claims embodied in legal acts. It also discusses whether this shared moral foundation, viewed through the prism of normative principles such as justice, equality, dignity, and solidarity, together with the new context in which states share part of their sovereignty with global technology companies, may lead to a greater convergence in moral understandings and in the concretisation of abstractly formulated human rights within the digital environment.

ON MAHLMANN'S CONTRIBUTION TO THE NORMATIVE ARCHITECTURE OF HUMAN RIGHTS: A PROPOSAL OF A TRIPARTITE MODEL

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ABSTRACT

In Mind and Rights, Matthias Mahlmann formulates a striking challenge to human rights theory, warning that "[t]he castle of Human Rights, constructed to shield the essence of humanity, is built of normative sand." This provocative metaphor captures a central philosophical concern: if human rights lack a sufficiently robust normative foundation, they remain vulnerable to scepticism, relativism, and reductionist accounts in neuroscience and moral psychology. Mahlmann's response is to defend the cognitive foundations of moral judgment, arguing that human rights are grounded in the rational structure of human moral cognition. His account convincingly demonstrates that human rights are not reducible to emotional reactions, sociocultural conventions, or evolutionary by-products. Instead, they are rooted in the rational structure of human moral cognition. We maintain, however, that his epistemic grounding, while necessary, is not sufficient to explain the universal reach, the historical resilience, and the constant innovation of human rights. While Mahlmann's cognitive approach successfully addresses the epistemic vulnerability of human rights, their practical and normative stability may also depend on two additional dimensions, dealing with their articulation respectively within public reason and at the institutional level.

Engaging reconstructively and critically with the theories of Matthias Mahlmann and Francesco Viola, we contend that neither cognitive grounding nor institutional positivisation alone suffices to account for the epistemic justification, universal claim, and practical stability of human rights.

Rather, these dimensions must be understood as structurally interconnected moments within a single evolving normative architecture.

Drawing on Francesco Viola's account, human rights are not merely discovered through moral cognition but are progressively specified, interpreted, and stabilised through public deliberation, at the social and political levels. As clearly pointed out also by Mahlmann, rights universality is neither metaphysical nor merely conventional; it is argumentative and reflexive. But we would like to emphasize that such universality engages – at the same time – the individual, the social and the institutional levels. Each of these levels is, for human rights discourse and practice, a specific as well as mutually intertwined dimension of development. Human rights normative force depends not only on their rational justifiability but also on their ongoing justification in shared social, legal and political practices.

Just because – as also Matthias Mahlmann underlined in his analysis – human rights are relational in nature, their universalism needs to be gained by passing tests at multiple levels: individual, social and institutional. Thus, we argue that the normativity of human rights can only be adequately explained through a tripartite framework integrating cognitive foundations, critical universalizability through public reason, and institutional articulation.

Beyond the individual cognitive dimension, the dimension of public reason has to be structurally introduced in accounting for the notion of human rights, since the critical and universalizable structure of rights claims is to be conquered at the social level. Human rights emerge historically through social struggles and articulate claims that aspire to intersubjective justification beyond particular cultural or political contexts. In pluralistic societies marked by deep moral diversity, rights are supposed to function as mediating standards capable of being justified across differences, to secure the equal normative standing of people, and to set the conditions for inclusive public deliberation. But this function can actually be performed insofar as human rights are socially "constructed", through public reason, with regard to their foundations, aims and content. We think that this dimension bridges the gap between abstract moral foundations and concrete political contexts, integrating historicity with normative aspiration without collapsing into relativism.

Moreover, the third dimension – the institutional dimension – stands out as crucial. We argue that public reason and positivisation are not merely mechanisms for implementing pre-existing moral rights but play a constitutive role in specifying and stabilising them. Rights initially arise as normative claims; through practices of public justification, they are evaluated, contested, and progressively articulated. Legal sources grant them formal status, but determinacy emerges only through implementation measures, judicial interpretation, and administrative application. We argue that full positivisation occurs when rights shape institutional behaviour and collective expectations, thereby acquiring practical durability.

Taken together, and far from being a one-way street, these three dimensions describe a continuous normative dynamic. They are not competing accounts but complementary moments in the life of rights. The cognitive moral step gives us the worth, expected content and rational possibility of rights; critical universalizability explains their justificatory expansion within and across plural contexts; institutional consolidation gives them relative stability (always open to change). Epistemic grounding, justificatory articulation involving both the individual and social levels, and institutional shaping and realisation constitute the perpetually open dynamics of rights.

Our tripartite model avoids the fragility of purely psychological or conventionalist accounts, as well as the opposite reductionisms of purely moral theories and strictly positivist approaches. We argue that human rights achieve their strongest normative architecture when cognitive foundations, critically universalizable claims, and institutional practices of public reason are understood as mutually reinforcing dimensions of a single normative enterprise. Only within this integrated framework can epistemic justification, democratic legitimacy, and institutional durability be coherently aligned in contemporary human rights theory.

THE CASTLE OF SAND IN AN OPEN-ENDED SANDBOX: HUMAN ENHANCEMENT AND THE ANTHROPOLOGICAL JUSTIFICATION OF HUMAN RIGHTS IN MAHLMANN'S MIND AND RIGHTS

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ABSTRACT

The paper examines Matthias Mahlmann's account of the justification of human rights in light of contemporary developments in biotechnology and neuroscience. In his seminal work Mind and Rights: The History, Ethics, Law and Psychology of Human Rights, Mahlmann develops a justification of human rights grounded in a normative account of the human condition, emphasizing features such as autonomy, self-consciousness, emotional depth, moral agency, and vulnerability. These existential characteristics justify the attribution of equal and inalienable human dignity, which serves as the normative foundation of human rights. At the same time, Mahlmann acknowledges the complexity and contestability of this justificatory framework, captured in the metaphor of a "castle of sand", which provides a starting point for this paper's analysis of the resilience of human dignity and human rights under conditions of rapid technological and epistemic change.

The paper situates this metaphor within what is conceptualized here as an "open-ended sandbox", a space of potentially unconstrained human self-modification enabled by advances in biotechnology, neurotechnology, and artificial intelligence (comparable to the creative freedom of players in sandbox video games such as Minecraft). This notion reflects a shift from a relatively stable conception of human nature toward a dynamic and increasingly malleable understanding of human existence. Unlike evolutionary change, which unfolds gradually and without intentional design, contemporary forms of human enhancement introduce the possibility of deliberate and potentially far-reaching transformations of the very features

that constitute the human condition. Cognitive enhancement may affect reasoning, attention, and decision-making processes, while moral enhancement may influence empathy, motivation, and pro-social dispositions. These developments raise the question whether the anthropological basis of human dignity can remain sufficiently stable to support the normative structure of human rights, as well as whether such applications of enhancement technologies can be considered acceptable from the perspective of human dignity. While some transhumanist approaches interpret enhancement as a means of expanding human capacities and even promoting dignity, others emphasize its potential to undermine autonomy, authenticity, and equality – especially in cases involving irreversible or intergenerational interventions.

At the same time, contemporary accounts of moral cognition raise the question whether the justificatory force of moral judgments, particularly those associated with deontological constraints and human rights, may be challenged if they are traced to cognitive processes of uncertain reliability. While such accounts do not, in themselves, displace the reasons that support these judgments, they invite a more careful examination of their justificatory basis. This gives rise to a question: if both the anthropological basis of dignity and the cognitive sources of human moral convictions are subject to transformation or epistemic challenge, does the justificatory structure of human rights remain intact, or is it itself open to transformation? How does human enhancement affect the concept of dignity, and what consequences might this have for the understanding of human rights?

The paper is structured in three parts. First, it reconstructs Mahlmann's account of the human condition and its normative significance for human dignity and human rights. Second, it analyzes how cognitive and moral enhancement may reshape these constitutive features, including the processes underlying moral judgment. Third, the paper evaluates the implications of such transformations on the concept of human dignity. If enhancement leads to stratified forms of human existence or "post-human" differentiation, or if key moral intuitions are subject to epistemic challenge, the assumption of a shared human condition and sufficiently reliable moral cognition, central to the defense of universal rights, may be called into question.

The prospect of human enhancement does not call into question Mahlmann's justificatory framework, but rather draws attention to its reflective and conditional character. As human capacities and the processes underlying moral reasoning become potential objects of technological intervention, the justification of human rights calls for careful scrutiny and the drawing of clear normative limits.

Rather than rendering human rights obsolete, these developments call for their reinterpretation and possible expansion, including the articulation of new rights related to cognitive liberty, mental integrity, and protection against technologically mediated domination. At the same time, they underscore the need for carefully defined legal frameworks capable of balancing the empowering and limiting dimensions of human dignity, avoiding both uncritical technological permissiveness and overly rigid paternalism. In this context, dignity should function as a normative guide, continuously specified through ethical reflection and legal regulation.

In conclusion, the metaphor of the "castle of sand" acquires heightened urgency within a potentially open-ended sandbox of human self-modification and epistemic uncertainty. The expanding reach of enhancement technologies calls for a principled and restrained approach, grounded in a clear awareness of the profound risks they pose to human dignity. Their capacity to reconfigure the core features of the human condition raises serious concerns about the erosion of the foundations of the human rights framework itself. These developments underscore the necessity of drawing clear normative limits for technological intervention, particularly where it risks instrumentalizing human life or undermining the shared basis of human dignity. In this context, human rights should be understood not merely as adaptable norms, but as safeguards against the uncritical transformation of the human condition.

RETHINKING MAHLMANN'S CONCEPT OF GROUP RIGHTS: CAN GROUP RIGHTS BE REDUCED TO INDIVIDUAL RIGHTS?

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ABSTRACT

The issue of group rights, which are not merely metaphorical, but rather belong to groups as such and are irreducible to individual citizens' rights, remains the subject of intense debate. The idea that only individuals can be bearers of rights continues to occupy an important place in legal theory. As Matthias Mahlmann emphasises, this issue leads not only to conceptual but also political difficulties, particularly in the context of the claims advanced by national minorities.

Across legal systems worldwide, the artificial entity of the "legal person" serves as a standard mechanism for organising the normative order and is unquestionably regarded as a bearer of rights, as Mahlmann notes. Group rights, however, represent something fundamentally different. Such rights may constitute a direct challenge to the idea of universal and individual human rights, as recognised in leading international human rights instruments and constitutional texts. One example highlighted by Mahlmann is the conflict between women's human rights and group rights associated with patriarchal traditions. The fear that individual rights may be subordinated to the protection of group interests is a central concern in liberal thought – namely, that the relationship between individual and group rights is zero-sum. According to Mahlmann, group rights should therefore be understood not as rights belonging to the group as such, but rather as "rights of a plurality of persons": their primary purpose must be to support individual rights, and they must never be designed as a political instrument directed against the rights of individuals.

This paper presents a critical analysis of this approach to group rights. Particular emphasis is placed on minority rights in multinational states

where individuals possess multiple identities, including those that connect them to a particular national community. Liberal thinkers traditionally regarded this issue as largely irrelevant in the contemporary context – a remnant of the past with no legitimate place within the political institutions of liberal democracies.

The first part of the paper examines criticisms of liberalism based on the argument that it insufficiently recognises or entirely neglects the importance of the shared culture, value system, language and religion for individuals. Liberal proponents of group rights, such as Will Kymlicka, point to the myth of state neutrality, behind which conceals the values of the majority community, particularly with regard to the official languages, state symbols, and public holidays. Membership in a particular group may therefore affect the equality of individuals.

The second part of the paper critically examines the theoretical construction of the concept of minority, which is frequently described as vague and fluid. At present, there is no universally accepted definition of minorities or minority rights. Unlike legal persons, minority communities arise independently of the law – they are a historical fact.

The concept of minority is also not defined in the most important international treaties that refer to minorities, such as the United Nations International Covenant on Civil and Political Rights, the United Nations Convention on the Rights of the Child, the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, and the Council of Europe Framework Convention for the Protection of National Minorities.

Within Europe, significant differences exist regarding the recognition of minority rights. Croatian legal theorist Ivan Padjen points to the distinction in this respect between Western Europe and the so-called new democracies of Central and Eastern Europe. Most constitutions of Central and Eastern European states recognise minority rights, for example, minority language rights, educational rights, and even political rights. Some constitutions frame these rights as the individual rights belonging to members of national minorities, while others employ the language of group rights. Certain constitutions designate individuals as the holders of minority rights, whereas others recognise groups themselves as right-holders.

The recognition of minority rights is commonly associated with the notions of justice, solidarity, security, and peace. The paper therefore examines existing attempts to conceptualise the group as a distinct bearer of rights and the ways in which such concepts have been embodied in the legal practice of the states that officially recognise them. The paper further analyses the arguments concerning the justification and legitimacy of recognising groups as bearers of group rights. In this regard, it is important to emphasise that group rights are not advocated as temporary measures, but rather as a permanent category that shapes the constitutional identity of the state.

In liberal democracies, group rights must be conceptually reconciled with liberal premises. They must answer the challenge of explaining why the liberal objective of protecting individual freedom and dignity can be achieved only by recognising special rights for groups, rather than by neutral political and legal rules alone.

MATTHIAS MAHLMANN'S MIND AND RIGHTS FROM THE PERSPECTIVE OF SELF-CARE

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ABSTRACT

This study offers an expanded interdisciplinary reinterpretation of Matthias Mahlmann's Mind and Rights by integrating its philosophical anthropology and cognitive-scientific foundations with contemporary counseling psychology and self-care. Mahlmann's central thesis – that human beings possess intrinsic cognitive, affective, and moral capacities enabling them to realize dignity and rights – provides a profound theoretical framework for understanding psychological well-being in modern contexts marked by chronic stress, burnout, and relational fragmentation. By translating this macro-level theory of human dignity into micro-level therapeutic principles, the presentation aims to illuminate how individuals can reclaim inner autonomy, correct distorted emotional processes, and cultivate holistic healing in the face of complex psychosocial pressures.

A foundational element of Mahlmann's argument is his engagement with the dual-process model, which distinguishes between intuitive, affect-laden "fast thinking" (System 1) and reflective, deliberative "slow thinking" (System 2). While fast thinking is evolutionarily adaptive and efficient, it is also vulnerable to distortions such as heuristics, framing effects, negativity bias, and implicit emotional amplification. Under conditions of sustained stress or emotional overload, these distortions intensify, leading individuals to catastrophize, internalize excessive guilt, or misinterpret interpersonal cues. Counseling psychology identifies emotional self-awareness as the foundational step in effective self-care: the capacity to observe one's internal states with clarity rather than being swept away by them. Techniques such as emotion journaling, mindfulness-based monitoring, cognitive defusion, and structured self-reflection intentionally activate slow thinking, enabling individuals to interrupt automatic emotional spi-

rals and regain cognitive coherence. This reflective regulation not only stabilizes emotional functioning but also strengthens the individual's sense of agency over their inner life, forming a cornerstone of psychological resilience.

A second major contribution of Mind and Rights is its articulation of human dignity and autonomy as core normative principles. Mahlmann argues that each person must be treated as an autonomous end in themselves, never as a mere instrument for others' goals. This philosophical stance directly supports the counseling principle of boundary setting, which is essential for protecting psychological well-being. In contemporary social environments – characterized by workplace hierarchies, familial obligations, digital hyper-connectivity, and cultural expectations of constant availability – individuals often overextend themselves to meet external demands, gradually eroding their autonomy. Counseling-oriented self-care reframes boundary-setting not as withdrawal or selfishness but as an ethical affirmation of one's dignity. Establishing emotional and interpersonal limits prevents the depletion of psychological resources and fosters self-regard, a stance in which individuals recognize themselves as worthy of respect, rest, and protection. This alignment between philosophical autonomy and therapeutic boundary work underscores the interdisciplinary relevance of Mahlmann's theory and highlights the ethical dimension of psychological self-preservation.

Third, behavioral science findings on loss aversion, omission bias, and status-quo bias illuminate why individuals often remain trapped in resentment, avoidance, or emotional paralysis, after experiencing relational harm. The instinct to avoid further "loss" leads people to close themselves off, maintain emotional distance, or cling to anger as a protective mechanism. Mahlmann, however, emphasizes that humans possess moral capacities that transcend these instinctive biases, enabling them to pursue justice, altruism, and respect for others as intrinsic values. In counseling, this perspective enriches the understanding of forgiveness and inner healing. Forgiveness is conceptualized not as excusing wrongdoing but as a reflective, intentional act that disrupts the psychological mechanisms perpetuating suffering. By choosing to reinterpret past injuries through a lens of dignity – both one's own and the other's – individuals can release themselves from cycles of bitterness and reclaim emotional freedom. Here, forgiveness is

not a helpless compromise that suspends moral judgment regarding wrongdoing; without the preceding process of strictly defining the perpetrator's actions – within an inner court (slow thinking) – as a "clear sin" that infringes upon one's dignity, forgiveness degenerates into mere resignation or submission. Here, forgiveness is not a passive concession that suspends moral judgment. Without first naming – within one's inner tribunal of slow thinking – the perpetrator's act as a clear violation of dignity, forgiveness collapses into resignation or submission.

Fourth, Mahlmann's comprehensive cognitive trust – his trust in the human mind's capacity for meaning-making, solidarity, and moral commitment – provides a conceptual foundation for resilience and well-being in positive psychology. Although human cognition is fallible, it is also inherently oriented toward coherence, connection, and ethical aspiration. This trust becomes a psychological resource that empowers individuals to endure adversity without collapsing into despair. When individuals believe in their own cognitive and moral capacities, they are more likely to engage in adaptive coping, rebuild disrupted life structures, and cultivate supportive relationships. Such inner trust enables the development of sustainable routines, balanced lifestyles, and long-term psychological flourishing. In this sense, Mahlmann's theory not only explains the foundations of human dignity but also offers a hopeful vision of the mind's potential for recovery and growth. It suggests that resilience is not merely a trait but a cultivated stance, grounded in the recognition of one's inherent moral and cognitive worth.

This expanded analysis demonstrates that Mind and Rights provides a robust theoretical framework for rethinking counseling-oriented self-care. Mahlmann's depiction of the human being as an autonomous moral agent – capable of reflective self-regulation, boundary setting, ethical decision-making, and resilience – redefines healing as an active developmental process rather than a passive state of rest. When applied to counseling, his framework suggests that genuine psychological healing involves cultivating emotional awareness, autonomy and boundaries, the transcendence of cognitive biases through forgiveness, and the strengthening of resilience. This interdisciplinary synthesis offers both conceptual depth and practical guidance for enhancing mental health in contemporary society, demon-

strating the enduring relevance of philosophical anthropology for therapeutic practice. Ultimately, the integration of Mahlmann's insights with counseling psychology invites a renewed understanding of human flourishing as a dynamic interplay between cognitive clarity, moral agency, emotional regulation, and the steadfast preservation of human dignity.

WHAT IS IT LIKE TO BE A HUMAN BEING?: MAHLMANN'S MIND AND RIGHTS PERSPECTIVE

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ABSTRACT

What happens to human rights when intelligence is no longer exclusively human? AI systems can now write texts, translate languages, recognize images, diagnose diseases, classify people, predict behavior, and produce responses that seem creative, sensitive, or even reasonable. At first sight, this may suggest that the traditional link between human beings, intelligence, and rights has become unstable. If machines can perform intelligent tasks, should we rethink the foundation of human rights? Or should we instead distinguish more carefully between intelligence, reason, mind, and dignity?

Mahlmann's work is important precisely because it allows us to approach this question at a deeper level. His argument does not treat human rights merely as legal instruments, historical achievements, or political conventions. It asks a more fundamental question: what kind of being is capable of recognizing dignity, justice, normativity, and moral obligation? In this sense, the issue of artificial intelligence is not simply technological. It is philosophical, legal, and anthropological. It forces us to ask what kind of mind is presupposed by the language of rights.

The classical philosophical problem of other minds helps clarify the matter. I have immediate access to my own thoughts, sensations, fears, intentions, and experiences; but I do not have the same direct access to the minds of others. I see their bodies, hear their words, observe their actions, and interpret their expressions. From these external signs, I attribute inner states to them. Law does something similar. Courts do not directly see intention, guilt, consent, bad faith, negligence, remorse, suffering, or discrimination; they reconstruct mental states from conduct, language, documents, circumstances, and institutional practices. This means that law has always depended on public criteria for attributing mental states.

Descartes gives this problem a decisive modern form in the Discourse on the Method, especially when he discusses automata. For Descartes, machines may imitate many human actions, perhaps even with impressive sophistication. Yet they lack two decisive marks of rational humanity: the flexible use of language and the capacity to act from general reason rather than from mechanical disposition. The Cartesian question is therefore not merely whether a machine behaves intelligently, but whether it possesses a rational mind. We may ask today: when an AI system writes, argues, apologizes, advises, or imitates empathy, is there a mind behind the performance, or only an automaton of a new kind?

Malebranche offers another important insight: the analogy theory. I know my own mind inwardly, but I do not know the minds of others in the same way; I infer them by analogy. When I see in others' behaviors that, in my own case, are connected with pain, fear, desire, or thought, I attribute similar inner states to them. This model is highly relevant to law. Legal institutions operate by analogical attribution: they infer mental states from external manifestations. But AI complicates this mechanism.

Machines now produce external signs that, in the case of human beings, would normally indicate understanding, intention, emotion, or judgment. The analogy becomes unstable.

This is why artificial intelligence creates a new version of the problem of other minds. The question is no longer only: how do I know that other human beings have minds? The new question is: when a non-human system produces human-like signs of intelligence, should law attribute to it understanding, intention, responsibility, or even rights?

Nevertheless, intelligence is not the same as mind and may be understood as the capacity to solve problems, identify patterns, calculate probabilities, and adapt means to ends. In this sense, AI systems already display powerful forms of intelligence. But a mind involves more than problem-solving; it includes consciousness, memory, emotion, imagination, vulnerability, moral experience, self-relation, and the capacity to recognize another being as worthy of respect. Intelligence is also not identical to reason, if reason is understood not merely as calculation, but as the capacity to justify norms, universalize principles, distinguish the useful from the right, and hold oneself accountable to others.

This distinction is crucial for human rights. Human rights do not protect human beings because they are efficient cognitive machines; they protect beings who are embodied, vulnerable, historical, dependent, and capable of being humiliated, harmed, excluded, recognized, and respected. A newborn child, a person with severe cognitive disability, or an elderly person with dementia may have limited intellectual capacities, yet their dignity remains intact.

For this reason, current AI systems should be understood primarily as objects of human rights regulation, not as subjects of human rights. They matter because they affect human beings. They can amplify discrimination, manipulate public discourse, reorganize labor, transform education, intensify surveillance, and reshape democratic life. The problem is that machines are increasingly used to decide matters that affect persons. Human rights play a protective and critical role. Consequently, AI makes human rights more necessary; it forces us to defend a non-reductionist view of the human being – not merely as an intelligent organism, but as a bearer of dignity, vulnerability, freedom, conscience, and moral claims. The age of artificial intelligence challenges us to protect what intelligence alone cannot explain: the human demand for justice.

Mahlmann's central contribution to this discussion is to show that rights are not grounded in intelligence alone, nor in mere adaptive behavior. AI may display remarkable cognitive performance, but Mahlmann helps us ask whether performance is enough for dignity, responsibility, and rights.

RIGHT TO A FAIR TRIAL FROM JUDICIAL TO NON-JUDICIAL DISPUTE SETTLEMENT IN THE EUROPEAN COURT OF HUMAN RIGHTS' JURISPRUDENCE AS A LITMUS TEST OF MAHLMANN'S UNIVERSALITY OF HUMAN RIGHTS CONCEPT

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ABSTRACT

The right to a fair trial is one of the basic human rights and the most important procedural human right. It has been guaranteed by the most relevant regional human rights conventions ever since its first formal recognition by the 1948 UN Universal Declaration of Human Rights. For Europe, the 1950 European Convention on Human Rights represents the most important legal source of human rights and its Article 6 para. 1 guarantees the right to a fair trial, referring to criminal charges and civil rights and obligations as objects of protection, yet without any reference to the procedural means of protection, be it judicial or non-judicial. More importantly, the European Convention on Human Rights has been backed by a solidly established and very successful implementation mechanism embodied in the European Court of Human Rights, which has established itself as the final judicial authority for the European judiciaries, thus creating obligations for the states both at the international and national level.

For decades, only litigation cases were brought before the European Court of Human Rights, and the interpretation of Article 6 para. 1 was quite straightforward and focused on protection of litigants only, which produced the standards that were believed to be applicable only to litigation. However, with the global rise of commercial arbitration and arbitration in labour cases, such lawsuits were also naturally coming before the European Court of Human Rights, though in modest numbers, since it covered the jurisdictions of the seats of arbitration proceedings. And then the question arose – is arbitration, as a non-judicial method of dispute settlement, covered by the provisions of Article 6 para. 1? In other words, is the

right to a fair trial applicable to dispute settlement proceedings which are outside the state settled judiciary? Is it restricted to public law proceedings only, or is it also applicable to private law? Is it universally applicable, or is it a human right reserved only for those who seek state judicial protection?

The preparatory materials for the European Convention on Human Rights do not provide a clear answer to the question whether the idea of its founding fathers was to cover only the judicial proceedings or other methods, as well. During the process of drafting Article 6 para. 1 of the European Convention on Human Rights, representatives of the United Kingdom proposed to include only the "suit of law", in addition to criminal proceedings, but that proposal was not adopted and, as it can be derived from the final adopted text, there is only a clear indication of the object of protection of the right to a fair trial – criminal charges, civil rights and obligations – but not of the precise procedural method, particularly not for the settlement of disputes related to civil rights and obligations.

However, the jurisprudence of the European Court of Human Rights, in several phases, has developed an approach in which it has determined that the standards of a right to a fair trial are equally applicable to the arbitration proceedings, regardless of whether it is mandatory or voluntary. Such an unrestricted approach stems from the positive obligation contained in Article 1 of the European Convention on Human Rights, which obliges the state signatories to ensure the rights and freedoms defined in Section I of the Convention to everyone within their jurisdiction. Moreover, the Court has stated that "the acquiescence or connivance of the authorities of a Contracting State in the acts of private individuals which violate the Convention rights of other individuals within its jurisdiction may engage the State's responsibility under the Convention," which hence includes the responsibility of the states whose laws allow for the arbitral institutions to operate within their jurisdictions and domestic courts to examine the validity of the arbitral decisions.

If we go back to the dilemma regarding whether, under Article 6 para. 1 of the European Convention on Human Rights, the right to a fair trial covers only judicial proceedings, or whether non-judicial are included as well, we can conclude that the intention of the founding fathers was primarily to provide protection in cases of criminal charges and claims, but

to allow the parties to choose the proper procedural means. This does not leave the provisions of Article 6 para. 1 open or ambiguous, but rather universally applicable and unrestricted in terms of procedural methods, as we can see from the jurisprudence of the European Court of Human Rights. In other words, right to a fair trial is non-derogable even when the parties to certain dispute opt for non-judicial proceedings. Hence, even though there is no direct reference to litigation and/or arbitration, Article 6 para. 1 only establishes the legal framework for the resolution of civil law disputes, whereas the choice of method is left to the parties; the right to a fair trial is applicable throughout the entire course of the proceedings, even when the parties themselves have, to a large extent, the freedom and autonomy to regulate the proceedings.

So, is Mahlmann right when he insists on (normative) universalism? It appears so, at least in the case of the right to a fair trial, and the right to a fair trial under Article 6 para. 1 of the European Convention on Human Rights, which aspires to universalism at its core, emanating Mahlmann's position that universalism "holds that the truth conditions of normative claims are the same for all human beings," even though at first it causes tangible and sometimes uncomfortable consequences for states signatories of the Convention.

Human rights have radicalized the position of the individual towards the state, and then towards a different individual. However, most of all, human rights have empowered people to seek protection, where the right to defend a right in a fair way is the pillar. By examining the applicability of Article 6 para. 1 to non-judicial proceedings, the European Court of Human Rights has in fact proved the assumed universality and validity of the right to a fair trial, or at least the European reading of this right, as well as that the right to a fair trial is grounded in mankind's pursuit for justice, as the universal value and goal, which, according to Mahlmann, "transcend[s] the boundaries of philosophical confessions and express[es] a common normative perspective for human beings that seems to be founded on something deeper than the false beliefs of a few contingent actors." Article 6 para. 1 in its broadest scope of application indeed proves that "human rights themselves determine the justified purposes of social action. They define what is or is not functional for the operation of society because they play a key role in setting the aims that social organization is to serve. In

light of the human rights idea, societies are not there just to reproduce themselves in whatever form; instead, societies are to be organized in a way that respects the worth, liberty and equality of human beings." Therefore, those who do not opt for judicial protection enjoy equal procedural protection as those who turn to the state. Such is indeed the universal demand of the right to a fair trial.

REALITY IN MAHLMANN'S MIND AND RIGHTS

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SW24 · On Mahlmann's Mind and Rights: Critical Reflections and Considerations
Convenors: Jasminka Hasanbegović; Bojana Čučković

ABSTRACT

Matthias Mahlmann's volume on mind and rights is valuable in many ways, but primarily because he reminds us that rights are real. They are real in the sense that they actually exist. Rights are intersubjective – and discoverable.

This reality of rights is evident in two ways: first, because human beings do in fact individually and collectively perceive certain rights as inherent in their humanity; and second, because normative theory yields very similar results. Normative theory converges with universal human experience. Mahlmann makes this point well in his excellent volume, reinforcing the reality of justice. Mahlmann's theory of moral cognition recognizes human beings as naturally committed to justice, respect, and concern for others. This conclusion is true, persuasive, and elegantly put.

To be clear: universalism as an epistemological position does not demand uniformity of the moral judgments of all human beings in the real world. Many factors of history, psychology, and law draw us away from our moral commitments, or cloud our perceptions, or lead us consciously and deliberately astray. The path of virtue may not always be clear, but is there to be found.

We feel more confident speaking of neuro-"science" than we do of the "science" of law because we cannot escape the obvious fallibility of legal institutions. Their necessary complexity produces inevitable disasters. Justice is always just beyond our reach in this imperfect world. Yet rights endure. The beauty of rights is their clarity in principle if not in practice. Their light remains to guide us, from within, inherent, as neuroscience ultimately confirms.

To say that rights and justice are a part of human nature is not to say that they are all there is in human nature. The Second World War – like many wars and calamities before it – reminds us that force, violence, selfishness and greed are also powerful and sometimes almost inescapable human emotions. The terrible consequences that follow when we choose their dark path turn us back to rights and justice, but not everywhere or forever.

Neuroscience, or (to put it less grandly) the best available theory of moral cognition, confirms the spark of something lovely and sublime in all human beings. The Universal Declaration of Human Rights and similar instruments elaborate its content and justification. Science discovers the ultimate foundation of rights in the reality of human cognition. Normative theory works out the implications of embracing this aspect of our inborn cognitive reality.

The structure and evolutionary origin of human moral cognition strengthen the case for human rights by giving them emotional reality. The desire to live together in justice, peace, and mutual respect already moves us forward, whether we acknowledge it or not. When we recognize and embrace our moral nature, we gain the possibility of a better world, or at least a world better suited to advancing our collective well-being. The empirical evidence of moral psychology and neuroscience fortifies our defenses against post-truth moral authoritarianism, destructive ethno-nationalism, and other self-indulgent paths to self-destruction.

The reality of reason and conscience claimed by the Universal Declaration give us means to discover human rights. Reasoning and moral thought give us better understanding of human rights. Reason supplies the ultimate basis for the entire enterprise – our shared capacity to understand the value of universal human rights, and therefore the ability to make them real not only as abstractions, but also as possessions, actually enjoyed every day.

Mahlmann recognizes that the reality of rights as discoverable ideals sustains the reality of rights as the necessary conditions of civilization itself. Rights become both the basis and the purpose of society. Thus, neuroscience reveals in every human being the capacity to reach moral understanding. We are equal citizens in the republic of cognition, with equal capacity to feel affinity for others and the equal ability to reason out what this demands of others and ourselves.

Within ourselves we find the origin of the normative principle that ought to rule human life, leading us, if we attend to it, towards the gradual establishment of a democratic constitutional state under the rule of law based on human rights and embedded in an international legal order, also committed to the protection of our fundamental human rights.

If human rights are, as the Universal Declaration declares, the "foundation of freedom, justice, and peace in the world", offering a "common standard of achievement" for all mankind, then human rights are the epistemic realm of each and every one of us. There is a close and intimate relationship between human thought, its structure and exercise, and the idea of justification of human rights. Matthias Mahlmann has had the courage to say so, which makes his reasoning uniquely powerful and just.

Human minds as they exist today emerge from millennia of evolution, with deep inherent structures of morality and emotion that are real, discoverable, and useful. At the same time, human reason has the capacity to study and evaluate these structures, to weigh some in the light of others, and elaborate their realization in practice. These two concurrent realities of our moral understanding, as it is and as it ought to be, coexist and reinforce each other. Mahlmann has given us the science and inspiration to understand and improve our moral reality. This is a very useful book.

DOES MIND AND RIGHTS GENUINELY PROVIDE "GOOD REASONS" FOR HUMAN RIGHTS?: A META-ETHICAL ENQUIRY

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ABSTRACT

Matthias Mahlmann's Mind and Rights: The History, Ethics, Law and Psychology of Human Rights is an impressive book. Its main purpose consists, apparently, in providing a comprehensive justification, not of human rights in general, as the title may suggest, but of a peculiar conception of human rights. In fact, it deploys a rich and articulated argument advocating for the moral soundness ("legitimacy", in Mahlmann's wording) and universal "validity" (binding force) of a set of human rights Mahlmann conceives as endowed with a Hohfeldian structure and a liberal-socialist (social-democrat, "liberal" à l'Américain) content inspired by the UN 1948 Universal Declaration of Human Rights.

As Mahlmann claims in the course of his wide and detailed enquiry, such a comprehensive justification must contain three prongs:

(1) a critical theory of human goods;

(2) a political theory of human rights;

(3) a normative theory of "foundational" or "fundamental" normative principles.

The critical theory of human goods purports to identify the state of affairs the establishment and preservation of which must be considered valuable from the standpoint of human beings, conceived as equally worthy and autonomous moral agents. Accordingly, these goods encompass respect for every human being's intrinsic and equal moral and legal dignity, the civil and political freedoms of the liberal tradition, equality in and before the law, and, not least, the enjoyment of the material resources necessary to lead a dignified existence, as claimed by the socialist tradition (pp. 53ff, 462, 465).

The political theory of human rights purports to present this set of liberal-socialist human rights as the viable matters and objectives for legal-political organizations to realize at the national, international, and supranational levels.

The normative theory of foundational or fundamental normative principles purports to identify the ultimate moral principles that would justify the endorsement and realization of the liberal-socialist cluster of human rights considered in Mind and Rights. These are the principles of justice as equal treatment, of altruism and solidarity, of respect for every human being's moral worth.

Mind and Rights also contains an important part, meant as a necessary complement to the justificatory task, which is devoted to outlining a theory of "human moral cognition" (Part III "Rights and Moral Cognition"). Its core consists of a "mentalist theory" (one "assuming a common framework of human moral judgment, thought and sentiment, generated by a shared faculty of moral cognition," p. 465) that purports to cast light on the ways and limits of any epistemologically sound justification for human rights and their foundational principles (Ch.8).

Mahlmann sums up the result of his enquiry in the following "Epilogue" passage:

"Principles of egalitarian justice, of human solidarity, care and respect for human dignity, together with a sufficiently rich concept of human existence and a political theory of the means for human flourishing embedded in a plausible theory of mind and its place in natural history provide good reasons to believe that the idea of human rights is as well-justified as anything ever has been in the history of fallible human thinking about morality and law" (p. 467).

My contribution to the discussion of Mind and Rights will focus on the meta-ethical component of Mahlmann's justificatory machinery. It will proceed in two steps.

Step one will provide a swift, but hopefully exhaustive and fair, reconstruction of Mind and Rights meta-ethics. The account will focus, as we shall see, on what seem to be its two major ingredients: on the one hand, a Humean conception of the role of reason in morality, centred on Hume's Law; on the other hand, a cognitivist approach to morality.

Step two will be devoted to a critical assessment of five aspects of Mind and Rights meta-ethics.

First. Mind and Rights endorses a substantive conception of morality. According to it, "morality", properly understood – be it the extant norms of a social morality in a given time and place, or the ideal precepts of a critical morality worked out in moral philosophy – is not just any set of "important" or "basic" norms for human behaviours in society. "Morality" is, rather, a set of norms that include, as their basic normative principles, the principle of justice as equal treatment, the principles of altruism and solidarity, and the principle of respect for other human beings' moral worth or dignity (see, e.g., pp. 404, 406-407, 409-411, 421-425, 452). Now, such a substantive conception, which evokes natural lawyers' approach to the concept of "law", is disputable on two counts. To begin with, it implies that those human beings that do not endorse the Mind and Rights' humanitarian morality of human rights have – properly speaking – no "morality". Furthermore, it tacitly advocates for a narrow conception of moral autonomy, because, for any human being, moral autonomy boils down to the faculty of adhering to the right morality: the morality of humanitarianism and human rights, endorsing the true cognitive content of humans' proper moral understanding.

Second. Mind and Rights adopts a conception of the relationship between sentiments (emotions, passions, basic practical attitudes) and moral judgements that presents sentiments as the consequences of independently constructed moral judgments. It claims, more precisely, that sentiments should not be the constitutive ingredients of moral judgments, but rather, their consequences, since moral judgments are sentiment-independent complex acts of moral cognition (see, e.g., pp. 345-346, 415ff). For instance, the sentiment of indignation at seeing or knowing about the purposeful mass-killing of civilians (including reporters and medical staff) by an occupation army would depend, ultimately, on the sentiment-independent adoption of a principle that imposes respect for civilians' lives, making their killing a moral and legal crime. Such a conception purports, so to speak, to put the Humean ingredient "in its proper place". Unfortunately, this is a misconception. As we shall see, the very "structural analysis" that would ensure the independence of moral judgments from sentiments is, and cannot but be, deeply affected by sentiments.

Third. Mind and Rights offers a limited, unilateral, theory of moral cognition. To use Hans Kelsen's terminology (though Kelsen's thought is apparently anathema to the overall perspective of Mind and Rights), it considers moral cognition from the standpoint of "democratic personalities", i.e., of human beings whose basic psychological attitude consists in regarding themselves as free and equal moral agents and considering others in the same way. In so doing, however, Mind and Rights avoids considering "autocratic personalities", i.e., human beings whose basic psychological attitude consists, rather, in regarding themselves as part of a natural hierarchical order concerning the social relations among humans, one that would justify autocratic forms of government.

Fourth. The adoption of a substantive conception of morality is the offspring of a cognitivist approach to moral justification. Such an approach appeals apparently to two justificatory principles: the principle (that may be dubbed) of adequate justification and the principle of "reflexive resilience" (pp. 449-453).

The principle of adequate justification represents the "internal mental yardstick" that provides the standard of truth for moral judgments and (non-foundational) moral principles. Rejecting the possibility of using a correspondence criterion of moral truth, such a yardstick apparently states (I say apparently, for Mind and Rights does not formulate it expressly) that a moral judgement or a (non-foundational) moral principle is true if and only if "compelling" reasons can be provided for it (pp. 450-452, 460). Unfortunately, such an "internal yardstick" provides no objective criterion for distinguishing a compelling set of reasons from a non-compelling one. Accordingly, the compelling character of a set of reasons appears to be, ultimately, in the eye of the beholder.

The principle of reflexive resilience concerns the justification of the "fallible" "principles of justice, altruism and respect", which would be "foundational not only for human rights, but for morality as such" (pp. 452-453, emphasis by author). It makes their justification depend, ultimately, on their capacity to overcome "systematic, conscious theoretical doubt" (pp. 452). Unfortunately, the principle provides no objective criterion for establishing when resilience is obtained. It is, furthermore, a double-edged device. If we cast even a cursory glance at the history of moral

thinking, resilience seems to also stay with the anti-humanitarian foundational principles.

Fifth, and finally. The long and detailed argument of Mind and Rights leads, apparently, to an overly modest conclusion. Let's have another look at its core formulation:

"Principles of egalitarian justice, of human solidarity, care and respect for human dignity, together with a sufficiently rich concept of human existence and a political theory of the means for human flourishing embedded in a plausible theory of mind and its place in natural history provide good reasons to believe that the idea of human rights is as well-justified as anything ever has been in the history of fallible human thinking about morality and law" (pp. 467, emphasis by author).

The conclusion, in its modesty ("provide good reasons to believe that the idea of human rights is as well-justified as anything ever has been in the history of fallible human thinking about morality and law"), is somehow paradoxical and, in essence, incongruous for a book that is ultimately of normative ethics. If a moral agent, in the free exercise of her moral autonomy, by way of an ultimate act of will, endorses the normative principles of equal human dignity and respect as the ultimate moral principles of her ethical Weltanschauung, then that theory of human rights is the only justified, and justifiable, ethical theory – to be sure, from the standpoint of her and those that share her views. Accordingly, from that normative standpoint, that set of human rights is not as well justified as any other moral outlook ever. For instance, it is not as well justified as, say, a radically inegalitarian ethics distinguishing human beings into the strong (who have a natural right to rule) and the weak (who have a natural duty to obey rulers), natural masters and natural slaves, high-IQ ambitious enterprising oligarchic techno-lords and gregarious servants, etc.

PROTECTING HUMAN DIGNITY IN WAR: MAHLMANN'S MIND AND RIGHTS APPROACH TO JUSTIFICATION OF HUMAN RIGHTS IN THE CONTEXT OF THE WAR IN UKRAINE

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SW24 · On Mahlmann's Mind and Rights: Critical Reflections and Considerations
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ABSTRACT

The justification of human rights remains one of the central tasks of legal philosophy. It seeks to answer the fundamental question of why human beings possess rights at all. Matthias Mahlmann's Mind and Rights offers one of the most comprehensive contemporary responses to this question. Among the various elements of his theory, the concept of human dignity occupies a particularly important place because it functions both as a fundamental human good and as a normative principle underlying the system of human rights. This paper examines the significance of human dignity within Mahlmann's theory and explores its practical relevance in the context of the war in Ukraine.

Mahlmann's theory of human rights combines three interconnected elements: a theory of human goods, a political theory of rights, and a theory of normative principles grounded in justice, solidarity, and respect for the intrinsic value of human beings. While the political theory primarily explains the role of rights within a legal and political order, the theory of human goods and normative principles addresses the more fundamental question of why human rights deserve recognition and protection. Within this framework, human dignity occupies a central position.

The idea of human dignity expresses the unconditional value of every human being regardless of personal characteristics, social status, abilities, and circumstances. Although there is no universally accepted answer to the question of what exactly constitutes dignity, it has become one of the highest values of contemporary constitutionalism and international human rights law. Jürgen Habermas has described human dignity as the normative

source of modern fundamental rights and a catalyst for their historical development.

The legal significance of human dignity increased dramatically after the Second World War. The unprecedented atrocities of that period revealed the devastating consequences of treating human beings merely as instruments for political, ideological, or military objectives. Since then, respect for human dignity has become a foundational principle of constitutional democracies and international legal instruments.

A central implication of human dignity is that no person may be treated merely as a means to an end. This principle was famously affirmed by the German Federal Constitutional Court in its decision on the Aviation Security Act, where the Court held that even the protection of many lives cannot justify reducing innocent individuals to objects of state action.

Mahlmann's justification of dignity is based on a particular understanding of human beings. According to him, "[h]uman beings are reflective, creative, autonomous, feeling, self-conscious, mortal subjects under moral laws." Human dignity derives from this shared humanity and from the recognition that every person possesses intrinsic and equal worth. Consequently, dignity provides a powerful critique of political and ideological doctrines that relativize individual human life in the name of supposedly higher collective goals.

The question arises whether human dignity retains its normative significance under the extreme conditions of war. Armed conflict represents perhaps the most serious challenge to human dignity because it creates circumstances in which violence, coercion, and dehumanization become widespread realities. For this reason, modern constitutions and international human rights instruments insist that respect for human dignity cannot be suspended even during war or public emergencies threatening the life of the nation. Article 15 of the European Convention on Human Rights permits certain derogations in times of emergency, but the very logic of the postwar human rights system presupposes that human dignity remains inviolable.

At the same time, wartime inevitably generates tensions between human rights and national security. Many rights may be restricted under conditions of martial law, but does national security undermine the intrinsic value of the individual person? From the perspective of human dignity, the

answer must be negative. National security may justify certain limitations of rights, but it cannot justify treating human beings as objects whose value depends solely on political or military calculations.

The war in Ukraine provides an important contemporary context for examining this problem. Ukraine has developed a system of institutional human rights protection that combines national mechanisms with international monitoring and accountability procedures. National institutions bear primary responsibility for protecting rights and freedoms, while international organizations perform supervisory, monitoring, and accountability functions.

One of the most significant challenges to human dignity during war concerns torture and inhuman treatment. Even in peacetime, torture is widely regarded as one of the gravest violations of human dignity. In wartime, the risks increase dramatically because of intensified hostility, weakened oversight, and the vulnerability of prisoners and civilians. Reports by the Office of the United Nations High Commissioner for Human Rights, as well as investigations conducted by Ukrainian human rights organizations, have documented systematic torture, cruel treatment, and inhumane conditions of detention inflicted upon Ukrainian prisoners of war in the Russian Federation. Such practices represent direct assaults on human dignity and illustrate why dignity must remain an absolute normative limit even during armed conflict.

Another important dimension concerns the rights of families of those who have been killed, captured, or gone missing. In such cases, the protection of dignity includes the right to know the truth about the fate of relatives. The state has a duty to establish effective procedures for identification, investigation, and communication with families. The inability to obtain information about loved ones or to conduct a dignified burial may itself constitute a form of inhuman treatment.

Human dignity also plays a crucial role in the protection of internally displaced persons. Dignity is inseparable from the conditions necessary for a minimally decent human existence. Ukrainian courts therefore consider numerous cases concerning social benefits, pensions, housing assistance, and other forms of support for persons displaced by the war. These disputes demonstrate that dignity is not merely an abstract moral concept but also a practical legal standard guiding state obligations.

Finally, the Ukrainian experience reveals both achievements and tensions in the protection of dignity under martial law. In some areas, administrative authorities have delayed payments and benefits owed to wounded soldiers, former prisoners of war, and their families. At the same time, courts have frequently acted as effective guarantors of dignity by protecting the rights of affected individuals and requiring state authorities to fulfil their legal obligations.

UNIVERSALISM OF HUMAN RIGHTS REVISITED: MAHLMANN'S MENTALIST THEORY OF ETHICS AND LAW

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SW24 · On Mahlmann's Mind and Rights: Critical Reflections and Considerations
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ABSTRACT

Universalism of human rights is an epistemological stance according to which there is a common standard for humankind as a whole (Christian Tomuschat). It holds that the truth conditions of certain human rights claims are the same for all human beings irrespective of their contingent properties, such as the groups that they belong to, or their social, cultural, religious and other background (Matthias Mahlmann).

The belief in the diminishing importance of social distinctions and in the law of reason of the world-city, which prevails over the customary law of the local city, dates back, at least, to the ancient Stoic philosophy. The idea of the universalism of human rights, which has developed over centuries (e.g. the Enlightenment project), particularly gained momentum with the adoption of the Universal Declaration of Human Rights (1948). The opening article of the Declaration, which states that "all human beings are born free and equal in dignity and rights [and that] they are endowed with reason and conscience and should act towards one another in a spirit of brotherhood" (Article 1), clearly echoes the universalist hopes of the past.

Parallel to these achievements, there have also been equally relevant considerations that the "universalism" of human rights is a misleading or even hypocritical term. It has been argued that it actually conceals the "Western" concept of human rights and serves the purposes of Western imperialism. The specificities of the values of peoples in Latin American, Islamic countries, India and East Asia are usually used as illustrations of the diversity of cultures, of conceptions of goods essential for human beings, and of systems of authority (Christian Tomuschat).

Hence, there is a legitimate need to reassess the arguments supporting the claim to the normative universality of human rights. Rolando E. Gaete distinguishes three sets of views in that respect. The foundationalist view – a strong version of universalism of human rights – draws on Immanuel Kant's political and legal philosophy. It grounds human rights on the essential autonomy of human beings that allows them to make moral choices, and considers this to be a general and enduring feature of human beings. In contrast to this ontological understanding of human rights, the eschatological type of argument takes universalism of human rights as an inevitable "end of history" outcome of the relentless march toward planetary enlightenment and freedom. The third view, reticent or self-restrained universalism, impregnates international human rights standards, which are in themselves minimal and are further relativized by subjective national and subnational implementations.

It is against this theoretical backdrop that Matthias Mahlmann's Mind and Rights: The History, Ethics, Law and Psychology of Human Rights appears. His book represents a powerful attempt to find solutions to some of the most intricate and challenging questions of contemporary human rights theory. This endeavor includes a quest to conciliate the normative claim to the universalism of human rights with the ethical and legal human rights pluralism of the real world.

Taking direction from Kant, and holding the Universal Declaration firmly in his hands, Mahlmann starts with the premise that the anthropological and epistemological foundational ideas of the human rights project are closely related to the equal autonomy of every human being as a moral and reflective agent. His justificatory theory of human rights contains three elements: first, a theory of goods essential for human beings that are important enough to be protected by human rights; second, a political theory of the role of human rights in society that contributes to the enjoyment of these goods; and third, a theory of the normative principles of justice, solidarity and respect for human dignity, the principles that are the ultimate sources of the normative position of rights.

In Mahlmann's view the normative claim to universalism of human rights draws on the very special value status of human dignity, which all humans enjoy. The humanity, which they equally share, is what makes all

human beings the justified highest-order ends of their intentions and actions. The universalization of the just, equal concern for the equal value of each life provides the ultimate foundation for the right to the protection of the intrinsic value of everyone's human existence.

According to Mahlmann, such an interpretation of the value status of each individual cannot be reconciled with ethical principles in which the greatness of nations, classes or religions trumps individual rights. Nevertheless, Mahlmann strives to reconcile human rights pluralism in the real world with normative universalism. Starting with the premise that universalism does not demand normative uniformity around the world, Mahlmann builds up his reconciliatory project on two arguments. First, since the normative issues human rights are concerned with are difficult and complex, it is not reasonable to expect everybody to agree on all normative matters after a little deliberation. Second, normative universalism is reconcilable with human rights pluralism because any legitimate order must leave scope for personal autonomy and democratic choices.

In this paper I examine the functionality of Mahlmann's conception of universalism of human rights. Firstly, I look at how it squares with the breakdown of shared values within the "Western civilization", taking the example, inter alia, of the differences in approaches in Europe and the USA to the fundamental questions of life, such as abortion and death penalty, or within Europe with respect to banning burqas. Secondly, I look at the functionality of Mahlmann's conception of universalism of human rights outside of the scope of the "Western civilization", where the principal challenge comes not from human rights pluralism, inasmuch as from human rights negationism.

MORAL COGNITION AND THE NORMATIVE FOUNDATIONS OF HUMAN RIGHTS: A CRITICAL ENGAGEMENT WITH MATTHIAS MAHLMANN

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ABSTRACT

Human rights is a concept on the front lines. What is exhausting about this struggle today is that a significant portion of the power and energy derived from the intellectual labor of human rights theory is devoted not to the anti-rights front, but to defending it against its unarmed comrades-in-arms. In his book Mind and Rights: The History, Ethics, Law, and Psychology of Human Rights, Matthias Mahlmann presents his own approach, while offering highly significant tools for defending the universality of human rights. However, it would be a mistake to view his approach as merely a defense, as this risks overlooking the alternative interpretation or normative explanation that he proposes. Mahlmann, who also addresses some of the criticisms directed at the concept in contemporary human rights literature, draws our attention to a problem I consider central to my presentation: the causal explanation of how a belief, thought, or presupposition is philosophically distinct from its justification. Many of the views that criticize human rights as a concept fall into the first category, while some fail to distinguish between factual-practical problems and theoretical justifications. Thus, the distinction between legal/institutional/factual "validity" and "necessity" is overlooked. However, according to Mahlmann (for example, in his remarks on the claim of universality, which he emphasizes), the epistemic propositions put forward regarding human rights are not metaphysical tools or assumptions, but rather hypotheses whose truths can be investigated and whose validity can be substantiated.

According to Mahlmann, humans possess a certain cognitive structure (or architecture of mind and consciousness) that enables them to make various judgments – including the capacity to recognize obligations, human dignity, and rights. Moreover, this moral cognition is not solely or entirely

a cultural construct. It is a qualification shared by humankind. This view compels us to reconsider the critique of cultural relativism that human rights are "native to the soil of a specific climate and cannot be harvested everywhere". These human qualities, ethical and intellectual agency of human beings, are not a metaphysical abstraction or a pattern of belief. It can be explained by relying on empirically observable characteristics of the human mind. Humans can generate certain normative judgments by virtue of a structural capacity, capability, or characteristic. They possess such potential. Mind and Rights claims that this kind of grounding also explains what universality means, in a way that applies to all humans. This claim, and the broader question of what human rights are, requires a multidisciplinary perspective. As the chapter titles in Mind and Rights indicate, Mahlmann constructs such a framework; however, particularly in the third part (Rights and Moral Cognition) he emphasizes the evolutionary and cognitive foundations of our capacity to form moral judgments. Here we also see that he draws on various scientific studies and tools, such as findings of neuroscience. The book's distinctive contribution lies in examining these studies and research on cognition, by linking them to the philosophical foundations of human rights.

In reaching the above conclusion (the relationship between moral cognition, moral grammar, and human rights), Mahlmann follows a comprehensive analytical approach, examining the interplay and mutual influences of various disciplines – including moral philosophy, legal theory, the history of the concept of human rights, cognitive science, and neuroscience. We see that one of the central issues is the generation of knowledge about the normative foundations of human rights. In doing so, the unique contribution of this approach to the subject compels us to reflect on the concept of "the nature of human cognition". In this regard, Mahlmann fully brings to light the effort he has pursued for many years – to make visible the relationship between the natural foundations of moral cognition and legal theory. In this form, can this valuable original contribution, this sincere confidence in our moral cognitive capacity, provide sufficient grounds for attempts to ground human rights normatively? Indeed, can the identification of a shared state of such moral cognition, as proposed in Mind and Rights, answer the question of why human rights are necessary? The answers to this question form the central problem of my presentation. In my

view, this is the most important line of epistemological inquiry, which requires us to discuss Mahlmann's analysis together; for "how a concept can be known?", "from where is it derived?", and "how can its necessity be justified?" are three distinct yet interrelated questions. Essentially, we see that Mind and Rights also points to the distinction between "causal explanation" and "normative justification". In fact, Mahlmann offers convincing answers to the questions "how can human rights be known?" and "from where are they derived?" through his own perspective. However, answering the third question requires more than such an identification. In other words, I would like to emphasize that merely identifying the notion of moral cognition does not, in itself, provide us with the means to justify the question "why are human rights necessary?"

I have structured my presentation around two main lines of discussion. I will devote the first section to highlighting the intellectual and practical benefits derived from Mahlmann's powerful and original contributions to human rights studies. In the second section, my primary aim will be to critically analyze this approach by drawing on the distinctions between the concepts of "explanation", "grounding" (in the sense of indicating the source or origin), and "justification" (in the sense of demonstrating why something is necessary). At the center of this second discussion lies the following critical perspective: "explaining" why and how we, as human beings, possess certain moral intuitions or capacities does not, in itself, demonstrate that these intuitions or capacities are necessary and normatively binding. This is because, for example, even after learning how the human mind works, an additional cognitive step is needed to demonstrate how and why certain rights-protecting choices are made among all other choices. Without this step, it is difficult to conclude that human rights are necessary and valid precisely because of this mental capacity. In short, I argue that the questions "why are human rights necessary?" and "why should we establish legal and governance systems based on human rights?" will remain inadequately answered until the question "where the act of explanation as a logical tool falls short in providing a justification, which tools should be brought into play?" is answered first.

Discussing the mental framework that makes the concept of human rights possible raises an important epistemological question: how can the idea of human rights be known? Mahlmann answers this question through

the act of "explanation". As a conceptual tool, "moral grammar" explains the structure of moral reasoning (through a cognitive anthropological analysis). In this way, we come across one of the conditions under which human rights are possible. Furthermore, it is important to note that possessing moral cognition – one of our various human characteristics and capacities – is also quite significant in terms of indicating one of the sources from which human rights are derived. This type of explanation shares meaningful similarities with the approach taken when addressing human rights alongside philosophical anthropology. However, we cannot answer the questions "why do we need rights such as human rights?" "why are these rights necessary?" or "how can we justify their legal validity and legitimacy?" in the same way, because these questions require the activity of "normative justification", as well as logical tools other than "explanation". In the second part of my presentation, I will discuss Mahlmann's contribution from this perspective.

LAW'S SUITCASE

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SW25 · What Fits Inside My Father's Suitcase: Memory and Oblivion in the Work of Orhan Pamuk
Convenors: Marcelo Galuppo; Mônica Sette Lopes

ABSTRACT

In his Nobel lecture, My Father's Suitcase, Orhan Pamuk begins with an apparently intimate scene: his father leaves him a small suitcase filled with manuscripts, notebooks, fragments, and possible literary remains. At first sight, the object seems to belong to the private sphere. It is a family relic, a material trace of a father-son relationship, a fragile archive of an unfinished life. Yet Pamuk does not use the suitcase merely to speak about his father. He uses it as an occasion to speak about literature, inheritance, vocation, shame, provinciality, identity, East and West, and the loneliness of the writer. The suitcase is therefore not only an object. It is a threshold. It opens one story in order to allow many others to appear.

This is the point from which my approach begins. Pamuk's suitcase shows that a concrete object may become a normative and narrative device. It gathers memories, but it also displaces them. It points to a personal history, but it soon reveals a wider cultural and political landscape. The suitcase carries more than papers; it carries silences, expectations, unresolved duties, and the question of what one generation transmits to another. Its meaning exceeds its contents.

Something similar often happens in law. A legal case, a statute, a trial, or a constitutional controversy is rarely only about the immediate dispute it formally presents. A case about property may become a case about colonial dispossession. A case about free speech may become a case about democracy, fear, exclusion, or public memory. A case about amnesty may become a case about the limits of forgiveness. A law about archives may become a law about whose suffering deserves to be preserved. Like Pamuk's suitcase, legal materials frequently contain more than they seem to contain.

Law works through occasions. It needs concrete forms: facts, documents, procedures, claims, judgments. But these forms often become openings through which societies speak about other things—about guilt, belonging, trauma, authority, dignity, and the possibility of beginning again. The legal case is therefore not merely an application of rules to facts. It may also be a symbolic container, a place where a community deposits conflicts that cannot be addressed directly.

This does not mean that law should become literature, nor that judges are novelists. The difference remains crucial. Law decides, coerces, distributes burdens, and produces institutional consequences. Literature can suspend judgment; law usually cannot. But literature helps us see something that legal theory often forgets: the visible object is not always the true object. The dispute before the court may be the juridical surface of a deeper struggle over memory, recognition, and historical narration.

Pamuk's suitcase allows us to think of law as an archive of displaced meanings. Legal institutions preserve precedents, testimonies, files, names, and judgments. But they also decide what remains unopened, unread, inadmissible, prescribed, or forgotten. Every legal order has its suitcases: cases and norms that appear technical, but carry inherited anxieties and unfinished histories.

My hypothesis is that law, like Pamuk's suitcase, often speaks most powerfully when it seems to be speaking about something else.

THE CENTENARY OF PAULO EMÍLIO RIBEIRO DE VILHENA: VISITING THE MUSEUM OF EVERYTHING

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SW25 · What Fits Inside My Father's Suitcase: Memory and Oblivion in the Work of Orhan Pamuk
Convenors: Marcelo Galuppo; Mônica Sette Lopes

ABSTRACT

The Museum of Innocence and My Father's Suitcase, by Orhan Pamuk, and Almost Memory, by Carlos Heitor Cony, served as a motif to explore the life of Professor Paulo Emílio Ribeiro de Vilhena, in celebration of the centenary of his birth. The traces left by him and kept in a repository of memorabilia help to understand the way he comprehended the theory of law and the theory of individual, collective, and procedural labor law, always based on the composition of legal relationships in the interaction between public law and private law.

URBAN POVERTY IN ORHAN PAMUK'S NOVELS: MEMORY, THE RIGHT TO THE CITY, AND THE LIMITS OF REPRESENTATION

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SW25 · What Fits Inside My Father's Suitcase: Memory and Oblivion in the Work of Orhan Pamuk
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ABSTRACT

This paper examines the literary construction of urban poverty in the novels of Orhan Pamuk through the interconnected concepts of memory, representation, and the right to the city. Focusing on Cevdet Bey ve Oğulları (1982), Kara Kitap (1990) and Kafamda Bir Tuhaflık (2014) it explores how access to urban memory and narrative visibility is distributed unevenly across class lines. The central argument is that Pamuk's novels reveal the right to the city not only as a claim to urban space but also as a claim to memory and narration. While bourgeois subjects accumulate narrative authority and appear as carriers of historical continuity, poor Istanbulites often remain figures of transience. They sustain the material reproduction of urban life, yet their experiences rarely generate enduring narrative traces. The paper traces a changing regime of urban visibility across Pamuk's fiction. In Cevdet Bey ve Oğulları, working-class figures appear primarily as servants, craftsmen, and anonymous inhabitants whose lives remain excluded from intergenerational accumulation. Kara Kitap transforms Istanbul into an archive of forgotten stories, yet these stories are largely mediated through a bourgeois intellectual perspective. Kafamda Bir Tuhaflık offers a more sustained engagement with a non-bourgeois protagonist, but frames urban incorporation largely through the language of cultural adaptation. Drawing on interdisciplinary scholarship on urban memory and the right to the city, the paper proposes the concept of memory as social infrastructure. Memory is approached as a socially distributed resource that organizes belonging, visibility, and historical continuity. From this perspective the paper ultimately asks who has the power to narrate the city and whose lives become part of its remembered history.

COLLECTIVE INTENTIONALITY AND COLLECTIVE AGENCY IN THE LAW

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SW26 · Collective Intentions in Law and Legal Reasoning
Convenors: Andreas Funke; Doohyun Kong

ABSTRACT

Statutory interpretation usually relies on the legislative history of laws, be it explanatory memoranda, parliamentary speeches or other information from the legislative records. It is open to debate whether this is compatible with theoretical concepts of legal interpretation which emphasise the 'objective' nature of interpretation, as being opposed to 'originalist' or 'subjective' approaches. Yet historical material is relevant to all these theories. What is nevertheless required is a justification of this practice. Contemporary legal theories draw on social theories of collective agency (such as those of Christian List & Philip Pettit, or Michael Bratman), applied to 'the' legislator. I will compare these theories with Ronald Dworkin's theory of statutory interpretation. Both theories have their strengths and weaknesses. I shall discuss in more detail just one missing point in Dworkin's theory: how the gap between 'the' legislator and the legal community can be bridged. I assume that it is precisely the idea of collective agency, which is, though, to be linked to the legal community as such, that can fulfil this bridging function.

LEGAL INTERPRETATION AND THE COLLECTIVE INTENTIONS OF JUDGES

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ABSTRACT

The traditional model describing judicial decision-making portrays the judge as an independent actor who derives legal norms through the cognitive process of statutory interpretation. In reality, however, judges do not make decisions in isolation. Within the judicial system, judges operate within an organized institutional framework, referring to precedents and related rulings while remaining aware that their own decisions may serve as future precedents. Thus, adjudication is carried out as a form of collective action among judges.

In this context, judges confront two distinct challenges inherent in the practice of collective legal interpretation: the "problem of inconsistency" and the "problem of uncritical deference." First, the problem of inconsistency arises when a plurality of judges, despite each engaging in independent and rational interpretation, arrive at mutually contradictory conclusions in identical or similar cases. By contrast, the problem of uncritical deference arises when judges pursue legal certainty to an excessive degree, resulting in the uncritical repetition of precedents and established legal doctrines.

For the judiciary to earn institutional trust, judicial adjudication must constitute a continuous process of shared deliberation through which previous errors are corrected and new standards are established in response to changing, thereby producing shared normative judgments. Re-evaluating the collective intention of judges from this perspective, it must evolve beyond a state where each actor simply performs the identical act with mutual awareness. Instead, it must develop into a mutual awareness of sharing an attitude: an attitude where each judge, grounded in the principles of the rule of law, exercises normative judgment to the best of their ability as a

judge, while mutually respecting and reflectively examining those judgments, and ultimately sharing the fruits of that reflection in the best possible form.

THE NEIGHBOURHOOD WATCH PRACTICES AS EXAMPLE FOR THE INTERSECTION OF COLLECTIVE INTENTIONALITY AND LEGAL CONSCIOUSNESS

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ABSTRACT

Acting in accordance with law is related with the individual perception and knowledge about legal rules but also related with the knowledge about how others react to the existing rules. In other words, rule-following can be conditional. In an example on waiting at the red light as pedestrian, possibility of someone's obedience on this rule is higher in a place they observe that everyone is waiting comparing a place where no one waits. Of course, someone who believes that obeying the law is a virtue may choose to comply individually. However, low compliance rates in a specific place are highly likely to influence individual preferences. Because of this, it can be said that compliance or obedience with the law has a dimension related to collective intentionality. Collective intentionality, either it be accumulation of individual intentions or an irreducible collective decision on doing something depends on cooperation and common knowledge. At first glance, in the example of red light, the compliance with the rule is basically an individual decision. However we can find examples in which collective intentions have a greater weight on the compliance decision. I want to discuss Neighborhood Watch type practices as an example to shed light to the connection between these phenomenons. These practices, mainly depends on local identities. Local identity and attachment to a certain place involve normative expectations regarding the place among those who live there. This common knowledge is also a driving force for collective action. Neighborhood Watch practices include residents both taking collective action to make improvements in the neighborhood and also keeping an eye out for unusual activities in their own areas, which is, in a sense, policing at the neighborhood level. In areas where the practices are implemented, especially in the UK, signs related to Neighborhood Watch are placed in visible areas, such as on electricity

poles or building walls, marking the boundaries of the normative space to which local residents feel a sense of belonging. Volunteer neighbors have a collective knowledge on the local identity and expected behaviour. At the same time, both cooperation in accordance with this knowledge and also observing others to make sure that everyone is following the rules can be examples of collective action and intentionality.

HOW PEOPLE 'CONNECT' TO UNJUST PROCESS

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ABSTRACT

In recent debates regarding injustice, two primary perspectives have emerged: interactional and structural. While interactional injustice focuses on wrongs caused directly by specific agents toward others, structural injustice emphasizes the dynamic socio-economic processes that inflict harm on certain groups. Although the concept of structural injustice broadens the scope of inquiry and is useful for analyzing large-scale social issues not necessarily attributable to specific individuals—such as racism, sexism, poverty, homelessness, global supply chains, and climate change—it remains difficult to determine how to ameliorate these wrongs. This difficulty arises because structural injustice is often characterized as an "unintended" consequence of individual actions within a dynamic process. Consequently, the connection between individuals and structural outcomes remains opaque, making it unclear "who should do what" to address it.

While many studies have focused on individual responsibility to bridge this gap, this presentation aims to provide a new account of the nature of structural injustice, specifically focusing on the relationship between individuals and the social processes that produce such outcomes. First, I overview existing explanations of structural injustice and argue for the necessity of clarifying how individual actions contribute to unjust outcomes. Second, I introduce the concept of collective intention to explain how individuals relate to the social processes that maintain structural injustice. Finally, I examine the implications of this new account for debates concerning individual responsibility for structural injustice.

THE CONSTRUCTION OF LEGAL REALITY

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ABSTRACT

Although legal philosophy has traditionally focused on questions such as the nature of law, its relation to morality, and the authority of legal systems, recent developments in legal ontology invite a reconsideration of these issues from a socio-ontological perspective. According to such a perspective, the law itself appears to fundamentally rely on forms of collective intentionality, understood as the capacity of multiple agents to share attitudes, goals, and normative understandings.

From constitutive rules that determine what counts as a contract, a public office, or a criminal offence, to the interpretive practices of legal communities, law can be redescribed as structured through joint intentionality rather than as a mere aggregation of individual actions or judgments. On this view, the "we-perspective" is not only a precondition for the existence of social facts, but a constitutive element of legal entities.

Building on this framework, this work argues that a robust theory of collective intentionality is not external to the legal domain but is already presupposed by its own operative structure. Rather than emerging from institutional practices, collective intentionality functions as the condition of intelligibility of those very practices, which would otherwise not be identifiable as "legal" in the first place. This perspective enables a reconceptualization of law as a dynamic and continuously reenacted process of normative coordination, bridging – without collapsing – the perspectives of legislators, judges, and citizens.

To substantiate this claim, the paper engages with empirical material from the COIN Project on collegial courts in Italy and Slovakia. These cases are not employed as evidential support or illustrative applications of the theory, but as analytically constrained reconstructions that make visible the preconditions already presupposed by the theoretical framework itself. Collegial courts, in particular, reveal how deliberative procedures do

not generate collective intentionality from individual judicial viewpoints, but rather presuppose a shared normative space within which individual reasoning becomes institutionally legible as a unified judicial voice – the "opinion of the court". In this sense, empirical material does not ground the theory; rather, it discloses its constitutive priority within legal ontology.

CRUELTY AS POLITICAL VICE

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Convenors: AMINTAPHIL

ABSTRACT

This paper introduces the topic of cruelty as a political vice using two contemporary examples. I then situate my project alongside influential political thinkers, Hannah Arendt and Judith Shklar, in their efforts to grasp the nature of political vice, and I explain how my account differs from theirs. After laying out the Aristotelian foundations of my project, I examine influential conceptions of cruelty from Seneca, Aquinas, Machiavelli, Montaigne, Nietzsche, and Shklar. From my analysis, I develop a conception of cruelty as a political vice that becomes embedded in relationships where people become disposed through their relationships to collectively experience shameful delight in, or callous indifference to, the suffering of political rivals or those they see as politically inferior.

Keywords: cruelty, political vice, virtue ethics, Judith Shklar, Aristotle

CULTIVATION OF TRUST: BEDROCK OF FLOURISHING DEMOCRACIES

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ABSTRACT

This research explores the dualistic role of institutional and interpersonal trust as the fundamental infrastructure of stable democratic governance. While political theory often positions formal institutions—such as laws and elections—as the primary safeguards of democracy, this paper argues that trust serves as the "essential virtue" or "soft tissue" that allows these hard structures to function. The study employs the qualitative approach, analyzing contemporary data on declining civic engagement within left liberalism on one hand, and the rise of populism on the other. The paper begins by examining trust as a "democratic bedrock," facilitating social capital and voluntary compliance with the law. It goes on to demonstrate that democratic stability depends not just on constitutional arrangements and legal frameworks but more importantly on the moral formation of citizens and leaders committed to reciprocity, accountability, and ethical governance. It goes on to analyse the "trust deficit," investigating how systemic corruption, economic inequality, and infodemics erode the social contract. Findings suggest that a trust deficit does not merely result in political apathy but actively fosters polarisation, as citizens retreat into insular ideological enclaves. The study concludes that a flourishing democracy requires more than efficient laws and administration; it necessitates a restoration of "rational trust"—a middle ground where citizens are neither blindly obedient nor reflexively cynical. Recommendations focus on institutional transparency, the revitalization of local civic spaces, and the implementation of deliberative democratic practices to bridge the gap between the governing and the governed.

Keywords: Flourishing Democracy, Institutional Trust, Social Capital, Civic Engagement, Trust Deficit.

TWO CONCEPTS OF DEMOCRACY (LIMITED AND UNLIMITED)

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ABSTRACT

Acknowledging that our democracies — all over the world and around the globe — are under pressure and identifying where the pressure is coming from are a must. Not surprisingly it is coming from different directions and often at the same time, from one side and the other, from inside and outside, pulling up and pushing down. What's more, our democratic institutions and virtues are being threatened by democracy itself — or more precisely by those who capture their institutions or claim to embody its virtues. Following Hans Kelsen's distinction between limited (or restricted) and unlimited (or unrestricted) democracies, I would like to suggest that nowadays there are two concepts of democracy, which are competing against each other. Each one leads to a different set of apparently necessary conditions, such as institutions and virtues, and so the ultimate purpose of this paper is to distinguish between these two concepts and the true necessary conditions of a "democracy" — and to settle once and for all the dispute on what democracy is and which are its necessary conditions. After a brief introductory section, I will call attention to the everlasting crisis of democracy and its current features; to the etymology and philology of the word 'democracy' and its dual characterization as both a form of government and a way of life; I will compare a direct and an indirect or representative democracy; contrast both the majoritarian and partnership conceptions of democracy; and consider the tension between a limited and restricted versus an unlimited and unrestricted democracy.

THE ROLE OF TRUTH IN DEMOCRATIC LEGITIMACY

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ABSTRACT

Discussions of the relationship between truth and democracy typically focus on the threat that misinformation, suppression of information and unequal access to information pose to democratic institutions. This focus misrepresents the relationship between truth and democracy as empirical and instrumental, suggesting that the primary reason that governing systems must support and advance truthful representations and access to good information is that these are empirical conditions for accountability and effective political participation.

In this paper, we argue that supporting and advancing truthful representations and access to good information is a condition of good governance in its own right, quite apart from contribution to accountability and capacity for effective political participation. Drawing on philosophical literatures on the value of truth and the human right to truth, we make the case that secure access to truths is one of the basic elements that a governance system must deliver to count as good. Governments (or other actors) that actively distort information or misrepresent social, political, economic and environmental conditions, for example, or that make it difficult for people to access information about such conditions, thereby both wrong those under their power and fail to meet one of the minimum conditions for being worthy of adherence. Democracies must secure and advance truthful representation. But access to good information is important for democracies for the same reasons and in the same way it is important for all governing systems: because to fail to do so is to fail to be good.

So, truth is not a dependent good that inherits its value from democracy or good governance: it is an independent good that governments owe to the governed. One reason this is important is because it negates arguments for the legitimacy of using untruths and useful fictions in the name of fostering solidarity, mutuality, attachment to institutions or any other feature

that is held to be an empirical condition for democratic institutions to function well. Insofar as such untruths and useful fictions suppress information and encourage acceptance of falsehoods, they violate a basic condition for governance to be good.

VIRTUES NECESSARY FOR DEMOCRACY AND THE ROLE OF HIGHER EDUCATION IN CULTIVATING THEM

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ABSTRACT

In our contemporary moment—marked by deep polarization, social fragmentation, and epistemic bubbles—the health of liberal democracy is increasingly under strain. The way back to health might seem to be more laws or better procedures, more "guardrails." But liberal, pluralistic democracies cannot be sustained by institutions alone. While laws, voting systems, checks and balances, and even constitutions are essential, they depend on a citizenry equipped with the virtues and shared norms necessary to navigate disagreement, respect for diversity, and pursue justice (Allen, 2006, Galston, 1991). This essay explores the importance of civility and a broader constellation of virtues—such as civic grace, empathy, openness to ideas, curiosity, and intellectual humility—that are indispensable for the flourishing of liberal democracy. I also argue that educational institutions, particularly universities and colleges, must be intentionally designed to cultivate these virtues. Our secondary schools and institutions of higher education should be spaces where democratic habits are actively fostered (Gutmann, 1999; Nussbaum, 2010).

SPEAKING WITH THE WIND: A CRITICAL WARNING AGAINST THE CONTINUED DEVELOPMENT OF SOCIAL IMITATIVE ARTIFICIAL INTELLIGENCE

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ABSTRACT

This paper argues that the continued development of social imitative artificial intelligence (SIAI) threatens the social conditions upon which legal and democratic legitimacy depend. Unlike other forms of artificial intelligence, SIAI is designed to simulate human interaction convincingly while maximizing user engagement for commercial profit. SIAI enters the communicative spaces in which citizens form identities, negotiate shared norms, and acquire the capacities necessary for participation in public life.

Drawing on Jürgen Habermas's account of the lifeworld, communicative action, and the public sphere, the paper argues that SIAI distorts the processes of cultural reproduction, social integration, and socialization through which the democratic community sustains itself. The central claim is that legal legitimacy presupposes more than formal institutions or valid procedures. It also depends on a social world in which citizens can recognize one another as accountable interlocutors capable of giving, contesting, and revising reasons. SIAI only imitate such behavior, thus convincing human users of their sincerity and personhood, all while producing a social environment that formats human beings such that they are incapable of communicative action, and thus the ability to engage as a proper democratic citizen.

The paper further situates this theoretical argument alongside emerging concerns about the social and psychological effects of sustained interaction with conversational AI. Prolonged engagement with SIAI conditions users to expect validation without accountability, dialogue without vulnerability, and social recognition without the risk of resistance or critique. Over time, these altered expectations erode the dispositions required for communica-

tive action and weaken the lifeworld necessary for democratic will-formation. The broader jurisprudential implication is that SIAI should be understood as an emergent threat to the normative infrastructure of legitimate law and collective self-government, rather than an innovation to be regulated.

THE LEGITIMACY OF CRIMINAL LAW IN A FRAGMENTED SOCIETY

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ABSTRACT

As the contemporary world faces a profound transformation of social cohesion, traditional justifications for ius puniendi – assuming a threshold of recognizable wrongness rooted in consensus – are fundamentally challenged. Contemporary liberal democracies face fragmentation that transcends standard pluralism (MacIntyre, 1981; Bauman, 2000, Lilla, 2017). When a society lacks a common moral language, the criminal justice system faces a crisis of legitimacy: can a state rightfully punish behaviour no longer universally deemed "wrong"? This dilemma is uniquely acute in criminal law due to its ultima ratio status and direct interference with individual liberties (Duff, 2017).

This paper explores the normative struggle in "divided societies" marked by significant discrepancies in the political and moral assessment of specific acts. I analyse how the systemic rule of law crisis intersects with radical social polarization. The collapse of institutional trust, coupled with multi-layered conflicts – ranging from reproductive rights and religious sentiments to public health mandates and migration – creates a vacuum of shared legal authority.

I examine two competing strategies. The first suggests that in deeply divided societies, criminal law may lose its capacity to ensure social peace. If the communicative function of punishment fails, the law risks being perceived as a tool of raw political power. In such cases, a "morally modest" approach – limiting the scope of criminal intervention – may be necessary to preserve the state's long-term authority (Lacey, 2011; Hörnle 2021).

The second approach argues that legitimacy derives from democratic procedures (Taylor, 2007). In Modern Era liberal concepts the idea of individual sovereignty presumes the delegation of authority (Locke) or the

social contract among individuals (Hobbes) vesting power in the state rather than requiring the consensus of all citizens hic et nunc (Rawls, 1987; Waldron, 1999). Furthermore, as Dworkin (1977) argues, certain societal preferences may not qualify as valid moral positions that the law is bound to respect.

However, as the real tension in society may persist, I explore whether courts can act as agents of "normative reintegration." I argue that the role of criminal law is not to impose a definitive mandate for punishment, but to navigate the tension between protecting the Rechtsstaat and acknowledging the democratic risk of a fractured populace. Since the functions and aims of criminal law are multidimensional (Cornford, 2023), criminal courts in times of social fragmentation should balance values: especially public peace and rights of the victim.

RESCUING HUMAN RIGHTS IN POLARIZED SOCIETIES: THE ROLE OF EMPATHY AND HUMILITY

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ABSTRACT

Three distinctive features characterize current constitutional democracies and tend to erode both the rule of law and democratic institutions: the post-truth mindset, digitally mediated communication, and the tendency towards polarization in the formation of opinions and identities. Democratic backsliding has been addressed in legal philosophy primarily through remedies at the institutional and procedural levels. However, the link between institutional crisis and individual – and, consequently, social – attitudes has not received adequate scholarly attention. Epistemic and relational dimensions remain largely outside the scope of legal philosophical accounts. Since democratic erosion is a complex phenomenon, it should also be tackled by examining the interaction among law, social practices, and individual allegiance. Human rights – understood as rights inherent to human beings as such, and set forth by international norms – represent one of the minimal conditions for the survival of liberal democracies. Yet, rather than functioning as a constraint in shaping social relations and public choices, they are systematically under attack, both in political and social narratives and in practice.

This paper addresses the need to draw on subjective attitudes in order to support human rights discourse and practice within constitutional democracies. It then examines: (i) whether virtues can play a role in shaping such subjective attitudes, particularly in countering polarization; (ii) the conceptualization of virtues as instrumental to constitutional democracy resilience; and (iii) the identification of two foundational virtues — empathy and humility — on the basis of their capacity to function as both ethical and epistemic dispositions.

Notwithstanding some critical perspectives (Songhorian, 2019; Bloom, 2017a, 2017b; Cotton, 2021), empathy can be regarded as an individual

attitude enabling mutual understanding and respect for human rights among people, as well as a virtue for legislators, public officials, and judges in implementing and applying human rights. Empathy supports the recognition of human dignity as the driving force behind human rights.

The paper argues for this role of empathy by advancing a conception that: (i) treats empathy as an epistemic attitude rather than an emotion; and (ii) emphasizes that this attitude operates by requiring a degree of distance from the emotions of the person with whom one empathizes, precisely in order to genuinely understand them.

Regarding humility, the paper develops a perspective that treats it as a precondition for civility (Walzer, 1991; Orwin, 1991). This approach differs from views that associate civility with the rehabilitation of hypocrisy as a virtue (Elster, 2006; Urbinati, 2023).

Reflection on the role of empathy in law falls within a field that intersects with the growing discourse on emotions and virtues in legal theory, developed mainly through virtue jurisprudence (Amaya, 2022; Corso, 2022; Glynn & Sen, 2015; Mangini, 2017; Michelon, 2022; Minow & Spelman, 1988; Solum, 1988, 2004; Roach Anleu & Mack, 2022). From this perspective, acknowledging the role of emotions and virtues in legal reasoning does not amount to admitting irrational elements into it. Rather, a judge's attentiveness to emotions during proceedings may: (i) facilitate a more accurate identification of the reasons for action arising from the specific case; (ii) aid in conveying the values at stake in the application of the law; (iii) enable recognition of the elements that are genuinely relevant to a given situation; and (iv) motivate action, that is, the application of the law in specific directions. This view goes beyond merely acknowledging the contribution of emotions to the determination of law, asserting that their presence in judicial decision-making also reflects and expresses the judge's virtuous disposition (Amaya, 2022, pp. 19–22; Mangini, 2017).

Having clarified the conception of empathy adopted here and analyzed the conditions under which it can be genuinely exercised, the paper asks whether and in what sense empathy can be regarded as a minimal virtue capable of counteracting individual attitudes that negatively impact the justificatory discourse on human rights.

Empathy is understood as an attitude that shapes a precise stance towards others, as well as a general openness to new ideas and differences.

Central to this conception is the distinction between empathy and sympathy. Sympathy involves feeling along with someone experiencing a given emotion; it arises from elements of commonality between individuals or from shared salient experiences; it entails understanding another's perspective through identification. Empathy, by contrast, does not necessarily require sympathy, nor does it lead to it. Rather, it is examined as a skill that leads not – as is commonly assumed – to feeling with another person, but to understanding their emotions, feelings, and point of view (Spaulding, 2017). Empathic capacity focuses on emotions and succeeds in uncovering, within those emotions, the values to which they are connected. When adopted as a stable disposition and practiced systematically as a consistent approach to legally relevant issues, this capacity constitutes an intellectual virtue.

This distinction proves structurally significant in restorative justice, where empathy plays an explicitly recognized and central role, grounded in three core concepts: recognition of the other, active listening, and empathy itself. These concepts guide the discussion and resolution of conflict, introducing structure into the disorder that characterizes it and, in successful cases, leading to an understanding of the harm caused and the identification – agreed upon by the parties – of a path toward repair. In this context, the mediator's effectiveness depends precisely on maintaining distance from sympathy: empathy enables understanding of the emotions and state of mind of each party in conflict, whereas sympathy would confine understanding to the feelings of only one party. Empathy is thus not a form of sharing but a form of understanding: a cognitive stance whose object is the feelings and emotions of another person.

In light of these features, empathy can be regarded as an attitude capable both of enabling someone to understand another's feelings, emotions, and point of view, and of fostering critical awareness of one's own inner dimension – encouraging reflective distance from it without collapsing into the other's perspective. This constitutes a basic condition both for resisting polarization and for recognizing the dignity of others, thereby meeting the first condition for sustaining human rights discourse and practice. When adopted by public decision-makers, regulators, public officials, and judges, this attitude encourages engagement with issues from the perspective of

those most vulnerable to having their dignity violated – a genuine first step toward the implementation of human rights.

Humility, in turn, operates at both the epistemic and ethical levels. It can be conceived as a precondition for civility in social and institutional relations – a means of governing interactions among strangers, in contrast to the expectation of mirroring so prevalent in today's narcissistic societies. As a fundamental disposition and a form of communicative self-restraint, it leads individuals to treat the views of others as relevant in specific contexts and situations, and to weigh their words by considering and anticipating others' reactions.

In addressing civility through the lens of humility, the paper departs from the view that links civility with hypocrisy – the idea that civility involves the capacity to exercise self-control over the expression of one's opinions (Urbinati, 2023, pp. 20, 139). While this account may have had some plausibility within the framework of modernity, it loses much of its force in the current context, characterized by the erosion of the public/private distinction through digitally mediated communication, and by a disregard for truth that fuels rather than counters polarization.

Linking civility to humility instead offers a more promising path: (i) it avoids the oscillation between an excessive emphasis on moral implications and a reduction to mere conformism; (ii) it makes room for the epistemic dimensions inherent to humility, thereby avoiding a form of civility tantamount to epistemic abstinence – which would be wholly inadequate as a response to post-truth tendencies in public opinion formation and decision-making; and (iii) it identifies the pre-legal force that virtues can exert in a manner better suited to address the polarization characteristic of contemporary liberal-democratic societies.

For these reasons, empathy and humility can function as virtues capable of supporting both the justification of human rights in pluralistic societies and the practices through which they are implemented.

RELATIONAL ACCOMMODATION AS RESISTANT AUTONOMY

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Convenor

SW29 · Care and Relational Autonomy at the Intersection of Vulnerability and Law
Convenors: Hirono Ikeda; Rika Sasaki

ABSTRACT

In this presentation, I clarify 'relational accommodation' as a form of autonomy exercised under conditions of oppression. Relational accommodation refers to the practice of acting upon one's own relationships to transform them into relationships that support or better constitute one's autonomy. I further argue that relational accommodation has an important institutional dimension and that the autonomy exercised through relational accommodation is itself vulnerable to oppression.

Within relational autonomy theory, constitutively relational accounts of autonomy—according to which relationships at least partly constitute autonomy—have often been criticized for overlooking the autonomy that oppressed agents exercise under conditions of oppression. I respond to this criticism by clarifying relational accommodation as one form of autonomy available under oppression. Oppression undermines autonomy by narrowing the range of options available and by distorting or limiting the epistemic resources through which they understand themselves. Nevertheless, oppressed agents respond to such circumstances by engaging in relational accommodation. Relational accommodation is the activity of acting upon relationships so that they become contexts within which one can exercise autonomy and through which one's autonomy is supported, thereby opening new possibilities for action and way of life. It includes both the accommodation of one's relationship to oneself and that with others, institutions, and society. For example, it includes caring for oneself and others, negotiating competing interests among those involved, requesting reasonable accommodations, and resisting oppression.

I analyze the process of relational accommodation by distinguishing three dimensions of autonomy involved in it. First, autonomy to accommodation, there is the autonomy required to undertake the actions that constitute relational accommodation. Second, autonomy by accommodation, there is the autonomy that is acquired for the sake of expanding one's space of options by relational accommodation. Third, autonomy through accommodation, there is the autonomy involved in generating understanding and forming one's own will through the process of relational accommodation itself. To clarify these dimensions, I focus in particular on how survivors of sexual violence autonomously reconstruct their lives and choices in the aftermath of violence.

Whether relational accommodation succeeds depends not only on how individuals approach others but also on institutional conditions. First, the institutional support available for particular acts of relational accommodation is crucial to whether such accommodation can proceed fairly. Second, when relational accommodation is obstructed by institutions, acting upon and challenging those institutions itself becomes a form of autonomy under oppression.

Finally, I argue that the autonomy exercised as relational accommodation can itself be oppressed. Particular attempts at relational accommodation may fail because of oppressive social conditions. Moreover, even when relational accommodation succeeds in enhancing an individual's autonomy, it often imposes burdensome and asymmetric distributed cost on those who undertake it. The concept of autonomy as relational accommodation helps illuminate this asymmetry in the burdens of realizing autonomy. In doing so, it supports demands for institutional responses to social oppression rather than merely individual accommodations.

BETWEEN DIGNITY AND AUTONOMY: RETHINKING THROUGH THE LENS OF CARE ETHICS

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SW29 · Care and Relational Autonomy at the Intersection of Vulnerability and Law
Convenors: Hirono Ikeda; Rika Sasaki

ABSTRACT

In this presentation, I examine the need for a legal theory grounded not in the ideal of the independent, self-sufficient individual but in the reality of human beings as vulnerable and relational beings. My focus is on the relationship between the concepts of autonomy and dignity.

In the post-Second World War era, dignity has acquired a privileged normative status as a concept denoting something that ought never to be violated. At the same time, its value has been the subject of persistent criticism. Some influential critics argue that dignity can ultimately be reduced to autonomy, understood primarily as self-determination.

Does dignity possess a meaning that cannot be reduced to autonomy, or a meaning distinct from it? This presentation explores that question. Examining those aspects of dignity that cannot be fully captured by autonomy may, conversely, help illuminate those aspects of autonomy that cannot be fully captured by dignity.

In pursuing this inquiry, I draw particular attention to the challenges that the ethics of care has posed to legal and political theory. Human beings cannot survive without receiving care in early childhood. Moreover, many people spend part of their later lives dependent on the care of others. Indeed, being cared for is a fundamental condition of human existence.

A society characterized by mutual dependence should not take for granted the delegation of care to others, especially to those who are poorer or otherwise socially vulnerable. Rather, it should be grounded in the idea of citizens who assume responsibility for care themselves. Yet the expectation that individuals ought to undertake care responsibilities may imply that those who cannot do so are regarded as second-class citizens.

This raises the need to reconsider the significance of "mere existence": the value of simply being, even when one does not produce economically useful value. What is gained by invoking the concept of dignity to articulate this value, and what risks might such an appeal entail?

Any assessment of the significance and limits of dignity must also confront the ways in which the concept is employed within existing legal systems. To this end, I examine several examples from Japanese law. In particular, I discuss the Anti-Prostitution Act (Act No. 118 of 1956), the denial of COVID-19 relief payments to sex workers, and recent legislation regulating the adult video industry in order to explore both the possibilities and the dangers of dignity-based reasoning in law.

FROM SELF-GOVERNANCE TO VULNERABILITY – CASE STUDY OF A PORN PERFORMER ON ONLYFANS

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ABSTRACT

In this paper, we present a case study of a former OnlyFans sexual content creator's framing and making sense of their experience of working on the platform for three years. We analyzed the discourses detectable in several public interviews through the theoretical lens of sexual and feminist ethics of vulnerability.

A common theme in academic research exploring pornography is the emphasis on performers' overcoming vulnerability with resilience, adaptability, and self-reliance in some way. Emphasis in recent research on indie-porn (or amateur porn) is on agency, management skills and the increased independency of content creators with new technology and platform-based gig work. We present an alternative narrative by analyzing themes detectable in the testimony of the former OF content creator leading up to and following their decision to leave the porn industry. We follow their changes in attitude towards OnlyFans, as well as their outlook on porn in general, through their experience of creating and selling content on the platform from 2021-2024. While there are many and sometimes contradictory parallell discourses detectable in the data, we find the gradual transition from discourses constructing and maintaining neoliberal subjectivity towards those discourses that acknowledge and are attentive to vulnerability, interdependence and relational autonomy a fascinating one which deserves further discussion from a feminist and ethical perspective.

In recent years, discussions about sexual violence and gendered power structures have been prevalent in Icelandic media landscape, not least during and following the several #MeToo waves that shook Icelandic society from 2017 and onwards. The prevalence of consent discourses and in-

creased sexual education aimed at teens and young adults has brought concepts such as ‚personal boundaries' to the forefront of discussing sexual violence prevention. This article is part of a PhD project in sexual ethics about how these and other concepts from sexual education (and rape law) are used and gain meaning in practice within a neoliberal and postfeminist culture, and moreover how feminist relational ethics and theories on vulnerability can further promote sexual justice. This article focuses on the framings of these concepts when it comes to the lived experience of engaging in porn production on the platform Onlyfans.

AUTONOMY AND INTELLECTUAL DISABILITY: BETWEEN PROTECTION AND INCLUSION

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ABSTRACT

The concept of autonomy is fundamental to the liberal philosophical tradition. It is also one of the most contested and consequential as, frequently, different conceptions of autonomy lead to disagreements in discussions about moral status, political participation, legal capacity and responsibility. Most approaches, despite their differences, link individual autonomy to intellectual capacities for reasoned self governance and informed choice, leading therefore to very specific conceptions of consent, competence, and responsibility. According to that line of thought, persons with intellectual disabilities are often considered to be at what has been called, the frontiers of justice, thought of as lacking the intellectual capacities these models require. In their case, legal systems tend to prioritise their protection (most notably through guardianship regime) instead of creating the institutional means for enhancing or revaluating their capacities.

Critics of these approaches and disability rights scholars support a less individualistic conception of autonomy. They emphasise the social dimension of autonomy, the interdependence and vulnerability of persons in different situations or periods in one's life. They also stress on phenomena of structural injustice which persons with disabilities face. For them, legal thresholds that treat autonomy as a fixed, individual attribute often exclude people whose agency is expressed in non-typical or supported forms. Recent evidence from empirical research on supported decisionmaking and pilot implementations in several jurisdictions shows that individuals considered to be incapable present meaningful decisionmaking capacities when provided with appropriate supports, accessible information, and noncoercive environments. These results are undermining the certainty of categorisations made by conventional legal assessments.

This paper suggests a reexamination of threshold approaches to the concept of autonomy in law. As not all social, political, or economic decisions require the same level of reflective self-awareness or independent reasoning; a universal threshold results to unjust exclusion and paternalism. At the same time, the preservation of justifiable and legitimate protective clauses of existing legal frameworks is crucial. Legal safeguards against exploitation and abuse remain a matter of utmost importance to vulnerable persons.

The approach suggested may help overcome part of the tension emerging when attempting to reconcile the universality of a specific law with the particularity of an individual's intellectual capacity.

RELATIONSHIPS AS A PATH TO AUTONOMY. ROMANTIC RELATIONSHIPS OF PEOPLE WITH DISABILITIES IN THE CONTEXT OF RELATIONAL AUTONOMY

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ABSTRACT

The presentation aims to analyze the status of romantic relationships among people with intellectual and developmental disabilities (IDD) through the lens of relational autonomy. By people with IDD, I refer to individuals with moderate and severe intellectual disabilities who are dependent on others—family members, caregivers, or institutions—for their daily needs.

Close relationships—especially romantic ones—are a fundamental expression of free will and a key component of well-being. The same applies to people with intellectual disabilities; however, they rarely have the opportunity to pursue such relationships freely. This also applies to their ability to develop and define their own identity. Historically perceived as fundamentally different from non-disabled individuals, people with IDD nevertheless seek closeness, intimacy, and sexuality in similar ways.

Despite international guarantees such as the Convention on the Rights of Persons with Disabilities (CRPD), which affirms the right to independent living, family formation, and intimacy, these rights remain largely unfulfilled in European countries. The lives of people with IDD are subjected to permanent control, justified in terms of their best interests, while crucial decisions regarding their personal lives are often made by family members, caregivers, or courts. At the same time, the framework for making personal choices is narrowed to heteronormative models of shared life. Moreover, many individuals require external approval for cohabitation, marriage, or even spending time together in private. Simultaneously, they have limited opportunities to develop their autonomy in spaces separate from institu-

tions and caregivers. While a certain level of dependence on others is necessary, in many areas of life it becomes an oppressive dependency, cloaked in the guise of care. Disability is frequently perceived as defining the person's entire identity (the spread effect), reinforcing beliefs that they cannot lead fulfilling lives. At the systemic level, it is often assumed that they have no future, will not be able to fulfill social roles, and that such aspirations may even be perceived as a threat.

The concept of relational autonomy emphasizes the importance of the external environment and social relationships in developing the internal dimensions of autonomy highlighted by Catorina MacKenzie: self-determination, self-governance and self-authorization. The key challenge is to create an environment that supports the recognition of the individual as autonomous, shifting part of the responsibility from the individual to third parties in shaping and supporting a person's agency. In this sense, autonomy may be externally derived—that is, the permission to exercise autonomy originates from the environment (Obuchowska, 1996). The individual's environment must therefore provide support, advocacy, and enablement of the person's autonomy, creating space for the expression of their needs and treating them seriously (Davy, 2015).

In my presentation, I will analyze the situation of people with intellectual disabilities across three levels: first, the social and legal environment (the legal significance of disability and its social understanding); second, the institutional and non-institutional living conditions of the person (upbringing, education, level of independence,life conditions); and finally, the conditions for developing close romantic relationships (including the possibility of forming legally recognized relationships as well as informal ones).

RELATIONAL AUTONOMY AND RETHINKING TAIWAN'S MARRIAGE LAW

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ABSTRACT

This paper takes "care" and "relational autonomy" as its core to reconstruct the normative foundations of the family law, and rethinks Taiwan's marriage law. The natural law theories have justified marriage as an exclusive one-to-one relationship oriented toward procreation. Today, as intimate relationships have become more diverse, especially with the legalization of same-sex marriage, family models based on procreation and a strict public–private divide are no longer undoubted.

Against this background, this paper repositions the institutional meaning of family and marriage from the perspectives of autonomy and care. Raz's notion of the "duty to improve autonomy" emphasizes the importance of an adequate range of options that supports individuals' life choices, yet family life is an area deeply intertwined with one's "good personal life." This paper reconstructs Raz's concept of autonomy-based principle as "relational autonomy," incorporating human vulnerability and inter-dependence, and puts it as a normative foundation for legal institutions that support intimate relationships.

This paper further explores the connection between care ethics and the family. Rather than defining "family" strictly by procreation or blood ties, it relies on the broader idea of "family resemblances." It specifically highlights the "intimate sphere," which is built upon concrete relationships of care among its members. Because care ethics is rooted in human vulnerability and interdependence, it promotes norms that strive for equality while still recognizing that relationships are often asymmetrical. Building on this, instead of viewing autonomy as an isolated capacity for independence, the paper treats it as a practical concept shaped by social connections that naturally involve dependence and care. As a result, the government has an institutional responsibility to support care relationships in general,

rather than limiting its focus solely to marriage. Marriage itself should be reimagined, not as an institution centered on sexual exclusivity and reproduction, but as a framework that nurtures caring social bonds, including parent-child relationships.

On this theoretical framework, this paper turns recent transformations in Taiwan's marriage law. Through constitutional interpretation, marriage in Taiwan has been repositioned as a fundamental right that protects personal autonomy and dignity. After the legalization of same-sex marriage, the decriminalization of adultery has catalyzed an institutional shift, dissociating marriage from traditional duties of fidelity and norms of sexual exclusivity.

Furthermore, the "Diverse Family Formation" (duō yuán chéng jiā 多元成家) bill proposed by TAPCPR in 2013 represented a significant milestone. It sought to institutionalize cohabitation based on relations of care as an alternative to family models centered strictly on marriage and procreation. Although the bill ultimately failed due to public opposition with its strong ethical values, these developments indicate that Taiwan's legal framework is gradually reorienting marriage from an institution of procreation and exclusive pairing toward one that sustains autonomy and care. This paper clarifies the theoretical significance of this shift and explores a future agenda: how non-heteronormative care relationships beyond same-sex marriage might be incorporated into legal institutions.

WHAT ARE THE LEGAL EFFECTS OF SOFT LAW?

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ABSTRACT

This paper aims to clarify what the legal effects of soft law consist of and under what conditions they arise. The question is far from trivial: soft law instruments are commonly characterized by their lack of binding force, yet legal scholars and practitioners increasingly recognize that they can produce genuine legal consequences. Understanding precisely when and how this occurs remains one of the central unresolved problems in the theory of soft law. The paper begins by reviewing the standard account of soft law's indirect legal effects, as developed by leading scholars such as Linda Senden and Emilia Korkea-aho. According to this account, soft law produces legal effects only when binding legal provisions incorporate or refer to it — whether through legislation, international treaties, contracts, or judicial precedent. The paper argues, however, that this characterization is both incomplete and conceptually imprecise, as it conflates the distinct notions of legal effects and bindingness. A central contribution of the paper is the distinction between legal effects and bindingness, situating the latter within the broader concept of legal relevance. Not all legally relevant effects are binding, and equating the two leads to a systematic underestimation of soft law's normative reach. Drawing on the theory of directives, the paper further introduces a distinction between normative and non-normative directives — the latter encompassing recommendations, advice, and plans — and examines how these two categories differ in their legal force and relevance. On the basis of these conceptual distinctions, the paper argues that soft law directly modifies the legal positions of at least some subjects — most notably adjudicatory bodies — even in the absence of any incorporation or referral by binding norms. When soft law takes the form of recommendations or advice, it generates atypical legal positions that the existing literature has largely overlooked. These effects are direct in the

sense that they do not depend on the mediation of binding legal instruments. Finally, the paper shows that under certain specific conditions, soft law may also produce direct binding legal effects. This occurs not through incorporation into binding documents, but through mechanisms internal to legal reasoning and institutional practice. The paper concludes by outlining the implications of this analysis for the broader theory of legal sources and for the practical operation of legal systems in which soft law plays an increasingly prominent role.

Keywords: soft law; legal effects; non-normative directives; legal justification; bindingness.

SOFT AUTHORITY

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ABSTRACT

This paper analyzes the notion of authority in law and its relationship with the phenomenon of soft law, challenging the widespread view that the latter lacks authority and, therefore, legal relevance. The starting point is the conceptual ambiguity of authority, which can be understood either in terms of its origin—who issues the statement—or its effects—the capacity to generate reasons for action or belief independently of its content. In the legal domain, authority is traditionally manifested as the right to issue pronouncements that must be complied with. This right may be grounded in legal norms (normative authority), in the legitimacy of the issuer, or in the presumption of correctness of its decisions. Authority also produces characteristic effects: it turns pronouncements into sufficient reasons for action, which raises tensions with practical rationality, as it implies accepting decisions without evaluating their content. The text distinguishes several types of authority relevant to the analysis: normative authority, based on rules of competence; epistemic authority, grounded in the subject's expertise and reliability in generating knowledge; and deontic authority, aimed at guiding action through value judgments. These categories show that authority is not a homogeneous phenomenon but a complex structure combining normative, social, and epistemic elements. A key element in explaining authority is recognition by a reference community. Without such recognition, authority lacks practical effectiveness. However, reducing authority to mere recognition is insufficient, as it fails to account for its normative dimension and the criteria that justify such recognition. Authority must therefore be understood as a combination of social recognition and normative justification. On this basis, the paper examines soft law, questioning the claim that it lacks authority. It argues that, although soft law does not possess binding force in the strict sense, it may still enjoy different

forms of authority. In particular, its relevance often derives from the epistemic authority of its issuers—such as experts, technical bodies, or academic institutions—and, in some cases, from a form of formal authority linked to their institutional position or to mechanisms of normative reference. Soft law can function as an interpretative, integrative, or specifying instrument of hard law, providing criteria that influence the application of legal rules. In this sense, its effectiveness does not necessarily depend on its normative character but on the trust it generates as a reliable source of knowledge or as a practical reference for decision-making. Moreover, in certain contexts—such as dynamic references—it may acquire a dimension close to normative authority. Finally, the paper suggests that the authority of soft law cannot be reduced to a single category but should be understood as a combination of epistemic, formal, and social elements. This approach helps overcome the dichotomy between binding and non-binding law, showing that legal influence can also operate through indirect mechanisms based on authority and trust. Consequently, soft law is not a marginal phenomenon but a significant expression of contemporary transformations in law and its modes of normative production.

Keywords: soft law; legal authority; epistemic authority; normative authority; legal interpretation.

RECONCILING NORMATIVITY WITH LEGAL CERTAINTY: DIRECTIVE PRINCIPLES OF STATE POLICY AS SOFT LAW IN THE INDIAN CONSTITUTION

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ABSTRACT

One of the novel features of the Constitution of India is that it contains certain Directive principles of State Policy issued to the legislature and the executive for their guidance to exercise their respective powers. It is clear from the provisions of Article 37 that these Directives are not justiciable in a court of law. Nevertheless, these moral codes are fundamental in the governance of the country and it shall be the duty of the state to apply them in making laws.

Critics have questioned the significance of the Directives on the ground that they are not enforceable. They argue that no matter how lofty the ideals contained in the Directives may be, they have no utility. They are merely theoretical and not practical.

In view of the above, this research paper examines whether and the extent to which Directive Principles of State Policy has bridged the gap between constitutional ideals and values on the one hand and legal certainty and enforceability on the other, thereby adding an element of normativity and idealism in the realm of legality.

The paper is structured as follows. In Part I, the rationale for labelling Directive Principles as soft law will be discussed. Part II will examine the ideals and values reflected in the Directive Principles. In Part III, some specific Directives will be cited to show how normativity acts as an alternative to legal obligations. Part IV will demonstrate the transition from normativity to legality, culminating in the transformation of soft law into hard law. Part V will illustrate the role of soft law as a catalyst to judicial decisions. Part VI will summarize the concluding observations of the paper.

Keywords: Directive Principles of State Policy, soft law, normativity

ONE LAW TO RULE US ALL – AND QUASI-NORMS TO BIND US IN THE DARK

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ABSTRACT

This paper starts from a deliberately strict constitutional premise. In Hungary, generally binding rules of conduct for citizens may be laid down only in the Fundamental Law or in legislation adopted by an organ empowered to legislate and promulgated in the official gazette. The attractiveness of this premise is its apparent clarity. It promises a clean boundary between law that binds outwardly and internal instruments that merely organise state action. My claim is that Hungarian practice systematically destabilises this boundary across all three branches of power, not by openly denying the constitutional rule, but by producing citizen shaping constraint through formally non legislative forms.

In the executive branch, the government resolution is not legislation, yet it frequently operates as an instrument of normative steering whose effects travel outward through implementation chains. A government resolution reallocates tasks, priorities, resources, and deadlines within the administrative hierarchy, and subordinate bodies translate this into individual administrative decisions, procurement specifications, funding criteria, inspection priorities, and enforcement sequencing. The citizen is not the formal addressee, and explicit sanctions are typically absent. Still, compliance becomes rationally unavoidable because consequences appear downstream, where the administration controls access to benefits, permissions, and risks. The resolution therefore resembles a lex imperfecta, not because consequences do not exist, but because they are displaced from the text into the structure of executive capacity.

In the judiciary, the puzzle is sharper. Uniformity Decisions of the Kúria (Supreme Court) are not legislation and they bind only courts. Their force is internal in addressee terms, yet it produces general effects in con-

sequence terms. The statute links binding force to publication in the National Gazette, and from that moment the decision binds all courts. This generates an intra erga omnes configuration, meaning internal addressees and effects towards all. Citizens are not directly commanded, but their conduct is indirectly regulated through the predictability of adjudication. Litigation strategies, settlement incentives, contractual drafting, and even everyday compliance are adjusted to the compressed interpretive space that uniformity decisions impose on courts. Here, too, the decisive engine is a power guarantee. The state's capacity to decide cases authoritatively replaces the explicit sanction clause.

The legislative branch seems, at first glance, immune. Parliamentary resolutions and Standing Orders do not typically impose duties on citizens. Yet they operate as meta norms that structure what may become legislation and how, including agenda control, admissibility, sequencing, and temporal compression of deliberation. This invites a Hartian reframing. The rule of recognition is a secondary rule that validates sources, yet it is not itself a typical primary duty imposing norm. In the parliamentary setting, this resolutions (orders) can function in an analogous way. They are not ordinary law for citizens, but they gatekeep the production of ordinary law, and thereby exert soft power over the content and legitimacy of legislative outputs.

Soft law should not be defined by non binding language. It should be defined as displaced constraint backed by a power guarantee. Legislation is distinguished not by behavioural impact, but by constitutional discipline, namely authorised authorship, outward publicity as a condition of validity, and direct avenues of legal contestation. Soft law becomes problematic precisely when effects are achieved without fully carrying those burdens.

Keywords: lex imperfecta, quasi-norms, government resolution, uniformity decisions, standing orders, soft laws.

EMERGING NORM AS A DYNAMIC CONCEPT WITHIN SOFT LAW

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ABSTRACT

In this paper, the concept of emerging norm is understood as a narrower and more dynamic concept within the broader field of soft law. While soft law generally refers to norms that do not possess the full formal binding force of hard law, the notion of emerging norm highlights the process through which such a norm, under the influence of legal texts, customs, culture, and adjudicative practice, gradually acquires the features of legal relevance and may eventually become a basis for legal decision-making. In other words, soft law describes the status of norms that are not yet fully binding, whereas emerging norm captures the direction of development of some of those norms toward a higher degree of legal character.

This paper starts from Alf Ross's theory of the sources of law and, on that basis, proposes a four-element structure for analysing the concept of an emerging norm. These four elements are: (1) the development of a norm from a moral or conventional sense of obligation toward a sense of legal obligation, (2) the role of normative ideology in recognising a norm as legally relevant, (3) the decisive function of judicial or quasi-judicial bodies, which may confirm such a norm through decisions connected with coercive enforcement, and (4) the influence of three groups of factors — formulated legal norms, customs, and culture — on the development of that norm. On this basis, an emerging norm is understood here as a norm that has not yet been fully confirmed as law, but is developing in that direction and may become a basis for legal decision-making.

The paper then tests this four-element structure against contemporary authors writing on soft law. The comparison shows that the same core elements can be identified in the works of Jaap Hage, Pauline Westerman, Marcel M. T. A. Bruss, Stephan Kirste, Antonia Waltermann, and Anne Ruth Mackor. These authors likewise recognise that norms may exist in

degrees, that their legal relevance depends on their usability in legal reasoning and argumentation, that courts and other adjudicative bodies play a central role in their legal confirmation, and that their significance depends not only on formal pedigree but also on custom, practice, attitudes of relevant actors, and broader legal culture. In this way, the paper argues that the proposed model, derived from Ross, provides a coherent analytical framework for understanding how certain forms of soft law may develop into emerging norms.

Keywords: emerging norm; soft law; Alf Ross; sources of law; legal validity; bindingness

THE LEGAL UNDERGROWTH EXAMINED: INFRA-LAW, SOFT LAW, AND FRONTLINE (ADMINISTRATIVE) DECISION-MAKING

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ABSTRACT

This paper investigates a set of regulatory instruments that operate at the margins and beneath the surface of the legal system and that I propose to name "infra-law". The term refers to a heterogeneous group of administrative instruments – such as circulars, guidelines, protocols, notes, recommendations, and even FAQs and tweets – that are formally excluded from the standard catalogue of legal sources, yet play a decisive role in the regulation of social relations. These instruments are typically presented as merely interpretative or technical, but in practice they often specify, supplement, or even modify the content of binding legal norms. As a result, infra-law occupies a structurally ambiguous position: it is neither law in the strict sense nor a purely non-normative form of guidance.

The central claim of the paper is that infra-law exerts a strong behaviour-guiding and decision-shaping function despite lacking formal legal validity. This function is not grounded in binding legal force, but in the institutional authority of the actors who issue infra-legal instruments and in the hierarchical organization of administrative decision-making. In particular, infra-law is predominantly employed in "frontline" administrative contexts, where lower-level officials rely on it to decide concrete cases. From their perspective, infra-law often operates as a de facto obligatory standard, even when it goes beyond or even contradicts the content of superior legal sources. This phenomenon raises significant challenges for traditional source-based and validity-centred accounts of legal normativity, which struggle to explain how formally non-legal instruments can function as sources of legal action.

Against this background, the paper examines the relationship between infra-law and soft law. Infra-law shares several features commonly associated with soft law – most notably its (supposedly) non-binding character, its in-formality, and its role in guiding behaviour. However, it is questionable whether it can simply be equated with it. I argue that the distinction between the two cannot be drawn solely on the basis of formal criteria or types of instruments. Instead, it depends on their function and use within administrative practice. It seems that whereas soft law typically aims to facilitate the implementation or interpretation of de jure legal policies, infra-law often enables the pursuit of de facto regulatory strategies that deviate from, or even circumvent, the formally established legal framework. From the standpoint of frontline officials, infra-law is frequently perceived as practically binding in a way that soft law is not.

ROLES BEFORE RULES: RETHINKING THE HARD/SOFT LAW DISTINCTION

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ABSTRACT

This paper revisits the classical intuition that the distinction between "hard" and "soft" law is essentially a distinction between binding and non-binding norms. While this binary model is descriptively elegant, it remains operationally incomplete, failing to capture how non-binding instruments—recommendations, guidelines, and communications—increasingly shape behavior and structure decisions in multilayered governance environments. In the modern administrative state, soft law is not normatively inert; it functions as the "legend for the map," guiding the interpretation of binding directives and structuring administrative discretion.

To resolve the paradox of how non-binding instruments produce decisive legal effects, the paper proposes a fundamental shift: from viewing hardness and softness as intrinsic properties of rules to viewing them as properties of role performance. Hardness and softness, it argues, belong neither to the text itself nor to the institution in the abstract, but to the specific mode in which an institutional role is performed. Under this model, an instrument produces "soft" effects when a role is performed in a soft mode oriented toward coordination and signaling. Conversely, the same instrument produces "hard" effects when an adjudicative or supervisory role operates in a hard mode, mobilizing institutional resistance by integrating the instrument into the interpretation of binding norms or using it as a benchmark for fairness and consistency.

The paper specifies the structural mechanism underlying this shift by distinguishing between the act of issuance and the act of activation. It argues that "softness at birth" is merely an illocutionary attribute—a speech act performed from an advisory position—that carries no predictive value for downstream behavior. Instead, operational hardness emerges only at the point of application, where a role chooses to perform its function in a

way that makes deviation from the norm untenable. This includes generating legitimate expectations, requiring a reinforced duty of motivation for departures, or triggering incidental effects where unjustified deviations result in the annulment of acts for violating general principles of law.

The analysis demonstrates that legal normativity is a relational function of institutional positions acting from the authority of their office—effectively saying, "From here, let this be so". The paper concludes that while bindingness remains a binary property, the actual force of law depends on the modes of role performance sustained across time. By shifting focus from the sovereignty of text to the sovereignty of roles, the account provides a more accurate map of legal authority, clarifying how non-binding instruments decisively influence the interpretation, application, and validity of the law.

SOURCES OF LAW AND THE CHALLENGE OF SOFT LAW

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ABSTRACT

The various soft law instruments currently employed, both at the international and domestic levels, attest to the growing prominence they have acquired in legal practice, even though they have yet to become a central topic of discussion in legal theory. This article argues that, given the current landscape and the effects that soft law instruments in fact produce across a range of law-governed practices, it is necessary to revisit the classical theory of sources of law in order to determine whether its present design is capable of accommodating soft law within legal orders, or whether, on the contrary, it requires revision so as to arrive at a plausible explanation or a workable theoretical home for this phenomenon.

SOFT LAW AT THE LIMITS OF LAW: THE AI ACT'S PENDULUM PARADOX

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SW30 · Soft Law: At the Limits of Law
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ABSTRACT

The proliferation of soft law instruments in contemporary regulatory practice has outpaced the theoretical frameworks designed to account for them. The problem becomes acute when soft law is assigned – by deliberate legislative choice – the task of filling the gaps of a structurally incomplete normative framework. This is precisely the logic underlying the EU Artificial Intelligence Act (AIA, Regulation 2024/1689), which treats Commission guidelines, not as an accessory to binding law, but as the mechanism through which otherwise inoperative provisions are rendered applicable.

That choice is rooted in the AIA's foundational commitment to technological neutrality, understood not merely as a principle of non-discrimination between equivalent technical solutions, but as a technique of legislative delegation: by deliberately abstaining from technical specificity, the legislature transfers to the Commission the task of resolving questions of considerable political sensitivity – harm thresholds, manipulative practices, the limits of automated decision-making – that are intrinsically value-laden and properly belong to the democratic process.

The paper argues that this structure generates an irresolvable paradox, here termed the pendulum paradox. Guidelines adopted under Article 96 AIA oscillate between two ideal turning points: full binding force, and sufficiently persuasive authority (which would generate voluntary convergence). The pendulum cannot stabilize at either pole: the guidelines cannot acquire binding force, for want of procedural legitimacy and normative anchoring; nor can they develop sufficient persuasive authority, given their technical imprecision and their encroachment on value-laden choices beyond their institutional competence. Lacking any arresting mechanism, they continue to swing, and the point at which they inevitably come to rest

is the center of the arc, where applicative fragmentation and legal uncertainty are at their peak.

The paper then traces how the November 2025 Digital Omnibus on AI initially deepened the paradox by transforming guidelines into gatekeepers (suspensive conditions for the entry into force of obligations applicable to high-risk systems) before partially retreating from that position.

The AIA case thus exposes a pathology of contemporary regulatory soft law: when soft law is called upon to substitute for deliberately incomplete legislative choices, it does not merely stand at the limits of law. It stands in place of it. That substitution is not an accidental dysfunction, but the necessary product of a normative technique – technological neutrality as delegation – that legislators continue to deploy. Identifying the structural conditions under which soft law can legitimately operate, and those under which it cannot, remains an open task for legal theory, with direct consequences for legal certainty and democratic accountability.

TOWARDS THE ENDS OF TIME: BIBLICAL APOCALYPTIC THOUGHT, ITS SECULAR TRANSFORMATIONS, AND THE MAKING OF HISTORICAL CONSCIOUSNESS

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SW31 · Finality and Normative Order: Apocalyptic Imaginaries in Law, Politics and Ethics
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ABSTRACT

In the paper, I argue that apocalyptic imagination has been one of the most powerful—and least acknowledged—forces shaping Western understandings of time, history, progress, and crisis. The paper traces how biblical apocalyptic motifs, originally eschatologically oriented toward divine intervention and cosmic renewal, were gradually reinterpreted in secular contexts from the Enlightenment to modern political ideologies. It shows how concepts such as linear time, historical rupture, collective destiny, and the expectation of radical transformation migrated from theological frameworks into philosophies of history, revolutionary movements, and contemporary narratives of global risk. By examining this long arc of transformation from revelation to revolution, the study demonstrates that modern historical consciousness—often presumed to be thoroughly secular—remains structurally indebted to apocalyptic patterns of thought. The paper concludes by assessing how these inherited frameworks continue to inform present-day imaginaries of catastrophe and renewal, from climate discourse to technological futurism, and considers what it means to inhabit a historical imagination still shaped by the ends of time.

ON THE RELATION 'THEOLOGY (RELIGION)-POLITICS (LAW)': SOME INSIGHTS BETWEEN PAST AND PRESENT

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ABSTRACT

The proposal schematically grounds in the following four passages closely related to each other.

1. Background. Some short remarks about the trinomial theology-politics-law (historical references and conceptual passages) and its theoretical relevance. 2. Classical reference, On Carl Schmitt's thesis: elements for a conceptual rediscovery of his position as a reading grid.

3. Contemporary debate. "Teleological" re-legitimation of politics and law: historical-conceptual images from the contemporary scenario. 3.1 Political polarization: the pair good-evil of the Eighties. 3.2 Political depolarization after "1989": from Fukuyama to Huntington through the "American theological debate". 3.2 The "new" polarization: a comparison between American context and Russian universe (Dugin and beyond Dugin). 3.3 The horizon of the "Armageddon" (as an apocalyptic perspective): three possible meanings of the apocalyptic political orientation (revolutionary, conservative, nihilistic).

4. Some conclusive considerations. Some questions (or spots) in sequence. 4.1 Can we understand the Renaissance of the relation theology-politics (law) as a crisis of the modern model of law and politics (and not only as an impasse of the international relations)? 4.2 Has this phenomenon any relations with the crisis of the idea of "democracy" dating back to the modernity? 4.3 What are the reflexes in order to grasp the crisis of the relation between "law" and "force"? 4.4 Can we re-read the "new" nexus theology (i.e. religion)-politics (law) in terms of research of "another" legitimation beyond the neo-contractualist (pragmatic, functionalist) perspective? Is this a theological relegitimation? 4.5 Should we deepen the

problematic relation between “rational/strategic” politics and “other (Western and non-Western) cultural horizons”? 4.6 Does theology represent a sort of ethical/theoretical reserve? 4.7 Can we draw a mutual theoretical exchange between law and theology (see also the first point of this abstract)? What can give law to theology? 4.8 Does the new relation theology-politics imply a instance of radical “foundation” (including the apocalyptic projection)? 4.9 Should we move to a new model of temporality? In other words: does the apocalyptic perspective open up to a new concept of the historical sequence (according to a mix between biblical references and Greek/Stoic philosophy)? 4.10 Should we explore the unitive as well as oppositional structure of the theological dimension involving a rich repertoire of theoretical imaginaries (including its possible differences/analogies with law and politics)?

FROM APOCALYPSIS TO AUTOCRACY: HOW CONTEMPORARY CONSTITUTIONALISM (DOES NOT) HANDLE UNCERTAINTY

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ABSTRACT

The presentation brings together an analysis of the imagery of popular apocalyptic Hollywood films and mainstream constitutional discourse on emergency to demonstrate how both contribute to normalising and legitimising what may be termed a Schmittian conception of emergency. This conception, rooted in the writings of Carl Schmitt, is characterised by two central features: exceptionalism and individualism.

Exceptionalism frames an emergency as a rupture, a state of exception that demands equally extraordinary responses—whether legally sanctioned or not—capable of suspending the ordinary operation of the normative and institutional framework of constitutional democracy. Individualism, in turn, centres on the figure of a powerful individual, an actor who assumes the role of a katechon: one who can prevent an impending catastrophe. As the presentation argues, the combined effect is a tendency toward autocratic developments in legal and political systems—an outcome that appears inherent in the very notion of the state of emergency.

The centrality of the state of emergency as the primary conceptual tool for addressing risks and uncertainties thus reveals a significant limitation of contemporary constitutionalism. Against this backdrop, the presentation asks whether an alternative approach is possible—one that enables societies to confront uncertainty while remaining anchored in democratic institutions and faithful to fundamental constitutional principles.

THE (ANTI) APOCALYPTIC NATURE OF LEGAL POSITIVISM

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ABSTRACT

The apocalypse, in its very essence, is a transgression of the boundaries of history, which "situates the tragedy between God and the world within man" (Taubes, 2016, p. 9). Man enters history by emancipating himself from the necessity imposed by God or nature. For as long as he remains bound by the mechanisms of the cycle of nature, his actions are merely the result of external determinants. "It is only freedom that lifts man out of the cycle of nature into the realm of history" (Idem, p. 9). If freedom is the essence of history, then its transgression – its apocalyptic quality – becomes a concept of political (social) philosophy.

By rejecting the world, the apocalypse reveals itself in full as a political concept of a revolutionary nature. Radical social change, which aims to completely transform all aspects of human social life, carries with it an apocalyptic power. The apocalyptic force of 'the destruction of forms' (Idem, p. 15) must therefore, conceptually, come into conflict with the force that petrifies the social world or transforms it in an evolutionary (and thus anti-revolutionary) manner, namely the law. This raises the question of whether law is an anti-apocalyptic concept. Answering this question requires an analysis of the central contemporary theory of law: legal positivism.

The central thesis of political theology states that all significant concepts of the modern theory of the state are secularised theological concepts. Although it was announced urbi et orbi by Carl Schmitt (1922; see: 2005, p. 36), who claimed that the transfer of the concept of God from the realm of theology to the realm of science of the state led to the emergence of the idea of an omnipotent legislator, this thesis found its surprising continuation in the reflections of Carl Schmitt's main opponent, the creator of the

"pure" form of continental legal positivism (Paulson, 2012), Hans Kelsen. In his 1923 article, significantly titled "Gott und Staat", the Viennese scholar demonstrates that religious and social experience have a common source structure in the form of experiencing subordination to a supra-individual authority, which in religion is God, and in social life is the State. These two concepts therefore have the same psychological ("spiritual") source, i.e. the mechanism of substitute Father figures described by Sigmund Freud (Freud, 1913; see: 2004).

Is it therefore possible to identify an intellectual moment when Carl Schmitt and Hans Kelsen held identical positions on the theory of the state and law? Nothing could be further from the truth! Theological themes in the analysis of the state, the legislator and the law lead the Viennese scholar to consistently rejection of the Berlin scholar's decisionism. Sovereign power above the law is negated by Hans Kelsen's monistic approach to the relationship between the state and law. In his view, religious concepts of God are not only transplanted into the science of the state, but also unjustifiably hypostasised into the figure of an omnipotent legislator standing above the law. Meanwhile, in terms of "pure" legal theory, the state is a legal entity constructed by a system of competence norms. The state is identical with the law, and therefore in Hans Kelsen's positivism the "God" of political theology undergoes a pantheistic fusion with the "world" of the legal system. Immanence as the principle of the state - law (resp. lawmaker - law) relationship thus precludes any apocalypse. If, following Jacob Taubes, we understand apocalypse as a category of political philosophy, the essence of which is the transcending of history and the "revelation" of what is "hidden" (2016, p. 11), then Hans Kelsen's legal positivism – normativism – is a radically anti-apocalyptic project. Even the most brutal revolution, with its crushing force of change, cannot interrupt the history of the legal system, which takes place in the sphere of norms (Sollen): the Grundnorm (Basic Norm) is the only source of the validity of positive law and, thus, of the system of competences that constitute the state. At most, a revolution can change the historical entity that occupies the place of the constitution-maker in the Grundnorm formula, but it can never become a new beginning for the legal system (Kelsen, 1934; see: 2002, pp. 59-61). The legislator cannot decree a sovereign exception that would suspend the validity of the law, because at that very moment it would negate its own

existence – it would become unrecognisable, because at the epistemological level, it is the knowledge of the law that allows us to know the state and vice versa.

However, Hans Kelsen's normativism is a case of "positivism without naturalism" (Paulson, 2012, pp. 27-34). Meanwhile, in the common law legal culture, since the time of Jeremy Bentham and John Austin, there has been a formation of naturalistically oriented legal positivism, whose successor was Herbert Hart (1961). The rule of recognition, which is constitutive for the system of legal rules, finds its basis in social convention and therefore cannot be equated with the Grundnorm, which is a transcendental-logical assumption. The naturalistic foundation of Herbert Hart's "sophisticated" legal positivism suggests that, due to its anti-metaphysical assumptions, the apocalypse is eliminated. However, we should once again listen to the lesson of Jacob Taubes, who (nomen omen) reveals that atheistic-materialistic philosophies are also essentially apocalyptic (2016, p. 11). What kind of apocalypse is possible in the case of naturalistically oriented legal positivism? This question sets the main theme of the chapter under preparation.

ACADEMIC LEGAL EDUCATION AND BILDUNG IN THE POSTHUMOUS CONDITION: PREPARING LAW STUDENTS FOR THE APOCALYPSE

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ABSTRACT

Contemporary society faces existential threats – ecological collapse, pandemics, armed conflicts, and other systemic crises – that challenge human institutions. These developments reveal the limits of traditional education and the need for learning that fosters critical reflection, ethical awareness, and practical judgment.

Bildung, understood as the cultivation of self through education, offers a framework for addressing these challenges. Marina Garcés' concept of the posthumous condition (Garcés 2017) – living as if humanity's future is already at risk – calls for education that cultivates awareness of human vulnerability, interdependence, and ethical responsibility.

For law students, Bildung must extend beyond technical proficiency. Academic legal education should help students grasp law as embedded in ethical, social, and ecological contexts. Following Martha Nussbaum (1994), capacities for moral imagination, practical judgment, and ethical discernment are essential for responsible action amid uncertainty.

Drawing on the Stoic exercises described by Pierre Hadot (1995), education can train students to confront finitude and systemic fragility with composure and self-awareness. Legal education, thus conceived, equips students to navigate existential threats, develop critical judgment, and envision forms of justice attuned to a world of complex interdependence and inherent fragility.

THE CLEFT HABITUS OF LAWYERS

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ABSTRACT

Habitus, one of the fundamental concepts of Pierre Bourdieu's sociology, is briefly a set of dispositions that enables individuals, who are part of a group, to produce common and automated responses to the events they encounter. Through habitus, an individual internalizes the functioning of structures within society, the hierarchies they create, and the social norms that develop in parallel and shapes his actions accordingly. In this way, social relations are maintained in a predictable manner, and social reproduction is achieved without damaging existing relations of domination. The habitus of lawyers develops in their minds from the very beginning of their legal education. This habitus creates a tendency among lawyers to approach to events based on normative categories, to think in a text-oriented manner, and to develop a professional consciousness rooted in the status provided by the power established over legal language. Although habitus is a durable structure, a cleft may occur particularly during moments of sudden changes or social crisis, where automated responses fail to produce practical solutions due to changing conditions. With neoliberalism and globalization, the flexibilization of law through privatized mechanisms like arbitration, the spread of deregulation, the "white-collarization" and precaritization of lawyers are altering the nature of legal professions and causing such a cleft in the habitus of lawyers. The reality of the legal world, constructed through rituals, is being shaken by political shifts, a situation voiced even in international gatherings such as the World Economic Forum attended by high-level politicians. Although a cleft habitus can often be adjusted by its adaptation to new conditions, in some cases, it can open the door to social transformations. Accordingly, this study examines the possible consequences of the cleft created in the habitus of lawyers by ongoing political and legal transformations.

FROM SADE TO MUSK: ROMANTIC ROOTS OF APOCALYPTIC THINKING AND TOTALITARIAN SYMPATHIES

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ABSTRACT

For some the end-time appears imminent, almost tangible. Contemporary technological elites envision an end-time as a precursor to a future of peace governed by advanced technology.

This contribution examines the aesthetics of apocalyptic discourse with particular attention to its connection with the sublime. I focus on the eighteenth and nineteenth-century theories of the sublime and analyse their persistence in liberal ideology and contemporary totalitarian sympathies.

The first part presents apocalyptic thought as a philosophy of history that emerges in response to a present perceived as chaotic. The second part argues that apocalyptic thought is fundamentally a discourse of the sublime. To substantiate this claim I analyse the history of ideas of the sublime. The sublime ranges from awe to what Baudelaire calls the 'taste of nothingness' and to a fascination with evil (Sade), in line with Mario Praz The Romantic Agony. Many of these notions recur in contemporary apocalyptic discourse and imagery.

However, eighteenth and nineteenth-century female epistolary writers find the sublime in nature or in certain architecture. They express wonder and enthusiasm in a more immediate and experiential style. At times, they acknowledge the impossibility of fully representing their impressions, thereby anticipating Lyotard's notion of the sublime as the unrepresentable. Often they dispute Burke's qualification of the sublime as tied to the masculine and beauty to the feminine. The 'epistolary sublime' reveals apocalyptic discourse as a gendered discourse of the hyperbole that conceals existential dread, a desire for knowledge and freedom and a fear of the fall.

The third part argues that the sublime is also integral to legal theory and liberal ideology. Liberal rights and the search for justice can be understood as manifestations of the sublime, insofar as they promise freedom and subjectivity that remain structurally unfulfilled. Confronted with the limits of human agency, these sublime promises may generate compensatory apocalyptic imageries that elevate sublime technology as a last resort and may ultimately give rise to totalitarian sympathies.

NO COPY OF THE ORIGINAL: NORMATIVE ORDER AND THE STRUCTURAL LIMITS OF EUROPEAN BIOTECHNOLOGY REGULATION

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ABSTRACT

J.W. von Goethe wrote that "we are, and ought to be, obscure to ourselves, turned outwards, working upon the world which surrounds us. We see ourselves, and therefore come to know ourselves, only indirectly, through our engagement with the world at large" (Goethe, 1833/1991). Legal regulatory systems governing human enhancement have inverted this orientation. They turn inward, designing the human from within, losing the external reference point that makes self-critique possible. This proposal examines a structural tension at the heart of biotechnology regulation: the covert operationalisation of natural law limits by a legal system that refuses to acknowledge them.

KNOWING THE LAW: SOCIAL EPISTEMOLOGY AND THE JUSTIFICATION OF LEGAL BELIEFS

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ABSTRACT

This paper examines the epistemology of legal knowledge from the perspective of social epistemology, focusing on the justification of legal beliefs and the role of social factors in their formation and validation. It begins by distinguishing between "legal epistemology," traditionally concerned with the proof of legally relevant facts, and the epistemology of legal knowledge properly understood, which addresses the conditions under which beliefs about the existence and content of legal norms are justified.

The analysis explores three main models of justification: foundationalism, holism, and reliabilism. While foundationalist and holistic approaches have influenced legal theory—particularly in natural law and positivist traditions—both face significant difficulties in explaining how legal beliefs are justified. In contrast, the paper defends a reliabilist account, according to which legal beliefs are justified when they are produced by reliable processes that tend to generate true beliefs.

The study then turns to social epistemology, emphasizing that legal knowledge is not only an individual cognitive achievement but also the result of social practices and institutional frameworks. Drawing on the work of theorists such as Goldman and Fuller, the paper highlights the importance of communication, testimony, and the division of epistemic labor in the acquisition of legal knowledge. In particular, it underscores the role of epistemic dependence, as individuals frequently rely on the testimony of experts and authorities to form justified legal beliefs.

The paper identifies a triple dimension of the social factors affecting legal knowledge: their role in shaping the object of knowledge (the law as a socially constructed reality), their influence on the justification of beliefs

(through socially structured practices of information transmission), and their impact on epistemic conditions, both objective and subjective. These include access to legal information, institutional reliability, and the cognitive capacities of individuals.

Finally, the paper addresses the normative dimension of legal epistemology, arguing that the justification of legal beliefs entails responsibilities and duties. It suggests that, while there may not be a strict legal duty to know the law, there is a strong normative expectation that legal systems ensure broad and equitable access to legal knowledge. Ultimately, the paper defends the view that improving the social conditions of knowledge production and dissemination is essential for the effectiveness and legitimacy of law.

Keywords: Legal knowledge, Social epistemology, Justification, Reliabilism, Epistemic dependence.

FORMAL PROMULGATION VS. EPISTEMIC ACCESS: PEOPLE ENFORCE INACCESSIBLE RULES DESPITE RECOGNIZING THEM AS UNFAIR

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ABSTRACT

Legal and political theorists argue that laws must be public to guide individual behavior, and lay judgments appear to endorse this principle. Yet publicity is often reduced to mere formal promulgation rather than actual accessibility — a distinction that raises a deeper conceptual question: does legal responsibility require only that a rule was validly issued, or that it was genuinely knowable by those subject to it? Across three experiments, we find a dissociation between normative judgments and enforcement behavior. While participants are reluctant to ground legal responsibility on rules that are kept secret, they treat formally promulgated but practically inaccessible rules as capable of grounding responsibility. When considering an imaginary society (Experiment 1), participants judge the enforcement of such rules as relatively unfair and recognize that violators are unlikely to have known them. Yet, in an incentivized economic game (Experiments 2 and 3), participants nevertheless impose costly punishment on rule violators under these same conditions. These findings suggest that, despite normative views about how the law should operate, people in practice enforce formally promulgated rules even when they are not practically accessible. Conceptually, this reveals a folk jurisprudential tendency to treat formal legal validity as a sufficient substitute for genuine epistemic access — one that operates below the level of reflective endorsement, and that has implications for how we understand the normative foundations of the publicity requirement.

EFFICACY, EPISTEMIC BARRIERS AND EXTRA-LEGAL INSTITUTIONS

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ABSTRACT

Epistemic barriers play a central role in undermining the efficacy of legal systems. In this presentation, I will consider how specific epistemic barriers, such as linguistic obstacles, lack of practical know-how, and limited access to reliable information, prevent certain agents—paradigmatically, migrant populations—from adopting the internal point of view towards legal norms. As a result, the law can fail to perform some of its core functions, like solving collective action problems. In such contexts, extra-legal institutions (e.g., mafias) emerge as functionally equivalent alternatives that reduce these epistemic costs and provide more accessible frameworks for coordination. The aim of the talk, thus, is to consider efficacy as partly dependent on epistemic accessibility when analyzing institutions, thereby contributing to ongoing debates in social epistemology and philosophy of law.

LEGAL UPTAKE, ENFORCEABILITY, AND THE FIDUCIARY STRUCTURE OF LAW

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ABSTRACT

This paper develops a social-epistemic account of legal normativity by shifting attention from the existence or efficacy of legal requirements to the conditions under which their justificatory basis—the ratio legis—remains accessible within a shared practice. Legal normativity, it argues, depends not merely on valid enactment or effective enforcement, but on the sustained availability of socially conditioned pathways through which institutional articulations can be taken up as publicly accessible justifications.

To capture this condition, the paper introduces the notion of legal uptake. Uptake is defined not as compliance, belief, or acceptance, but as the preservation of a social-epistemic environment in which legal requirements remain connected to their justificatory basis in ways that are accessible, assessable, and contestable. This environment is structured through a tripartite circulation of legal-institutional guises: articulation (comprising legislative enactment, administrative implementation, and judicial application), tracking (conformity), and tracing (enforcement). These operations are reinterpreted as differentiated modes of trust-address through a respective tripartite circulation of social-associational guises—invitations, displays, and invocations of public trust—through which legal requirements are integrated into a shared justificatory space.

The paper specifies the epistemic mechanism underlying this structure, arguing that trust is not a substitute for reasons but a second-order epistemic orientation through which institutional acts are treated as sites of justificatory accessibility. Because legal subjects rely on institutions for mediated access to the pathways connecting requirements to reasons, legal

authority is grounded in a fiduciary conception. Under this model, institutions bear responsibility for preserving the availability structure of legal justification. Enforceability, on this view, is reconceived as the capacity of a legal order to sustain these justificatory conditions across time.

The analysis further reinterprets the Rule of Law as the institutional structure of trust-validation. Its familiar requirements—publicity, clarity, prospectivity, consistency, and congruence—are understood as essential conditions for preserving justificatory accessibility. This framework is applied to contemporary forms of algorithmic governance, identifying two distinct justificatory failures: masking failures, where pathways are blocked, and mimicking failures, where the appearance of justification is preserved while its function is displaced. The analysis demonstrates that the central challenge lies in the breakdown of epistemic reciprocity and the inability to integrate technical outputs into a shared justificatory practice.

The paper concludes that legal normativity is a function of the conditions that sustain public justification over time. Where these conditions are systematically degraded, legal authority may persist institutionally and behaviorally, but it increasingly operates as organized power rather than as law.

INDUCTIVE FALLACIES AS A SOURCE OF JUDICIAL ERROR

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ABSTRACT

My aim in this talk is to analyse some key aspects of issues such as testimonial injustice and sound judicial reasoning.

The aim is to examine the inferential problems present in the factual premise of the judicial syllogism; more specifically, problems relating to the sample selected or the type of inductive extrapolation carried out by the judge.

Apart from problems relating to probability and other strictly inferential issues, it is important to take into account the judge's experiences and knowledge in order to determine whether their judgement is subject to any bias.

NORMATIVE PROPOSITIONS IN SOFT LAW: CAN SOFT LAW INFORM CITIZENS ABOUT THE CONTENT OF THE LAW?

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ABSTRACT

This paper examines an underexplored dimension of soft law: its capacity to convey information about the content of binding legal norms. The question intersects two areas that have not received adequate joint attention in legal philosophy — citizens' legal knowledge and the phenomenon of soft law. While Bobbio identified the problem of legal knowledge as central to legal philosophy, subsequent scholarship focused almost exclusively on how jurists and legal scholars know positive law, neglecting the kind of knowledge citizens need in order for law to fulfil its social functions. At the same time, soft law has grown considerably in importance within contemporary legal systems without receiving the systematic theoretical treatment it deserves. The paper begins by clarifying the concept of soft law employed throughout the analysis, understood as a body of normative and non-normative directives — including norms, recommendations, advice, and plans — issued by institutionalized authorities. This definition departs from the standard characterization of soft law as merely non-binding, which the author argues is both theoretically problematic and empirically inadequate. A key analytical contribution is the distinction between directives — speech acts that guide conduct — and normative propositions — statements that describe or report on the content of directives or norms. While the former are action-guiding, the latter are descriptive and truth-apt. The paper argues that soft law instruments frequently contain normative propositions, that is, statements purporting to describe the content of binding legal norms, rather than creating new ones. This phenomenon, which some authors have called informative soft law, has been largely neglected in the theoretical literature. The paper identifies and examines several types of soft law instruments that perform this informative

function: instruments that communicate the interpretive position an administrative authority will adopt; instruments that describe how existing norms apply to specific types of conduct; and instruments directed at citizens that purport to convey what the law requires of them. Each type raises distinct theoretical problems regarding the accuracy, authority, and epistemic reliability of the information conveyed. The analysis concludes that soft law can, under certain conditions, serve as a legitimate and effective vehicle for informing citizens about binding legal obligations, but that its informative function is subject to important limitations. These derive from the structural features of soft law — its non-binding character, its institutional origin, and its variable relationship to authoritative legal sources — as well as from the specific epistemic requirements that legal knowledge must satisfy for law to achieve its guiding function.

Keywords: soft law; normative propositions; directives; legal knowledge; informative soft law.

THE EPISTEMIC RELIABILITY OF THEORIES OF FUNDAMENTAL RIGHTS

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ABSTRACT

This paper aims to address a specific issue concerning knowledge of what is prescribed by fundamental rights norms that recognize or confer fundamental rights. Since these rights relate to aspects of personality or human conduct that are of the utmost importance for the free development of the individual, it seems reasonable that citizens themselves should be able to know, with a certain degree of precision, which forms of conduct are protected by these rights and which spheres of personality deserve protection against illegitimate interference. Any theory of fundamental rights should be capable of providing a satisfactory answer to this question.

This paper seeks to show that Alexy's theory of fundamental rights, by advocating a broad interpretation of the scope of application of fundamental rights norms, fails to take into sufficient account the importance for rights holders of being able to determine, with the greatest possible degree of precision, the deontic range of fundamental rights norms. This criticism constitutes a further argument in support of the positions defended by the narrow-scope theory of the factual assumptions underlying fundamental rights norms.

PROVING CUSTOMARY NORMS: ONTOLOGY AND EVIDENCE IN INTERNATIONAL LAW

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ABSTRACT

This article addresses the epistemological and conceptual challenges involved in proving the existence of customary norms in international law. Its central contention is that the persistent confusion surrounding usus and opinio juris — both in scholarship and in the practice of international tribunals — stems from a failure to distinguish between the ontological question of what customary norms are and the epistemological question of how to establish their existence. Courts applying the two-element formula inconsistently, sometimes privileging State practice and sometimes opinio juris, reflect not merely doctrinal disagreement but a deeper conflation: methodological choices about evidence have been mistakenly treated as revelations about the constitutive conditions of customary norms themselves.

To resolve this confusion, the article develops a framework drawing on legal epistemology, social norm theory, and social ontology. It argues that customary norms are conceptual objects — their existence is grounded in participants' shared normative expectations, not merely in behavioral regularities. This ontological account draws on David Lewis's conventionalist framework, as extended and refined by Cristina Bicchieri's theory of social norms, which distinguishes descriptive norms (mere convergent behaviors) from social norms proper, characterized by second-order normative expectations: the expectation that others expect one to behave in a certain way, and the conditional preference to conform accordingly. On this account, opinio juris does not require demonstrating that States believe their conduct is already legally obligatory — a requirement that has generated both the "chronological paradox" and the influential error-theory critique — but rather that normative expectations are operative and manifested through patterns of practice.

The article makes three interconnected contributions. First, it reconceptualizes usus and opinio juris not as independent variables requiring separate proof, but as parts of a unified inferential procedure: State practice constitutes the evidence base from which the existence of shared normative expectations is inferred. This dissolves the chronological paradox and reveals why both "traditional versus modern custom" distinctions and sliding-scale methodologies rest on conceptual error. Second, it clarifies what adjudicators should be looking for when they seek opinio juris: not expressions of legal belief, but behavioral cues — justificatory discourse, patterns of approval and criticism, and responses to perceived violations — that are best explained by the hypothesis that a normative framework is operative. Third, it proposes narrative reconstruction as the appropriate evidentiary method for proving customary norms: an abductive inference strategy that integrates heterogeneous evidence into a coherent account of the normative expectations underlying State practice, subject to the applicable standard of proof.

DIGITAL BUREAUCRACY, STRUCTURAL ALIENATION, AND EPISTEMIC ACCESS TO LAW

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SW32 · Social Epistemology and Law
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ABSTRACT

The expansion of digital administration has often been presented as a paradigmatic case of institutional rationalization: faster procedures, greater transparency, and improved access to public services. From an epistemic perspective, digitalization promises to reduce information asymmetries between citizens and public authorities by standardizing procedures and facilitating access to legal information. However, this paper argues that, under certain institutional configurations, digital administration may instead generate forms of structural alienation that undermine citizens' epistemic access to law and public decision-making.

The paper develops this claim by combining insights from social epistemology with a critical theory of alienation. Rather than treating digital exclusion as a mere technical malfunction or a deficit in individual skills, the analysis conceptualizes it as a pathology of institutional design. Drawing on Rahel Jaeggi's non-essentialist account of alienation and its recent refinements, alienation is understood not as the absence of participation but as a distorted relation of participation: subjects are formally included in institutional practices yet unable to appropriate them as spaces of agency and understanding.

This framework is applied to a concrete institutional practice that has become widespread in many jurisdictions after the COVID-19 pandemic: the imposition of mandatory electronic appointment systems as a precondition for accessing basic administrative services. From a social-epistemic standpoint, such systems often presuppose forms of digital literacy, technological access, and procedural familiarity that are unevenly distributed across social groups. As a result, certain classes of citizens—particularly older persons, migrants, and individuals with limited digital skills—are

placed in a structurally disadvantaged epistemic position. They are required to comply with procedures they cannot meaningfully navigate, interpret, or contest.

The paper argues that this situation should not be analyzed merely in terms of efficiency or proportionality, but as a case of institutionally produced epistemic injustice. The administrative system becomes opaque and alien to those subject to it, transforming citizens from epistemic agents into passive users who must adapt to processes they neither control nor fully understand. In this sense, digital administration risks reproducing, under new technological forms, classic bureaucratic pathologies traditionally associated with delay, opacity, and irresponsibility.

Finally, the paper explores the normative implications of this diagnosis. It suggests that addressing structural alienation requires more than digital literacy programs or technological fixes. Instead, it calls for explicit institutional guarantees—such as enforceable rights to non-digital access in basic administrative interactions—that reconfigure the epistemic relationship between citizens and public authorities. From the perspective of social epistemology, such guarantees function as conditions of epistemic agency, ensuring that legal subjects can recognize themselves as participants in, rather than mere objects of, administrative governance.

KNOWING THE BOUNDARY. COMPOSITE LEGAL KNOWLEDGE AND THE CADASTRAL PROCEDURE

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ABSTRACT

A functional social epistemology of law treats legal knowledge as a social product whose reliability conditions law's capacity to orient conduct, coordinate, and generate justified trust. This paper argues that at the institutional sites where law most visibly delivers such functional outputs, the 'legal knowledge' relied upon is in fact a composite: a structured assembly of heterogeneous epistemic claims – legal, scientific, technical, administrative – each governed by its own criteria of justification, and bound together through procedural translation. In this sense, the reliability of the legal output is therefore parasitic on an epistemic operation that contemporary jurisprudence has not yet adequately theorised.

The paper develops this argument in three steps. First, it argues that while the dominant picture of law as a self-sufficient normative construction – what I have called the phantasm of legal construction – is functionally indispensable for the practising lawyer, it is misleading when extended into a theory of legal knowledge. It conceals the heterogeneous epistemic inputs on which legal outputs in fact depend. Second, it proposes a perspectival reframing on which the perspectives at work inside a legally consequential procedure are not subjective viewpoints but structured ways of knowing, each with its own criteria for justification. This account is not relativist. Rather, it preserves the evaluation of reliability, but does so by relocating it from any single discipline to the procedural site at which perspectives are translated and bound. Failures of translation between perspectives, rather than failures within any single perspective, become a distinctive source of degradation in the epistemic-institutional circuit this workshop identifies.

Third, the framework is tested against the administrative procedure for registering property rights in the land register, where legal qualifications

(ownership, easement, boundary) are inseparable from geodetic measurements, cartographic conventions, and administrative classifications. The cadastral case is instructive precisely because it is unspectacular; a registered property right is namely neither ‘found by law’ nor ‘measured by geodesy’ alone, but co-constituted through a procedure that translates and binds the two. The reliability of the registered right – and the justified trust it generates among legal subjects – thus depends on the epistemic integrity of this binding operation.

The paper briefly draws out its implications for epistemic dependence, the reliability of public systems of legal information, and the conditions under which non-legal expertise becomes legally consequential. It also raises what I take to be the sharper question for a social epistemology of law: whether reliability at the level of legal outputs (such as property right listing) requires a normative theory of inter-perspectival translation, and what such a theory would need to be philosophically honest and institutionally usable.

THE EVIDENCE ASYMMETRY EFFECT. ARE AI AGENTS NAKED STATISTICAL EVIDENCE?

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SW34 · The Values of Legal Testimony. Epistemology and Morality of Testimonial Evidence
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ABSTRACT

Decision-makers in legal proceedings are systematically subject to the so-called evidence paradox (Enoch et al., 2012; Fratantonio 2021, Ross 2022), i.e. they are led to assign a conclusive or decisive value to evidence such as testimonies, while they are unwilling to do the same with naked statistical data, even if they have a very high reliability.

On the other hand, it has also been noted that decision-makers tend to have a deferential attitude towards expert knowledge (Canale 2022; Ubertone 2022), which leads them to make de facto blind decisions.

But what happens when the evidence comes from an AI agent? Will decision makers defer to it as they do with experts, or will they treat it as naked statistical evidence? The thesis of this talk is that AI agents are in fact naked statistical evidence and however it is quite likely that judges and lawyers will treat them just like human experts (and expert testimony), due to what I will call the agent bias. This results in an unjustified asymmetry in the way epistemically equivalent pieces of naked statistical evidence are likely to be treated.

TESTIMONY AS AN INFERENTIAL MOVE: FROM WITNESSES TO MACHINE OUTPUTS

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SW34 · The Values of Legal Testimony. Epistemology and Morality of Testimonial Evidence

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ABSTRACT

In the theory evidence and proof, testimony is usually framed in transmissive terms: the witness is a channel through which perceptually acquired knowledge about past events is transferred into legal proceedings. Major debates — between reductionist and non-reductionist accounts of testimonial knowledge, or between probabilistic, explanatory and narrative models of proof — typically share this background picture: testimonial statements are informational inputs whose probative value must be measured or weighed.

This paper proposes an inferentialist account of testimony in adjudication. On this view, the probative value of testimony is not a property of a declarative act considered in isolation, but a function of the inferential role it plays within a normative space structured by procedural rules. That role is fixed by what licenses the statement, what the statement in turn licenses, and what defeats it.

This framework yields a distinctive purchase on a difficult case: the use of large language model (LLM) outputs as evidence. On the transmissive picture such outputs are anomalous, since these systems neither hold beliefs nor transmit knowledge and so appear unable to testify at all. On the inferentialist account, however, what matters is not whether an LLM can convey a pre-existing belief, but what inferential role its output plays. An LLM output is therefore best understood as a defeasible inferential node: a proposition introduced into the trial's network of reasons under specific conditions and exposed to characteristic defeaters (training-data limits, prompt sensitivity, fabrication, the absence of any accountable source).

The upshot is to reframe the legal question from "can a machine testify?" to "what inferences may a court legitimately draw from a machine's output, under what conditions, and subject to what defeaters?"

BETWEEN LAW AND FACT: THE DUAL EPISTEMOLOGY OF ADJUDICATION

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SW34 · The Values of Legal Testimony. Epistemology and Morality of Testimonial Evidence
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ABSTRACT

This presentation examines a central but often underexplored tension within legal reasoning: adjudication depends simultaneously on interpretative reasoning and factual reasoning, although these forms of reasoning operate according to different epistemic standards. Interpretative reasoning seeks the legally correct meaning of texts, principles, doctrines, and institutional purposes. Its logic is holistic, argumentative, justificatory, and oriented toward coherence rather than empirical truth. Factual reasoning, by contrast, reconstructs past events from incomplete and fallible evidence. It is probabilistic, evidence-based, error-sensitive, and mediated by standards and burdens of proof.

The core claim is that a judicial verdict unifies these two distinct rationalities in a single institutional decision. Law manages this tension through doctrines such as the law/fact distinction, standards of proof, burdens of proof, materiality, and appellate deference. Yet these solutions remain fragile, especially in mixed questions where interpretation shapes what counts as fact and factual patterns influence legal meaning. The presentation argues that this dual epistemology is not accidental but constitutive of adjudication itself. Understanding legal reasoning therefore requires closer attention to the intersection between legal meaning and factual truth.

ADJUDICATION, LEGAL ADJUDICATION AND WHY MACHINES CAN DO THE FIRST BUT SHOULD NOT DO THE SECOND

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SW34 · The Values of Legal Testimony. Epistemology and Morality of Testimonial Evidence

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ABSTRACT

I start the paper giving a rough lay definition of adjudication that accommodates legal adjudication, but also well-known examples of adjudication drawn from folklore, mythology and religion. I then move to enrich this definition with some desiderata, with the aim of sketching a normative theory of legal adjudication and of criminal adjudication, in particular. I argue that a criminal adjudicator – here comes a key desideratum – must be liable to being a defendant. Without this, they cannot understand what it means to be a defendant; and if they cannot have such understanding, they cannot properly appraise the defendant and their conduct. Moreover, if they cannot have such understanding, the defendant has a sound argument against accepting the verdict ('something/someone that cannot possibly understand what it is to be in my position, cannot judge me'). I conclude by arguing that machines cannot meet this desideratum and that this is a reason why, while machines may well be adjudicators according to the lay definition, they ought not to be legal adjudicators.

A CONVERSATION WORTH HAVING: DEFERENCE AND LEGAL SCRUTINY OF PSYCHIATRIC EXPERT TESTIMONY

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ABSTRACT

In this article, I aim to show what kind of caution judges and litigating parties should exercise regarding the inherently political character of language when assessing expert testimony. By the "political character" of language, I mean its capacity to preserve certain distributions of power, benefiting some and disadvantaging others, even when the statements in question appear to be merely descriptive. I focus in particular on psychiatric expert testimony concerning whether a defendant is criminally responsible or not. As an example, I consider the judicial use of diagnoses of psychopathy. As Ludwig Wittgenstein showed, language is never private. Its use can be understood only within language games, in which people cooperate or clash in the pursuit of individual or collective purposes. If this plurality of purposes is ignored, those assessing testimony may fail to distinguish between, on the one hand, the consequences that may legitimately be drawn from a sequence of assertions because they represent a reasonable attempt by the speaker to cooperate with the hearer in resolving the quaestio facti, and, on the other hand, spurious consequences that have nothing to do with the propositional content on which the expert is entitled to testify, and instead depend solely on how that information is presented. These modes of presentation – conceptual distinctions, epistemic standards, normative or descriptive uses of language – often do not help the recipient form an accurate picture of the facts in the context of the trial. Experts rely on them either because they import into the courtroom conceptual distinctions and pragmatic concerns that are central to their own discipline but

potentially irrelevant for legal purposes, or because, more or less consciously, they seek to make those concerns and distinctions count as reasons for deciding the case in the way they wish it should be decided.

Suppose that Bill has killed his wife and that his lawyer, in Bill's defence, submits a psychiatric expert report. The psychiatrist called to testify states that Bill is a psychopath and that, for this reason, his action should be attributed not to a choice he made, but to factors attributable to his condition. An expert for the opposing side might defend the opposite conclusion either by denying that Bill is a psychopath or by denying that such a diagnosis entails a lack of control over his actions. How should a judge proceed in circumstances of this kind? It would be unrealistic to expect judges to grasp, in a fully independent way, the clinical, methodological, and statistical foundations of a diagnosis of psychopathy. A judge can and must examine the expert's credentials, method, argumentative coherence, quality of sources, the existence of significant scientific disagreement, and the relationship between the observed data and the conclusions drawn from them. Yet, if this scrutiny is successfully passed, the procedural use of expert evidence always involves a form of epistemic deference. This epistemic deference, however, must be distinguished from semantic deference, that is, from the judge giving up the task of understanding what exactly the expert means when they say that Bill is a psychopath. The expert report may help establish whether the defendant has certain emotional, cognitive, or volitional deficits, but cannot by itself determine what legal significance those data should have for conviction or acquittal. In psychiatry, the danger of uncritical semantic deference is that it ultimately prevents the judiciary from scrutinising psychiatry itself as a form of social control. Michel Foucault, especially in the lectures collected in Abnormal, shows that psychiatric expert testimony is a device that societies have long used not only to treat people who are unwell, but also to isolate and exclude from the social body certain individuals with anomalous cognitive styles, without any judicial scrutiny of the legitimacy of that exclusion. This example is useful because it invites us to consider more carefully the distinction between questions of law and questions of fact. It shows that the judge should regard as relevant not only facts concerning Bill's behavioural dispositions, but also more general factual considerations concerning the consequences for society of treating individuals like Bill in a certain way. Psychiatrists are therefore fully entitled to contribute to the court's resolution of the

question of law, provided that they do so indirectly: for instance, by showing that purposive interpretations of certain rules rest on false factual assumptions about the likely consequences of their application. The observation that psychopathy, for example, often stems from trauma which is itself caused by conditions of social deprivation, might persuade the judge that the constitutionally most appropriate strategy for addressing the deviant behaviour of psychopaths is not criminal repression, but the strengthening of the welfare state.

BACK TO TESTIMONY?

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SW34 · The Values of Legal Testimony. Epistemology and Morality of Testimonial Evidence
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ABSTRACT

Testimony, especially in legal proceedings, has long been regarded with suspicion. According to this perspective, we should be sceptical towards testimony unless there are compelling reasons to trust it. Doubts about lay testimony arise from well-known issues such as perceptual errors, memory fallibility, cognitive biases, lack of impartiality, and stereotypes. Even expert testimony is not immune to these flaws. Regarding the latter, to guard against both epistemic and semantic overvaluation, as well as the risks of pseudoscience, courts and evidence theory have developed criteria for admissibility and assessment.

In contrast, until a few decades ago, some forms of evidence were considered more reliable due to their tangible nature, which allowed for direct perception—for example, documents, photographs, videos, audio recordings, and physical evidence in general. There was widespread confidence in the 'truthfulness' of the written word and in the accuracy of photographs or videos to faithfully 'represent' reality.

This scenario shifted, first with the advent of digital evidence, and subsequently with the rise of generative artificial intelligence (GenAI). Both phenomena initially fostered a blind faith in data—a form of "data fundamentalism." However, the need to rebut such evidence prompted the creation of new fields of knowledge: digital forensics and specific forensic communities specialising in AI applied to documents, videos, and records. Today, these experts offer crucial testimony in judicial proceedings whenever the accuracy, authenticity, or integrity of digital and GenAI evidence is challenged.

In this presentation, I explore this paradoxical "return to testimony," focusing on the forensic expertise required to decode digital and GenAI evidence. I raise the question of whether we must revise our traditional

criteria for evaluating this type of meta-evidence (Frye and Daubert standards, or similar). Ultimately, this "back-to-testimony" movement demonstrates more than a mere technical necessity; it underscores both the profound social value of human testimony as a primary source of knowledge and the enduring epistemic weight of adversarial cross-examination.

THE RIGHT TO THE EXAMINATION OF WITNESSES

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SW34 · The Values of Legal Testimony. Epistemology and Morality of Testimonial Evidence
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ABSTRACT

I shall attempt to present an argument in support of the claim that the right not to be punished by the state without first being found guilty at a fair trial is a moral right. The moral right to a fair trial is a species of the more general moral right of a person not to be blamed and punished without justification. A prerequisite for criminal punishment is the commission of a crime. In seeking to punish a person, the state has a moral duty to first justify its accusation that the person is guilty as charged. The main purpose of a criminal trial is to hold the state to account and to adjudicate the rightness and sufficiency of the justification that the state has proffered. Even the factually guilty have the right to a fair trial understood as the right to justification. By the right to justification, I mean that the state has the moral duty to justify – that is, present right and sufficient reasons for – the blaming of the accused for a specified crime, and the accused has a moral right not only to know the reasons but also to engage with or challenge them. Norms of fair trial can be derived from the accused's right to justification. One such norm, on which this paper concentrates, is the procedural right of the accused to 'examine and have examined witnesses against him'. This right is of intrinsic, and not merely instrumental, value. Making good this claim requires recognition that the value of testimony is not merely evidentiary.

TESTIMONY, DISTRUST, AND RELIABILITY

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SW34 · The Values of Legal Testimony. Epistemology and Morality of Testimonial Evidence
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ABSTRACT

Testimony is generally accepted as evidence in law. Both in civil and criminal proceedings, though to a different extent, witnesses are heard for the purpose of reconstructing the relevant facts. At the same time many legal systems appear to be quite suspicious about testimony and hearsay in particular. The plausible explanation for this is that the stakes in legal proceedings are usually higher than in everyday contexts, as well as the temptations to conceal or distort the truth, and this calls for a different attitude.

In that regard there are legal rules that embody a principle of distrust, for they require particular formalities from witnesses (notably, swearing to tell the truth) and particular caution from factfinders when they evaluate a testimony.

One of the vexed questions is that of reliability. First, it is unclear whether reliability is a property of the person testifying (i.e. the witness) or rather of what the person says. In other words, whether it is a property of the testimonial source or of the testimony itself. Second, it is unclear how to assess reliability. The intuitions of factfinders in this regard are not completely useless but are not sufficient either. A proposal to handle both problems is to focus on the testimonial source and use AI tools to check the source's ability to discriminate the relevant items. An example will be provided. That can give a measure of reliability as a likelihood measure, which can be projected from source to testimony and helps overcome an attitude of distrust.

RUSSIAN LEGAL REALISM AS A SOVIET INFLUENCE ON REALIST MOVEMENTS

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SW36 · Prospects for Legal Realism
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ABSTRACT

There are fundamental connections between Russian, American, and Scandinavian movements of legal realism. The foundations of Russian realistic thought include, among other things, a broad understanding of the sources of law, the individual and corporate interests of law enforcement officials, the plurality and parallelism of normative systems, and a psychological approach to law. It is necessary to pay attention to the diversity of approaches to understanding and describing realistic methods. There are several approaches to the label "realism", including philosophical realism and its variants, political realism and the intentionality of public authorities, and various versions of legal realism. A new approach to the relationship between the phenomena of law and legal order is proposed, substantiating the modern structure of the legal order, which, along with regulatory legal acts (the dogmatic construct: legal norm – legal institution – legal branch), includes a corpus of law enforcement acts, legal educational institutions, scientific institutions, and public authorities that create and enforce legal regulations. I suppose to validate the role of theorists, or scholars, as intermediaries between "law in books" and "law in practice". Law acts as a practical tool, being largely the result of experience and intuition, the interpretation of norms, facts, and legal relations. We need to analyse the Soviet period of statehood that was decisive for the introduction of a realistic concept of law in the territory of the former Russian Empire.

The creation of a law concept that will correspond to current legal practice is becoming possible in the discourse of Russian legal realism. The modernization of Soviet legal theory has been ongoing for over a quarter

of a century, taking into account the changing legal consciousness of the Soviet people in the post-Soviet realities of the 21st century. The Marxist-Leninist school of explaining political and legal phenomena is no longer suitable for predicting the rule of law in a state-monopoly capitalist system. Legal educational institutions and practicing lawyers require a modern, realistic approach to explain the sources of law, the branches of public power and the structure of the law and order.

Russian version of legal realism emerged historically between the two World Wars as part of an intellectual movement towards pragmatism and psychologism in law. The realistic approach to legal phenomena made it possible to use legal norms as a tool in the construction of communism, reducing the role of abstract metaphysics and emphasizing the willful aspect of the law and order, highlighting the significance of law enforcement in the management of a new Soviet state. The term "Russian legal realism" has been used in international academic discourse since 2012, following a presentation at a conference ("Changing the Russian Law: Legality and Current Challenges"), held at the University of Helsinki. Based on the ideas of L. I. Petrażycki, his predecessors and followers, a wide range of scholars and practitioners, including M. A. Reisner, A. Ya. Vyshinsky, Ya. M. Magaziner, E. B. Pashukanis, V. I. Lenin, I. V. Stalin, P. I. Stuchka and others, – founded a realistic approach to law in Soviet Russia.

After 1991 the socialist period of legal life was replaced by a new state-capitalist era, in which the functions of jurisprudence at the level of psychological perception of law were in demand, including for further revolutionary transformations and redistributions of property. The historical results of state building in the years 1917-1991 indicate Russia's unique civilizational path of development, whose spiral evolution did not end with the transformation of the socialist system into state-monopoly capitalism but continued on established ontological foundations. The Russian version of legal realism developed in parallel with the American and Scandinavian movements, that indicates supranational trends determined by the cyclical nature of global crises, the common ideas of legal pragmatism in many jurisdictions, and the desire to get rid of outdated legal structures.

Legal practice allows us to understand the real needs of not only the moderators of the legal system, but also its diverse recipients. Realistic approaches are viewed as theoretical frameworks that can influence the

practical legal system. In today's society, the boundaries between legal positivism and natural law doctrine are blurring, and there is a shift away from dogmatic Soviet traditions in legal theorizing. Without the concept of "Russian Legal Realism" (see, e.g.: Tonkov D.E., Tonkov E.N. (2023) Legal Realism, Russian. In: M. Sellers, S. Kirste (eds) Encyclopedia of the Philosophy of Law and Social Philosophy. Springer Nature B.V., pp. 1982–1988) modern research in the humanitarian knowledge can no longer claim to have a comprehensive understanding of law.

Realistic approaches to solving specific legal problems were formed during the era of Soviet statehood by leaders of Communist Party and their followers. Then, in the middle of the twentieth century, legal realists took root in socialist law, evolved over many decades, and today their usage continues in the post-Soviet law and order. The concept of Russian legal realism has become an integral part of the global movement of supporters of the legal realism ideas. Its integrity manifested itself in the presence of a critical aspect in relation to some dogmatic Soviet ideas, in the ability to consistently explain the advantages of a new approach to understanding modern legal phenomena. The realistic concept of law is considered as an effective way of clarifying legal reality, becoming a methodological basis for purposeful influence on the law and order and for creating projects of future solutions. The concept of Russian legal realism actualizes the legal culture of the population of the country-civilization and contributes to overcoming the outdated understanding of law as a system of legal acts issued or approved by the state. The ideas of legal realists develop methodological pluralism, which includes the use of achievements in psychology, sociology, anthropology, economics, biology, and other sciences. Empirical research on the structure and mechanism of law is reflected in modern post-classical studies.

SCIENTIFIC POPULISM AS A TOOL FOR REALISTIC RETHINKING OF LAW

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SW36 · Prospects for Legal Realism
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ABSTRACT

The author emphasizes that even in the case of the most radical ideas of legal realism, its proponents identify patterns and factors amenable to scientific understanding, leading, for example, the court to a particular decision. Critics' labeling of certain anti-metaphysical ideas and slogans of realistic jurisprudence as "populist" is not accidental: the use of vivid images and metaphors, the appeal to pressing human problems, and the intellectual freedom of supporters (often in high positions) of legal realism, have created an aura of "academic troublemakers" around them. Despite the existing negative connotations, the author notes, the word "populism" itself evokes only an emotionally neutral connection with "the people" and with concern for the common good as the highest political goal. The paradox of societal development (in the form of increasing social tension between the "knowledge society" and the "academic elite"), linked to its own rationalization, is examined separately. According to the author, legal realists have taken an important step towards exploring the interaction of law with ordinary human life, demonstrating a desire to reform jurisprudence as a "science" based on constantly re-examined social facts. The inconsistency of the accusation of excessive "simplification" of legal phenomena addressed to realistic jurisprudence is presented, and the terms "scientific populism" and "legal populism" are analyzed: the latter is considered in the form of "judicial populism", which correlates in the chapter with "judicial activism" and "judicial behavior style". It is concluded that "populism" in legal scholarship is not an antithesis of fundamental research, but a necessity for realistic understanding of law.

REALISM AND RUSSIAN LEGAL THEORY

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ABSTRACT

Albeit legal realism was formed outside Russia, with its intellectual origins in the US and the Scandinavian countries of the first decades of the 20th century, this theoretical perspective seems to be very promising for better understanding of how legal machinery and legal thinking are organised in Russia. This paper does not seek to give a full account of the names and topics discussed by Russian legal scholars who can be qualified as legal realists, which is carefully analysed in the literature. Instead of being a meticulous description of who said what, I would present the topic as a general introduction to Russian legal thinking in order to highlight what can be considered as realist elements in it. I will give some prehistory to situate the recent developments and further prospects in a more general context and to connect it with the actual development of Russian law. To present this topic in a compact and practical way, the discussion will be divided into three parts: (1) specific realist elements in Russian debates on theoretical issues about law; (2) historical and social reasons for this specificity; and (3) an overview of the main contemporary debates among Russian legal theoreticians which display realist arguments. For the purposes of this presentation, "legal theory" will be considered as a set of reflections about fundamental problems (rights, rule of law, separation of powers, sovereignty) and about basic concepts and distinctions in legal knowledge. This broadens the topic as compared with the usual distinction between 'theory' and 'practice'. In such a broader meaning, this term would include not only those who teach legal theory and philosophy, but also those who teach in other fields of law or even those who are mostly engaged into legal practice but publicly speak or write on theoretical issues of law. E.g., the Chief Justice of Russian Constitutional Court Vladimir Zorkin who is a prolific author writing on a range of problems and having a strong influence. Or a number of other Russian top law-enforcement officers who have

little or no academic background but who are active in public discussions where theoretical issues of law are raised. As to "legal realism", this theoretical approach is understood as comprising several its key methodological theses: scepticism about norms; scepticism about facts; unlimited power of interpretation that have law-enforcers; prevalence of ideology over formal considerations in the application of law; legal outcomes as determined more by biases than by logical conclusions; law and politics are inseparable, the former is often the tool for the latter. The presentation will necessarily imply a large degree of generalization. On one hand, for the sake of simplicity, I will show several main trends and paradigms of theoretical thinking about law in Russia, although there still will remain a number of authors who do not fully enter into this description and who putatively can be classified as legal realists. On the other hand, speaking about certain intellectual traditions in Russian legal theory (like thinking law in the necessary connection with religion in Middle Ages, or the Soviet legal philosophy based on the command theory of law, or the actual trends in Russian legal philosophy toward traditionalism) does not mean that each and every legal thinker of certain époque can be identified with one of the main traditions of legal philosophy (realism, natural law, positivism, etc.). More frequently, in various theoretical conceptions one finds realist elements mixed up with other (positivist, ius-naturalist, sociological, etc.) ideas. With this, my presentation will suggest only a general picture that intentionally leaves aside some details and personal particularities. This will be an ideal-type analysis that will suggest that Russian law and culture have certain characteristics that might be used to construct some differences with the Western legal culture. Some of these characteristics can be favourable for development of realist elements in Russian law. The term "law" is often a source of debates and misleading conclusions. Law can be conditionally defined as a compulsory social order based on certain values (among these values are such as justice, security, freedom or else). For understanding the Russian legal debates, the terminology is very important. For example, before 16th century Russians did not use the term "law" (pravo), it came from the Polish language; the term "the law" (zakon) meant divine or natural law; and the posited law was referred to as "truth" (pravda) like the main Russian medieval code – the Russian Truth. Now, the situation in Russian legalese is different, but this confusion still

somehow presents in Russian philosophical debates and the linguistic distinctions between law, morality, religious law remains obscured. This is crucial for understanding the relevance of legal realism in this context: the primary task of judges and law-enforcement officers is to establish 'truth' both in the meanings of 'istina' (logical and factual truth) and 'pravda' (moral and religious truth). To conclude, there are similar trends in Russian, American and Scandinavian theoretical jurisprudence. This similarity can be explained both by the common standards of scientific inquiry about the law, from Leo Petrazycki and his school in the beginning of the 20th century until now. This similarity is also due to the common tasks that the law is expected to accomplish – to govern human relations in a just, predictable and reasonable manner. As well, the law is expected to be close to the practical life, to social experience everywhere; is expected to achieve socially relevant goals and bring benefit to societies. Therefore, it comes as no wonder that the law and its scientific cognition displays realist elements in the US, in the Scandinavian countries or in Russia. Still, there is a number of differences that are due to the variability in development of legal systems in these parts of the world and in the intellectual background that underpins this development.

FRENCH LEGAL REALISM

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ABSTRACT

One of the key trends in French legal thought, represented by Michel Troper, is analyzed. Neorealism offers a radical revision of the normative paradigm, arguing that a norm arises from an act of interpretation. Unlike Kelsen's normativism, neorealism strives for empirical rigor and value neutrality in examining legal discourse and justifying judicial decisions. Legal constraint theory explains the stability and predictability of decisions through the factual circumstances of the legal system. Neorealism critiques basic metaphors of legal theory, such as the pyramid of norms, proposing to study the hierarchy of lawmaking competencies and using game theory to analyze the interactions of interpreters. Despite internal difficulties and external criticism, French legal neorealism represents an original and interdisciplinary theory that emphasizes the importance of intellectual effort in interpreting legal texts.

CAN METAPHYSICAL REALISM BE USEFUL FOR JUSTIFYING LEGAL REALISM?

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ABSTRACT

The main idea of metaphysical realism is that reality exists independently of our thoughts or perceptions. In other words things in the world are real even if no one observes them. This idea is similar to scientific realism, which says that scientific objects exist even if we cannot directly see them. This approach also allows law to borrow ideas from natural sciences, such as biology and medicine, and apply them in legal thinking.

Metaphysical realism also supports logical and scientific reasoning. It argues that our language and concepts should be connected to real things in the world. Words should refer to actual objects, events, or natural processes. For example, if we say "the patient is dead," this statement is true only if it corresponds to the real condition of the patient's body. Even though language may sometimes be unclear or imperfect, it still aims to describe reality as accurately as possible.

One of the main thinkers who developed this idea in legal philosophy is Michael Moore. He argued that legal terms should be understood in relation to real-world facts, not just through language or social agreement. Moore believed that legal terms often refer to natural kinds, meaning real categories in the world. For example, the term "death" refers to an actual biological condition, not just a word defined by law. This allows legal systems to adjust their definitions when scientific knowledge improves. As science develops, our understanding of reality becomes better, and legal definitions should follow these changes.

A clear example is the concept of death. In the past, death was defined as the stopping of the heart and lungs. This definition was used in law, especially in cases related to organ transplantation. However, modern medicine has shown that some people can be revived even after their heart

and breathing stop. Because of this, doctors and lawmakers began to define death as the irreversible stopping of brain function.

At the same time, Moore's theory also raises some difficulties. Scientific progress, especially in medicine, can create ethical problems. For instance, new technologies like organ transplantation or life support systems challenge our traditional ideas about life and death. Even if science gives us more accurate information, we still need ethical rules to guide our decisions.

In real situations such as medical decisions people often use both scientific facts and ethical judgments. Doctors may ask whether a patient is "really alive" or in a state between life and death. These questions are not only scientific but also moral and legal. Decisions about treatment often depend on values, not just facts.

This shows that metaphysical realism cannot completely replace conventional or ethical thinking. Even if we accept that reality exists independently, we still need human judgment to interpret and apply this knowledge in law.

Where Metaphysical Realism useful for supporting Legal Realism?

Legal realists often emphasize deep disagreement about what rules mean and how they apply. Metaphysical realism can be useful by providing a semantic picture where legal terms (for example, "equality", "punishment") aim at real properties or classes of cases, even if our understanding is partial or contested.

Another challenge for legal realism is the charge that it grounds into pure skepticism: if law is just what officials do, how can we criticize their decisions as wrong? Metaphysical realism offers a partial answer: realist judges still respond to facts and policy, but they can be wrong when their decisions cannot describe the underlying realities those concepts pick out. This is particularly useful in debates about "right answers" in hard cases, judicial activism, and the limits of interpretive freedom.

Finally, metaphysical realism is useful wherever legal realism pushes law to pay attention to empirical sciences. In Neurolaw it supports the idea that brain states, cognitive capacities, and mental disorders are real phenomena that can refine concepts like intent, insanity, or responsibility. In

social and legal research it backs the claim that social structures and institutions have real properties that explain legal outcomes and should inform doctrinal development.

In conclusion metaphysical realism offers a powerful way to connect law with reality and science. It encourages legal systems to adapt to new knowledge and to base decisions on objective facts. However, it must be balanced with ethical considerations and human judgment, especially in complex cases involving life, death and human values.

ONCE UPON A TIME IN ENGLAND: 'MIGHT-HAVE-BEEN' LEGAL REALISM

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ABSTRACT

This paper examines why no canonical movement known as “English Legal Realism” emerged within English legal thought despite the central role of common law, precedent, judicial reasoning, and legal practice in the English legal tradition. While legal realism became associated with several national and intellectual traditions – including American, Scandinavian, Russian, French, and Italian legal realism – the English case remains strikingly absent. The paper argues that this absence should not be understood as evidence that English legal culture lacked realist tendencies. Rather, England lacked the institutional, constitutional, and academic conditions under which realist sensibilities could crystallise into a self-conscious jurisprudential movement comparable to American Legal Realism.

The paper proceeds in three stages. First, it reconstructs the historical and institutional reasons why legal realism did not take root in England during the late nineteenth and early twentieth centuries. English jurisprudence developed under conditions fundamentally different from those of the United States. Legal education remained closely tied to professional apprenticeship and the Inns of Court, academic jurisprudence was comparatively weak before the rise of H. L. A. Hart, and the legal profession preserved a conservative self-understanding centred on practical craftsmanship rather than theoretical innovation. At the constitutional level, the doctrine of parliamentary sovereignty and the absence of American-style judicial review prevented courts from becoming the same kind of politically contested institutions that shaped the realist critique in the United States during the Lochner era and the New Deal period. Consequently, England never produced the institutional environment in which a generational revolt against doctrinal formalism could emerge as an identifiable movement.

Secondly, the paper addresses the methodological problem of defining legal realism itself. It distinguishes between a narrower understanding of realism associated with American Legal Realism and Brian Leiter's reconstruction – anti-formalism, naturalism, empiricism, and attention to adjudication – and a broader understanding of realism as a practice-sensitive, institutionally grounded, and sociologically attentive orientation toward law. Drawing on debates surrounding American Legal Realism, Scandinavian realism, New Legal Realism, socio-legal studies, and the work of scholars such as Brian Leiter, Dan Priel, Roger Cotterrell, and William Twining, the paper argues that realism is best understood not as a fixed doctrine but as a broader intellectual disposition united by suspicion toward purely conceptual and self-contained accounts of law.

Finally, the paper reconstructs an English "might-have-been" realism. This reconstruction does not attempt to invent a lost school, but instead identifies dispersed realist orientations within English legal thought. Particular attention is given to the London School of Economics, the early Modern Law Review, socio-legal studies, and the Law in Context movement. Figures such as Harold Laski, William A. Robson, Roger Cotterrell, and especially William Twining are examined as representatives of anti-formalist and contextual approaches that connected legal doctrine with social science, institutional analysis, and empirical inquiry. Twining's reinterpretation of Karl Llewellyn and American Legal Realism is especially significant because it translated realist insights into a broader critique of legal education and doctrinal isolation within English law.

The paper concludes that England did not produce Legal Realism as a coherent historical movement. Nevertheless, English legal culture developed a dispersed but recognisable realist orientation that survived through socio-legal scholarship, contextual jurisprudence, and critiques of doctrinal formalism. English "might-have-been" realism therefore represents not a failed school, but a reconstructable intellectual possibility within twentieth-century English legal thought.

SYSTEMATIC TERMS IN ALF ROSS'S ACCOUNT OF LEGAL LANGUAGE

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ABSTRACT

The paper examines Alf Ross's account of legal terms as systematic terms and its methodological parallel with Rudolf Carnap's notion of correspondence rules in the philosophy of science. Ross's starting point is that some legal terms cannot be defined by substitution, that is, by answering questions of the form "What is X?" and replacing the term with a defining expression. Instead, their meaning can be clarified only by indicating the conditions under which sentences containing them are true.

Ross explains this by pointing to the specific function of such terms. They are not descriptive and do not refer to facts, properties, or events. Rather, they are systematic or logical terms whose role is to designate a systematic correlation between a plurality of conditioning facts and a plurality of legal consequences. As Ross states, such term "designates no fact, no quality, relation, event or process whatsoever" (Ross, A. (1958). "Definition in Legal Language". Logique et Analyse 3/4(1): 145) and does not point to anything in the observable world. Its function is purely logical.

This becomes clear if legal rules are analyzed in their basic form. Ross proposes that a legal rule should ultimately be understood as a directive to the judge and can be restated in the formula D(if F, then C), where F denotes a conditioning fact and C a legal consequence. In a legal system, there is a large number of such rules. To present them in a workable form, a term such as "ownership" is introduced between a disjunctive plurality of conditioning facts (F1…Fp) and a cumulative plurality of legal consequences (C1…Cn).

However, this term does not refer to any entity or state of affairs. Ross explicitly rejects the idea that something is "created" between fact and consequence. Saying that ownership is created by purchase is, in his words, "nonsense" (Ross 1958: 145). What actually occurs is that the judge takes

certain facts into consideration and makes a judgment accordingly. The systematic term is thus "a word without any semantic reference whatever" (Ross 1958: 144), serving solely as a tool of presentation. For this reason, such terms can be defined only by indicating rules of use, that is, the conditions under which sentences containing them are true. Their meaning is therefore fixed by rules connecting facts and consequences in judicial decision-making.

A similar structure appears in Carnap's philosophy of science. He argues that theoretical terms are neither reducible to observation terms nor derivable from them. In order to connect theoretical laws with empirical statements, additional rules–correspondence rules (Carnap, R. (1966). Philosophical Foundations of Physics: An Introduction to the Philosophy of Science. Edited by Martin Gardner. New York: Basic Books. P. 238–239) – are required. These rules link theoretical terms with observable conditions and thereby determine their use. In this sense, they function as contextual definitions relating theoretical statements to empirical ones.

Ross's account follows the same idea. Systematic legal terms, like theoretical terms in science, do not derive their meaning from reference to independently identifiable objects. Instead, their content is determined through rules governing their use–rules that connect normative formulations with facts taken into account in judicial decisions. Thus, the meaning of such terms is determined within the sentences and rules in which they occur.

The comparison between systematic terms in Ross and correspondence rules in Carnap shows a common structure. In law, rules connect conditioning facts with legal consequences, expressed through D(if F, then C). In science, correspondence rules connect theoretical statements with observable facts. In both cases, the meaning of a term is fixed by its role within such rules. Ross's analysis can thus be understood as applying this model developed in logical empiricism to legal language.

BEYOND SURFACE REALISM: A PHENOMENOLOGICAL FRAMEWORK FOR EVIDENTIARY ANALYSIS IN THE DEEPFAKE ERA

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ABSTRACT

The rapid maturation of generative AI has destabilized a core juridical assumption: that audiovisual realism reliably signals authenticity. Deepfakes—synthetic media capable of fabricating faces, voices, and contexts with high plausibility—transform digital recordings from "strong evidence" into strategically ambiguous artifacts, generating not merely a forensic challenge but a methodological crisis in evidence law.

This paper proposes a phenomenological reorientation inspired by Edmund Husserl's method—particularly epoché (suspension of the "natural attitude"), reflective reduction, and attention to how credibility is constituted within institutional practices. On this basis, a practical Four-Dimensional Detection and Analysis Method is developed: (1) reflexive analysis of the adjudicator–evidence relationship; (2) temporal analysis of evidentiary lifecycles; (3) relational analysis of stakeholder incentives and custody networks; and (4) semiotic analysis of cross-modal coherence.

The framework is demonstrated through Taiwan court precedents involving contested digital recordings. The paper concludes that phenomenological reasoning complements technical forensics by strengthening courts' reason-giving capacity, structuring adversarial contestation, and preserving accuracy, fairness, and transparency in the deepfake era.

PREVISIBILITY OF CONFLICT AND TYPOLOGY OF COLLISIONS BETWEEN NORMS

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ABSTRACT

In previous works (Martinez-Zorrilla 2007, 2011) I presented a threefold classification of normative conflicts, distinguishing between 'classic' antinomies, 'contextual' antinomies and instantiation conflicts, respectively. Each instance of normative conflict would pertain to one (and just one) of those categories. In the first two categories, the conflict arises due to logical reasons, whereas in the third type, the conflict would arise because of the specific empirical circumstances of the individual case at hand. Due to their characteristics, the first two types are regarded as conflicts in abstracto, as their occurrence can be 'predicted' or 'foreseen' as long as their underlying causes are of a logical (not empirical) nature. By contrast, instantiation conflicts are in concreto, and hence unpredictable, at least in the same sense of 'predictability' than the other, as they happen because of strict empirical facts. The 'predictability' of the first two types of conflicts would be also helpful to try to avoid and/or to solve them, as it wouldn't be necessary to face an actual conflict to deal with the problem.

More recently, though, this view has been challenged in two opposite directions. On the one hand, Guglielmo Feis (2020) claims against the predictability of normative conflicts and defends that they all ultimately depend on empirical circumstances. On the other hand, Alessio Sardo (2018) rejects the very idea of instantiation (i.e. "empirical") conflicts and claims that all the alleged examples of those conflicts are actually standard antinomies, and hence linked to inconsistencies within the normative system. Therefore, they would be all 'predictable'. My contribution analyzes those conflicting views respond mainly to conceptual or definitional differences rather to a substantial disagreement, and there are still reasons to keep the threefold classification of normative conflicts.

ON LOGICAL AND EMPIRICAL NORMATIVE CONFLICTS

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ABSTRACT

Regarding the possibility of distinguishing between logical normative conflicts and empirical normative conflicts, scholars have disagreed: some categories and examples have been controversial, and the very possibility of empirical normative conflicts -the so-called Conflicts of Instantiation- has been challenged. I offer clarifications on canonical examples to show that the line between logical and empirical conflicts can be drawn. In turn, I criticize the distinction -introduced by Guastini- between antinomies in abstracto and antinomies in concreto, arguing that it misleadingly leads to associate antinomies in concreto with empirical conflicts: they are, in fact, logical incompatibilities. I claim Guastini's distinction does not correspond vis-à-vis to the distinction between logical and empirical conflicts; therefore, if the analysis aims to illuminate the different nature of normative conflicts, it should be set aside. I also disentangle two usually confused categories: inconsistencies arising via certain facts and Conflicts of Instantiation. Finally, I comment on a recent paper where Guastini's distinction is presupposed with odd results: although the author correctly favors distinguishing empirical conflicts -Conflicts of Instantiation- from conflicts in concreto, to coherently ground this claim, he should abandon the in abstracto / in concreto distinction.

TYPOLOGIES OF CONFLICTS AND WHAT THEY PRESUPPOSE: THE CASE OF CONSTITUTIONAL RIGHTS

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ABSTRACT

Legal theory offers several typologies of normative conflicts: antinomies between rules versus collisions between legal principles, total versus partial antinomies, conflicts resolved by the classical criteria (lex superior, lex posterior, lex specialis) versus those resolved by balancing, among others. Such typologies are often presented as descriptions of a pre-existing conflict. This paper argues that they are nothing of the sort: each carries a presupposition, and in the case of constitutional rights that presupposition fails. The hidden commitment is one of priority – that is, that the type of a conflict is fixed prior to, and independently of, its resolution, so that classifying a conflict (as, for example, one "between principles") can count as a reason for the method (balancing) applied to resolve it. Genuine logical antinomies do exist: deontic contradictions that obtain on every admissible interpretation of the relevant norm-formulations, and which in this sense are interpretation-robust. But the conflicts that the theory of judicial balancing treats as paradigmatic – the ones between constitutional rights – are not of this kind. The same material can equally be reconstructed either as a defeasible rule whose scope settles the matter by delimitation or as an optimization command that present a collision to be weighed. Which reconstruction one adopts fixes the type of conflict and the method of its resolution. The typology therefore does not merely describe the conflict but encodes a resolution already chosen. Using the case of a conflict between freedom of expression and personality rights, the presentation shows how a typology of rights conflicts cannot be method-neutral, and that the choice it conceals must be defended on first-order institutional grounds – legal certainty, legitimacy and the rationality of method.

CONFLICTS BETWEEN NORMS IN INTERNATIONAL LAW: A LEGAL-THEORETICAL MODEL AND PRELIMINARY MAPPING

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ABSTRACT

This article proceeds from the assumption that legal theory operates at a meta-level in relation to particular legal sciences, just as legal science operates at a meta-level in relation to legal practice. The problem addressed in the article is the insufficient connection between these levels. It examines this broader problem through the phenomenon of legal antinomies, taking international law as its specific field of inquiry.

The article is preliminary and programmatic in character. It introduces a broader research project on antinomies in international law. That project asks whether a general legal-theoretical model of antinomies can be tested against the reasoning of actors in international law. Accordingly, the aim of this article is to present a legal-theoretical model of antinomies and to map the adjudicative and scholarly materials against which that model may subsequently be tested in more specialized studies.

The central theoretical question is whether the analytical categories developed by legal theorists for understanding conflicts between norms correspond to the forms of reasoning found in international adjudicative practice and international legal scholarship.

The proposed legal-theoretical model is organized around four elements: the identification of antinomies; their classification; their avoidance through interpretation; and their resolution, including the legal consequences of resolution. The mapping of adjudicative practice identifies cases that are relevant to an initial understanding of how international courts and tribunals conceptualize and address antinomies. The mapping

of international legal scholarship identifies works that are relevant to understanding how conflicts between norms are conceptualized and analyzed within international legal discourse.

These three tasks—presenting the legal-theoretical model, mapping adjudicative practice, and mapping international legal scholarship—provide the methodological foundation for future specialized research and make it possible to formulate a preliminary answer to the central theoretical question. The article argues that international legal discourse broadly confirms the usefulness of the proposed legal-theoretical model, while also showing that the model must take account of the specific features of the international legal order, as reflected in both adjudicative practice and legal scholarship.

Keywords: conflict of norms; international law; fragmentation; systemic integration; lex specialis; jus cogens; Article 103 UN Charter; legal theory; international adjudication; legal scholarship

CONSTITUTIONAL AMENDMENTS AND NORMATIVE CONFLICTS

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ABSTRACT

The problem of whether constitutional amendments may themselves be unconstitutional touches upon some of the most fundamental questions of legal theory: the nature of constitutional supremacy, the relationship between constituent and constituted power, the existence of limits to democratic decision-making, and the role of courts in safeguarding the constitutional order.

Constitutional amendment procedures are traditionally conceived as the legitimate mechanism through which a political community adapts its fundamental law to changing circumstances. Yet this conventional understanding obscures a deeper normative question: can amended constitutional provisions themselves enter into conflict with the existing constitution. If the constitution is the supreme norm of the legal system, what happens when one of its parts contradicts another? And who — if anyone — has the authority to adjudicate such conflicts?

THREE GUARANTIST CODES FOR THE RESOLUTION OF CONSTITUTIONAL ANTINOMIES

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ABSTRACT

Constitutional antinomies are incompatibility relations between constitutional norms (as opposed to constitutionally relevant antinomies, which run between two norms one of which only is of constitutional rank).

They are part of the ordinary furniture of constitutional democracies. No legal practitioner (judge, jurist, or attorney) can carry out her job in a conscious and masterly way without knowing how to cope with them, be it at the identification or resolution stage. My paper will focus on the resolution issue. It will proceed in four steps.

Step one will provide a very swift overview of constitutional antinomies.

Step two will introduce the notions of resolution code and well-constructed resolution code.

Step three will outline three guarantist codes for the resolution of constitutional antinomies corresponding to the varieties of pure, moderate, and very moderate guarantism, i.e., each one purportedly suitable for the use by judges of guarantist allegiance operating in a constitutional democratic state.

Step four will phrase a few conclusions. On the whole, the paper purports to suggest that, from a theoretical standpoint, it appears preferable conceiving the resolution of antinomies as an activity carried out by legal practitioners, not just on the basis of isolated criteria for antinomies resolution, but, rather, by resorting to resolutory codes, i.e., to finite, articulated, set of resolutory rules.

REDUNDANT REPETITION? ON THE USEFULNESS OF GENERAL REPEAL CLAUSES

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ABSTRACT

Repeal — the act of eliminating a norm or set of norms from a legal system — is widely recognized as the primary mechanism through which legislators deliberately modify existing law. Legal theory distinguishes two fundamental types of repeal: explicit and implicit. Explicit repeal occurs when a legislator enacts a provision directly stating that certain norms or normative documents are to be removed, and it is further divided into nominate repeal, which identifies the targeted provisions by name, and innominate (or generic) repeal, which uses a general repealing clause without specifying the norms to be eliminated. Implicit repeal, by contrast, arises when newly enacted legislation is incompatible with pre-existing norms, with the conflict resolved in favor of the newer law through the lex posterior derogat legi priori principle. In both innominate and implicit repeal, the task of identifying the affected norms is left to law-applying bodies.

This paper focuses specifically on explicit innominate repeal and the legislative use of general repealing clauses — provisions of the form "All norms incompatible with this Law shall be repealed." Despite their continued presence in many legal systems, these clauses have attracted substantial criticism in Italian, Spanish, and English-language legal scholarship. The central objection holds that general repealing clauses are functionally redundant: because implicit repeal already operates in such cases of normative conflicts, an explicit but non-specific clause adds nothing. This paper refers to this position as the claim of the uselessness of general repealing clauses.

The paper proceeds in two main parts. The first subjects the uselessness claim to close scrutiny, examining the reasoning behind the alleged redundancy of general repealing clauses and the extent to which they genuinely overlap with implicit repeal. The second part challenges the claim on historical grounds, arguing that it overlooks the institutional and interpretive context in which these clauses originally emerged. Accounting for that history, the paper contends, reveals that general repealing clauses continue to serve a meaningful function that the uselessness claim fails to adequately explain.

ADJUDICATING LEGAL CONFLICTS: HIERARCHY, LEX SPECIALIS, AND THE BALANCING OF PRINCIPLES

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ABSTRACT

Contemporary legal systems inevitably confront normative antinomies: situations in which two or more valid and effective norms attach incompatible deontic qualifications to the same conduct or operative facts. Their resolution requires meta-norms governing applicability, which operate at a level logically distinct from the object-level norms in conflict. This paper revisits the classical criteria of lex superior, lex posterior, and lex specialis, focusing on the logical structure of specialty and on its relation to the balancing of principles.

The argument begins from a structural distinction among three elements present in every conflict-resolution criterion: the meta-norm or rule of judgment; the relevant property that activates it; and its legal effects, particularly derogation and abrogation. While temporal succession and hierarchical rank supply important ordering properties, specialty has a distinctive basis: it rests on a logico-semantic relation of class inclusion. A norm is special in relation to another when the class of cases to which it applies falls within the scope of the general norm. The relation is intensional rather than merely extensional, since it depends on the conceptual content of the norms rather than on an enumeration of their instances.

This reconstruction clarifies the relation between specialty and derogation. Specialty itself constitutes a factual-logical premise, whereas the prevalence of the special norm constitutes a practical-normative conclusion. The criterion presupposes a genus-species relation, the coexistence of the relevant norms within the same temporal and hierarchical framework, and the legal system's recognition of lex specialis as an applicable

meta-criterion. It may therefore facilitate not only the resolution of genuine antinomies but also the systematic coordination of compatible norms.

The paper then examines the maxim lex posterior generalis non derogat legi priori speciali. The maxim does not express a constitutional or absolute principle. A later general provision may supersede an earlier special rule where the former manifests the legislative intention to regulate the entire subject matter exhaustively. Whether such an intention exists is an interpretive question, not a consequence of logic alone. This reveals a recurring tension between equality, represented by uniform general regulation, and equity, represented by differentiated special regulation.

The central claim concerns the widespread opposition between rules and principles. It is often assumed that lex specialis governs conflicts among rules, whereas balancing governs conflicts among principles. This dichotomy lacks a sound logical basis. Principles, no less than rules, may stand in a genuine genus-species relation and may therefore be governed by the specialty criterion. Conversely, when two norms partially overlap without either including the other, their relation is one of interference. Such interference calls for balancing, but its logical structure can be reconstructed through the intersection of the relevant classes: the resulting class constitutes a species of each original principle and identifies the concrete norm applicable to the case.

Logic does not replace evaluative judgment in balancing; it makes the process intelligible, explicit, and open to criticism. It also explains why clusters of principles cannot always be reduced to bilateral balancing and may require a more complex, reticular model, such as panarchy. Ultimately, logical reconstruction serves the ethics of adjudication: it constrains discretionary disapplication, renders legal reasoning controllable, and supports the requirements of justification associated with the Rule of Law.

AUTONOMY AND VULNERABILITY: BETWEEN THE SOURCE AND THE CONTEXT OF NORMATIVITY

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ABSTRACT

This paper explores the deep division between two conceptions of normativity. According to the first, no social requirement imposed on individuals can become a legitimate binding norm unless it can reasonably be expected to be accepted by all citizens considered as autonomous and equal agents, including those who are worst off. According to the second conception, the notion of rational autonomous agents is too abstract and empty to play a foundational role in obligation. From this perspective, individuals are constitutively relational and communal beings. Normativity ultimately derives from social structures, while abstract autonomy amounts to a merely formal status with little practical effect. This approach is shared by a wide range of critics of liberalism, including communitarians, ecofeminists, critical feminists, decolonial theorists, nationalists, and, in general, theorists of vulnerability and recognition.

In my contribution, I will defend two arguments in favour of liberal autonomy. First, theories of vulnerability and recognition tend to reject, or critically displace, autonomy as the source of normativity without providing any alternative capable of replacing it. Vulnerability refers to the social and intersubjective context in which obligations emerge, are interpreted, and are applied. Autonomy, however, denotes the individual capacity to recognise and endorse norms as binding, which remains the only genuine foundation of obligation. To borrow Hart's distinction, social context (structures of power, frames of recognisability, or conditions of heightened vulnerability) may explain why I feel obliged, but I only have an obligation when I recognise a requirement as normatively binding. Autonomy and vulnerability therefore occupy different structural positions within normativity.

Second, politics of recognition may undermine the effectiveness of the rule of law, understood as the ideal of constraining governmental power through abstract and general rules. Although some forms of recognition may be accommodated, for reasons of non-discrimination, as limited exceptions within a legal order, this does not justify the institutionalisation of privileges linked to particular identities. An excessive emphasis on identity and recognition risks eroding formal equality before the law. A legal system presupposes an abstract conception of citizenship according to which all individuals are entitled to equal concern and respect from government and public officials, whereas politics of recognition tends toward the fragmentation of citizenship into constitutive identity groups and the subsequent weakening of the rule of law. For this reason, I conclude by defending the presumptive generality and colour-blind character of legal norms and institutions as the best means of preserving a stable and enduring rule of law.

AUTONOMY AND VULNERABILITY: A CONCEPTUAL APPROACH

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ABSTRACT

The traditional conception of autonomy since the Enlightenment has evolved towards a relational conception of autonomy. This conception has a strong impact on contemporary concerns about the notion of vulnerability and its implications regarding the possibility of living an autonomous life. Different features of the conception of autonomy have been highlighted since the Kantian tradition: from the rationality and the independence criteria, where autonomous individuals are conceived as those with critical reflection capacity and full independence from external obstacles, till the recent incorporation of other elements, as the need of an optimal scope of options available - following Raz - and the relational perspective incorporated by Mackenzie and Stoljar, in which a network of various different social relationships affect the possibility to develop autonomy.

Autonomy can be achieved at various levels, depending on the perspective taken. One perspective can be that of the level of preferences, in which traditional theorists of action classify preferences according to different reasons: desires, prudential reasons or moral reasons. The relational perspective applied to it speaks about the ineffective intentions and the notion of adaptive preferences remarked by Stoljar: conditions of oppression can diminish or cancel the possibilities of performing options to the agent, then affecting her autonomy. Another perspective is the one concerning oppression: different levels of oppression, signaled by Cudd, can hinder autonomy in many ways. Conditions of oppression have also been pointed out as an explanation of the notion of vulnerability, conceived as a dependent notion from power and force.

If vulnerability is taken as a notion conceptually dependent from power and conditions of oppression, defined as the possibility of suffering damage or being at risk of power subordination, then it can perfectly fit as an element incorporated through the relational conception of autonomy: not a separate notion affecting it, but a direct and dependent one.

FROM UNIVERSAL VULNERABILITY TO SITUATED VULNERABILITY. A PROPOSAL FOR CONTEXTUAL LEGAL ANALYSIS

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ABSTRACT

The concept of vulnerability has acquired a remarkable centrality in contemporary legal and philosophical discourse, to the point of becoming a cross-cutting category for analysing issues related to inequality, harm, and the protection of rights. However, this expansion has been accompanied by increasing conceptual indeterminacy, because under the label of «vulnerability» coexist diverse approaches which are not always mutually compatible. This presentation takes that diagnosis as its point of departure and seeks to intervene in the debate by offering a critical reconstruction of the concept.

First, it will be argued that, although the concept has a solid theoretical and practical grounding, its claim to generality tends to dilute its explanatory capacity in specific contexts. Against this background, the proposal questions the usefulness of a universal definition of vulnerability, particularly of ones grounded in an abstract ontological conception of vulnerability, such as the one advanced by Martha A. Fineman. While this kind of approaches is valuable for justifying positive state duties and highlighting the centrality of care, resilience, and institutional structures, it will be argued that its level of abstraction limits its usefulness in addressing other problems, particularly those related to selective criminalization in contexts of social injustice. In this regard, the paper revisits critiques that emphasize the need to attend to the purposes for which the concept of vulnerability is employed.

On this basis, the notion of situated vulnerability is introduced. Rather than as a substantive definition, it is proposed as a use-oriented concept aimed at guiding case analysis and justifying the introduction of specific

context and intersectional perspectives for a useful meaning of vulnerability. In that way, situated vulnerability begins by recognizing human vulnerability in a general sense, but shifts the focus toward its concrete manifestations, attending both to relational dimensions –such as support networks, recognition, or social integration– and to material and contextual conditions –like the socioeconomic environment, institutional frameworks, and individual trajectories–. This approach intends to avoid conceptual vacuity while capturing the specificity of the processes through which certain subjects become particularly exposed to harm, even from the State in the form of unequal criminal interventions.

Finally, the proposal takes this last criminal turn into account and argues that adopting a situated perspective on vulnerability provides more precise analytical tools for examining specific phenomena on this area, such as criminal selectivity, the criminalization of socially disadvantaged groups or the criminal account of action and freedom. Rather than functioning as an abstract category for the justification of general policies, understanding vulnerability as necessarily situated makes it possible to identify concrete patterns of exposure to punitive power and to critically assess legal responses. In this way, it is proposed not only as a conceptual tool but also as a methodological strategy with normative implications for contemporary criminal law.

LOVE IS (NOT THE ONLY) ANSWER: FUTURE INDIVIDUALS AS LEGAL PERSONS BEYOND KINSHIP RELATIONALITY

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ABSTRACT

The escalation of the climate crisis has led to a widespread realisation that human agency is now capable of determining the fate of the planet. In this context, the traditional boundaries between the social and the natural, and between the present and the future, are becoming increasingly blurred. This shift reveals the profound relational ties connecting these spheres and supports the consolidation of post-anthropocentric and post-presentist legal personhood. For instance, the granting of rights to natural entities – such as rivers, mountains and ecosystems – serves to legally reconstruct the interdependent relations between human communities and nature, which are rooted in cultural connections and shared vulnerabilities. A similar dynamic is evident in the debate on the rights of future generations. While these rights are typically grounded in intrinsic human dignity, they also presuppose relational bonds: a general belonging to the human species and the specific lineages linking present and future individuals.

This analysis will examine the recognition of rights for future individuals, focusing on the pivotal role of relationality and the limitations of its current, narrow application. It argues that the legal personhood of future individuals should be released from exclusively familial-affective models and rethought through a broader conception of legally relevant relationality.

The work is structured in three stages.

First, it addresses common objections to granting rights to future generations, specifically the 'non-existence' and 'non-identity' problems. The core of these objections is that the non-existence of future individuals pre-

vents them from meeting the criteria of a legally relevant person. By comparing diverse legal experiences across time and space, this work demonstrates that such stances are neither absolute nor universal.

Secondly, building on recent discussions about legal personhood beyond human beings — including AI, natural systems, and animals — the analysis explores a possible theoretical approach to the legal personification process. In this perspective, although the law may appear to enjoy a form of 'virtual omnipotence' in determining who qualifies as a legal person, such constructions are rarely arbitrary, as they are often informed by the extra-legal social relevance of specific entities. This approach can be applied to cases in which legal personhood is already recognised for future individuals, such as the nondum conceptus, thereby revealing an inherently relational character of the intergenerational paradigm.

Finally, this work argues that the prevailing tendency to model the personhood of future individuals exclusively through familial or affective ties – though historically significant and doctrinally consistent – now constitutes a conceptual limitation. This narrow perspective is reflected in contemporary narratives of intergenerational justice, which continue to frame future individuals primarily as present persons' descendants. Even innovative instruments such as the Maastricht Principles on the Human Rights of Future Generations remain partly constrained by this paradigm, confirming that existing models have not yet fully detached future personhood from affective and genealogical assumptions. Such models should be understood not as definitive endpoints, but as transitional prototypes for a broader model of legal personification capable of accounting for the heterogeneous nature of intergenerational relations.

THE IMPERATIVE OF RELATIONAL EQUALITY IN EDUCATION AND ITS IMPLICATIONS

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ABSTRACT

In 1896, the US Supreme Court established the 'separate but equal' doctrine: it was deemed constitutional to have separate facilities for white and black people, provided that both facilities were of the same standard. Such a doctrine was thankfully rejected in 1954 and, looking back, it now appears outrageous. However, in practice, schools with a very high concentration of migrant and/or racialised pupils persist worldwide. Similarly, there are still schools that are, in effect, only for the wealthy, and others that are predominantly attended by pupils from low-income families. And even today, some schools separate their pupils by gender. The paper questions the persistence and legitimacy of educational systems in which children are separated along lines of race, socio-economic status or gender, even when material resources appear nominally equal.

Such contemporary forms of educational segregation are examined through the lens of relational equality, understood as the ideal that individuals must be able to regard and relate to one another as social equals. Such an ideal captures harms arising from segregation, stigma, and status inequality. I argue that these relational harms are systemic in nature and that they persist even when segregation is not explicitly mandated by law or policy. Indeed, implicit and informal segregation is especially dangerous insofar as it remains socially invisible and is often perceived as the unintended outcome of fair procedures or neutral parental choice.

Applying relational equality to education, the paper draws on the work of Elizabeth Anderson and Debra Satz to argue that schooling has a dual civic function. First, it must provide children with the knowledge and skills required for democratic citizenship. Second, and crucially, it must enable children from different social groups to interact, cooperate, and learn to

regard one another as equals. Segregation undermines both aims by reinforcing social distance, entrenching stereotypes, and impeding the development of empathy and communicative competence across social divides. Moreover, educational segregation compromises the diversity of societal elites, weakening their capacity to understand and serve the interests of all citizens.

The paper then explores the policy and institutional implications of this analysis. It rejects 'separate but equal' arrangements in schooling, such as gender-segregated schools, and argues that the demands of relational equality apply equally to public and private education. While educational reforms are necessary, they are insufficient on their own: meaningful integration also requires addressing residential and broader social segregation. I conclude that relational equality in education is inseparable from relational equality in society at large, calling for a shift away from competitive and meritocratic logics toward integration, cooperation, and shared civic life.

SOME EPISTEMIC CHALLENGES FOR DEMOCRACY IN TIMES OF CRISIS

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ABSTRACT

We live in a time of eco-social crisis in which it is essential to make collective decisions quickly and effectively. Beyond the behavioural changes that individuals can make, a global problem of this magnitude requires rapid and profound transformations involving all social actors. Such changes are only possible through measures of many different kinds adopted by public institutions. For institutions to assume this responsibility, there must be sufficient awareness, knowledge and understanding of the crisis both within institutional structures and among the wider population, which must also demand that effective measures be taken. However, the social practices through which shared social knowledge is produced and disseminated are often affected by multiple dysfunctions. Some of them may be unavoidable, but others —such as epistemic injustice and epistemic violence, which respond to the interests of particular groups— can be identified, and accountability for them and responsibility can be demanded. These harmful dynamics obstruct the generation and circulation of knowledge, thereby hindering collective decision-making and slowing efforts to confront the eco-social crisis. Moreover, these dynamics constitute discriminatory practices against certain groups and individuals. They violate fundamental rights such as freedom of expression, hinder the free development of individuals, and exclude people from participating in collective decision-making processes. This form of discrimination —or oppression, if that term is considered more appropriate— can be especially serious when those affected are already in situations of special vulnerability, either because they are disproportionately impacted by the ecological crisis or because their voices have historically and systematically been excluded from equal participation in public deliberation. This presentation

seeks to address some of these problems by revisiting some of the theories related to deliberative democracy in light of work on epistemic injustice and epistemic violence. By analysing these theoretical frameworks together, the aim is to identify and better understand certain avoidable dysfunctions that are not usually examined from this perspective or may even remain unnoticed. Such an approach may help illuminate the epistemic obstacles that collective struggles against challenges such as the eco-social crisis must confront.

VULNERABILITY AND JUDICIAL IMPARTIALITY

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ABSTRACT

My aim in this presentation is to examine various ways of conceptualising the prescriptive model of adjudication within the rule of law and, specifically, the judge's treatment of the accused.

This involves exploring the concept—generally underdeveloped in positive law itself—of the duty of judicial impartiality, paying particular attention to situations where the defendant or any of the parties to the trial are vulnerable.

There are different perspectives on this treatment, depending on what is considered to be the source of such vulnerability (either a vulnerability arising from the trial itself, due to the person's role in it, or a vulnerability of a social nature, external to the trial) and the most appropriate way to counter it.

I will undertake a comparison between some of these models, such as the "penal guaranteeism" (which ranges from Filangieri and Pagano to Ferrajoli) and some more critical perspectives, such as those focusing on systemic inequalities.

Another highly significant factor is the approach to knowledge that the judge must adopt in each of these models. For example, there are models in which the judge must maintain a distance from the defendant to avoid "osmosis" that might cloud their judgement, and there are models in which the judge must empathically "understand" the parties to the case in order to deliver a sound judgement.

Such an exam is of interest both in terms of the problematic framework and the proposed solutions, and also in terms of what is understood by the very notion of "impartiality" and by the very notion of "vulnerability" in the frame of a trial.

RETHINKING AGENCY UNDER OPPRESSION

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ABSTRACT

This contribution examines how agency should be understood in contexts of oppression by revisiting what Serene Khader has termed the dilemma of agency: the challenge of accounting for the reality of oppression without denying that oppressed individuals exercise agency. Standard formulations of this dilemma tend to oscillate between two unsatisfactory positions: a voluntarist view, which treats agents' choices as straightforward expressions of autonomy, and a determinist view, which explains those choices as mere effects of oppressive structures. I argue that this framing is inadequate. The voluntarist view obscures how non-voluntary social positioning and structural constraints shape agents' options. The determinist view, by contrast, captures the normative structuring of action, but does so in a way that makes it difficult to understand agents as responsible or answerable for what they do. To show this, I focus on two interrelated problems: non-voluntary membership in social groups and structural ignorance. These phenomena challenge the assumption that agents knowingly and intentionally participate in the social realities that shape their options, but also show that action cannot be reduced to the mere effect of social forces, as agents continue to act, respond, and sustain those structures under conditions of constraint.

I argue that this limitation reflects a deeper problem in standard (ideal) approaches to social ontology, which explain social phenomena in terms of collective intentionality, acceptance, or joint commitment. Against this view, I defend a structural account according to which social realities are constituted by practices, norms, and relations of power that position individuals within fields of constraint and enablement, independently of their acceptance or awareness.

From this perspective, agents can participate in and reproduce oppressive structures without fully recognizing them, due to asymmetrically distributed interpretive resources and conditions of structural ignorance. At the same time, their actions are often rational relative to their social position, as they respond to the constraints and incentives they face. These structures are not merely descriptive but normative, insofar as they are sustained by socially embedded practices of assessment and justification.

On this basis, I propose a reformulation of the dilemma of agency. The task is not to choose between treating oppressed individuals as fully autonomous agents or as merely determined by structural forces, but to account for forms of agency that are structurally mediated: actions that are meaningful and intelligible, yet shaped by relations of power, constraint, and limited epistemic access. This framework calls for a reconceptualization of agency that accommodates the rationality of action under constraints together with its normative assessment within socially structured contexts.

THE FUNCTION OF THE ENVIRONMENT COMMISSION IN TURKEY IN TERMS OF SUSTAINABLE LAW AND COMMENTS ON THE CLIMATE LAW PROPOSAL

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ABSTRACT

Turkey, like every industrialized country, needs to build its institutional structure around the concept of sustainability. This is because it faces two clear threats to sustainable development and environmental protection. The first is the possibility of not being able to repair the damage caused to nature in the name of production and settlement, since urbanization and industrialization took place in a very narrow time in the context of late capitalism..

The second clear threat is drought and reduction in biodiversity brought about by global climate change. Turkey is one of the countries that feel the effects of global climate change the most due to its geographical location. Decreased rainfall and drought affect agricultural production, industry, cities and public health. In addition, the number of wildlife and plant diversity are under threat in areas affected by global climate change. Reforming the law for sustainability requires sustainability policies to operate in parliament. In this respect, the Environment Commission has a crucial role. In this study, the general structure of the Environment Commission and the Law submitted to the Environment Commission by the ruling MPs at the end of February 2025 will be evaluated in terms of sustainability.

The legislature has a permanent specialized commission on the environment. In this commission, it is aimed to discuss the legal regulations related to the environment and send them to the general assembly of the parliament. Established in 1992, the Environment Commission was created to find solutions to the above-mentioned unplanned urbanization and environmental problems. However, it cannot be said to be one of the effective parliamentary committees. Although many legal provisions require

an environmental assessment, the procedure of discussing bills in other committees is adopted. This is because there are committees such as the Agriculture Committee, the Industry, Trade and Energy Committee, and the Zoning, Transportation and Tourism Committee, which operate in the field of environment. Since the beginning of the 2000s, 5 laws were discussed in the environment commission and referred to the general assembly, while dozens of laws were discussed and debated in other commissions. However, since many regulations were sent to other specialized commissions and enacted into law, there have been discussions that the Environment Commission is dysfunctional. For this reason, although there have been discussions on the closure of the environment commission, this commission still continues to function. On 21/2/2025, very important legislative proposals were submitted to the Commission by MPs from the ruling party. These laws in particular need to be evaluated separately in terms of their topicality. In addition, Turkey's new policies on sustainability can be observed through the texts of these proposals, which will probably be enacted very soon. It was stated that global climate change is a global threat and a Climate Change Presidency was established to develop policies. In the general justification of the proposal, it was emphasized that Turkey became a party to the UN Framework Convention on Climate Change in 2004 and to the Paris Agreement in 2021. In this context, it will fulfill its duties to develop policies on global climate change and ensure cooperation among institutions. The institution, which is authorized to cooperate with public institutions as well as private and legal persons, is intended to ensure its independence by regulating its revenues. As a result, Turkey is making institutional transformations in its law to ensure sustainability. In this context, the legislative, executive and judicial powers assume responsibility for ensuring sustainability.

Keywords: sustainibility, Turkish Environment Comission, Turkish Climate Change Bill, legislation, climate, change.

THE PLACE OF PHILOSOPHY OF LANGUAGE IN THE COMMUNICATIONAL THEORY, CONCEIVED AS THE THEORY OF LANGUAGE OF JURISTS

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SW39 · Law as Communication
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ABSTRACT

In this presentation, I focused on analyzing the philosophical roots of the communicational theory of law proposed by the scholar Gregorio Robles-Morchón. Although at first it seemed difficult to delve into these philosophical roots, since it deals with a theory of jurists' language, I soon realized that we were facing a theory that left behind numerous philosophical traces. Of all the philosophical traditions that have engaged with the communicational theory of law, it is the traditions of hermeneutics and analytical philosophy that have left the greatest mark.

Both traditions make it easier to break down the text into simpler units (in the case of analytic philosophy of Elizabeth Anscombe) and make better interpretation and understanding possible (in the case of hermeneutics of Hans-Georg Gadamer). The communicational theory of law does not lean towards one of these philosophical traditions at the expense of the other, but rather advocates for incorporating a methodology that promotes a spiral-like interrelation between hermeneutics and analytics.

The added value of this contribution has been bringing to light the philosophical basis of a theory, which, even though it has legal practice in its sights, still incorporates philosophical assumptions of the highest order.

LEGAL MONISM OR DUALISM? THE COMMUNICATIONAL THEORY OF LAW AND THE DUALISTIC, MANICHAEAN THEORY OF LAW

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ABSTRACT

This paper compares two contrasting approaches to Law. The first is a monistic approach, which focuses exclusively on the positive dimensions of the legal order, as exemplified by the Communicational Theory of Law. The second is a dualistic approach, which places the positive and negative dimensions of Law on an equal footing, as exemplified by the dualistic, Manichaean Theory of Law that we have developed in previous works. Our comparison suggests that, both theoretically and practically, a dualistic, Manichaean understanding of law provides a more adequate account of the legal phenomenon.

ECONOMIC JUSTICE AND BUSINESS FINANCE IN EUROPE: AN ANALYSIS FROM THE COMMUNICATIONAL THEORY OF LAW

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ABSTRACT

European law recognises ideals of economic justice in financial relationships, including balance between the parties, proportionality and protection against exploitation, whose realisation also depends on how those relationships are legally structured. This raises a particular question in business finance, where a well-recognised bias in favour of debt over equity is reflected in the different tax treatment of their returns. While economic analysis describes this bias as a distortion, the question remains whether it also constitutes a legal problem, of what kind, and what response it may admit. The Communicational Theory of Law (CTL) provides the conceptual framework for addressing these questions.

First, CTL helps to locate the problem in the field of coherence, rather than validity, efficacy or effectiveness, which relate each norm to its own system, addressees or purposes rather than to the relationship between the solutions they establish. Its theory of action explains why this coherence can be assessed legally: forms of financing are not merely economic alternatives on which law operates, but distinct generic actions whose procedures and effects are configured by the legal order.

Second, CTL provides the framework for determining the criterion of assessment. Its notion of ambital justice confines the analysis to ideals concretised within the European legal domain, while the distinction between ideals and structural criteria makes it possible to consider correspondence between risk and return as a criterion favouring the realisation of those ideals. Islamic finance provides an explicit formulation of this criterion, whose presence is then examined within European law. Although its concretisation in securitisation, investment in start-ups and participating loans does not amount to a general rule, these manifestations reveal a constant

ordering relationship whereby European law favours correspondence, rather than separation, between risk and return. The preferential treatment of returns detached from business risk can thus be characterised as an incoherence of the legal order with itself.

Third, CTL helps to determine the type of response. Since forms of financing are legally configured as distinct generic actions, and risk not assumed when the transaction was constituted cannot subsequently be imposed on the financier, the criterion can operate fully only at the level of that configuration, which, as a general rule, can only be altered through legislative intervention. This leads to a de lege ferenda proposal to reconsider legal effects that systematically favour returns detached from business risk, a step that lies beyond CTL's internal analysis. More broadly, the incorporation of a structural criterion into a legal domain admits degrees according to the plane, extent and intensity of its concretisation: it may support an internal assessment of coherence without being sufficiently generalised to produce normative consequences without legislative intervention.

Keywords: Communicational Theory of Law, ambital justice, corporate finance, debt bias, risk and return, legal coherence, Islamic finance.

DIALOGUES BETWEEN LOGICAL-SEMANTIC CONSTRUCTIVISM AND THE COMMUNICATIONAL THEORY OF LAW: ORDENAMIENTO, SISTEMAS AND ÁMBITO JURÍDICO

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ABSTRACT

This paper examines points of contact and divergence between Logical-Semantic Constructivism (Paulo de Barros Carvalho) and the Communicational Theory of Law (Gregorio Robles). Both theories draw on the philosophy of language to shape their perspectives on their object. Logical-Semantic Constructivism, in particular, rests on three linguistic axes, syntax, semantics and pragmatics, and holds that positive law, as a communicative system, depends for its full construction on the work of interpreters and appliers. The paper concentrates on one of the many themes shared by the two schools: the relationship among the concepts of ordenamiento and sistema. Logical-Semantic Constructivism generally treats these terms as synonyms, understanding the ordenamiento as the set of legal texts capable of giving rise to legal norms in the strict sense, elaborated by the authorities competent to create new prescriptive content; legal science, as a purely descriptive metalanguage, remains outside the object "law". The Communicational Theory of Law, from a nominalist perspective concerned with how law manifests itself rather than with what law is, distinguishes ordenamiento from sistemas doctrinales, sistema en sentido estricto and ámbito jurídico, the last of which is foreign to Logical-Semantic Constructivism. The paper considers how Logical-Semantic Constructivism treats texts that the Communicational Theory of Law locates within the ámbito jurídico: contracts, regarded as individual and concrete norms, belong to the ordenamiento, whereas notarial documents and registry entries are not included in positive law and can at most serve as evidence. It asks whether Logical-Semantic Constructivism could develop a category of its own,

analogous to the ámbito jurídico though not identical to it, for texts relevant to legal dynamics that do not directly give rise to individual and concrete norms. It concludes that the positivist and, to some extent, ontological features of Logical-Semantic Constructivism are not foundational to the theory, and that, in order to treat with greater methodological rigor the textual data it already regards as relevant to law but currently leaves outside its field of study (the materials found in the sistemas doctrinales and the ámbito jurídico of the Communicational Theory of Law), it could revise its positivist stance toward the ordenamiento and toward legal science without the collapse of the theory as a whole, finding in the Communicational Theory of Law an ally in that task.

SOCIAL CONFLICT AND THE COMMUNICATIONAL THEORY OF LAW

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ABSTRACT

This contribution examines the role of social conflict within Gregorio Robles' Communicational Theory of Law (CTL) and argues that conflict constitutes a fundamental category for understanding both the emergence and the function of law. Although Robles does not explicitly formulate a theory of social conflict, a systematic reading of his work reveals that conflict occupies a structural position within his conception of law as a system of social communication. The central hypothesis defended here is that the relationship between social conflict, legal decision-making and peace provides a particularly fruitful interpretative key for understanding the architecture and practical function of the Communicational Theory of Law.

Robles' theoretical project constitutes one of the most ambitious contemporary attempts to explain law through a hermeneutic-analytical approach grounded in the syntactic, semantic and pragmatic dimensions of language. Law is understood fundamentally as a complex communicational system comprising decisions, norms, institutions, actions and legal relationships articulated through linguistic structures endowed with normative meaning. Yet this communicational dimension cannot be understood as an end in itself. Beneath the textual and communicational structure of law lies a practical function: the organisation of human coexistence through the institutionalised resolution of conflicts and the establishment of conditions of social peace. As Robles explicitly maintains, law arises in response to conflict and fulfils a primary function in resolving conflicts that emerge when human beings pursue incompatible interests.

The first part of the study therefore clarifies the different meanings attributed to the term conflict throughout the Communicational Theory of Law. The analysis identifies four principal uses: social conflict, conflict of interests, procedural conflict, and conflict as a condition of legal decision-

making. These meanings should not be regarded as isolated or unrelated categories. Rather, they form part of a conceptual sequence. Social conflict represents the original condition generated by human coexistence; conflicts of interest constitute one of its most concrete manifestations; procedural conflict emerges when social controversy is transformed into a legally structured dispute; and legal decision-making constitutes the institutional response through which the legal system addresses such situations.

This distinction is important because it shows that social conflict is not merely one among many phenomena regulated by law. It occupies a more fundamental position: it helps explain why law exists in the first place. In Robles' account, human coexistence inevitably generates situations in which individuals pursue incompatible interests or claims. Where these situations cannot be resolved peacefully by those directly involved, an institutional mechanism becomes necessary. Law provides that mechanism by transforming an initially social conflict into a legally structured controversy capable of being resolved through an authoritative decision.

The second part places this conception within the broader sociological debate concerning the nature of conflict. The analysis contrasts theories centred on social consensus and integration, represented particularly by Émile Durkheim and Talcott Parsons, with approaches that regard conflict as a structural dimension of social life, including those developed by Karl Marx, Georg Simmel, Lewis A. Coser, Ralf Dahrendorf and Niklas Luhmann. The purpose is not to reduce these authors to a rigid dichotomy, but to show the progressive transformation of the theoretical status attributed to conflict. Whereas functionalist approaches tend to understand conflict primarily in relation to disturbances of social integration, subsequent theories emphasise its permanence, structural character and potential institutional functions.

This sociological perspective provides an essential background for the legal argument. Human beings are free subjects who pursue different ends and formulate claims that may be incompatible. Plurality of interests, values and expectations therefore makes the complete elimination of conflict impossible. The relevant question for legal theory is consequently not how conflict can be eradicated, but how it can be transformed into forms of interaction compatible with the continuity of social coexistence. From this

standpoint, law emerges as an institutional response to a permanent anthropological and social condition.

The third part of the study develops the relationship between conflict and legal decision-making. Decision occupies a central position in Robles' theory because law is not merely a static body of norms but an institutional practice involving choices between possible alternatives. Conflict and decision are therefore conceptually connected. Where there are no alternatives, competing claims or problematic situations, there is no genuine need to decide. Robles himself establishes this connection by linking the absence of conflict to the absence of any need for legal decision-making and, consequently, to the absence of the need for law.

This relationship becomes particularly clear through the distinction between normative decisions and resolutive decisions. Normative decisions establish general and abstract patterns capable of anticipating and simplifying the resolution of foreseeable conflicts. Resolutive decisions, by contrast, address concrete controversies and determine which of the competing claims must prevail. The legal order can thus be understood as a dynamic structure in which decisions, norms and procedures are interconnected responses to actual or potential conflict.

The procedural dimension is especially significant. A social conflict does not automatically become a legal dispute. It must first undergo a process of juridical transformation through which the original controversy is reconstructed in legal terms, subjected to procedural rules and placed before a competent decision-maker. The judicial process therefore represents a specifically legal form of communication: it replaces direct confrontation with regulated interaction and transforms competing claims into a legally structured controversy whose final stage is an authoritative decision.

Finally, the study examines the relationship between conflict and peace. In the Communicational Theory of Law, peace should not be understood as the complete absence of disagreement or social tension. Such a condition would be incompatible with the plurality inherent in human coexistence. Legal peace instead results from the institutionalised treatment of conflict through procedures capable of replacing violence, private force or uncertainty with an authoritative legal determination. Law thus stands between conflict and peace: conflict constitutes its starting point, institutional

procedure its means, and legal decision the mechanism through which a condition of juridical peace can be established.

The contribution therefore proposes an interpretation of the Communicational Theory of Law in which communication is not regarded as an autonomous or self-sufficient purpose of the legal system. Rather, legal communication acquires its full practical meaning from the social function it performs: transforming human conflicts into legally binding decisions capable of producing order, stability and peace. On this reading, conflict is not an external circumstance to which law occasionally responds. It is a structural condition underlying the emergence, operation and practical significance of the legal experience. The relationship between conflict, decision and peace consequently offers a unifying interpretative framework through which the communicational, normative, procedural and decisional dimensions of Robles' theory can be understood as interconnected moments of a single institutional process.

Keywords: Communicational Theory of Law; social conflict; legal decision; legal communication; legal process; social peace; Gregorio Robles.

EL DERECHO COMO INSTRUMENTO DE RACIONALIZACIÓN Y PACIFICACIÓN DE LOS CONFLICTOS SOCIALES

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ABSTRACT

Law is, in effect, a coercive order of human behaviour, and it must also be stated that it is not just any type of coercive order; rather, it has characteristics that are unique to it and common to all possible forms of law, which are also those that give it special dignity or legitimacy.

Below, I will use the basic outline of the Communication Theory of Law to address this peculiar nature of legal coercion or, more precisely, the relationship between law and violence. Not surprisingly, violence or, more neutrally, legal force is closely connected to the three basic elements of the legal system: decision, norm and institution.

LEGAL COMPETENCE BETWEEN THE COMMUNICATIONAL THEORY OF LAW AND LOGICAL-SEMANTIC CONSTRUCTIVISM

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ABSTRACT

This paper examines legal competence through a comparative analysis between Paulo de Barros Carvalho's Logical-Semantic Constructivism and Gregorio Robles's Communicational Theory of Law, using Alejandro Daniel Calzetta's explanatory strategies of competence as its classificatory framework. The central question is whether legal competence should be understood primarily as a normative authorization, as a constitutive-conceptual criterion, or as a mixed category that combines both dimensions. The article first reconstructs Calzetta's distinction between the normative, conceptual, and mixed strategies. It then argues that Paulo de Barros Carvalho's account of competence is best situated within the normative strategy, since competence is conceived as a structural norm that regulates the production of other legal norms. From this perspective, competence is not a sociological fact or a mere institutional attribute, but a legal meaning constructed from positive legal texts and operating as a condition of validity for normative production. The article then turns to Gregorio Robles's Communicational Theory of Law, in which law is understood as a communicational process produced by legal decisions that are objectified in texts. In this framework, competence is not merely the authorization to issue norms, but the institutional prerogative to make legal decisions. The paper argues that Robles's position is better classified within Calzetta's mixed strategy: competence has a normative dimension, because it depends on institutional authorization, and a constitutive dimension, because it defines which communicational acts count as legally relevant decisions. The conclusion shows that both theories treat competence as a condition for the validity of legal production, while differing as to its primary object: normative production in Carvalho and legal decision-making in Robles.

Keywords: legal competence; Communicational Theory of Law; Logical-Semantic Constructivism; legal decision; structural norms; Alejandro Daniel Calzetta.

EQUITY AND PRUDENCE: AN ESSENTIAL PAIR FOR CONTEXTUAL JUSTICE

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ABSTRACT

The Communicational Theory of Law (CTL) is aimed at legal scholars, sociologists, anthropologists, psychologists, and philosophers, and has a multidisciplinary dimension. This study adopts the perspective of the legal scholar, seeking to explain how CLT truly advocates a holistic conception of justice and how the transition from justice to contextual justice requires crossing the bridge of the rule of law. In this study, this ultimately leads to the development of a "Communicational Ethical Theory of Law" in which the pair of prudence and equity takes on a special prominence.

LA TEORÍA COMUNICACIONAL DEL DERECHO Y EL EJERCICIO DE LA ABOGACÍA

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ABSTRACT

Is there a connection between practicing law and the communicational theory of law, or in other words, is Law as Communication actually useful for practicing law? A lawyer can't properly do their job if they can't convey the reasons behind their claims and, as a result, defend the interests entrusted to them. More specifically, the different aspects of practicing law have a communicational side, which makes Law as Communication extremely useful to understand, namely: the factors that guide the handling of cases (law, doctrine, and case law) and their analysis, evidence and its link to the specific case, the procedural actions of legal professionals, their performance during court hearings, and the need to provide reasoning for the most important judicial decisions (orders and sentences).

LA INTERACCIÓN ENTRE EL ÁMBITO JURÍDICO Y EL ÁMBITO DIGITAL DESDE LA INTERTEXTUALIDAD Y LA HIPERTEXTUALIDAD

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ABSTRACT

Las tecnologías de la información y la amplia conectividad promovida por internet transformaron las relaciones sociales, dando origen a una sociedad de la información en la que los conflictos también ocurren en un escenario digital, exigiendo una manifestación del derecho. Apoyada en la Teoría Comunicacional del Derecho (TCD) de Gregorio Robles, esta investigación identifica la interacción entre el ámbito jurídico y el ámbito digital, entendidos como espacios comunicacionales textualizables definidos por un lenguaje propio. La hipótesis de trabajo es que el contacto entre ambos ámbitos configura una intertextualidad extra-ambital, ejecutada por la hipertextualidad: un texto de un ámbito (hipotexto) es incorporado, derivado o transformado por un texto del otro ámbito (hipertexto). Primero se identifican los ámbitos de la realidad social y sus rasgos comunicacionales, caracterizándose, después, en sus especificidades, el ámbito jurídico constituido por un conjunto de procesos comunicacionales que se refieren a textos del ordenamiento, a textos del sistema y a otros textos con importancia jurídica. En seguida se defiende la existencia del ámbito digital como un espacio virtual en el que las personas se comunican e interactúan con un lenguaje binario intermediado y procesado por máquinas. Finalmente, se examina que la interacción entre el ámbito jurídico y el ámbito digital ocurre por medio de la intertextualidad ambital (interna a un ámbito) y la extra-ambital (entre ámbitos distintos) que operan por la hipertextualidad, que presupone el texto anterior u original (el hipotexto) y el texto posterior (el hipertexto). Así, el hipertexto es creado a partir de la derivación, transformación o incorporación del hipotexto, que puede estar en el mismo ámbito (intertextualidad ambital) o pertenecer a otro ámbito (intertextualidad extra-ambital). Casos del derecho brasileño, como

la evolución jurisprudencial y legislativa del art. 241 del Estatuto de la Niñez y la Adolescencia frente a la divulgación digital de imágenes, y el art. 11 de la Ley General de Protección de Datos, ilustran cómo un hipotexto digital se transforma en hipertexto jurídico, y viceversa. Se concluye que esa incorporación no es automática ni libre: el propio ordenamiento, por medio de normas de competencia, reglamenta quién y cómo genera un hipertexto normativo válido.

DAS MODELL EINES „GEMÄSSIGTEN KONSTRUKTIVISMUS“ IN DER THEORIE DER JURISTISCHEN ARGUMENTATION

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ABSTRACT

Juristische Argumente sind relativ nicht nur auf unterschiedliche Rechtsordnungen, sondern auch auf unterschiedliche rechtsphilosophische Modelle der Struktur von Rechtsordnungen. Untersucht werden soll, welche Konsequenzen sich für das Verständnis und das Potential juristischen Argumentierens aus einem (realistischen) konstruktivistischen Modell des Rechts ergeben, dem zufolge Recht keine ideale, sondern nur eine soziale Existenz hat.

Da in diesem Modell die Möglichkeit einer kognitivistischen Interpretation der richterlichen Entscheidung (Suche nach der „Bedeutung“ des Gesetzes, allgemein: dem „richtigen“ Ergebnis) ausscheidet, bleibt der Prozess der Abwägung heterogener Argumente ohne einen (selbst: virtuellen) externen Bezugspunkt. Die in der Wissenschaftstheorie aufgezeigte Möglichkeit, das Abwägungsproblem dadurch zu neutralisieren, dass man Argumenten unterschiedlichen Typs unterschiedliche Hypothesen zuordnet, scheidet aus Gründen der praktischen Funktion der Rechtswissenschaft aus.

Versuche, das Abwägungsproblem auf der Ebene der Rechtstheorie durch die Festlegung einer mehr oder weniger flexibler Rangfolge von Argumenten bzw. Auslegungsmethoden zu entspannen, sind skeptisch zu beurteilen. Zum einen, weil reflektierte Rangfolge-Modelle zugestehen müssen, dass es letztlich auf das Gewicht der unterschiedlichen Argumente im konkreten Fall ankommt. Zum andern, weil die Bestimmung des relativen Gewichts von Argumenten unterschiedlichen Typs zumindest auch der jeweiligen Rechtsordnung obliegt.

Angesichts der resultierenden Unsicherheiten stellt sich die Frage, ob das – in ontologischer Interpretation diskreditierte – Modell der „einzig richtigen Entscheidung“ in dem bisher überwiegend akzeptierten Umfang als „regulative Idee“ aufrechterhalten werden kann. Es wird vorgeschlagen, den Anwendungsbereich dieses Modells auf den institutionellen Kontext zu beschränken und sich bei der genaueren Kalibrierung an den Bestimmungen des jeweiligen positiven Rechts zu orientieren.

PROBLEMS OF SYSTEMATIC INTERPRETATION IN LAW

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ABSTRACT

Since Savigny, systematic interpretation has been one of the recognized forms of interpretation in legal reasoning. Nevertheless, a look at the current literature on methodology shows that the breadth of the systemic approach has led to numerous inconsistencies. This lecture analyzes some of these inconsistencies, which in part point to real problems with systematic interpretation, but in part also merely reflect the problematic state of the methodological debate.

DIE RELEVANZ VON ARGUMENTEN FÜR DIE DEMOKRATISCHE LEGITIMATION DES RECHTS

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ABSTRACT

Welche Rolle spielen Argumente für die demokratische Legitimation des Rechts? Das hängt davon ab, welches Verständnis von Demokratie man zugrunde legt. Während etwa für die deliberative Demokratiekonzeption das Argumentieren, der Austausch von Gründen und Gegengründen, zentral für den demokratischen Prozess und die Legitimität demokratischer Beschlüsse sind, spielt die Deliberation beispielsweise für eine elektoral-interessenbasiert verstandene Demokratiekonzeption keine gleichermaßen wichtige Rolle. Der Vortrag soll diesen unterschiedlichen Perspektiven genauer nachgehen und dabei auch untersuchen, welche Implikationen sich für die derzeit diskutierte Frage nach einem strafrechtlichen Schutz vor der Verbreitung politischer Fake News ergeben.

JURISTISCHE ARGUMENTATION UND DER VORRANG DER PERSON

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ABSTRACT

Wenn wir davon ausgehen, dass alle Begründungen im Recht nicht logischer sondern argumentativer Natur sind, und zudem zur Kenntnis nehmen, dass die juristischen Argumente wie alle praktischen Argumente nicht gleichartig sind, sondern sich in ihrer normativen Kraft unterscheiden, dann stellt sich die Frage, welchen von ihnen bei der Begründung eines rechtlichen Urteils die Priorität gebührt. Der vorliegende Beitrag will der These beipflichten, dass im Recht deontologische vor konsequentialistischen (ob utilitaristischer oder axiologischer Art) Argumenten den Vorrang genießen, und sich dabei auf die Bedeutsamkeit der auch für den Rechtsbereich grundlegenden Idee der Person als eines autonom handelnden Subjekts stützen. Diese Idee wird ausgehend von ihrer kantschen Herkunft analysiert, wobei gezeigt wird, dass die Verursachung einer Verletzung der Person moralisch wie auch rechtlich im Prinzip schwerer wiegt als die Missachtung des Utilitätsprinzips bzw. die ungenügende Berücksichtigung eines Wertes. Zudem ist auf die enge Verbindung des personenbezogenen Unrechtsverbots mit einer dezidierten Sanktionierung seiner Übertretung in Betracht zu ziehen; Ausnahmen sind nur unter strengsten Bedingungen zugelassen. Demgegenüber ist nicht jede Missachtung eines Wertes, auch nicht immer der Vollzug einer Handlung, die die Utilität nicht maximiert, rechtlich zu beanstanden, auch wenn manche diesbezügliche Übertretungen schwer sanktioniert werden. Entscheidend ist hier das Denkmittel der Abwägung. Abwägungen sind aber bei Verletzungen von Personen im Grunde nicht am Platz.

LAWFARE ALS INSTRUMENTALISIERUNG DER JURISTISCHEN ARGUMENTATION: EIN BEISPIEL AUS DEM FALL DER OPERATION „CAR WASH“ IN BRASILIEN

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ABSTRACT

In dieser Arbeit wird diskutiert, wie Gerichte den Begriff der Instrumentalisierung juristischer Argumentation durch die Praxis des Lawfare konkretisieren. Dies wiederum führt zu einem Szenario, in dem sich die Gerichte nicht einmal mehr an die Rechtsstruktur gebunden fühlen, auf der ihre Arbeitsweise basiert. Zu diesem Zweck wird zunächst die Verwendung des Lawfare-Konzepts in der brasilianischen Literatur diskutiert, die sich in letzter Zeit mit der Operation „Car Wash“ befasst hat. Diese derzeitige Verwendung ist spezifischer als die globale Verwendung, die sich erstens auf die Debatte über den Kriegskontext konzentrierte und sich in einem zweiten Schritt allgemeiner auf die Beziehung zwischen Recht und Politik bezog. Die brasilianische Doktrin präzisiert den Begriff jedoch dahingehend, dass er sich auf das Verhältnis zwischen Recht und Politik bezieht, wenn ein Freund-Feind-Gegensatz besteht, insbesondere in Fällen, in denen das Recht missbräuchlich zur Erreichung politischer Ziele eingesetzt wird. In diesem Sinne fassen Zanin Martins et al. (2019) die Definition von Lawfare wie folgt zusammen: „den strategischen Einsatz von Recht mit dem Ziel, einen Feind zu delegitimieren, zu schädigen oder zu vernichten“. Hier wird der ursprüngliche Zweck des Rechts, nämlich die friedliche Beilegung von Streitigkeiten durch Begrenzung der Gewaltanwendung, negiert. Im Rahmen dieser Debatte wird die Operation „Car Wash” infrage gestellt, da sie für die Erreichung bestimmter politischer Ziele instrumentalisiert wurde, d. h. als Instrument der Lawfare verwendet wurde. Vor diesem Hintergrund wird das Argument vorgebracht, dass

diese Instrumentalisierung der juristischen Argumentation zu einer Entkopplung der Praxis der mit Lawfare-Fällen befassten Gerichte von ihren grundlegenden Pflichten führt. Dies kann auch als eine Form der übermäßigen Unabhängigkeit der Gerichte von ihren verfassungsmäßigen Pflichten sowie vom Gleichgewicht zwischen den drei Gewalten dargestellt werden.

DIE BEGRÜNDUNG ALS QUASI-TRANSZENDENTALE VORAUSSETZUNG DER RECHTSERKENNTNIS

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ABSTRACT

Die Postulierung der Irrationalität der Rechtsgewinnung ist kein modernes Phänomen. Bereits die Freirechtsschule und die Interpretationstheorie Hans Kelsens wiesen eine mehr oder weniger latente Tendenz zum Dezisionismus auf. Gegenwärtig droht jedoch erneut eine Wende zum Irrationalismus: Das Recht erscheint nicht mehr als Ergebnis eines rationalen Prozesses, sondern als Produkt nicht rational überprüfbarer Wertentscheidungen. Diese nonkognitivistische Position ist darauf zurückzuführen, dass sowohl die Naturrechtslehre als auch der Rechtspositivismus – zwei klassische „rationale" Rechtslehren – in den letzten Jahrzehnten erheblich an Bedeutung verloren haben.

Diesem Irrationalismus ist zu widersprechen, indem die Erkenntnisfähigkeit normativ-rechtlicher Aussagen verteidigt wird. Dies setzt voraus, dass der Begriff Erkenntnisfähigkeit anders als gewöhnlich verstanden wird: Mit der Erkenntnis des Rechts ist nicht etwa die ontologische Einsicht in objektive Werte gemeint. Gegenstand der Erkenntnis ist vielmehr allein die Begründung normativ-rechtlicher Aussagen. Denn eine normative Aussage kann nur dann als sinnvoller Satz erkannt werden, wenn ihre Geltung begründet wird. Die Argumentationstheorie ist demnach nicht nur Methode, sondern Quasi-Transzendentalphilosophie, da sie sich mit den Bedingungen der Möglichkeit von (Rechts)Erkenntnis befasst. Insofern eine Aussage begründet wird, kann sie außerdem auf ihre Richtigkeit hin überprüft werden. Gerade diese Unterscheidbarkeit gewährleistet die Rationalität der Erkenntnis.

In meinem Vortrag möchte ich diese Gedanken erläutern, die mich seit mehreren Jahren beschäftigen. Insbesondere möchte ich darlegen, was ich unter Quasi-Transzendentalphilosophie, verstehe, welche erkenntnistheoretische Bedeutung die Argumentation in der Rechtsanwendung hat und

warum gerade die Qualifizierung der Rechtswissenschaft als argumentative Wissenschaft ihre Rationalität gewährleistet.

WO IST DIE JURISTISCHE ARGUMENTATION? EIN VORSCHLAG ZUM VERHÄLTNIS VON POLITIK- UND RECHTSDISKURS AUS RHETORISCHER PERSPEKTIVE AUF VÖLKERRECHT UND INTERNATIONALE POLITIK

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ABSTRACT

Als Formen praktischer Argumentation teilen juristischer und politischer Diskurs eine gemeinsame Grundlage. Dennoch bestehen spezifische Unterschiede. Diese Arbeit untersucht die Kontinuitäten und Trennlinien zwischen politischem und juristischem Diskurs, insbesondere im supranationalen Kontext, d. h. die Unterscheidung zwischen dem Diskurs der internationalen Politik und dem Diskurs des Völkerrechts. Die Arbeit gliedert sich neben Einleitung und Schlussbetrachtung in zwei Hauptteile. Im ersten Teil werden, basierend auf dem theoretischen Rahmen der Rhetorischen Rechtstheorie und ihren Analysekategorien, insbesondere Logos, Ethos und Pathos als Argumentationsmittel, die Berührungspunkte und Unterschiede zwischen juristischem und politischem Diskurs, insbesondere im supranationalen Bereich, untersucht. Dabei werden die Ansätze von Andreas von Arnauld, einem Vertreter des völkerrechtlichen Diskurses, und Wilhelm Hennis, einem Vertreter des politischen Diskurses, miteinander in Einklang gebracht. Diese Untersuchung greift die Unterscheidung zwischen materiellen und formalen Rechtsquellen erneut auf, die laut Niklas Luhmann auch die Grenzen zwischen Rechts- und Politiksystemen als funktional autonomen Systemen widerspiegelt. Im Rahmen der Rhetorischen Rechtstheorie wird die von Nicolai Hartmann geprägte und von Theodor Viehweg genutzte Dichotomie zwischen Systemdenken und Problemdenken zur Gegenüberstellung zweier Denkweisen über das Recht neu betrachtet. Die Wiederentdeckung der Rhetorik Mitte des 20. Jahrhunderts mit Theodor Viehwegs Werk „Topik und Jurisprudenz“, das den Weg für die Rhetorische Rechtstheorie

und rhetorisch fundierte juristische Argumentation ebnete, ist mit der fundamentalen Rolle von Topoi im problemorientierten Denken verknüpft. Gerade die von Lothar Bornscheuer beschriebenen Merkmale von Topoi – nämlich Habitualität, Potentialität, Intentionalität und Symbolizität – werden im Hinblick auf die Besonderheiten des juristischen und politischen Diskurses neu untersucht und liefern die Grundlage für die Begründung, inwieweit diese Diskursarten konvergieren oder divergieren. Im zweiten Teil dieser Arbeit werden anhand eines Beispiels und der Anwendung des theoretischen Teils auf die Analyse konkreter Diskurse zwei Topoi der politisch-rechtlichen Debatte zum Thema Migration in Deutschland untersucht: „Wir schaffen das“ als Paradigma des Migrantenschutzes und „Unser Land zuerst“ als Modell der Stärkung der Staatsgrenzen und der Aufwertung nationaler politischer Gemeinschaften. Dieses Beispiel soll die enge Verbindung zwischen juristischem und politischem Diskurs verdeutlichen und die Gemeinsamkeiten sowie die Unterschiede herausarbeiten.

«DAS PROBLEM IST … STETS FÜHREND»: REFLEKTIONEN ZU VIEHWEGS ERNEUERUNG DER TOPIK

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ABSTRACT

Der Beitrag erörtert die Erneuerung der Topik durch Theodor Viehweg und beleuchtet deren philosophische Orientierung(en). Er widmet sich der paradoxen Situation, dass Viehwegs Topik zwar zunächst grossen Widerhall fand und auch in der Gegenwart immer wieder Erwähnung und Beachtung findet, sein Begriff der Topik aber undeutlich bleibt. So gibt die Anwendung der Topik auf die juristische Methode auch heute noch Anlass zu Diskussion und Vergewisserung. Denn die Frage, was die seit der Antike bekannte Topik für die juristische Methode bedeutet, ist nicht einfach zu beantworten und es wurde bereits Viehweg selbst vielfach vorgeworfen, diese Frage nicht zu klären. Eine Schwierigkeit liegt darin, dass Viehwegs Topik ein Produkt unterschiedlicher Entwicklungsstränge ist. Die Gemengelage metaphysischer, kontextualistischer, pragmatischer und systemorientierter Orientierungen wird im vorliegenden Beitrag untersucht. Eine solche Verortung scheint auch für die Auseinandersetzung mit den Grundlagen der Theorie der juristischen Argumentation bedeutsam, die einen engen Zusammenhang zur Topik behauptet.

ZUR PARADOXIE AUTORITATIVER VERFASSUNGSINTERPRETATION IM DEMOKRATISCHEN VERFASSUNGSSTAAT

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ABSTRACT

In diesem Beitrag geht es um das Spannungsfeld zwischen der Autorität juristischer Argumente und demokratischer Anerkennung. Die juristische Argumentationstheorie steht vor einem grundlegenden Problem: Einerseits beruht die Autorität rechtlicher Entscheidungen auf dem Anspruch, verbindliche Interpretationen des Rechts als legitime Geltungsansprüche zu liefern. Andererseits hängt die faktische Wirksamkeit dieser Interpretationen von ihrer gesellschaftlichen Anerkennung, ihrer politischen Umsetzung und schließlich vom Rechtsgehorsam der Rechtsadressaten ab. Besonders deutlich tritt dieses Spannungsverhältnis im Verfassungsrecht hervor, wo die letztverbindliche Interpretation der Verfassung institutionell beim BVerfG konzentriert ist, ihre Legitimität jedoch auf die Anerkennung politischer Institutionen und der Verfassungsadressaten angewiesen ist.

In Verfassungsgemeinschaften, die zugleich immer auch Interpretationsgemeinschaften sind, kann der Rechtsgehorsam nicht allein durch die beanspruchte Autorität verfassungsgerichtlicher Entscheidungen erzeugt werden; vielmehr setzt die faktische Wirksamkeit juristischer Argumente voraus, dass die Adressaten des Rechts diese Deutungsangebote als legitim und anerkennungswürdig verstehen. Zur Erzeugung anerkennungswürdiger Geltungsansprüche müssten die Rechtsadressaten jedoch in den Interpretationsprozess eingebunden sein. Der Verweis auf die Kettentheorie oder auf parlamentarische Wahlen kann diese Paradoxie der juristischen Argumentationslogik nicht überzeugend auflösen.

Damit rückt ein aktuelles Problem der juristischen Argumentationstheorie in den Mittelpunkt: Wie lässt sich die Autorität einer exklusiven und

institutionell privilegierten Verfassungsinterpretation rechtfertigen, wenn die gesellschaftlichen Prozesse der Sinnbildung und Interpretation nicht in ihr aufgehen? Je stärker die juristische Praxis auf die Letztverbindlichkeit gerichtlicher Entscheidungen abstellt, desto deutlicher tritt ihre Abhängigkeit von außergerichtlichen Formen der Anerkennung hervor. Damit wird die Frage, wer die Verfassung verbindlich interpretieren darf, ist damit nicht nur eine Frage institutioneller Zuständigkeit, sondern zugleich ein Problem der juristischen Argumentations- und Legitimationstheorie wie auch -praxis.

BEWUSST GEGEN DEN WILLEN DES GESETZGEBERS? EINE ARGUMENTATIONSTHEORETISCHE REFLEXION ZUM KRITISCHEN AUSLEGUNGSANSATZ GEGENÜBER DER EXPANSION DES STRAFRECHTS IN CHINA

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ABSTRACT

In der chinesischen Strafrechtswissenschaft gilt die „restriktive Auslegung" als wirksames Mittel gegen die „Expansion des Strafrechts". Diese grundsätzliche Haltung, Strafrechtsnormen unter Umgehung des Willens des Gesetzgebers restriktiv auszulegen, ist jedoch aus argumentationstheoretischer Sicht fragwürdig. Dies zeigt sich insbesondere in den Ansätzen zur restriktiven Anwendung von Straftatbeständen, die vom chinesischen Gesetzgeber als abstrakte Gefährdungsdelikte ausgestaltet wurden. Der vorliegende Vortrag stellt zunächst drei Lösungsansätze nach der gängigen Auffassung vor, namentlich die Zulassung des Gegenbeweises der Ungefährlichkeit bei abstrakten Gefährdungsdelikten, die Hinzufügung einer besonderen Absicht oder die Straffreistellung aufgrund des Ausbleibens eines Schadens. Anschließend wird untersucht, ob diese dogmatischen Ansätze aus Sicht der Argumentationstheorie begründbar sind. Nach der hier vertretenen Auffassung unterliegt der Rechtsanwender bei der Ermittlung des objektivierten Willens des Gesetzgebers der Bindung an den Gesetzestext. Er darf sich nicht über den eindeutigen Wortlaut und die vom Gesetzgeber festgelegte Tatbestandsstruktur hinwegsetzen. Ob das vom Gesetzgeber typisierte Verhalten strafwürdig ist, ist nicht mehr Gegenstand der Interpretation durch den Rechtsanwender. Bei der Auslegung des abstrakten Gefährdungsdelikts beruht der zulässige restriktive Ansatz auf einer Einzelfallbeurteilung aus strafpolitischen Gründen sowie auf der Festlegung eines typisierten „Prüfungsmaßstabs der Präventionsnotwendigkeit" unter den Hinweis auf den durch § 13 Abs. 1 S. 2

chStGB (die sog. „Ausnahmeregelung“) bestimmten Ermessensrahmen. Ausgehend von den oben genannten Überlegungen zur Praxis der restriktiven Auslegung des abstrakten Gefährdungsdelikts sollte die Strafrechtsdogmatik in China nicht nur „methodologisches Bewusstsein“, sondern auch „methodologische Ehrlichkeit“ entwickeln.

MACHINA PRAEDICIT, HOMO IUDICAT. ZU DEN GRENZEN DES KI-EINSATZES IN DER JURISTISCHEN ARGUMENTATION

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ABSTRACT

Wo liegen die tatsächlichen Leistungsgrenzen moderner KI-Systeme bei der juristischen Argumentation? Dieser Beitrag argumentiert, dass die vollständige Ausrichtung (Alignment) von juristischer KI keine bloße technische Herausforderung darstellt, sondern auf einer prinzipiellen Limitierung beruht, die in der strukturellen Anfechtbarkeit (Defeasibility) des Rechts begründet liegt. Eine Analyse neuster KI-Architekturen – darunter Agentic RAG, neuro-symbolische und Multi-Agenten-Systeme – zeigt, wie diese bei den zentralen Aufgaben der juristischen Argumentation systematisch scheitern: sowohl bei der Identifikation der eigentlichen normativen Geltung eines Rechtssatzes, als auch bei der kontextuellen Prüfung der Einschlägigkeit (einschließlich der Filterung ungeschriebener Ausnahmen) sowie bei der abschließenden, wertenden Abwägung. Diese Defizite lassen sich, da ihre Ursachen technisch nur teilweise identifiziert und erklärt werden können, absehbar nicht beheben. Und selbst wenn, vorrangig mit Blick auf die Bestrebungen zur Entwicklung von Artificial General Intelligence, die vorgenannten Probleme möglicherweise eines Tages überwinden werden könnten, bleibt das Problem, dass KI-Modelle innerhalb eines rein syntaktischen Rahmens operieren und keinen Zugang zu einer geteilten gesellschaftlichen Praxis („Lebensform“) haben. Ihnen fehlt die notwendige Handlungsfähigkeit (Agency) für valide kontrafaktische Schlüsse und autoritative Sprechakte. Für den Einsatz von KI-Systemen bei der juristischen Argumentation bedeutet dies, sich erneut vom alten Traum des Subsumtionsautomaten zu verabschieden und KI-Systeme als unterstützendes Gerüst zu entwickeln: KI-Systeme können als eine Art Argumentationskartograph fungieren, der mögliche Argumente

und regelbasierte Gewichtungsvorschläge aufzeigt. Die Systeme liefern jedoch stets nur eine prädiktive Vorhersage des Diskursraums und niemals die Entscheidung selbst. Der Mensch bleibt exklusive Quelle jener Verbindlichkeit, die erforderlich ist, um die Kluft zwischen komputationeller Syntax und rechtlicher Geltung durch einen echten Dezisionsakt zu überbrücken.

DIE VORRANGRELATIONEN JURISTISCHER ARGUMENTE. EIN ABWÄGUNGSMODELL

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In der Methodenlehre ist es umstritten, ob sich ein Vorrangverhältnis der juristischen Argumente in der Auslegung und Anwendung des Rechts bestimmen läßt. Es dominieren Positionen, die ein derartiges Vorrangverhältnis ablehnen und ein Durchsetzen juristischer Argumente gegen andere als Sache des Einzelfalls betrachten (Einzelfallmodell). Diesem Modell stehen die Auslegungszieltheorien gegenüber, die einen abstrakten Vorrang eines Auslegungsziels gegenüber anderen annehmen (Abstraktionsmodell), was zumeist in absoluter, seltener in relativer Lesart vertreten wird. Diesen Modellen soll ein Abwägungsmodell gegenübergestellt werden, nach dem eine Vorrangrelation juristischer Argumente erst aus einer Gesamtschau der methodologischen oder abstrakten und der einzelfallbezogenen oder konkreten Gewichte dieser Argumente zu bestimmen ist. Das Modell unternimmt es, die Faktoren dieser Gesamtschau herauszuarbeiten und sie in einer Abwägungsformel zusammenzustellen.

WORTLAUTGRENZEN, DICHTE BEGRIFFE UND DIE UNERSÄTTLICHE NATUR DER MENSCHENRECHTE

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ABSTRACT

Die Konstitutionalisierung und Implementierung neuer argumentativer Modelle in der Rechtsanwendung in modernen Rechtsstaaten hat zu einer Überarbeitung der klassischen Rechtsmethodik geführt und neue Zielsetzungen gefordert, um unterschiedlichen argumentativen Konzeptionen Rechnung zu tragen. Dieser rechtliche (gesellschaftliche) Wandel birgt die Frage nach der Tragfähigkeit des rationalen Rechtsverständnisses und eines konstitutiven Anspruchs auf Richtigkeit, wobei nicht nur auf die vernünftige Begründung der Entscheidungen im Rahmen der geltenden Rechtsordnung eingegangen werden muss, sondern auch eine letztendliche Rechtfertigung derselben durch die Angemessenheit solcher Ordnung erreicht werden soll.

Obwohl in den Diskussionen neue Ideen und Vorschläge zur Ausweitung des Normensystems zu finden sind, sind die zugrunde liegenden Probleme nicht neuartig. Die These, es gäbe eine inhärente Unterbestimmtheit der Menschenrechte, findet kräftige Unterstützung und deren Lösung bleibt eine umstrittene Frage in der Rechtstheorie. Menschenrechte lassen sich in keiner Konzeption vollständig objektivieren und repräsentieren. Diese Frage ist sowohl auf gesellschaftliche Transformationen als auch auf das mögliche Verständnis bzw. die Erweiterung der Rechtsbegriffe, die die Menschenrechte konstituieren (u.a. dichte Begriffe), und auf die Wortlautgrenzen zurückzuführen, die durch weitere (Handlungs-) Gründe ergänzt werden müssen.

In einem seinen letzten Bücher kehrt Jürgen Habermas auf die Diskussion um Anwendungsdiskurse und Menschenrechte zurück und behauptet, Letztere seien Normen ungesättigter Charakter, die sich aus bestimmten Problemen ergeben, welche in drei Dimensionen auftreten: eine zeitliche

(Differenz zwischen den in der Gegenwart positivierten Menschenrechten und den nicht vorhersehbaren neuen Anwendungssituationen), eine sachliche (zusätzliche Situationsmerkmale für die Anwendung) und eine räumlich-soziale (kosmopolitische Gemeinschaft der Menschenrechtssubjekte).

Der Zweck dieses Aufsatzes besteht darin, zu analysieren, ob die in einigen zeitgenössischen Diskussionen vorgeschlagenen Rechtstransformationen und die Anerkennung der Grundrechte durch die in den Systemen bereits vorhandenen Mechanismen gelöst werden können (i), zur Überprüfung der dichten Rechtsbegriffe, ihrer Spielräume oder Anwendungsgrenzen im allgemeinen praktischen Diskurs (ii) im Anbetracht der Wortlautgrenzen in der Rechtswissenschaft (iii) und der Auswirkungen, die solche Vorschläge auf die Rechtspraxis haben können, unter Berücksichtigung der ungesättigten Natur der Menschenrechte (iv).

THE METHODOLOGICAL HETEROGENEITY OF LEGAL BRANCHES AND LEGAL DISCIPLINES: BEYOND REDUCTIVE PARADIGMS IN CONTEMPORARY JURISPRUDENCE

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ABSTRACT

Contemporary legal scholarship is frequently constrained by reductive methodological paradigms. These frameworks erroneously advocate for a singular, unified methodology to govern the entire spectrum of legal science. This monistic approach represents a fundamental misunderstanding of the nature of law. It reduces a multifaceted discipline into a monolithic structure. In reality, legal science encompasses a diverse array of scientific approaches. These approaches address the creation, adjudication, and compliance with law. Furthermore, they investigate the critical dichotomy between law in books and law in action, alongside the pedagogical dimensions of legal education.

The core deficiency in current theoretical discourse lies in an oversimplified categorization of legal methodology. For instance, contemporary scholars like Bodig often restrict their methodological awareness to a binary tension. This tension exists primarily between legal dogmatics and the philosophy of law. Such a narrow view fails to account for the broader landscape. It overlooks the fact that distinct legal sub-disciplines require distinct analytical tools. Traditional doctrinal methodologies – incorporating systemic and normative analysis, experimentation, and idealization – are uniquely tailored to doctrinal teaching and internal legal coherence. However, they are entirely inadequate for addressing external legal phenomena. This explanatory gap has led to the proliferation of various exotic and non-traditional analytical approaches in modern legal scholarship.

This paper thus challenges methodological reductionism. It argues for the explicit recognition of methodological heterogeneity across different legal branches and disciplines. The central thesis posits that every scientific approach is uniquely suited to solve specific, predetermined legal problems. To build this argument, the study revives the foundational insights of classical legal theorists. It draws upon Tomsa's differentiation of multiple pure models of legal science. Each model is designed to address a distinct jurisprudential problem.

The study re-evaluates also the scope of normative theories, specifically those of Hans Kelsen and František Weyr. It argues that their methodologies are strictly designed for legal dogmatics. They are not intended to serve as comprehensive frameworks for legal theory or legal history. Legal history and general legal theory must track the universal principles, historical origins, and conceptual foundations of law across time.

Conversely, empirical and interdisciplinary disciplines – such as legal sociology and the Law and Economics movement – pursue distinct objectives. They focus on evaluating the efficiency, social impact, and behavioural outcomes of law-making and adjudication. Finally, the philosophy of law operates on a different plane entirely. It addresses the overarching ontological and epistemological questions that underpin both theoretical and practical dimensions of jurisprudence.

The implications of this presentation are dual-fold for legal theory and practice. Cultivating a nuanced understanding of methodological heterogeneity prevents scholars from misapplying empirical tools to normative questions, and vice versa. It establishes a clearer division of labour among legal dogmatists, historians, sociologists, and philosophers. Ultimately, this paper demonstrates that embracing methodological pluralism does not fragment legal science. Instead, it strengthens it. It provides the precise analytical tools necessary to understand law as both a normative system and a living social reality.

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THE CONSTITUTION AS A TEXT: METHODS OF CONSTITUTIONAL REASONING IN CENTRAL EUROPE

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ABSTRACT

There is a difference between the concepts of legal interpretation and legal argumentation (legal reasoning). Legal interpretation is the exploration of the meaning of a legal norm in a specific case; while legal argumentation is an attempt to justify the application of the norm (in a given way and with a given meaning) – essentially a probabilistic argument to prove that the premises sought for the conclusion are correct and that the correctness of the conclusion can also be rationally deduced therefrom.

Both interpretation and argumentation can appear not only during the application of statutory ("ordinary") law, but also in the application of the norms of the constitutions. The starting point of the presentation is that constitutional reasoning, including the methods of constitutional interpretation, although similar in many respects to the methods of ordinary legal reasoning, is special in certain respects. It is therefore justifiable to speak of constitutional interpretation as distinct from statutory interpretation, and of constitutional reasoning as opposed to ordinary legal reasoning.

My presentation primarily aims to present the characteristics of the constitution as a text and as a legislative product that differ from those of "ordinary" legislation, and to analyze those characteristics that justify the application of the norms of the constitutions as a special activity of application of legal norms. With this, we can create a particular classification of methods and sources of constitutional reasoning. A further aim of the lecture is to assess the possible methods of constitutional argumentation, and within that, primarily constitutional interpretation, and to review the methods and sources used in certain Central European countries for interpreting constitutional norms, especially constitutional rights.

BOURDIEUSIAN REFLEXIVITY: KNOWLEDGE, OBJECTIFICATION, AND INTERNATIONAL LAW

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ABSTRACT

This paper aims to develop the methodological framework through which Bourdieusian relational sociology can be translated onto the study of international law. It begins from reflexivity, not as self-oriented objectification, but as a method of objectifying the social, historical, and disciplinary conditions that make both the object of inquiry and the act of objectification possible. Against what Bourdieu calls 'narcissistic' forms of reflexivity, the paper argues that Bourdieusian reflexivity requires the objectification of objectification itself: the researcher must examine not only her position in relation to the object, but also the field conditions under which certain objects (e.g., categories, and questions) appear as legitimate objects of study.

The paper then addresses the epistemological problem raised by situated knowledge. If knowledge is position-bound and relationally produced, how can social sciences claim objectivity without falling into relativism or infinite regress? Drawing on Bourdieu's historicist rationalism, the chapter argues that objectivity need not be transcendental in order to be meaningful. Rather, historically constituted fields can produce provisional standards of rational validity and critique. Reflexivity strengthens objectivity not by escaping history altogether, but by making the historical and field-specific conditions of knowledge production visible and an object of critique.

Finally, the paper tries to apply this methodological position to international law. It rejects the view that a Bourdieusian approach must avoid the "legal system" by turning only to specialized areas of legal practice. Instead, it argues that the appearance of international law as a system is itself a proper object of inquiry. The task is therefore not to study international

law as law imagines itself, but to objectify the agents, procedures, categories, forms, and exclusions through which international law appears, and fails to appear, as a system and source of authority.

CIVIL, ADMINISTRATIVE, AND CRIMINAL LAW IN THE BRAZILIAN SUPERIOR COURT OF JUSTICE: A COMPARATIVE ANALYSIS OF JUDICIAL ARGUMENTATION

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ABSTRACT

The debates following the adoption of binding precedents in Brazil's 2015 Procedural Code have raised important questions. One of the most important is the debate over whether binding precedents enhance predictability, comprehended as "treating like cases alike". The paper does not aim to answer that question. The objective is, rather, to explore a prior one. Precedents are, in some measure, texts. Just like legal statutes. So, can the matter of their predictability-enhancing capabilities be reduced to their ability, as texts, to be interpreted more stably than legal statutes? This paper explores some consequences of the claim that the answer to this question is a negative one. Actually, the question concerning the (in)ability of precedents to enhance the predictability in a certain legal system can be better understood if one is to treat it as a matter of how precedents are "used" in legal decision-making.

As an initial empirical approach to this subject, twenty opinions by the Brazilian Superior Court of Justice that mention Supreme Court binding precedents were analysed. In the Brazilian legal system, at least formally, the Superior Court of Justice has the final word concerning the interpretation of federal statutes. The court is divided into three sections, six panels (two in each section), and a special panel for constitutional trials and other extraordinary issues. Each section deals with different subject matters: the first with administrative and tax law; the second with private law; and the third with criminal law.

The twenty opinions examined in this initial study reveal differences in how the three sections of the Court use Supreme Court precedents, which

may be attributed to the peculiarities of their subject matters. Specifically, in the first section, Supreme Court precedents were often invoked as sources of general legal principles used to resolve controversies distinct from those in the precedent case. In the second section, precedents were followed more literally, with references to their main reasoning. Finally, in the third section, precedents were mostly employed as supporting arguments for concepts developed in scholarly works.

THE FIRST AMENDMENT AND NONCITIZEN SPEECH: A CONSTITUTIONAL ANALYSIS OF CONTENT-BASED EXCLUSION AT U.S. BORDERS

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ABSTRACT

The First Amendment protects freedom of speech and of the press, and limits to its application are subject to strict scrutiny in judicial review, requiring the government to provide a compelling reason for restrictions implemented. First Amendment rights, though highly regarded, are at the same time generally limited at the United States border in their application to noncitizens, who fall under the broad discretion of consular officers. While courts justify heightened deference at the border on the basis of national security, giving consular officers wide discretion to control border crossing on the basis of speech directly contradicts First Amendment doctrine. National security thus displaces regular First Amendment standards and allows content-based censorship by consular officers that would otherwise be impermissible. By analyzing judicial discrepancies in First Amendment cases regarding noncitizens at the border in comparison with cases regarding U.S. citizens, this paper shows how national security displaces ordinary First Amendment review. When courts claim national security as the rationale for content-based exclusion by consular officers and give judicial deference to such practices, they create a mechanism by which censorship effectively achieves immunity from constitutional review.

Keywords: First Amendment, immigration, noncitizen rights, censorship, border.

COLLECTIVE INTENTIONALITY AND JUDICIAL DELIBERATION: PRELIMINARY INSIGHTS FROM COLLEGIAL COURTS IN EUROPE

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ABSTRACT

This paper presents preliminary results from the COIN project (The emergence of Collective Intentionality in participatory decision-making processes of the Courts), an interdisciplinary investigation conducted at the Gustav Radbruch Institute (Pavol Jozef Šafárik University). The project examines how collective intentionality may arise within collegial judicial deliberation, framing judicial decision-making as a fundamentally relational and democratic practice, and proceeds from a simple question with immodest implications: how does a collegial court think? Not metaphorically, but ontologically: how does a deliberating panel transform dispersed convictions into a unitary juridical act endowed with authority and legitimacy, and what conceptual structures enable this transformation? Building on philosophical accounts of collective intentionality and social ontology (e.g., Tuomela, Searle) as well as debates on the procedural legitimacy of courts, the study combines conceptual analysis with empirical observation. It asks whether and how panels of judges form shared intentions, and whether such sharedness influences the determination of the legal status of facts, acts, or entities adjudicated in trial, thereby shaping both practical outcomes and the underlying normative logic of judicial reasoning. To date, approximately twenty professional judges from collegial courts in Italy and Slovakia have been interviewed, with a third jurisdiction to follow. The interviews explored five thematic areas: (1) personal and career trajectories; (2) mutual knowledge among panel members and its influence on deliberative stance; (3) procedural and temporal structures of deliberation (in-person vs. written exchanges, sequencing); (4) modes of decision-making (voting practices, pursuit of unanimity, management of

dissent); and (5) whether and how panels explicitly deliberate on the juridical status of the facts or entities at issue—whether legal status itself becomes an object of collective reflection. Preliminary findings reveal recurrent tendencies toward unanimity and conformism, often justified as safeguards of institutional legitimacy and coherence. At the same time, early evidence indicates that explicit engagement with the juridical status of contested facts is uneven: in some panels, status-constitutive reasoning is foregrounded, whereas in others, collective choices appear shaped more by interpersonal dynamics and procedural conventions than by explicit ontological deliberation. These mixed patterns raise important theoretical and normative questions about the authenticity of collective intentionality in courts and its democratic value. What emerges, in the end, is not a doctrine but a perspective: that the democratic legitimacy of adjudication lies in its relational texture, in the ceaseless translation of singular voices into collective meaning.

INTIMACY UNDER SUPERVISION: INSIGHTS INTO RELATIONSHIPS OF PERSONS WITH INTELLECTUAL DISABILITIES

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ABSTRACT

This paper examines how intimate relationships of persons with intellectual disabilities are shaped, constrained, and negotiated within legal and institutional frameworks. Rather than approaching the issue solely through normative analysis, the study adopts a socio-legal perspective grounded in Critical Disability Theory (CDT).

The study grows from the observation that European legal systems respond in highly varied ways to the relational needs of persons with intellectual disabilities. Relationships are frequently absent from the assumed life trajectory of people with disabilities — a phenomenon we refer to as the no future assumption. Persons with intellectual disabilities are rarely seen as partners, lovers, parents, or full members of families. This is reflected in divergent legal arrangements governing the possibility of marriage or other forms of institutionalised relationships, which most commonly require prior judicial authorisation. However, the capacity to form, maintain, and institutionalise relationships depends to a significant degree on the person's immediate environment — including, crucially, the consent of caregivers.

These structural conditions produce a particular form of epistemic and political marginality. Drawing on Spivak's concept of the subaltern, we argue that persons with intellectual disabilities are systematically positioned as objects of legal regulation rather than as participants in the production of legal and social meanings concerning relationships and intimacy. Their voices are mediated — and frequently silenced — through institutional and family frameworks that define both the possibilities and limits of relational life.

The study is structured in two stages. The first focuses on reconstructing the legal landscape: it encompasses analysis of historical and contemporary legislation, family law doctrine, parliamentary discourse, and media discourse concerning relationships of persons with disabilities, as well as comparative legal research drawing on selected contrasting examples (Germany, England). The second stage focuses on reconstructing the lived reality of relationships: it involves participant observation within institutional settings, contact with diverse communities of persons with intellectual disabilities (community theatres, occupational therapy workshops, supported living houses), in-depth interviews with persons with disabilities, therapists, and family members, focus groups as well as analysis of court files concerning judicial authorisation of marriage.

The CDT framework allows us to bring in the individual voices of people with intellectual disabilities — voices largely excluded from legal discourse — giving them a sense of being heard and recognised (Rojas et al. 2016). It also makes it possible to concretise the opportunities and constraints that people with intellectual disabilities face, what can be called, following Maria Lugones (1987), "travelling to other people's worlds."

In this presentation, we aim to outline the structure of the study and discuss the challenges and limitations involved in reconstructing the formal and informal factors shaping the romantic relationships of persons with disabilities.

THE ABSENCE OF THE RIGHT TO MARRY: A CRITICAL DISCOURSE ANALYSIS OF EUROPEAN COURT OF HUMAN RIGHTS ADJUDICATION

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ABSTRACT

Article 12 of the ECHR, guaranteeing the right to marry and to found a family, is one of the least frequently adjudicated provisions by the European Court of Human Rights (ECtHR). Yet this scarcity does not mean that there are no issues in Europe relating to this subject. How, then, has it happened? There is no single easy answer to that question, just as there is no single way of approaching it. In my research I decided to examine the ECtHR's case law on the right to marry through critical discourse analysis, seeking to identify the Court's underlying approach to this right, the factors it considers decisive in determining who may marry whom, and what is actually protected by Article 12. My research is situated within the sociology of human rights and critical legal studies.

The analysis is based on 71 cases, grouped into six main categories: prohibited marriages, suspicious marriages, the right to remarry, the right not to marry, the right to found a family, and others. These categories were also divided into subcategories. The study focuses on three issues: the bond between persons wishing to marry, the question of who should decide who may marry whom, and the role of tradition when it comes to right to marry. Comparing the Court's discourse across these categories reveals that its narrative shifts depending on the type of case.

The findings show that the ECtHR presents a vision of modern, tolerant Europe grounded in gender equality and marital choice as a private matter. However, this discourse changes when the case concerns couples that do not fit the heteronormative model, the Christian idea of indissoluble marriage, or an endogamic rule. The right to marry is therefore a right for a very narrow group of individuals who, in most cases, already enjoy that

right in their states. What at first glance may seem most important in relation to marriage, such as feelings, the nature of the bond, and agency in choosing a partner, is in fact used by the ECtHR in a highly instrumental way to support a particular outcome. Overall, the ECtHR tends to avoid saying too much about the right to marry, redirecting the discussion towards other human rights whenever possible.

JUSTIFYING PUNISHMENT THROUGH THE EYES OF THE PUNISHED: EMPIRICAL REFLECTIONS FROM A PARTICIPATORY ACTION RESEARCH PROJECT IN A MEXICAN PRISON

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ABSTRACT

In 2025–2026, the socio-educational project "Inside-Out Prison Exchange Program" has been implemented in a state prison in Jalisco, Mexico. The program consists of a seminar-workshop on autobiographical narratives conducted jointly by incarcerated individuals and university students, culminating in the production of a prison-based magazine. Within this framework, a participatory action research component was developed to explore whether and how participants' views transform regarding three central themes: stigma, structural violence, and punishment. This paper focuses specifically on the question of punishment. It presents and analyzes the evolution of participants' justificatory views before, during, and after the seminar. Three primary sources of data are examined: Likert-scale questionnaires applied at different stages of the project, autobiographical ethnographic writings produced throughout the workshop, and field notes documenting classroom discussions, interactions, and reflexive observations recorded during each session. The analysis highlights significant differences between participants inside and outside prison. While university students initially tend to endorse imprisonment as a relatively unproblematic or necessary response to crime, incarcerated participants articulate more complex and ambivalent positions. Interestingly, despite the institutional prevalence of rehabilitative discourse, many incarcerated participants frame punishment in terms that resonate with retributive intuitions. At the same time, their narratives and classroom exchanges reveal tensions between moral responsibility, structural violence, and lived experiences of state coercion. By bringing empirical observation into dialogue with normative theories of punishment, this paper argues that participatory research

settings can function as sites of "law observed" in a strong sense: not merely describing legal institutions, but exposing the lived justificatory grammars through which punishment is understood, resisted, negotiated, or internalized. These findings invite legal philosophers to reconsider whose perspectives count in debates on the justification of punishment and how empirical inquiry can illuminate –and potentially destabilize– the normative assumptions embedded in criminal theory.

THE PRINCIPLE OF MAXIMIZING THE PROTECTION OF HUMAN DIGNITY AND DEMOCRATIC LEGITIMACY

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ABSTRACT

Current observations of legal reality lead us to conclusions regarding the opening of the texture of law, which carries consequences for legal argumentation and interpretation against the backdrop of changing approaches to the concept of law. The judge is placed not only in the position of an autonomous interpreter of legal text but also emerges as a partner in the creation of law itself. The opening of the texture of law can also be observed at the level of intersystemic judicial discourse arising from collisions between national, european and international legal systems. Common insights on a hierarchically ordered system of sources of law constituting a uniform legal system have become obsolete. Constitutional pluralism has become our reality, one that disrupts both the traditional hierarchy of sources of law within national legal systems and the classical theories of monism and pluralism from the perspective of international law. We believe that even within this newly observed legal reality, it is not viable to abandon the systematic approach to law that developed during the scholastic era. Just as the resolution of conflicts between canon law and roman law required a scientific and systematic approach, the resolution of contemporary intersystemic conflicts within the reality of constitutional pluralism likewise demands a method grounded in detailed analysis and knowledge of legal reality. The new reality is the heterarchy of legal systems. The constitutions of national, european, and international law together form a single multilevel association of complementary constitutions characterized by relationships of mutual supplementation and interdependence, as described by the theory of multilevel constitutionalism. Theoretical analysis of legal reality, viewed through the lens of the theory of multilevel constitutionalism, lead us to conclusions concerning the necessity

of a uniform collision criterion of a value-based character. The proposed uniform collision criterion is a new methodological instrument in the form of the principle of maximizing the protection of human dignity.

THE RULE OF LAW AS A STRUCTURE OF RECOGNITION: AN INFERENTIALIST EXPANSION OF KRYGIER'S ACCOUNT OF THE RULE OF LAW AS TEMPERED POWER

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SW43 · Special Workshop on Martin Krygier's Tempering Power: Beyond the Rule of Law

Convenors: Xiaobo Zhai

ABSTRACT

The resilience of the rule of law as a topic of interest in jurisprudence and political philosophy, among other disciplines, can be explained by the simple fact that as long as arbitrary power exists, the value of the rule of law will continue to play an important political role. Martin Krygier's new book offers a mature and reflective understanding of this concept, and one of the novelties of his theoretical approach lies in the idea that the rule of law is fundamentally concerned with tempering power. Importantly, this image of the rule of law has the advantage of focusing not only on limits, constraints, and other kinds of negative conditions on the exercise of power, but mainly on serving "larger, more positive ideals as well" (Krygier 2026, p. 156). Krygier shows that thinking of the rule of law as "tempered power" can be understood along three different, though interrelated, dimensions. First, in its Greek usage, it refers to sophrosyne or temperantia, understood as a form of personal virtue, encompassing restraint, moderation, thoughtfulness, wisdom, and self-knowledge. Second, in its institutional sense, it denotes a form of "moderating" or "blending of powers and elements" (for example, power with law, justice with mercy, strength with moderation), that is, a balancing and distribution of powers. Finally, in a third sense—which is the primary focus of my analysis—it refers to a kind of "chemical process" by which elements are blended so as to make the original compound stronger and more resilient. Like the process of tempering steel and other materials, it designates a transformation that makes the original component "stronger and more fit for purpose" (Krygier

2026, pp. 155–163). The first dimension of "tempered power" is not discussed in this paper. Although I have something to say about the second dimension, my main concern lies with the third. With regard to the second, I believe that the metaphor of balancing is potentially dangerous and has caused significant damage in contemporary forms of constitutional reasoning, both in judicial practice and in legal scholarship. If balancing is understood as the "optimization of principles," in Alexy's sense (2002, pp. 47–48), involving trade-offs between constitutional values and endorsing an a priori assumption that they are inherently prone to conflict, then balancing does more harm than good in constitutional reasoning. However, I do not think this is what Krygier has in mind. If I understand him correctly, he is gesturing toward something closer to a principled "discourse of application" of political values, in Jürgen Habermas's sense (Habermas 1996, p. 217), or to a "sense of appropriateness" in our handling of norms and principles, in Ronald Dworkin's sense (Dworkin 1978, p. 40). This second sense is theoretically robust, politically attractive, and legally grounded, and it represents an important advance of the ideal, one that could help legal practice move beyond its current stage of development. Nevertheless, the most powerful idea in Krygier's account concerns the third dimension of the rule of law: the analogy with chemistry. There have been earlier attempts to associate the idea of "legality" with a kind of transformation of power into right (see, for instance, Kelsen 1945, p. 120; Dyzenhaus 2022, p. 150). Krygier, however, gives this idea greater structure and depth, interpreting it neither primarily as an analytic explanans (as Kelsen did) nor as a moral claim (as Dyzenhaus suggests). Rather, it is best understood as a process—a social and political process, albeit one with moral and political significance. How does this process come about? I think this question is partially addressed in Krygier's book, but one important aspect of it remains to be developed. I suggest that this process should be understood as a practice of recognition with a Hegelian structure, which can be articulated with the help of Robert Brandom's seminal work A Spirit of Trust (2019). Brandom interprets recognition in close connection with an account of human experience and rationality. It concerns both ourselves and the norms we institute through our social practices and institutions. The idea of Self, on this view, is that of an individual who can rise above mere nature. What is distinctive of us as rational beings is that we are normative creatures: we know how to employ concepts, assess standards of

evidence, judge actions and beliefs as appropriate or inappropriate, formulate scientific laws, make moral judgments, build institutions, and regulate the use of power. We are not, however, born as Selves. We enter the world as natural beings, and only through social processes of recognition do we become Selves. Once we attain this status, we participate in practices in which it becomes obligatory for us to recognize others, who possess the same capacities, as Selves as well. Within a community of Selves—who each recognize one another as normative beings (or cultural subjects, if one prefers)—norms and values are instituted through processes of mutual recognition. In addition to a general form of recognition, by which we recognize ourselves and others as normative subjects with equal status, there is also a form of specific recognition, by which we recognize each and every norm that binds us. A crucial implication of this idea is that no individual can institute norms unilaterally. A symmetrical "recognitive dyad" must be in place. All participants in normative practices have equal standing. My recognition of a value is insufficient on its own; it must be reciprocally acknowledged by those whom I recognize as capable recognizers. The structure of recognition is therefore symmetrical and transitive. There is no such thing as asymmetrical or unilateral authority—an authority that can institute norms for others and hold them accountable without itself being accountable. Authority relations are instead instituted among equals. A recognitive community with a symmetrical structure recognizes everyone as an equal, not merely as someone who will be judged equally. Such a normative structure may, in due course, invest authority in officials and legislatures for specific purposes, such as governing and enacting general laws. To do this work, it needs the rule of law. As Dworkin said in the first line of Law's Empire, "We live in and by the law. It makes us what we are" (Dworkin 1986, vii). Yet an essential feature of the structure of rule of law is that accountability applies to all—officials and citizens alike. I submit that the process of transformation described by Krygier presupposes an underlying recognitive mechanism if it is to generate legitimate norms. This points to an important egalitarian aspect of the procedural dimension of the rule of law that Krygier discusses in his third account of temperance. The rule of law blends legality and equality. The latter is not a luxury; it is a defining condition for the rule of law to achieve its aims. The rule of law is a system that takes us as equals, treats us as equals and makes us equals,

at least in the political sense. It gives shape, grounds, and method to our claims of equality.

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FROM TEMPERING POWER TO MILITANT RULE OF LAW: RECLAIMING FULLER'S SPIRIT IN THE FACE OF AUTOCRATIC LEGALISM

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SW43 · Special Workshop on Martin Krygier's Tempering Power: Beyond the Rule of Law
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ABSTRACT

This paper critically examines Martin Krygier's latest contribution to legal philosophy, Tempering Power: Beyond the Rule of Law, focusing on the methodology he adopts and the substantial claims he supports. Krygier argues that rather than starting with a checklist of the rule of law, we must begin with the fundamental problem of arbitrary power that law is meant to resolve. Therefore, he develops a sophisticated methodology in his book, investigating the relation between means and ends, and reorienting attention to the underlying substantive challenges. While endorsing Krygier's teleological reorientation as a necessary corrective to the poverty of anatomy in contemporary rule of law discourse, this paper argues that his project remains insufficiently thorough, particularly in its theoretical engagement with the formal traditions he seeks to displace. The first part of this paper contends that Krygier's critique of Lon Fuller- the archetype of anatomical theorists- rests on an interpretation that, while acute, remains contestable. Although Krygier acknowledges Fuller's moral insight regarding the citizens as a 'responsible agent', he ultimately categorizes Fuller's "internal morality of law" as a static laundry list tradition. He maintains that this approach, focused as it is on formal craftsmanship, provides an insufficient defense against the threats posed by modern arbitrary power. This paper challenges this view, arguing that Fuller's framework is itself a profoundly teleological enterprise that should not be summarily relegated to the anatomical camp. A close reading reveals that Fuller's eight principles are not mere criteria of effectiveness liable to be "gamed" or exploited by modern authoritarian regimes- as Krygier fears; rather, they are rooted in a morality of reciprocity, forming an inextricable bond between legal

form and substantive value. Fuller's insistence on the moral dignity of legal form is precisely the core necessary to define the very ‘spirit’ of law required to resist arbitrary power. The second part of this paper addresses the phenomenon that Krygier identifies as a central threat where authoritarian populists employ legal punctiliousness and legal cheating to maintain the appearance of the rule of law while hollowing out its substance. When legal forms are utilized to conceal constitutional malice, Fullerian fidelity to law demands not blind obedience to a “Letter” of the law, but rather allegiance to the “Spirit” of the law aimed at tempering power. Therefore, the responsible agent, although insufficiently developed in Fuller's theory, becomes an indispensable component of achieving militant rule of law. Only by reshaping this moral commitment to the spirit of the law can officials and judges possess the theoretical legitimacy to refuse complicity in the face of arbitrary power.

THE RESTRAINED ROLE OF THE RULE OF LAW IN PROF. KRYGIER'S PROJECT OF TEMPERING POWER

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ABSTRACT

Prof. Krygier's forthcoming book, Tempering Power: Beyond the Rule of Law, offers a highly insightful and theoretically profound perspective on the rule of law. Particularly compelling is his argument that scholarly attention should focus on "what the end of the rule of law is" rather than on providing anatomical accounts of "what the rule of law is." In recent scholarship, several excellent alternative approaches to anatomical accounts of the rule of law have been advanced by distinguished scholars such as Gerald Postema (who positions the protection of and recourse against the arbitrary exercise of power at the core of the rule of law conception), Jeremy Waldron (who contends that the rule of law embodies a commitment to respect for human dignity in the forms and procedures of law), and Kristin Rundle (who maintains that the political demand for rulers' and subjects' reciprocal subjection to law constitutes the fundamental point of the rule of law). Prof. Krygier's approach, however, is innovative, I believe, in advocating for the rule of law's restrained role in tempering power—displacing its traditionally central position and situating it within a broader tempering ecosystem. Prof. Krygier's thesis successfully explicates the tempering of power in constitutional systems such as that of the UK, where parliamentary sovereignty is constrained not only by the rule of law in Dicey's classical formulation but also by extra-legal mechanisms such as constitutional conventions and public opinion. Nevertheless, this paper will try to contend that in jurisdictions possessing a constitutional Bill of Rights and comprehensive judicial review mechanisms, it remains analytically defensible to maintain the centrality of the rule of law in constraining excessive governmental power (whether exercised by public au-

thorities or by powerful private corporations and individuals). Furthermore, from a normative standpoint, this paper will try to argue for preserving the centrality of the rule of law by drawing upon Postema's thesis that "equality in the eyes of the law" constitutes a foundational element of the rule of law concept and upon Waldron's observation that an implicit commitment to human dignity inheres in the formal and procedural structure of law.

PRIVATE LEGAL POWER AND THE RULE OF LAW

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SW43 · Special Workshop on Martin Krygier's Tempering Power: Beyond the Rule of Law
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ABSTRACT

In the intellectual history of the rule of law, theoretical disputes have often concentrated on institutional architecture, the formal character of legal norms, and the proper configuration of legal offices. On the dominant view, the rule of law is largely identified with the establishment and effective operation of a set of institutional elements. In Tempering Power: Beyond the Rule of Law, Martin Krygier resists this "anatomical" reduction and reorients the ideal around two claims: first, that the rule of law is centrally concerned with how law structures the exercise of power; and second, that it depends on congruence between law and the actual functioning of social life. The characteristic pathologies, accordingly, are arbitrariness in the exercise of legal power and a marked disjunction between citizens' social practices and the system of legal norms. Krygier further insists that the success of the rule of law is necessarily "present and local": law's effects are mediated by its entanglement with other normative domains and by unofficial normative practices through which legal demands are socially taken up, often in conditions of only partial legal knowledge. He also extends the inquiry beyond the state, asking when emergent forms of non-state power become sufficiently consequential to require tempering in the name of preventing arbitrariness.

Building on (and partly sharpening) these insights, this paper argues that Krygier's framework under-theorizes the exercise of private legal power, and that attending to it illuminates the very mediating mechanisms on which his account depends. Through an analysis of agents' committed attitude toward empowering norms, this paper claims that the conferral and exercise of private legal power generate conventional normative practices that mediate between law and its addressees. These practices constitute a form of "social causality": the practical mechanism through which legal

norms are translated into coordinated social action, thereby securing congruence between law and social functioning. Finally, by foregrounding the social role of private legal power, the paper sketches a route for extending Krygier's rule-of-law diagnosis to contemporary settings in which non-state powers operate through legally enabled private arrangements and become vulnerable to abuses of arbitrariness.

FROM SOLUTION TO JUSTIFICATION: RETHINKING CONCEPTUAL ANALYSIS OF THE RULE OF LAW

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SW43 · Special Workshop on Martin Krygier's Tempering Power: Beyond the Rule of Law
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ABSTRACT

Martin Krygier distinguishes two approaches to the rule of law: an anatomical approach and a teleological approach. He ultimately endorses an end-focused strategy: to understand what the rule of law is, we should begin by asking what it is for, rather than by dissecting legal institutions in isolation. This paper argues that both approaches are flawed and that a third way of conceptualizing the rule of law is needed.

These approaches are motivated by two seemingly conflicting common-sense ideas: first, that the rule of law must remain conceptually rigorous and thus remain "about law"; second, that the rule of law is an ideal that names a valued achievement. The anatomical approach privileges the first idea but struggles with the second. It locates the rule of law in identifying institutional conditions for the existence of a legal system, and then seeks to explain the moral achievement produced by those conditions. However, as Krygier emphasizes, the connection between rule-of-law institutions and moral achievement is mediated by social causality. As a result, institutional anatomy cannot guarantee the rule of law as a valued achievement.

To avoid this problem, Krygier turns to a teleological approach. It starts from the end—on his account, tempering arbitrary power—and then identifies the elements that might contribute to that end. This leads him to a broader view of the rule of law's constitutive elements, in which law is no longer dominant and extra-legal factors (cultural, societal, political) are included. While sympathetic to this move, I argue that it risks hollowing out the concept of the rule of law. First, no determinate criteria can be secured for which arrangements genuinely contribute to tempered power; the link remains vulnerable to the same "curse" of social causality. Second, the rule

of law threatens to become a mere placeholder with little conceptual utility: if the real target is tempering arbitrary power, there may be no need to invoke the rule of law at all.

Instead of asking what the rule of law is, or what it is for, I argue that we should first ask why we need the concept of the rule of law in the first place. My answer is that the concept is needed to justify legal arrangements by appeal to rule-of-law values (for example, to justify requirements such as publicity, generality). On this basis, I propose a third approach that treats the rule of law as a justificatory concept. The central difference from Krygier lies in distinguishing the "end" of the rule of law as a state of affairs from the values that justify legal arrangements. The goal of tempering arbitrary power is a state of affairs, lying between the value and contingent institutional and social conditions—as the content of the rule of law. By contrast, on the justificatory approach, the end refers directly to values rather than to a specific state of affairs. Those values directly justify legal institutions. Value (as end) and legal arrangements therefore form a unified compound: to separate them either alters the character of each or leads the concept toward vacuity.

This approach has several advantages: (1) it establishes the necessity of conceptual analysis of the rule of law; (2) it satisfies both common-sense ideas simultaneously; (3) it better explains why the rule of law is an essentially contested concept; and (4) it better explains persistent contradictions in rule-of-law institutional arrangements.

FUNCTIONAL OR CONSTITUTIVE? A REVIEW ON MARTIN KRYGIER'S TEMPERING POWER

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SW43 · Special Workshop on Martin Krygier's Tempering Power: Beyond the Rule of Law
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ABSTRACT

There are two ways to understand Martin Krygier's account of the rule of law in his recent book Tempering Power. The first is a functional or teleological conception, according to which the rule of law is a crucial political ideal because it contributes to the telos of restraining the arbitrary exercise of power. The second is an immanent conception, which holds that non-arbitrary ways of exercising power are immanent in the very idea of the rule of law. On this view, tempering power is constitutive of the rule of law rather than merely one of its valuable effects. In this article, I argue that each conception faces a distinct difficulty. If we adopt the first, functional conception, an immediate question arises: why stop at tempering power? Why not go further and tie the rule of law to, for example, respect for people's dignity—something that, on Krygier's own definition of arbitrariness, also appears to be at stake? If, by contrast, we adopt the second, immanent conception, it becomes difficult to distinguish Krygier's account from Joseph Raz's formal conception of the rule of law. For when Krygier argues that the core idea of the rule of law concerns the ways in which power is exercised, regardless of the purposes of those who wield it, the value of the rule of law appears to be instrumental in a familiar Razian sense: it is neutral among the substantive values it may happen to serve.

TEMPERING POWER: RULE OF LAW BEYOND LEGAL PERSPECTIVE

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SW43 · Special Workshop on Martin Krygier's Tempering Power: Beyond the Rule of Law

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ABSTRACT

Tempering Power, Martin Krygier's newest book, revisits, condenses, and revises themes that have preoccupied him throughout his prolific academic career. In this new book, Krygier accepts his identity as a rule-of-law scholar but introduces an important novelty in his approach to the subject. For him, the rule of law is part of a broader, more challenging theme he characterizes as Tempering Power. The rule of law is one chapter of the legal form by which the objective and importance of tempering power is established. This thematic expansion is not surprising for someone who has spent a good part of his academic life closely linked to social legal studies. It brings a different view from that usually adopted by jurists and jurisprudence scholars. This text seeks to compare and evaluate the differences and the theoretical, normative, and descriptive impacts that this change of perspective has brought to the analysis of the Rule of Law, using Gerald Postema's recent book, Law's Rule, as a means of comparison.

TEMPERING POWER IN THE AGE OF DEVICES: LAW, TECHNOLOGY, AND ALGORITHMIC AUTHORITY

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SW43 · Special Workshop on Martin Krygier's Tempering Power: Beyond the Rule of Law
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ABSTRACT

The core thesis of Tempering Power: Beyond the Rule of Law could be understood through the lens of Albert Borgmann's distinction between things and devices in the philosophy of technology. Martin Krygier's central concern with restraining arbitrary power gains renewed urgency in the digital age of algorithmic governance by law. Krygier's core thesis—that the rule of law derives its value from its capacity to temper power rather than from its formal legal properties—provides a powerful framework for assessing contemporary deployments of artificial intelligence in law enforcement and adjudication. When examined alongside Borgmann's critique of technological "device paradigms," AI-driven legal systems emerge not merely as efficiency tools but as mechanisms that risk transforming law from a participatory, reason-giving social practice into an opaque, output-oriented apparatus. The review contends that algorithmic enforcement and adjudication may systematically undermine the conditions of tempered power by displacing control, obscuring reasons, diminishing responsiveness to persons, and severing decisions from normative justification. In doing so, digital legal technologies threaten to produce a form of lawful yet untempered domination—an automated analogue of the very arbitrary power Krygier's book seeks to resist.

WHAT IS THE RULE OF LAW FOR? ARBITRARINESS AND TELEOLOGY AFTER KRYGIER

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SW43 · Special Workshop on Martin Krygier's Tempering Power: Beyond the Rule of Law

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ABSTRACT

Martin Krygier's Tempering Power: Beyond the Rule of Law offers a powerful and ambitious account of the rule of law, seeking to render this political ideal both intelligible and practically applicable. A central contribution of the book is its distinction between two approaches to theorising the rule of law: an anatomical approach, which seeks to understand the rule of law by listing the principles it must satisfy, and a teleological approach, which understands the rule of law by referring to its immanent purposes. Krygier argues for the latter, maintaining that a proper understanding of the rule of law must begin with an inquiry into what it is for, rather than with a checklist of requirements. This paper examines Krygier's teleological approach. I first argue that one of the key insights underlying Krygier's critique of the anatomical approach lies in its vulnerability to a 'problem of arbitrariness': the approach appears to select certain features of legal practice as constitutive of the rule of law without providing principled reasons for their selection. It is this concern, I suggest, that motivates Krygier's turn to teleology as a way of supplying such reasons. I then make three points. First, at a methodological level, the teleological approach may itself face a similar problem of arbitrariness. Given the diversity of legal practices and different histories across different societies, and the fact that different actors may appeal to the rule of law in pursuit of diverse and sometimes competing purposes, it remains unclear why certain purposes should be regarded as immanent to the rule of law rather than others. Second, insofar as the teleological approach is concerned with what agents take the rule of law to be for, I argue—drawing on the work of Christopher Cherniak and Peter Railton—that attention to human rationality conditions, and in particular to the normative attitudes individuals adopt when

participating in legal practice, can provide principled reasons for purpose selection. Such reasons help to explain why certain candidate purposes are admissible as immanent purposes, while others should be excluded as incompatible with the normative attitudes which are preconditions for the existence of legal practice. Third, I argue that these considerations may in turn lend support to Krygier's proposed immanent purpose of the rule of law—namely, tempering the ways in which power is exercised—both by reducing its abuse and by illuminating how powers simultaneously constitute our social lives.

THE RULE OF LAW AND ARBITRARY POWER

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SW43 · Special Workshop on Martin Krygier's Tempering Power: Beyond the Rule of Law
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ABSTRACT

There were lots of laws under Stalin, and a lot of rule, but there was not much rule of law. Martin Krygier's TEMPERING POWER: BEYOND THE RULE OF LAW is about 'what the RoL involves (meaning) and why it matters (values)'. It distinguishes itself from many writings on the rule of law by at least three key features. First, its theoretical discussions are illustrated with many real, sad, and even horrifying examples. Second, its theoretical resources are not limited to post-Hart rule of law discourses; in contrast, Krygier, like Postema, joins and continues a tradition of millennia of legal and political thought, and engages with not only Fuller and Raz, but also Aristotle and Montesquieu. Thirdly, and most importantly, he suggests a new way of thinking about the rule of law: teleological, instead of anatomical. The focus of the book is tempering power, which Krygier argues is the master/immanent goal/point/concern of the rule of law, and also the place where we should start our exploration of the RoL. Krygier is fully aware that his claim is controversial. He says: I hope to persuade [persuasion] readers of the central importance of tempering the exercise of power so it not be arbitrary, and that is the core of the book's argument. However, even if I fail in that ambition I want to insist [insistence] that to think clearly and well about the rule of law, we should begin by working out what we want it for and what we want from it. I believe that Krygier's persuasion is convincing, but his discussion of arbitrary power and tempering could be further developed. I agree with his insistence, but I would like to add that, in order to work out what we want the rule of law for and what we want from it, we need to know what the rule of law is in the first place. 'The central importance of tempering the exercise of power so it not be arbitrary' by itself does not tell us what the rule of law is. Krygier is

fully aware of this, and, he says, many extra-legal arrangements or practices or technologies have the goal of tempering the arbitrary power. In order to know what the rule of law is, we need to know what is ‘rule’ and what is ‘law’. In this paper, I will provide an account of the relations between arbitrary power and the rule of law, by following Krygier's major steps of thinking about the rule of law, and engaging in dialogue with his arguments at each major step. The questions to be discussed in this paper are: what is arbitrary power (its nature and features)? Focusing on Krygier's chapter 5: Mischief. What is tempering? Focusing on Krygier's chapter 6: Remedy. What is Krygier's concept of law, of rule, and, thereby, of the rule of law? Focusing on Krygier's chapter 8: Law. Building upon the discussion of these three questions, I will then explore, first, the relations between law and arbitrary power, and then, the relations between the rule of law and arbitrary power. I will argue that the relations between arbitrary power and the rule of law are more complex than Krygier has provided.

SHAPING POWER, NOT JUST TEMPERING IT: A KANTIAN ARGUMENT FOR THE POINT OF THE RULE OF LAW

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SW43 · Special Workshop on Martin Krygier's Tempering Power: Beyond the Rule of Law

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ABSTRACT

This article argues that the Kantian assurance problem reveals fundamental elements of the rule of law and makes criminal punishment necessary for a rightful condition. Rejecting an interpersonal interpretation of the assurance requirement, it defends a law-centered view in which the duty to respect acquired rights depends on rational trust in the law's protective and guiding power. The article contends that the occurrence of intentional crimes generates a cognitive indeterminacy regarding whether the rightful condition obtains, which the state must systematically eliminate. Civil remedies are insufficient for this task because they address only the consequences of wrongful actions rather than the actions themselves. The article proposes that punishment functions as a public ritual of repentance, demonstrating through the offender's submission the law's supremacy and capacity to bind all persons, thereby sustaining citizens' general and formal trust in law. It further addresses the proportionality of punishment, the treatment of offenders who refuse to repent, and objections concerning coercion and the instrumentalization of criminals.

TEMPERING POWER AS THE POINT OF RULE OF LAW: ACCORDING TO WHAT? HOW TO TEMPER?

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SW43 · Special Workshop on Martin Krygier's Tempering Power: Beyond the Rule of Law

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ABSTRACT

In Tempering Power: Beyond the Rule of Law, Martin Krygier argues in order to think clearly and well about the rule of law, the theoretical starting point is to ask what we want the rule of law for and from it, rather than defining its specific components. In other words, the rule of law is as what Krygier says, an appraisive concept, in which the fact and value entangles. And the reason that we want the rule of law, according to Krygier, is to temper power (although the latter could be realized without the former, still it does not cancel out the value of the former and the rule of law arguably remains to be the most efficient way to temper power). The rule of law is particularly best tailored to remedy arbitrary power. Hence, the inquiry about the rule of law has been transferred to understand what is non-arbitrary exercise of power. Krygier further contends that four ways of exercising power facilitate arbitrariness: uncontrolled, unpredictable, unrespectful and ungrounded.

The preceding argument invites the following objections and questions. First of all, does non-arbitrary exercise of power alone suffice to capture the point of the rule of law? In other words, regardless of whether the rule of law could facilitate justice, equality, prosperity, security, etc, is it worthy of appraisal so long as the exercise of power is tempered? Secondly, can the first question even be answered within Krygier's framework? Does he not inevitably intertwine the remedy of arbitrariness with a substantive idea of the rule of law? Since respectful way of exercise power requires those who have power treat citizens as agents with free will rather than "a rabid animal or a dilapidated house". That is to say, non-arbitrary ways of exercising power at least contributes to one's dignity and practical agency,

and Krygier goes as far to imply that otherwise the emphasis on predictability is rendered pointless. Thirdly, respectful ways of exercising power denotes that reasons for exercising power must be provided insofar as citizens are treated as agents. To what extent this respectful element can be distinguished from the fourth one, the grounded element, which specifies that non-arbitrary power has to derive from its justifying purpose? Finally, suppose that non-arbitrary exercise of power is grounded in a certain purpose (whatever that may be), and is respectful towards its subjects, and is also in a controlled and predictable manner, does this benchmark not already presuppose what it means to temper power?

ACTIVE INTERFACES: GOTHIC STAINED GLASS AS A PRECURSOR TO POSTHUMAN AND ALGORITHMIC AGENCY

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ABSTRACT

The contemporary shift toward Transhumanism and Posthumanism—where the human "soul" is reimagined as data and the "self" as a distributed pattern—finds a surprising and profound genealogical anchor in the Neoplatonic aesthetics of the 12th and 13th centuries. This paper explores the "active images" of the St. Nicholas stained glass windows at Chartres Cathedral as early technological and philosophical "interfaces" designed to facilitate the transcendence of biological limits.

By drawing a line from the Neoplatonic pursuit of the "One" (as seen in the works of Pseudo-Dionysius and Abbot Suger) to modern Object-Oriented Ontology (OOO), this study argues that Gothic stained glass functioned as a "non-human actor." These windows were not merely decorative but were perceived as active media—translucent entities that "acted" upon the viewer to elevate the mind to an "intelligible world."

We will examine how the "fragmented" materiality of the glass (paralleling modern digital data patterns) and its unique optical agency challenge traditional legal and philosophical definitions of personhood and intent. If a medieval "active image" could be held responsible for guarding property or validating a loan, it challenges our modern legal obsession with biological human intent. It provides a precedent for assigning rights or liabilities to "non-human actors"—whether they are 13th-century windows or 21st-century algorithms.

By presenting the St. Nicholas windows as "Active Interfaces," we are arguing that the Posthuman turn (decentering the human) is not a brand-new crisis but a return to a Neoplatonic understanding where the material

world and the "intelligible world" are entangled through active, non-human media.

POSTHUMAN AUTONOMY AND DIGNITY – ARE WE INSTRUMENTALISED BY AI AND TECHNOLOGIES?

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ABSTRACT

In this paper, I would like to try to make an ethical and philosophical assessment of artificial intelligence in relation to human dignity. I will explore the question of whether or not artificial intelligence instrumentalizes us and how it interferes with our autonomy, through the lens of Kantian philosophy in the Groundwork for the Metaphysics of Morals (Kant, Imanuel, 2017, 1990) and the Metaphysics of Morals (Kant, Immanuel, 2016). The topic of artificial intelligence will be presented in a historical and philosophical perspective as a critical challenge of our time. In the absence of rules, values, and principles such as dignity and autonomy become increasingly important. Artificial intelligence develops these, but needs legal limits. The case of cyborgs demonstrates the same (Rosenkranzová, 2025). I endorse Hans Jonas's thesis regarding human responsibility for everything. Furthermore, I take a critical look at dignity, autonomy, and equality through the lens of Rosi Braidotti's post-humanist philosophy. (Braidotti, Rossi, 2022)

The legal framework governing human dignity is based on Immanuel Kant's philosophical concept of human dignity. Although Kant's original writings have been misinterpreted over time, the influence of Kant on the law is evident, particularly concerning freedom and human dignity (Rosenkranzová, 2019, 2021, 2024). An integral part of the legal concept of dignity is the issue of the instrumentalization of human beings, that is, the diminishment of their value. Instrumentalization is a form of violation of human dignity directly grounded in Kant's categorical imperative, which served as the basis for the German constitutional scholar Günter

Dürig in developing the German doctrine of the "Objektsformel" in post-war German constitutional law as well (Dürig, Günter, 1952, 1956, Wagnerová, Eliška, 2012, Pfordten, von der Dietmar, 2009. Mohr, Georg. 2011, Kant, Immanuel. 1990: 128.; Kant, Immanuel. 2016, p. 408.; Rosenkranzová, Olga, 2022, Rosenkranzová, Olga. 2019:155.)

Kant defines autonomy as a state where you are not even under the influence of other persons. Freedom for Kant is independence from the will of other persons (Hill, Thomas E. Jr., 2015: 21). And what about artificial intelligence? Are we immune to it? Can we stand in our decision-making processes as autonomos, that is, uninfluenced by the will of others, including AI's algorithmic searches? If we take AI only as a tool, for collecting data - like books, websites and others, for research, for translation and correction, and we stand by our own will in an autonomous space of self-mastery, then we will naturally take our own autonomous decisions and, from that, our own responsibility. A rational autonomous being, like a human being, has duties to himself and to other persons; only the human being has ultimate responsibility for everything (Hans Jonas, 1997).

I incorporate Erich Fromm's views on the necessity of transitioning from having as a possession to being. I also examine dignity, autonomy, and equality in post-humanism through the philosophy of Rosi Braidotti, and finally return to the concept of techné itself in Martha Nussbaum's analysis in *The Fragility of Goodness*.

Is man still an *auto-nomos* in a technological world, and the dignified master of himself? The independence of the human will is a prerequisite for human dignity. If we lose the ability to be autonomous, and if our autonomy of will is limited, distorted, and subject to influence—that is, dependent—then we are not masters of ourselves, nor are we capable of giving ourselves our own commands. We lose the qualities and virtues of homo noumenon and descend into animality and objectification in the realm of phenomena. Then we lose our human dignity. The concept of autonomy is viewed through a Kantian lens and subsequently critically refuted by posthumanism. Post-humanism emphasizes equality and multiplicity, and the strong modern and Enlightenment narratives of human dignity are fading away. We do not strive for perfection and ideality, but live through concrete experiences. We seek nature and naturalness, but find

only artificial nature. Artificial nature and artificial intelligence, artificial reproduction and social genders—all of this is our new nature.

The artificial, techné, is practical Aristotelian deliberation, practical rationality. We set this against higher theoretical reason and true wisdom. Practical reasoning, techné, is not sustainable in the long term; it has its dual instabilities, and that is why we humans—according to Martha Nussbaum's interpretation of Aristotle—are vulnerable. Vulnerability is a social phenomenon that, in legal terms, indicates discrimination and unequal treatment. There are far too many at-risk groups lacking techné—that is, practical rationality and the ability to handle technology. However, this is not just about minority groups suffering from discrimination; it is about our majority's loss of autonomy of will and loss of dignity caused by the instrumentalization of technology.

RELATIONAL AGENCY AND LEGAL RECOGNITION: AN ANT PERSPECTIVE

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ABSTRACT

For centuries, Western philosophy has structured identity and legal personhood around the human subject, reinforcing a binary distinction between "persons" and "things." The rise of humanism and the Enlightenment further entrenched this framework, placing man at the top of the ontological and ethical hierarchy. While human rights expanded over time—gradually including those once excluded—the fundamental logic remained the same: an ever-widening circle of human dignity.

Today, emerging entities—rivers, ecosystems, artificial intelligence—challenge the sufficiency of this model. Legal systems are increasingly recognizing non-human rights, yet these developments often stretch, rather than redefine, traditional humanist categories. At the same time, an increasing number of philosophical approaches across disciplines have begun rethinking the subject-object divide (from Tarde, across Latour, Deleuze, Guattari, to Braidotti, Harman, Barad, etc.), and from the point of view of law, Latour is one of the most influential among them. His work is particularly relevant for legal theory, having influenced debates on legal personhood, environmental rights, and technological issues. This paper examines whether Bruno Latour's Actor-Network Theory (ANT) offers an alternative ontology better suited to this transformation. Specifically, it explores whether ANT can provide a non-humanist justification for legal recognition – one that moves beyond human-like attributes (such as dignity or autonomy) and instead grounds legal personhood in relational agency. If law were to adopt such a framework, legal personhood would be based not on intrinsic qualities, but on the dynamic networks of interactions that shape legal and political realities. This shift could have significant implications for human rights law, challenging its anthropocentric

foundations and offering new ways to conceptualize rights for non-human entities, such as ecosystems, AI, and corporate actors. By analyzing these possibilities, the paper seeks to bridge ANT and legal personhood theory, critically assessing whether law can move beyond its humanist roots while still providing a coherent structure for rights and responsibilities.

AMARTYA SEN AND THE FUTURE OF HUMAN AGENCY

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ABSTRACT

Contemporary social and technological transformations are fundamentally reshaping the understanding of the human being, human autonomy, and the position of individuals within society. Digitalisation, automation, algorithmic governance, biotechnological interventions, and posthumanist conceptions increasingly challenge traditional notions of the human being as an autonomous, rational, and politically participatory subject. Individuals are increasingly perceived through systems of evaluation, categorisation, and optimisation that redefine not only social relations and decision-making processes, but also the normative foundations of human agency itself.

The paper analyses these tendencies through the philosophical framework of Amartya Sen's capability approach. In contrast to technocratic, utilitarian, or purely functionalist models of society, Sen understands the human being primarily as an agent capable of public reasoning, reflective choice, and participation in shaping social conditions.

The paper argues that contemporary posthumanist and technological tendencies may lead to the gradual transformation of the human being from an active subject of public reason into an object of governance, prediction, and systemic optimisation. In this regard, the problem lies not exclusively in technology itself, but in a broader transformation of the social ontology of the human being, within which the importance of deliberation, political participation, and human reflexivity is progressively weakened. These tendencies simultaneously revive the classical tension between utopian visions of a rationally organised society and dystopian concerns regarding social control, depersonalisation, and the erosion of democratic structures

and the rule of law. The growing dominance of predictive and managerial forms of governance may therefore represent not only a technological challenge, but also a deeper normative risk connected to the weakening of legal certainty, democratic legitimacy, and the humanistic foundations of the rule of law.

Drawing on Sen's concepts of agency, the capability approach, and public reasoning, the paper examines whether his theory may provide a normative framework for the protection of human autonomy, dignity, and democratic legitimacy under the conditions of contemporary social and technological transformations.

ON TECHNOLOGY, SELF AND THE LAW

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ABSTRACT

Humans are technological animals (Bernard Stiegler). Technology is part of what it means to be human (Habermas 1971), and therefore is not something that can be replaced or done away with. (David Savat, Uncoding the Digital, Technology, Subjectivity and Action in the Control Society). In Being and Time (1927) Heidegger argues that our relationship with tools can become so close and familiar through the use of them, that, the more we learn to master them, the more seamless their use becomes, blurring the lines between users and tools. Gilbert Simondon in his book Du mode d'existence des objets techniques (On the mode of existence of technological objects) argues that technology cannot be reduced to a utilitarian function, because it is more than just particular tools used for particular purposes. Technology, Simondon declares- partially opposing Heidegger, is a network of relations; it is what mediates between humankind and nature. Information and digital technology gave rise to a virtual world of relations, which is gradually melding with the physical world, as we increasingly use, create and rely on technology. The world we relate to from our screens following us everywhere, shapes our take on reality, our social relations and our identity (Vittorio Gallese, 2021). This paper argues that we are experiencing a novel relational and dialectical subjectivity. We can no longer talk of a unified, knowing subject of law as presented in liberal theories from Kant to Rawls, rather we need to acknowledge the subject as one which exists in a state of continuous construction, and reconstruction (Kenneth Gergen, The Saturated Self), one which is (re-)created in an ever-changing network of relations. The subject is always in flux and always inter-subjective and this is more the case now than ever, thus, it is paramount to understand and acknowledge the subject as such. The question that bears to be raised and discussed further to establishing the relationship

between Technology and Self and further to articulating the relational and dialectical nature of the subject as described above, is what is the role of the Law in this interplay between technology and self? And what is the role of the Law in relation to this transformation of the subject of law? The role of the Law is twofold: (i) To provide for the emergence of the subject by drawing the framework in which the subject is to emerge, by giving rights to the subject and defining the outline in which subject interacts with others, including technology; and (ii) to provide for the necessary prohibitions in order to protect the subject of law and its relations. How is Law to maintain and sufficiently fulfil such role? As a response this paper argues that 'If we are to survive, improvisation will become our way of life' (Kenneth Gergen, The Saturated Self) - Law should abide by this. Law has to develop a flexible and dynamic reaction in order to keep pace with the digital Self and Technology.

DIVINE NATURE AND MAN AS A MICROCOSM IN NEOPLATONISM AS AN INSPIRATION FOR POSTHUMAN JURISPRUDENCE

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ABSTRACT

This chapter examines whether and how Renaissance Neoplatonism, with its concept of Divine Nature and its mystical and magical applications in Western esotericism, can now serve as a source of inspiration, with an emphasis on the equality and dignity of creatures (Würde der Kreatur) in posthumanism (Braidotti, Ferrando). It further aims to determine how these philosophical concepts can be translated into law.

Posthumanism deconstructs duality and promotes unity as a prerequisite for experiencing equality and dignity. That is why I present here the non-dual models advocated by the Neoplatonists, who applied the triad. Since the time of the Pythagoreans, the number three has been a number of stability, and Pythagorean teachings were adopted by Neoplatonism, which, for example in the case of Giovanni Pico della Mirandola, demonstrates an effort toward unification in his syncretic method, combining philosophy and religion—not only Christianity but also paganism, Arabic mysticism and magic, and Jewish Kabbalah—that is, what later became part of Western esotericism as a component of European cultural heritage. In philosophy, Pico sought to combine the significance of Aristotelianism with Platonism. Pico drew upon Marsilio Ficino. Both sought a conception of humanity within nature and its relationship to the divine. The concept of man in Neoplatonism is generally cosmological, and man is understood as a microcosm, a part of nature and at the same time possessing the magical potential to invoke the divine. Equally original was Jacob Böhme, a shoemaker who mystically perceived the nature of the world and the workings of God within it.

The concept of divine nature evolved and was misinterpreted during the communist era and the era of dualistic Christianity as a mere materialistic philosophy of nature. Nature, however, has always been understood as bearing the signatures of God, as a world in which the harmony of forms and sacred geometry speak to us, revealing themselves for our inner contemplation. Nature is a gift to humanity for its spiritual elevation and for recalling the perfection of the divine idea, often referred to as Light—the Light carried by the Sun as a metaphor for the Supreme Spirit. Therefore, for Neoplatonism, this world and nature were important aids on the path to the spirit.

In Neoplatonism, the triad is applied in such a way that it encompasses the earthly, corporeal, material—that is, physical—realm; the mental, metaphysical, and more subtle material plane, including the cosmos; and the spiritual, hyperphysical plane (Woldring, Palouš, Comenius). In the triad, none of the planes is excluded; rather, they complement and assist one another.

The concept of creation from the Logos is commonly invoked, or, according to Böhme, from the Ungrund (Böhme's work clearly exhibits Gnostic traits) (Weeks). Within the concept of Divine Nature, there is a single original cause of creation, a single creative force that created everything—including nature, living beings, and us humans. Only the human soul is capable of rising to the spirit, but to do so it must study nature, come to know it, observe it, and uncover the divine signs in nature. Thus, the observation of the stars and the production of gold, the exploration of natural physical laws with the discovery of gravitational force—which is merely a metaphor for daily communion with God and for the awakening of the spiritual soul—are born. These observations were simultaneously a method of mystical invocation of God and a state of elevation of the mind, a prayer (Yates). The book of nature was a metaphor for the divine books, that is, God's wisdom (Pavlas).

Rossi Braidoti also offers a critique of dualism in posthumanism. He bases his ideas on Spinoza's conception of nature and the world, in which we all possess the same creative powers on earth and are therefore created from the same matter, or from various combinations thereof. This is supported by Neoplatonism, along with the later idea that all natural elements are contained within the human being as a microcosm: minerals in bones

and teeth, plants—with which we share a vital force and can grow—and animals—to which we are similar in our emotional life. Rationality has been interpreted ambiguously; some long considered it a distinguishing criterion, while others distinguished between practical reasoning as techné and theoretical rationality serving the soul for contemplation and union with the spirit (Nussbaum).

I believe that Braidotti presents Spinoza in a more materialistic light, conceptualizing a new materialism. Moreover, in addition to Spinoza, one can also draw on Marsilio Ficino, Giovanni Pico della Mirandola, Jan Amos Comenius, Robert Fludd, and Jacob Böhme. I agree with posthumanism that our current nature is quite artificial and that the artificial is becoming part of nature, as evidenced by reproductive medicine, cyborgs, and other biotechnologies (Braidotti).

Nevertheless, this new materialism does not exclude spirituality, which stems from a triadic conception of the world and nature; and emotionally, mystically, and organically, thanks to nature, we will be able to experience wonder and inner elevation from the perfection of forms, much as in Neoplatonism, where nature was experienced as a divine sign through one's own spiritual experience.

Both in Neoplatonism and today, we can experience a sense of wonder toward nature as something not created by humans. And so today, humans imitate nature, and nature—as God's signature—imitates God. Everything happens through analogy. Everything is merely an imitation of the totality of creation and the creative forces. And thus, artificial nature—including AI and all technologies, art and culture, the achievements of civilization—all of this is merely an imitation of the creative forces; but as an imitation, it is the same as natural nature itself imitating God, according to His pattern. These are two intertwining matrices leading to the realization of their interconnectedness and unification. It is precisely the awareness of the whole and unification—a sort of alchemical coagulation following the previous phase of separation in duality—that can now lead to the experience of equality and respect, that is, to the dignity of all entities.

Since collective emotions shape the law in legislation, emotions and spiritual experiences can also serve as inspiration for the law (Sajó) and, gradually, on the basis of individuality, change the law and its understanding, application, and interpretation toward these values.

THE NEW 'NORM'ALIZATION OF STATE VIOLENCE

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ABSTRACT

As Weber famously stated, the modern state is "the only human community, the Gemeinschaft, that claims a monopoly on the legitimate use of physical force." It is no coincidence that Weber defines the monopoly on violence as the modern state's distinctive concrete instrument. For ever since its institutionalization with Hobbes, the state's raison d'être has been to concentrate sole control over the instruments of violence in exchange for the security of its citizens. Therefore, according to this assumption/premise, the state may, under certain circumstances, use violence that is "proportionate" and "within legal bounds" to protect the rights of others. While this framework itself is already subject to debate/controversial, state violence has now begun to create a new norm by stepping outside the normative framework drawn by the state itself. Especially when it comes to stigmatized groups—such as LGBT+ individuals and refugees—states no longer feel the need to remain within the bounds of the law. Indeed, gender-based violence and violence against women have taken on the form of a war, and social opposition is being suppressed through coercive means across all spheres. As organized crime's violence escalates due to rising poverty and the state's abandonment of its former responsibilities in favor of capital, interpersonal violence has also intensified. In the Turkish context, the "impunity" policy regarding violence directed at social opposition and gender-based violence coexists with increasing state violence targeting spaces of social opposition and the possibility of opposition. For a policy of impunity is a sign of the state's complicity. On the other hand, as various causes and consequences—such as neoliberal policies, the strengthening of authoritarian regimes, escalating armed conflicts, intense international migration, and anti-gender movements—have for some time been driving not only Turkey but also other states toward brutal practices

beyond the normative framework, state violence that deviates from the norm has begun to be normalized in other forms; and as it becomes normalized, it begins to be redefined as normative. In other words, it can be argued that states are responding with violence that goes beyond the already controversial normative framework, rather than finding solutions to individuals' problems. The primary aim of this discussion is to examine the "disproportionate" violence directed at bodies and social movements, and whether what is "disproportionate" has become the norm.

Keywords: State Violence, modern state, normalization of state violence

CRITIQUE OF COERCIVENESS IN LEGAL THEORY: THE VIOLENCE IN THE PRODUCTION OF 'NORMAL'

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ABSTRACT

In the legal positivist tradition, coercion or coerciveness is considered the unique and central element of legal systems, eliminating outcomes that contradict the law's "normal." From Hobbes to Austin, coercion and coerciveness have been crucial for the law's ability to enforce rules. In these theories, political power and the ability to coerce reside outside the law, providing enforceability and order from without. Hence, the law itself becomes secondary to the power or politics. However, new waves of legal positivists in the 20th century, such as Kelsen and Hart, have advanced formulations in which rules do not refer to entities outside the law. In these theories, legal rules govern or regulate when and how force and coercion are activated, rather than being directly dependent on the coercion of political power. Here, the nature of law is interdependent with coerciveness. However, the suggestion that legal rules do or can govern or regulate how violence/force works is prone to criticism. Walter Benjamin, especially, claims that the instrumental use of violence and coercion creates an infinite dependence on violence itself. Producing the normal or eliminating the abnormal through violence imposes logical necessities on legal systems. To possess the power to implement rules, the legal systems must seek to expand and intensify their monopoly over violence. Thus, maintaining this monopoly becomes the secret, or rather, the fundamental purpose of law; weighing over the normative content of law; rendering the latter trivial. In Benjamin's view, the law can never be objective; it is always employed by the powerful, within the legal vagueness that awaits the powerless. It also limits those who seek to bring about reform or revolution through law,

because, in the end, the law's secret purpose corrupts any political ideology. This criticism challenges both formulas: 1- Legal rules cannot govern how a state, as a coercive organization, works because the momentum of violence necessitates that law must seek its own demise. To stay in existence, the legal system must strengthen its monopoly on violence at all costs. So much so that, if there is an issue of survival, the normative part of law falls back, to keep the power of implementation for the future. Therefore, if legal systems are to maintain their existence; they cannot remain indifferent to violence 2- The critique also challenges the first formula: Because being dependent on violence / sovereign power does not create a legal or political consistency: On the contrary, both law and power are in an endless yet futile struggle to expand and monopolize all resources/means of violence; so that they can guarantee their future survival and existence. While in the first formulation law is dependent on violence/political power, the second juxtaposes law and violence on somewhat equal footing, interdependent, so to speak. The Benjaminian criticism, however, recognizes the moment of indecisiveness in violence as a means and points out how it can swallow the promises of normativity altogether. Therefore, the presentation suggests that discussing how law operates and the instrumentality of violence within it is one of the most important debates in legal theory today.

Keywords: coerciveness, Walter Benjamin, legal positivism

CITIZENSHIP AS A CATEGORY OF LEGAL NORMALIZATION AND BEYOND: IN SEARCH OF A NEW EQUALITY

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ABSTRACT

Although citizenship historically emerged with the promise of creating a "community of equals," it remains structurally entangled with mechanisms of exclusion. This study traces the evolution of citizenship from Ancient Greece and Rome to the modern nation-state, analyzing how it operates as a category of legal normalization and legitimizes exclusionary practices through the construction and reproduction of a particular "normal" subject.

The modern citizenship regime, through the principle of formal equality, abstracts the individual and renders social, economic, and cultural differences invisible. This "difference-neutral" approach functions as a mechanism of legal normalization: it codes dominant power structures (masculinity, whiteness, property ownership) as "normal," while relegating those outside this norm (women, Black people, migrants, queer subjects) to subordinate positions, thereby producing epistemic and legal violence.

This paper centers its analysis on the concepts of substantive equality and intersectionality in order to move beyond the inherent "dialectic of inclusion and exclusion" within processes of legal normalization. Intersectionality is not merely a descriptive tool for capturing multiple identity experiences; rather, as articulated in Kimberlé Crenshaw's foundational legal critique, it operates as a critical methodology that reveals how intertwined power hierarchies are reproduced through legal norms and normalization practices.

In this respect, the study invites a reconceptualization of citizenship as a concrete form of membership rather than an abstract status and explores the possibilities of an "intersectional substantive citizenship" model—one

that resists normalization by recognizing differences and addressing structural inequalities through asymmetric interventions.

Keywords: Citizenship, substantive equality, intersectionality

BEYOND NORMAL, BROADENING OF LAW'S DOMAIN: TRAJECTORY OF GENDER-BASED VIOLENCE IN INTERNATIONAL HUMAN RIGHTS LAW

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ABSTRACT

Violence is a concept or fact we face in everyday life. However, how we understand and judge violence is shaped by law. As law shapes what counts as normal and "normal" forms of life, what violence means is determined by law too. Thus, the meaning of violence against women and under what circumstances protection will arise against it depends on how the law defines and regulates violence. International human rights law had excluded domestic violence from its scope for a long time. Today, even though there are some deficits, domestic violence and gender-based violence is part of human rights law. This paper explores the inclusive evolution of human rights discourse and law, demonstrating how its trajectory has expanded beyond 'normal' conceptualizations of violence. It argues, using the evolution of the conceptualization of the gender-based violence in human rights law as a case study, that while law fundamentally shapes normalized forms of life, it simultaneously functions as a domain of struggle—one that can be actively leveraged to broaden and redefine the boundaries of what is considered normal.

Keywords: gender-based violence, domestic violence, human rights law

QUEER THEORY'S DISRUPTION OF NORMATIVITY AS A CRITICAL METHODOLOGY IN LEGAL THEORY: TOWARDS A NON-NORMATIVE CRITICAL POSITIONALITY

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ABSTRACT

Critical legal perspectives critique the modern legal framework's discourses of objectivity and impartiality by focusing on the role of law in masquerading and reinforcing factual inequalities and discrimination in social, cultural, and economic contexts. Among these critical approaches, feminist legal theories have had a considerable impact on legislative processes and legal practice. Since the early 1990s, however, feminist conceptions of gender and sexuality have themselves been challenged. Especially, the various perspectives in queer theory have not only critically analyzed heteronormativity and gender binarism as hegemonic systems of gender and sexuality, but also identity-based approaches that oppose these systems. Consequently, queer theoretical perspectives offer a range of possibilities for developing new critical methodologies relevant to legal theory. This paper explores the potential of queer theory as a critique of normativity when translated into a methodological stance in legal thinking, grounded in a distinction between normative critical positions and non-normative critical positionalities. Drawing mainly on the work of two scholars, Brenda Cossman and Lorenzo Bernini, the paper discusses how queer legal perspectives may differ from feminist and LGBTI+ rights perspectives. Reinterpreting Cossman's proposition of queer legal studies as a sensibility, the paper presents queer theory as a methodological positionality in legal theory, in law-making processes, and legal practice, applicable beyond gender and sexuality issues, as it critiques the processes that legitimate normativity by naturalizing social constructs that are products

of power relations, such as law. Drawing on Bernini's work, it also proposes a distinction between normative and non-normative critical approaches. A critical positionality towards normativity in legal theory may enable practitioners to treat law methodologically as a realm of constant contestation, a site of both power and empowerment, while avoiding the naturalization of hierarchies, discrimination, and violence. It may also provide political movements with conceptual tools and strategic methods to foster dynamism, fluidity, and self-critique in their legal struggles for social change, thereby avoiding the exclusionary practices of essentialism. Hence, the paper argues that queer, understood as a non-normative positionality, may provide methodological awareness and sensibilities in legal theory and political-legal strategies.

Keywords: queer theory, normativity, critical legal perspectives

THE JURIDICAL PRODUCTION OF THE NORMAL IN KINSHIP: QUEER INTIMACY AT LAW'S EDGE

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SW45 · Normativity, Normalcy, and Law: Critical Legal Perspectives on the Production of the 'Normal'
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ABSTRACT

This paper argues that marriage and civil partnership function as ontological regimes that do not merely recognize intimate life but actively constitute which interpersonal relationships can exist as socially real, intelligible, and legally consequential. Within family law, these institutions operate as classificatory and hierarchical mechanisms: they privilege romantic, sexual, monogamous, and reproductive bonds as the paradigmatic form of kinship, while rendering queer kinship practices—such as friendship-based care networks, chosen families, and various forms of belonging that flourish in response to institutional harm—legally peripheral, unstable, or unintelligible.

Drawing on critical legal studies and queer legal theory, the paper treats legal recognition as a form of translation that is neither neutral nor exhaustive. Relationships become legible to law only insofar as they can be reformulated within the normative grammar of couplehood, familiality, and dependency. Legal reform may expand access to marriage or civil partnership for some LGBTQIA+ subjects, but such inclusion is conditional upon the reiteration of cisheteronormative assumptions about intimacy, relationality, and social order. Recognition therefore does not simply widen the field of protected relationships; it reorganizes that field by establishing the conditions under which relational life may count as worthy of legal status.

The paper conceptualizes this process as simultaneously epistemic and ontological. It produces epistemic violence by imposing the categories through which relationships are known, narrated, and evaluated, while exercising ontological force by stabilizing certain relations as fully real and consigning others to forms of partial or precarious existence.

Focusing on marriage and civil partnership as privileged sites of norm production, the paper interrogates what forms of relational life are diminished when law claims authority over intimate truth, and whether legal recognition can accommodate queer kinship without subordinating it to normative ideals. It argues that the central problem is not only exclusion, but the juridical production of "the normal" as the condition of recognition, and therefore of intelligibility and legitimacy. The task, then, is not to secure recognition from a cisheteronormative order, but to expose and unsettle the legal ontology through which law determines whose life may count as relationship, kinship, and life itself.

Keywords: queer kinship, family law, legal ontology

THE CONCEPT OF (QUEER) FRIENDSHIP BEYOND LEGAL NORMALIZING STRATEGIES AND IDENTITY-PRODUCING POLITICS

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ABSTRACT

The declaration of 2025 as the "Year of the Family" in Türkiye has reinforced family-centred policies that have narrowed the social and political space available to women and LGBTI+ people by producing a new normative framework. Likewise, the global rise of anti-gender movements has increasingly mobilized anti-LGBTI+ politics through discourses that sanctify the family. While this political context underscores the continuing urgency of struggles for legal recognition and equal rights, it also invites us to question how such demands are frequently reproduced within assimilative legal frameworks, thereby reinforcing rather than unsettling existing normative orders. Within this context, this paper turns to the concept of friendship as an alternative political and legal horizon. Drawing on Michel Foucault's later work and contemporary queer theory, it argues that the concept of (queer) friendship is a critical political concept capable of exposing the limits of identity-based legal strategies and the normalizing effects of law. Friendship, besides, is presented as an open-ended practice of inventing new forms of intimacy, care, solidarity, and collective life beyond established social and legal norms.

While acknowledging that struggles for legal recognition and equal rights remain politically indispensable, the paper argues that legal recognition cannot exhaust queer political imagination. Drawing on reflections on the strategic necessity—and simultaneous limitations—of identity, it suggests that politics cannot remain permanently confined to defensive

struggles for recognition. Friendship instead opens another political horizon by shifting attention from the production of recognizable identities toward the creation of new forms of relationality.

Finally, this work connects Foucault's analysis of law as a regime of normalization with his proposal for “rights of friendship”, understood as an attempt to imagine new forms of kinship and therefore legal concepts that stabilize alternative forms of relationality without assimilating them into existing familial frameworks. In this regard, it highlights the contribution of the concept of (queer) friendship to legal philosophy: to expand legal imagination beyond the atomistic individualism embedded in liberal legal thought, to acknowledge the constitutive sociality of the self, and to consider lives and relationships that law struggles to represent or refuses to represent at all.

Keywords: friendship, queer politics, Michel Foucault

WHAT IS THE FUNCTION OF RAPE CRIMINALISATION? HERMENEUTICAL INJUSTICE IN NORMS AND JURISPRUDENCE CONCERNING SEXUAL CRIMES IN POLAND

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ABSTRACT

The #MeToo movement in Poland has been termed as "unfinished revolution". Part of the reason for that is the fact that it did not result in immediate legal change directly after the first wave of the movement. However, it seems that "revolution" was revived in February 2025: the definition of rape, long criticized by feminists, has been amended to explicitly include lack of consent. Thus, one could claim that revolution was finally finished as #MeToo movement in Poland reached one of its goals. Unfortunately, the new law may bring little change in protection from rape.

This paper explores the tacit assumptions of the old and new definition of rape, and their doctrinal and judicial interpretations. It uncovers the presuppositions about gender roles within sexual contacts in patriarchal societies embedded in the law. We claim that the Polish regulation concerning rape before the amendment did not fulfil its proper function, i.e. protection against sexual violence, but instead protected patriarchal status quo. We also argue that the 2025 amendment – aimed at correcting the above shortcoming – failed to meet its goals.

The failure of this amendment has two main grounds. First, rape is a gendered crime: committed predominantly against women and femme people. Thus, the regulation ought to reflect their perspective but is constructed in an apparent gender-blind manner and thus is an example of hermeneutical injustice. Second, legal conceptualization of rape with its doctrinal and judicial interpretations facilitate pursuit of interests of men, who are not 'typical' rape survivors, and petrifies patriarchal stereotypes.

HOW TO COUNTERACT INTERPRETATIVE EXCLUSION? PHILOSOPHICAL HERMENEUTICS ARGUMENT(S)

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ABSTRACT

Critically oriented theories of legal interpretation note that interpretations and experiences of certain social groups are excluded from the discussion on the final meaning of legal terms. These theories, which are sensitive to issues such as gender identity, sexual orientation, or race, show how social injustice manifests itself within the social process of meaning construction. Due to the power relations that exist in each society, the interpretative position of the members of marginalized groups is often weaker than the position of dominant groups because the latter have the power to impose interpretations that result from their experience. One of the examples from legal domain is the recent debate on "rape". Klaudyna Horniczak and Karolina Śliwecka apply Miranda Fricker's conception of hermeneutical injustice to show that in Polish jurisprudence, the experience of women is marginalized when it comes to interpreting the law on sexual violence.

The main aim of my presentation is to show how the hermeneutical theory of interpretation can strengthen the interpretative position of the members of marginalized groups. To prove that hermeneutical theory of interpretation can counteract the phenomenon of interpretative exclusion, I will present the following three arguments. First argument: Since philosophical hermeneutics offers analytical categories that are useful for critique of ideology (as Paul Ricoeur points out), they can also be used for critical analysis of dominant and biased legal interpretations. Second argument: Since philosophical hermeneutics rejects the idea of one objective interpretation and assumes multiplicity of meanings, it democratizes discourse and opens it to various interpretations including minority ones (Gianni Vattimo and

Santiago Zabala). Third argument: Since philosophical hermeneutics recognizes the role of prejudices in the process of interpretation and values individual experience, it can be argued that prejudices held by members of marginalized groups (which are determined by the history of exclusion of the entire group) enable a better understanding of certain legal terms.

FREEDOM IN PUBLIC SPACE: SEX, NUDITY, AND THE BURDENS OF TOLERANCE

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ABSTRACT

This paper examines the limits of individual freedom in public space by focusing on legal norms regulating nudity and sexual conduct. While such norms are often regarded as prima facie justified—given the widespread discomfort associated with unexpected exposure—the challenge lies in identifying a principled basis for them that does not also license broader restrictions grounded in majority preferences.

The paper argues that this difficulty reflects a deeper issue concerning the distribution of the burdens of tolerance in public space. Public space is not merely a site of interaction, but a necessary means of access to a wide range of social, economic, and civic opportunities. For this reason, access to it should be as unburdensome as possible. At the same time, however, life in a pluralistic society inevitably exposes individuals to conduct they may find disturbing. Since tolerance is a limited resource, a viable account of public space must address how its burdens are fairly allocated and must incorporate forms of civic self-restraint that prevent their excessive imposition on others.

Against this background, the paper rejects both a libertarian view—according to which whatever is permissible in private should also be permissible in public—and a communitarian view that grants the majority broad authority to regulate public space on the basis of offence. In their place, it sketches the contours of an intermediate position structured by two constraints: first, respect for liberty of conscience implies that access to public space must not require individuals to go against their fundamental convictions; and second, that the burdens imposed in the name of tolerance must remain justifiable to those who are asked to bear them.

Within this framework, the paper considers whether nudity and sexual conduct possess features that may justify their differential treatment. It explores the idea that such behaviours, given their distinctive psychological and affective impact, may interfere with forms of interaction in public space that presuppose a degree of reciprocity and impartiality, thereby imposing distinctive burdens on others.

The final part of the paper develops the implications of this account. If some individuals are disproportionately burdened by restrictions designed to facilitate shared use of public space, considerations of fairness may require forms of accommodation. This points towards a more pluralistic understanding of public space, in which differentiated public environments, subject to distinct normative regimes, can help reconcile competing claims of access, tolerance, and freedom.

ON DESIRING A NONIDEAL THEORY OF CONSENT

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ABSTRACT

For Quill R. Kukla, enthusiastic consent is neither necessary nor sufficient for sex to be regarded as permissible. They advance a framework called interpersonal scaffolding; for sex to be permissible, parties involved must provide a multifaceted acknowledgement and support for each other in the form of social, economic, political safeguards to protect against retaliation and to acknowledge each party as autonomous and agential.

However, Kukla leaves a central question unaddressed: who is to shoulder the burden of creating interpersonal scaffolding? I argue that, under the pretense of a heteronormative relationship with existing power differentials, Kukla's model does not adequately explore how the burdens of scaffolding creation ought to be distributed. I raise a critical conversation on the execution of Kukla's model, exploring three possible replies, and why all three are all found wanting, requiring intervention through Amia Srinivasan's conception of desire.

Kukla's framework cannot be understood in a vacuum. Second wave feminist thinkers have problematized consent, arguing that, due to the compromised autonomy faced by women under patriarchy, and the autonomy that consent presumes women to have, no heterosexual sex can be consensual. The dominant contemporary account of consent is the enthusiastic model of consent, which asserts that so long as consent is freely and enthusiastically given, sex is permissible.

Rejecting both positions, Kukla constructs a novel account for the permissibility of sex. Yet, an ambiguity remains in the interpersonal scaffolding model when applied to a relationship with existing power differentials, namely, how the burdens of scaffolding creation ought to be distributed.

Even assuming both parties agree to the creation of such interpersonal scaffolding, the creation and upholding of this framework in a relationship

still requires labor. Where should this burden lie? There are three possible responses for Kukla, each unsatisfactory.

First, if the burden of scaffolding creation is in any part with the disenfranchised party, the scaffolding seemingly collapses. It seems that psychological oppression may stifle any such efforts to mitigate the effects of patriarchy within an interpersonal relationship. Thus, it seems that Kukla has failed to mitigate standing power differentials between partners.

Second, if scaffolding creation is entirely to the privileged party, the scaffolding fails to mitigate the standing power differential. The interpersonal scaffolding framework, if delegated entirely to the enfranchised party, perpetuates the disenfranchisement it seeks to address.

Third, if Kukla argues the creation of interpersonal scaffolding is that which challenges such power differentials, then the assumption of such power differentials is theoretically dismissable under the creation of a successful system of scaffolding. However, this third option fails to evade the question of how the burdens of scaffolding creation ought to occur in the first place.

To bolster Kukla's argument against this objection, one may employ Srinivasan's conception of desire: that which possesses the ability to either perpetuate stereotypes, harm, and fetishization, or the ability to surprise the desirer, challenging preconceived notions, working against the desire that politics has chosen. This interjects the consideration of sexual desire prior to interpersonal scaffolding creation, possibly mitigating the aforementioned tension.

IF YOU REALLY LOVED ME, YOU WOULD SAY YES. TOWARDS FOLK UNDERSTANDING OF GREY SEX

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ABSTRACT

It is widely recognised, at least in so-called Western countries, that sex without consent is a serious wrong and often a crime. It is also acknowledged that coercion, deception, and incapacity undermine consent.

However, recently it becomes increasingly acknowledged that consent is only one of criterions for fully morally permissible sex. In other words, there are sexual contacts that are considered consensual, thus do not constitute rape in a paradigmatical sense (as the element of coercion does not meet the legal understanding of the term), yet can still be perceived as morally problematic as they involve a sense of being wronged due to psychological pressure or manipulation. Those types of pressure include, for example:

a) other threats, e.g. of cheating or ending the relationship;

b) sulking into sex (Patwardhan, 2024), which is a practice of emotionally distancing oneself and blaming the other party for their refusal to sex;

c) repeated, burdensome requests for sex (Woodard, 2022);

d) social constraints (Dougherty, 2022), which is pressure stemming from stereotypes surrounding sexuality, e.g. a man agrees to sex because of the myth that the "real" men are always interested in having sex.

In literature, situations of sexual contacts resulting from such pressure are referred to as e.g. gray rape (Alcoff, 2018), bad sex (Woodard, 2022), or unjust sex (Cahill, 2016). We term them grey sex. While such situations raise ethical concerns, it is unclear to what extent they should consider a legally relevant factor with regard to protection of sexual autonomy in law, as such approaches may lead to overcriminalization.

The paper will provide an empirical insight into folk understanding of the phenomenon of grey sex. It will present results of a vignette experiment aimed at assessing laypeople's moral and legal judgement concerning grey sex.

The research design: a series of vignettes, describing a scenario of sexual contact resulting from various means of applying pressure, will be presented to laypeople. Each will differ in method used to influence one's decision-making process on engaging in sexual intercourse. The scenarios will contrast grey sex situations with instances of rape in paradigmatical sense as well as prima facie consensual acts. Each participant, on a Likert-type scale, will evaluate:

- whether the described behaviour was morally wrongful;
- whether the described behaviour was coercive;
- whether sexual contact was consensual;
- should such behaviour come with a legal sanction.

According to our prediction, laypeople will tend to assess situations of grey sex as morally wrongful and – to a degree -- non-consensual and coercive; however, they will not consider them deserving of legal punishment. The results will be compared with scope and interpretation of violations of sexual autonomy in Polish criminal law, allowing to assess if and to what extent legal and folk understandings of sexual violence differs, as well as what is the perceived conceptual relationship between coercion and consent.

A RIGHT TO SEX? CONSENT AND THE LIMITS OF LAW

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ABSTRACT

Sexual autonomy is protected, in liberal legal orders, almost entirely through the concept of consent: sex is permissible when the parties agree, and rape is sex in the absence of agreement. This paper argues that consent, while indispensable at the point where the criminal law must operate, is an insufficient framework for the ethics and politics of sex. Rather than a defect we simply ought to 'repair' by a better measure of agreement, however, I treat this insufficiency as a structural feature of what consent is and does.

Taking Amia Srinivasan's The Right to Sex (2021) as its analytical frame, the paper begins from a distinction the workshop's theme makes urgent: sex is a social phenomenon before it is a legal one. Consent, as a concept, is attractive to lawyers precisely because it localises the wrong, thereby attributing a discrete harm to an identifiable agent at an identifiable moment. This is exactly the analytical shape that criminal law, and especially 'legal dogmatics', is built to process. But this feature is also its very limit. I consider four main lines to argue this.

First, consent establishes whether a person agreed, but is silent about why. It is also silent about the background against which a 'yes' is given; under the conditions of inequality, for example, the line between consent and coercion is not as sharp as one might want, which is where the debate over 'grey areas' belongs. Second, consent proposes a floor, not a ceiling. Consensual sex can still be alienating, contemptuous, or unwanted, so that everything belonging to good sex lies above the consent line. Third, consent operates downstream of desire by taking our wants as a given. The political formation of desire through the racialised and ableist distribution of 'desirability' might be precisely where injustice does its quietest work, however. Fourth, because consent locates the wrong in an individual act, it renders criminal law as its native remedy. But carceral responses rarely

do justice. They fall hardest on the women already worst off, while the conditions that actually shape sexual life, such as class, economic dependence, or the wage, lie beyond any consent standard.

The constructive aim I pursue is neither to discard consent nor to propose the state ought to police or redistribute our desire, which is in line with what Srinivasan argues. Rather, it is to show that the freedom at stake in sex is not simply exhausted by the freedom to consent, and that it is necessary to reopen – and keep open – the prior questions a consent-centred ethics does not address. So, what forces lie behind a yes, what makes sex good rather than solely permitted, how desire comes to be formed, and what material conditions a freer sex might require. I consider this a crucial feminist position worth defending: one aware of the limits of criminalisation, of the grey areas of consent, and of the question of whether there is a right to sex at all.

FINDING THE LIMITS OF CONSENT: BDSM AND THE RECONCILIATION OF AUTONOMY WITH RADICAL FEMINISM

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ABSTRACT

Is it morally reprehensible to harm someone if that is their wish? Can an individual consent to being injured or to the risk of injury? These questions are often raised in discussions of various ethical dilemmas, from euthanasia or risky surgeries to extreme sports. They also lie at the heart of the problem of how moral philosophy and the law should approach BDSM (Bondage and Discipline, Dominance and Submission, and Sadomasochism) activities and their potentially dangerous health consequences. The taboo surrounding such activities amounts to a refusal by many jurisdictions to recognise consent as a valid defence against charges of assault and battery or of causing bodily harm. Arguments supporting this approach are either based on the paternalistic view that people cannot give valid consent to being harmed or on the premise that recognising such consent indirectly leads to harm being caused to others. Radical feminists view dominance and submission in sexual activities as a reflection of a male-oriented system which eroticises power and violation. As Catharine MacKinnon argues, female sexuality cannot be interpreted as an expression of women's agency, because its very existence is a response to powerlessness. Consent is then a structural impossibility; engagement in BDSM is seen as an affirmation that power over the powerless is erotic, a dynamic that transfers from the sexual plane to the political, social and economic spheres. Others, however, claim that simulation is not the same as replication, and that the contextual field makes a profound difference. In this debate, we return to the age-old question of free will: a man can do what he wants, but he cannot want what he wants. But even if we agree that the fact that some people are drawn to receiving harm in a sexual context is due to living in a system that shapes women to desire submission and degradation, it remains an

open question whether we assess acting on those desires as immoral. Similarly, it does not in itself determine whether consent to such activities should always be considered invalid—we can simultaneously trace social roots of a decision and recognise the right of an individual to take it. Furthermore, even if we assert that people have a moral duty not to harm, even consensually, it does not mean that this duty should be enforceable by law. Conversely, there are strong arguments against treating consent as a universal defence in all cases of causing harm, no matter how grave. This presentation proposes a framework for assessing the validity of the defence of consent in BDSM-related cases, that attempts to synthesise general principles of criminal law, philosophical reflection on the nature of autonomy and an analysis of objections raised by radical feminists. It argues that, while the unique character of sexual relations and gender dynamics must be accounted for, it is possible to establish when partial or complete defence of consent is warranted drawing on the rules guiding other instances where people might consensually risk harm.

SEX, AUTHORITY, AND THE LIMITS OF CONSENT

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ABSTRACT

Contemporary debates on sexual wrongdoing in both law and moral philosophy are predominantly structured around the concept of consent. Within this paradigm, the presence of valid consent is often taken to mark the boundary between permissible and impermissible sexual conduct. However, this framework struggles to account for a range of cases in which sexual relations arise within relationships of authority, where consent may be formally present yet normatively compromised.

This paper argues that consent, while necessary, is not sufficient to capture the normative significance of cases in authority relations. It develops an account of role-based authority as a distinctive normative structure, rather than merely a form of inequality or power imbalance. Authority is understood here as grounded in socially recognised roles that carry expectations of service, responsibility, and legitimate influence. As such, it does not simply constrain choice externally but shapes the subordinate party's practical reasoning by structuring the options available, the perceived costs of refusal, and the expectations governing the interaction.

On this basis, the paper advances a structured account of sex in authority relations (SAR), distinguishing between different ways in which authority may figure in sexual interactions. Authority may remain largely peripheral, it may exert a shaping influence on the development of intimacy, or it may become a determining feature of the conditions under which sexual relations occur. These distinctions are not reducible to degrees of harm or coercion but reflect different configurations of how authority operates within the interaction. This framework provides a basis for explaining how sexual agency may be distorted even in the absence of force or invalid consent, and clarifies the conceptual boundary between influence, dependency, and abuse.

The paper further argues that the normative concerns raised by SAR cannot be adequately explained within a purely consent-based model. Such cases involve not only questions of individual autonomy but also breaches of role-based obligations and disruptions of trust embedded in authority relations. By foregrounding these dimensions, the account offers a more comprehensive explanation of why certain authority-based sexual relations are experienced and understood as wrongful, even where consent is present.

The paper concludes by reflecting on the implications of this analysis for legal and moral evaluation. It suggests that authority-based sexual relations reveal a structural limit within consent-based approaches, and that a more adequate framework must take seriously the role of authority in shaping the conditions under which sexual autonomy is exercised.

DEMOCRATIC AUTHORITY AND PRISONERS

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SW47 · Democratic Authority and Its Boundaries
Convenors: Shinichi Tabata; Hirohide Takikawa

ABSTRACT

I argue for enfranchising prisoners by examining the philosophical justifications of democracy and punishment. While universal suffrage is globally recognized, it is rarely absolute, as seen in jurisdictions like Japan and various US states where prisoners are systematically excluded from the democratic process.

To evaluate the legitimacy of this exclusion, I briefly examine two justifications of democracy -- namely, instrumentalism and proceduralism -- and demonstrate that they support the enfranchisement of prisoners. I then scrutinize three primary arguments for their disenfranchisement: competence, democratic self-determination, and co-legislation. First, the competence argument, which claims criminals lack the political knowledge required to vote, is dismissed due to a lack of empirical evidence and its logically absurd implications for regular citizens. Second, the argument from democratic self-determination is shown to risk voluntaristic tyranny and the boundary problem of democracy. Third, the co-legislation argument asserts that criminals violate the universal will by imposing their unilateral will. Based on Kantian two-world theory, I refute this claim by demonstrating that an individual can simultaneously commit a crime as homo phaenomenon and legitimately legislate law as homo noumenon. Consequently, I conclude that prisoners maintain their status as co-legislators and should remain enfranchised.

DEMOCRACY, SOCIAL EQUALITY, AND THE LIMITS OF EQUAL POWER

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ABSTRACT

The most influential justification of democratic authority appeals to social equality. On this view, democracy is a necessary condition of social equality and is justified non-instrumentally as one of its essential constituents. The equality that democracy secures at the political level is understood as equal power. Any situation in which some agent holds relatively greater power is itself a form of social inequality.

This presentation accepts the strategy of grounding democracy in social equality and treating it as a constituent. It nevertheless argues that political equality should not be understood as equal power. The concept of equal power takes into account only the equality present at the moment of decision-making. This, however, is insufficient for realizing the ongoing relationship of equality that social equality fundamentally aims at — namely, the condition in which we stand in continuous relation to one another as equals. This presentation proposes instead that political equality needs to be reconceived as a concept adequate to the sustained relationships among persons.

WHEN LEGITIMACY BECOMES UNINTELLIGIBLE: POPULISM AS EPISTEMOLOGICAL RUPTURE

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ABSTRACT

This paper examines the contemporary crisis of legal legitimacy under populist conditions by conceptualizing it as an epistemological rupture rather than a merely political or institutional problem. Despite the expansion of legal institutions, legal legitimacy is becoming increasingly fragile. I argue that populism does not simply weaken legal institutions but disrupts the epistemic relation between collective memory, public justification, and identity formation.

Under populist dynamics, legitimacy is increasingly grounded in exclusionary identity claims rather than in practices of reason-giving. Historical narratives are selectively reconstructed and insulated from critical reinterpretation, while public justification is replaced by moralized distinctions between "the people" and their opponents. As a result, law may retain formal validity yet lose its capacity to function as a shared framework of intelligible reasons.

To address this condition, the paper introduces the concept of epistemological continuity as a necessary condition of legal legitimacy. Legal norms can guide action only insofar as their justificatory meaning remains intelligible across time within shared cognitive and interpretive horizons. When this continuity is distorted, legitimacy collapses at an epistemic level.

Building on this diagnosis, the paper develops a layered epistemological model of legal legitimacy that directly responds to the multidimensional distortions produced by populism. Each layer addresses a specific breakdown: historical consciousness counters the instrumentalization of collective memory; procedural validity restores practices of public justification; pluralistic recognition resists exclusionary identity constructions; civic agency reactivates citizens as co-authors of law; and socio-economic

conditions mitigate the material foundations of ressentiment and epistemic closure. The central claim is that legitimacy cannot be secured through any single source but must be sustained across interacting epistemic layers.

The contribution of the paper is twofold. First, it reframes populism as a problem of distorted epistemological continuity rather than mere anti-institutional politics. Second, it proposes a multidimensional framework for reconstructing legal legitimacy under conditions of epistemic fragmentation. Existing accounts of legal legitimacy tend to privilege single sources of justification, whether procedural, historical, or socio-economic. This paper proposes instead a layered epistemological framework that captures their interaction and offers a new perspective on how law can remain both normatively binding and socially meaningful in plural societies.

THE ETHICAL PRIORITY OF LEGITIMATE LAW

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SW48 · Legality, Legitimacy and the Moral Purpose of the Constitution
Convenors: Dimitrios Kyritsis; Stuart Lakin; George Letsas; Matthew Lewans; Luís Pereira Coutinho

ABSTRACT

One of the many things that instrumental theories cannot comprehend about our moral life is the priority of legitimacy over justice. Instrumental theories reduce our ends to the pursuit of some good, say happiness, or safety, or power, or glory or something else captured by the virtually empty term: 'interests'. The idea of 'legitimacy' for such theories is linked to the modest end (or 'value') of stability, or co-ordination or peaceful co-existence, which seems something much less significant than full justice or the satisfaction of the full range of our 'interests' in the best way. Such instrumental theories are unable to express and account for the priority of law in our moral life, just like they are unable to understand the priority of justice over the pursuit of personal ends. All instrumental accounts of law conflict with our daily experience of it. It is part of our daily life that the law claims to be enacted reason for us, something that takes priority over our personal commitments or religious beliefs and guides our actions (so a judge has to set aside both if he is to correctly apply 'the law'). A proper understanding of our practical reason sees law as an essential element of our moral life and a matter of ethical duties to oneself. Ethical theories of law, such as those defended by Kant and Dworkin show that each person has a responsibility to oneself, conceived as a free person with powers of free will over his own desires and preferences, to construct a practical identity that takes others seriously as equal persons and, potentially, as equal citizens. We can only live together as equal persons, if we jointly create institutions that protect everyone on the basis of reciprocity (which Kant calls 'public right' or the civil condition). The Kantian argument, set out in the 'The Doctrine of Virtue' shows that in order to discharge our responsibility to ourselves to live a life of dignity, we ought to adopt the civil condition as one of the dominant ends of our life. Institutions that recognise our equal personhood

constitute a civil condition. Institutions that recognise our equal citizenship constitute a legitimate constitution. Both sets of institutions generate political obligations owed to other persons, yet the origins of these obligations lie in a paramount duty of virtue, a duty to live the life of a free person, which is owed to oneself.

THE LEGAL POSITIVITY OF THE CONSTITUTION: A VINDICATION OF POLITICAL LIBERALISM

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SW48 · Legality, Legitimacy and the Moral Purpose of the Constitution
Convenors: Dimitrios Kyritsis; Stuart Lakin; George Letsas; Matthew Lewans; Luís Pereira Coutinho

ABSTRACT

This paper defends the legal positivity of the constitution by framing it not as a mere institutional fact, but as a direct proposition of political liberalism as developed in the Hobbesian tradition. Historically, the positivity of the constitution was affirmed to bind state authority within positive law. Philosophically, it obeys a requirement of publicity and immanence of state action that reflects the axis of political representation as understood in that tradition. Today, this logic is fundamentally challenged by illiberal and moralist discourses, which, despite their differences, converge in the deformalization of law. This article holds that deformalization threatens civil coexistence amidst pluralism, which finds its stronghold precisely in the publicity and immanence of the legal form. It also assesses how the legal form can be preserved in the context of constitutional adjudication, proposing a circumspect variant of inclusive legal positivism.

NECESSARY EVALUATIVE COMPONENTS OF THE CONSTITUTION

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SW48 · Legality, Legitimacy and the Moral Purpose of the Constitution
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ABSTRACT

In the analytic legal positivist theory of law elaborated by Hart and followers, the existence/validity of the Constitution is itself based on a, simultaneously, social and meta-legal rule (the RoR) that roughly states that "Whatever is written in the Constitution has to be done"; therefore, the Constitution necessarily embodies all elements that are requisite and have to be presupposed for the intelligible emergence of the RoR. This paper argues, from an internal-to-the-Hartian account point of view, that this emergence necessarily involves not only "social facts", but also acceptance of fundamental non-conventional, evaluative and/or moral principles that, consequently, are necessary components (either explicit or immanent) of the constitutional provisions. Following Hart's analysis, the RoR is composed of an external aspect, i.e. a regularity of behavior according to its content, a 'cognitive internal aspect', i.e. an understanding of its meaning and an internal attitude of acceptance of its content, i.e. a "critical reflective attitude". Independently on whether the RoR has to be accepted only by officials, within Hart's own epistemic framework, "acceptance" is intelligible only as evidenced by respective internal statements (otherwise it is reduced to a mysterious psychological state, to feelings or mythical volitions). It is, therefore, imperative to investigate on the meaning and presuppositions of the utterance of a statement of the type "I accept the RoR". Considering RoR as a secondary rule, we can distinguish between the following interrelated types of acceptance (in analytic priority): 1. Acceptance of the RoR (A1) 2. Acceptance of the Constitution (A2) 3. Acceptance of second-order legal rules (A3) that directly interact with social reality. A3 inclusively presupposes A2 that presupposes A1 (and all ele-

ments necessary for its emergence). As the use of "presupposition" suggests, this relation is not strictly formal (as, e.g., in Kelsen's pyramid). Now, the possibility of the utterance of "I accept the RoR" and, a fortiori, of its having a potentially definite meaning, presupposes at least some cognitive capacities related to the utterer (as the ability to understand a language and the - constitutive of meaning - distinction between right/wrong in using a certain word, a certain "cognitive fairness", a sense of practical reason regarding his/her own life etc.), as well as normative elements, values or principles that are requisite non-conventional components of its context, of the public/communal sphere of its utterance (such as protection of life, liberty, equality or, more specifically, functional independence for the officials, as well as the quasi external yet hermeneutic point of view that would check, following the "against private language argument", the cognitive rightness of its utterance etc.). If the statement "I accept Rex" is uttered, e.g., under threat or in a context of oppression, in a "gunman situation", it cannot communicate its proper meaning and so cannot evidence and a fortiori bring about any type of acceptance. In this framework, different contexts of these types of "acceptance" within the legal and constitutional order, require similar or various instances and nuances of these background principles that are also to be considered as providing regulative guidelines for the interpretation of the Constitution and of second-order legal rules in judicial and legislative practice; relatedly, they should be adjustable to particular contexts of the constitutional order allowing for the possibility of existence of quasi-autonomous RoRs in these contexts. Further, together with certain cognitive capacities, they tend to form a contextual, "ideal type" of acceptance(s), allowing for its potentially definite meaning and for the identification of its distortions and of other stances/attitudes toward the RoR, the Constitution and second-order legal rules. Thus, the whole function of a dynamic legal order can be captured (either deductively or inductively): within the normative context (generated by these background principles) and constitutional order established by the RoR via fundamental internal statements, second-order legal statements presuppose non-ultimate legal rules and (defeasibly) transform, via their performativity, post-legal reality; and vice-versa: interaction of second-order rules with (richer than dictum) facts through respective statements, eventually leads to modifications of the Constitution, the RoR and related background values. Consequently, the role of the Constitution is implied

and regulated by these principles: on pain of contradiction, it should defend these (moral) values and principles, their smooth insertion in the legal system and their continuous, efficient application in all its operational aspects.

THE ROLE OF TRADITION IN CONSTITUTIONAL RESILIENCE

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SW48 · Legality, Legitimacy and the Moral Purpose of the Constitution
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ABSTRACT

Constitutionalism is commonly thought to depend, for its resilience, on the formal text of the constitution and the institutional architecture that surrounds it. In this paper, I argue that an additional, less visible source deserves equal attention: established constitutional traditions on which constitutional courts can draw when they defend a constitution against attempts to override it. Such traditions can render a constitution normatively strong even when its formal provisions would not. Their importance becomes most visible in the context of constitutional amendments, for it is there that a constitution's resilience is most directly tested.

Constitutional rules and principles are inherently contested. They do not come with universally agreed meanings. Even if we suppose that there is an objectively fixed meaning of, say, the principle of secularism, it is unlikely that the political and legal disagreement over that principle will be resolved through theoretical arguments alone. More fundamentally, the application of any such rule or principle requires interpretation, since legal application demands concretisation and grounding within specific contexts. Interpretation, however, makes sense only within a given context, informed by shared understandings among interpreters.

These shared understandings, embedded in the history and language of a legal-constitutional practice, are what I call a constitutional tradition. A tradition of this kind, in the Gadamerian sense, structures how participants make sense of constitutional norms and concretise them in adjudication. Where such a tradition is established within the practice, it can sustain an autonomous domain of legality that is resistant to the contingent demands of politics and ideology.

The unamendability jurisprudence of the Constitutional Court of the Republic of Turkey under the 1961 Constitution exemplifies how this works. Sustained by what I call the modernisation tradition, a deeply embedded constitutional tradition rooted in the Ottoman-Turkish history of legal-constitutional reform, the Court's amendment review doctrine made the 1961 Constitution resilient against attempts to override it on grounds that its formal text alone could not have supplied. The text gave the Court no explicit power to review constitutional amendments, and an amendment in 1971 was widely read as removing whatever such power it had. Yet the modernisation tradition supplied the Court with both an authority to review and a standard for that review. It thereby allowed the Court to defend the basic characteristics of the Republic. Because the tradition was established and recognised, the Court's decisions were ultimately accepted by political actors, even when vehemently opposed.

A CERTAIN UNEASE – THE COMMON GOOD AND THE CONSTITUTION

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SW48 · Legality, Legitimacy and the Moral Purpose of the Constitution
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ABSTRACT

In recent normative constitutional theory, the common good seems to be forgotten. For instance, the common good is totally ignored in the "Cambridge Handbook of Constitutional Theory" (Bellamy/King (ed.), 2025). From a Dworkinian point of view, the common good may be assigned to policy, as being opposed to principle. Even if the common good can be defended as a requirement of political morality, its determination seems to depend at the same time on considerations of pure efficiency. And yet – the common good has always been a core idea of statehood. Some even claim it is the ethical foundation of the state. Still others argue that it is wrong to conceive the public good as being an institutional obligation at all. Rather it would basically be a personal obligation.

How then can one get a clear idea of that foundational idea? First, it is helpful to analyze the structures and modes of operation of the common good within the architecture of constitutional law. This analysis renders some important features. For instance, the common good is not merely a directive for action, but it also establishes a framework for how the government and public administration acquire knowledge relevant to their operations. Also it is helpful to differentiate between the common good as an ambition, as a reason and as an effect of public action. Finally, it is necessary to break down the common good to particular concerns of the public good. Those concerns arise out of collective action.

On these grounds, it becomes clear that constitutional law organizes the common good through a dynamic interplay between enabling actions that serve the common good and the obligation to undertake such actions. Constitutional principles like the rule of law and democracy can be given a place in such an organizational account. In this respect, the common good

provides a powerful framework for the explanation of constitutional institutions. Yet, besides this explanatory task the normative outcome is modest: The government must not pursue private interests. The question remains as to how this rule can be justified. Equality is a promising candidate for this.

DOES THE RULE OF LAW REQUIRE THE SEPARATION OF POWERS? THE CASE OF THE VERMEULIAN EXECUTIVE

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ABSTRACT

While the separation of powers is generally assumed to be a corollary of constitutionalism and the rule of law, it is also an enigmatic political ideal. Its enigmatic character is particularly acute in the context of the modern administrative state, a massive bureaucratic apparatus in which administrative officials routinely perform a combination of legislative, judicial, and executive functions. In this paper, we reexamine the theoretical foundations of this political ideal by interrogating Adrian Vermeule's provocative argument that the separation of powers is neither a necessary nor desirable attribute of the rule of law.

In the first section of the paper, we flesh out the theoretical basis for Vermeule's argument by comparing it with the constitutional models of two theorists who share a similar skepticism of the separation of powers—Thomas Hobbes and Carl Schmitt. We argue that Vermeule's theory is best understood as a variation of Schmitt's apology for unitary executive power. By contrast, Hobbes' model gives pride of place for what we call law's systematicity.

In the second section of the paper, rather than offer a full-fledged constructive account of the separation of powers, especially as it applies to the administrative state, we elaborate this more basic idea. We claim that law's systematicity issues into a set of constitutional imperatives that call for a 'proto-separation' of state institutions. It is because law is systematic in the sense we defend that it makes sense, both conceptually and norma-

tively, to bolster the rule of law through a separation of powers. The separation of powers allows us to articulate the demands of the rule of law through a process that realizes fair, transparent, and reasonably justified deliberation in the public domain. By contrast, a political order that relinquishes its constitutional commitment to the separation of powers for the sake of unleashing the power of the executive, ends up degrading its commitment to the rule of law as well.

ENGINEERING DISCRIMINATION

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SW48 · Legality, Legitimacy and the Moral Purpose of the Constitution
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ABSTRACT

For the humanistically inclined, limiting discrimination is of primary moral importance. But it has never been fully clear what was to be limited and why. Both ordinary and legal concepts of discrimination are muddled (e.g. direct, indirect, structural, institutional…), and the moral justifications of anti-discrimination go in many contrasting directions.

With this paper, I throw my hat in the ring and attempt to "fix" the concept of discrimination a certain way. My approach is inspired by some relatively recent pragmatist discussions around "conceptual engineering" (e.g. Queloz 2025), which have affinities with HLA Hart's theoretical-practical views on the selection of concepts. Strictly analytical arguments are not determinative. Conceptual concerns cannot neatly be separated from more practical (including moral) ones. Simplicity, clarity and tractability have theoretical, practical and moral valence. On the other hand, we may allow for increased complexity if the potential moral payoff is great. In short, the selection of a concept of discrimination should be made on the basis of theoretical and practical (including moral) considerations. Practical considerations should take on added importance, however, when concepts are to be deployed in actual institutional settings rather than in speculative discussion. In that sense, my view seems to align with the proposition that constitutional law should be oriented towards "the more modest moral value of legitimacy". What is more, I take the view that it should also be oriented towards the (also moral) value of practicability (Fallon 2006). Of course, neither practicability nor legitimacy exclude justice.

In the first part of the paper, I expose legal (direct, indirect) notions of discrimination. In the second, I try to map out more fundamental conceptual distinctions. In the third part, I engage in conceptual engineering. I contrast what a group-justice view with a more restricted personal-action

view. My weighing of theoretical, practical and moral considerations leads me to favor the more restricted view and to cast aside the group-justice view.

ON THE VERY IDEA OF CONSTITUTIONALISING AREAS OF LAW

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SW48 · Legality, Legitimacy and the Moral Purpose of the Constitution
Convenors: Dimitrios Kyritsis; Stuart Lakin; George Letsas; Matthew Lewans; Luís Pereira Coutinho

ABSTRACT

What does it mean to say that an area of law has become constitutionalised? Does it simply mean that constitutional courts decide on private law disputes by reference to constitutional rights? Or does it mean that the relevant area now acquires new values and principles, imported from constitutional law? I argue that neither of these captures adequately the openness of different areas of law to constitutional law. That openness does not signify a relation (complementary or otherwise) between two separate sets of principles but a reminder of the moral values that apply to law as a whole.

LEGITIMACY AS GOOD FAITH DISAGREEMENT

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SW48 · Legality, Legitimacy and the Moral Purpose of the Constitution
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ABSTRACT

Under what conditions do we owe our allegiance to a set of laws and constitutional norms? In this paper, I attempt to plot a course between two influential answers to that question:

1. Law as Justice. Where a) it is possible to interpret the decisions and practices of the community in line with the requirements of justice (precisely defined), and b) judges have the authority to enforce such interpretations. If neither a) nor b) obtain, we should repudiate the (sham) constitutional order. (TRS Allan and perhaps one reading of Dworkin).

2. Legitimacy as Assurance. Where the constitutional order offers assurances, through relatively stable constitutional laws, of its long-term orientation towards justice. On this view, we should tolerate unjust decisions only in so far as they are 'within an accepted range', and only where warranted by (assurance) considerations of institutional design. (Kyritsis with shades of Waldron).

I contend that 1. pays too little attention to the contingencies of constitutional practices. It is (avowedly) a defence of Natural Law rather than the law of X.

I contend that 2. places too much store in the existence of stable, settled understandings of separation of powers. SoP cannot provide the desired anchor for assurance legitimacy in the face of deep disagreement.

I defend

3. Legitimacy as good faith disagreement. Where judges and officials offer good faith interpretations of past political decisions, based on plausible (albeit oftimes divergent) theories of justice and SoP.

Why understand legitimacy in this way? It takes as its starting point the fact of deep disagreement about constitutions - on matters of procedure/SoP as much as on substance/justice. We can only coexist in such circumstances, I submit, if we are willing to accept the authority of institutional decisions, even if fundamentally at odds with our own convictions. I draw here on Dworkin's 'expressive' value of integrity (LE). I am also interested to carry his notion of 'theoretical disagreement' (LE) further than he perhaps does himself - towards what we might call an interpretive defence of moral pluralism.

How would these three theories fare explaining e.g. the UK Rwanda saga, all things US?

FROM POLITICAL UNITY TO VALUE UNITY? HERMANN HELLER, MAASTRICHT AND THE CJEU'S ARTICLE 2 TEU TURN

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SW48 · Legality, Legitimacy and the Moral Purpose of the Constitution
Convenors: Dimitrios Kyritsis; Stuart Lakin; George Letsas; Matthew Lewans; Luís Pereira Coutinho

ABSTRACT

The Maastricht judgment of the German Federal Constitutional Court framed the democratic legitimacy of European integration through the absence of a European people capable of forming a sufficiently coherent political unity. In doing so, it drew on Hermann Heller's Politische Demokratie und soziale Homogenität — a reference long criticised in the literature as attributing to Heller a thesis closer to Carl Schmitt's homogeneous Staatsvolk than to Heller's own democratic and social theory of the state.

The recent judgment of the Court of Justice in Commission v Hungary (C-769/22) moves the constitutional imagination of the Union in a different direction. By finding, for the first time in infringement proceedings, a self-standing breach of Article 2 TEU, the Court treats the Union's foundational values not merely as political commitments or interpretive principles, but as an autonomous legal standard. The judgment further presents these values as part of the very identity of the Union as a common legal order in a society in which pluralism prevails.

This paper uses Heller's Staatslehre to examine the constitutional significance of this shift. Heller understood the state neither as a purely normative order nor as a mere empirical fact, but as a historically situated form of social and political unity mediated by law. Read through this lens, Commission v Hungary raises a fundamental question: can a legal order generate constitutional legitimacy through judicially enforceable values, or does such legitimacy presuppose a socially and politically constituted unity?

The paper argues that the judgment marks a move from the Maastricht problem of political unity towards a value-based construction of Union

identity. Heller's theory illuminates both the promise and the limits of this move: it resists reducing European constitutionalism to ethnic or national homogeneity yet warns against replacing democratic political formation with judicially articulated value unity.

PERSONAL IDENTITY AS FICTION

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SW49 · Fictions in Legal Theory and Practice
Convenors: Giuseppe Moro

ABSTRACT

The starting point for the presentation is the phenomenon of so-called radical changes in a person. Such changes can result from accidents (like the famous case of Phineas Gage), diseases (such as dementia), medical procedures (e.g., gender transition), or traumas. These events cause the individual (Person P) to change so fundamentally that while we know Person P has not died, "Quasi-P" (P after the change) appears to be someone else. We often encounter statements such as “There is little left of P” or “Quasi-P is a different person altogether.” These radical changes pose significant legal challenges, as they raise doubts about whether the rights and obligations held by Quasi-P are identical to those of P. In other words, a radical change may justify treating Quasi-P as someone other than P, which in turn raises the question of whether Quasi-P retains right R (or obligation O) that P once held. For example: “If there is little left of P, is Quasi-P still obligated to serve the sentence to which P was sentenced?” or “If Quasi-P is now a different person, do Quasi-P remains a party to the contract entered into by P?” The concept of personal identity is often invoked to resolve these doubts. I will argue that this concept is a fiction and identify the conditions for its acceptance in legal practice. First, I will illustrate radical change through several examples. Next, I will discuss personal identity, demonstrating that it is a fictional construct. The presentation will conclude with an analysis of the collected data, highlighting the key conditions for applying this construct within a legal framework.

DO CAUSAL JUDGEMENTS OF CRIMINAL COURTS INCORPORATE FICTIONS?

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SW49 · Fictions in Legal Theory and Practice
Convenors: Giuseppe Moro

ABSTRACT

Fictions play a specific role within the legal system - accepting that status actualis may be different from status legalis eliminates some obstacles of application of law. We argue that fictions exist also in criminal law. Criminal law distinguishes two types of crimes: those which deserve punitive response due to contemptworthiness of an action itself ('action crimes') and of an outcome that an action entails ('effect crimes'). In the latter case, in order to punish an agent for an outcome, one's action - agential interaction with the physical realm (event A) - must be causally linked to the outcome - a change in the physical realm (event B). Linking two events (events A and B) in the physical realm is done based on causal judgment of the court. Positive judgement on the existence of causal link (meaning that event A is a cause of event B) is necessary for considering an action (event A) a crime in the first place. Causal judgments of courts are made based on theories of causal link. They set conditions that must be fulfilled by an action (event A) in order to recognise its causal link with the effect (event B). Unfortunately, due to the complexity of the physical realm, original theory - inspired by J.S. Mill's somewhat counterfactual approach to causation - must have been supplemented by additional theories. They were conceptualised in order to solve insufficiencies of the aforementioned counterfactual approach. Resting criminal liability for some crimes on a notion of causality is present in most legal systems. What seems problematic, is that this system presupposes that the causal structure of the chain of events is cognitively comprehensible. Modern metaphysics lacks common consensus whether causal links are even precisely traceable and grant us undoubtful knowledge on the physical world or not. Hence, we argue that criminal liability for 'effect crimes' rests on fiction. We will

analyse four dominant theories of causal link used in modern Polish criminal law: condition sine qua non theory (the original), relevancy theory, adequacy theory and theory of empirically verified regularity. We will argue that each and every one of those theories incorporate forms of fiction that are necessary for them to be tenable in praxis and which do not find sufficient justification in philosophical debates - either in metaphysics or in philosophy of language. Additionally, we will present findings of experimental philosophy on folk causal intuitions with a specific focus on causal attributions in prescriptively atypical cases - so cases where agents broke prescriptive norms. Both of these segments will direct us into the considerations on reasonableness of existence of 'effect crimes', since they operate on fully or partially fictional suppositions. Should impracticality of some theories of causal links, their lacking sufficient theoretical justification and already existing empirical data direct legal scholars towards entirely new approaches to the criminal system which would be grounded in a more solid basis that do not involve falling into the realm of any 'fiction'? We will attempt to answer that question.

JUST TO PROVE A POINT? USING EMPIRIA IN A CRITICAL CONSTITUTIONAL THEORY

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SW50 · Philosophical Pragmatism in Legal Theory
Convenors: Kristen Hessler

ABSTRACT

What does Empiria do in critical constitutional theory (CCT)? Too often, it comes out either as naïve positivism, where cases are expected to "test" theory, or as decorative illustration, selectively mobilised to support the point already made. This presentation rejects both uses. Instead, it argues that empiria serves as a site of conceptual disruption and transformation.

The presentation develops a methodological approach to the use of empiria in CCT. Here, empiria does not refer to data collection or observation in a positivist sense, but to the treatment of historically situated cases as sites of theoretical work. Rather than using cases as evidence for or against a hypothesis, the approach understands them as interpretive opportunities that both constrain and allow (re-)conceptualisation.

Methodologically, the presentation promotes an explicitly non-positivist, reciprocal model in which theory and empiria are mutually constitutive. Following Clarence Irving Lewis, observation is understood as theory-loaded and therefore incapable of straightforwardly verifying conceptual claims. At the same time, while sharing Kim Lane Scheppele's and Panu Minkkinen's critique of purely conceptual CCT and the emphasis on context found in constitutional ethnography, this presentation adopts another approach. Rather than abstract theorisation or "hands-in-the-mud" fieldwork, I treat cases not as lived experience to be recovered, but as sites where concepts collapse and must be reconstructed.

Furthermore, this methodological argument is illustrated by analysing the theory of constituent power, focusing on the role of external actors in constitution-making processes in selected cases. However, these examples are not treated as evidence but as sites in which the concept, namely, the

sovereignty of the subject of constituent power, is destabilised and re-analysed.

Given this, the presentation reconceptualises empiria in critical legal research: not as a means of proving theoretical claims, but as a practice that makes them unstable, reveals their limits and forces their reconstruction.

COMPUTATIONAL LEGAL INTERPRETATION

Michał Araszkiewicz
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Keynote

SW52 · From Leibniz to the Digital Age: Logic, Law, and the Future of Legal Thought
Convenors: Cesar Serbena; Réka Markovich

ABSTRACT

Can legal interpretation – or any interpretation, for that matter – be computed? The idea of representing reasoning as a computational process traces its roots back to Gottfried Wilhelm Leibniz and his attempt to reconstruct syllogistics in a mathematical model. On the other hand, the tradition of hermeneutics, specifically of Dilthey and Gadamer, speaks against the possibility of making (legal) interpretation computable. Instead of simply presenting this debate against the common naturalism-antinaturalism juxtaposition, this talk engages in a question of what we have in mind when we speak about computational interpretation – and, consequently – what is supposed to happen in human minds or algorithmic systems when an act of interpretation is performed. We use David Marr's tripartite model of cognitive process analysis to revisit the principal theories of legal interpretation and the models thereof developed in the AI and Law community. In conclusion, we tackle the problem of legal-interpretive Turing test: if the result of machine performance is indistinguishable from human thought, and even qualitatively superior, should we care about how the process was implemented, and if so, why?

A BRIEF HISTORY OF LOGIC AND LAW

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SW52 · From Leibniz to the Digital Age: Logic, Law, and the Future of Legal Thought
Convenors: Cesar Serbena; Réka Markovich

ABSTRACT

In general terms, what separates a judicial decision from rough arbitrariness is the fact that the former is justified vis-à-vis a respective legal system, whereas the latter is not. To say that a decision is justified with respect to a legal system seems to imply that said decision follows from or that it is a consequence of the norms contained in said system. Thus, at least at first glance, it seems evident that a legal decision has to be – in one way or another – logically connected to the norms of the respective legal system. Clarifying the nature of this logical connection has been a main problem of legal thought at least since Greek Antiquity. Based on a running example, the contribution provides a historical overview of logic and law, and proposes a systematisation of the respective historical developments.

THE LANGUAGE OF SYSTEMS IN LAW: FROM LEIBNIZ UP TO OUR DAYS

Mikhail Antonov

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SW52 · From Leibniz to the Digital Age: Logic, Law, and the Future of Legal Thought
Convenors: Cesar Serbena; Réka Markovich

ABSTRACT

In my presentation, I will analyse this language of systems in the contemporary legal parlance and will reveal its different meanings, trying to highlight this old tradition that stems from Leibniz and lives nowadays. Using this language, one can find legal systems at different levels. Generally, the term "system" refers to the macro level, to an entire legal order, that is the ordinary use of the notion "legal system". It can be argued that legal systems secure unity of norms and other elements that form the normative part of the law. That is why there must be a certain degree of coherence created by principles, implicit or explicit, or by other tools. At the same time, systems can exist also at other, middle levels of the law. The brilliant analysis proposed by Carlos Alchourrón and Eugenio Bulygin in Normative Systems (1971) shows how norms or legal propositions can be regrouped into logical sets with the help of deontic logic. In this regard, Normative Systems provides a series of efficient tools for construction and reconstruction of legal order at this micro level.

DEONTIC LOGIC, LAW, AND ARTIFICIAL INTELLIGENCE

José Renato Gaziero Cella & Lia Loana Curial Oliva

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SW52 · From Leibniz to the Digital Age: Logic, Law, and the Future of Legal Thought
Convenors: Cesar Serbena; Réka Markovich

ABSTRACT

Deontic logic presents several obstacles to the analysis of law: the deontic model draws no explicit distinction between statements of fact and norms; it draws no explicit distinction between facts and norms, and it offers no explicit classification of cases. Moreover, deontic logic assumes that agreement among norms is desirable. This gives rise to paradoxes within deontic systems. The central concern here is the application of norms to cases and the outcome of that application. Because deontic systems are extensions of classical logic, there is no room within them for confronting contradictory norms. The use of deontic logic, where its underlying logic is classical, therefore becomes inadequate to the study of law on account of these limitations. The use of informatics by law – with the development of artificial intelligence systems based on LLMs – makes it possible for legal decisions to rest on a more refined rationality. Informatics can provide the necessary support across different cases and situations. The progress of logic has therefore reached a point at which it is possible to build and develop systems capable of supporting legal practice.

IN WHAT SENSE DOES LAW EXIST? LOGICAL FORM AND ONTOLOGICAL COMMITMENT IN LEGAL DISCOURSE

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SW52 · From Leibniz to the Digital Age: Logic, Law, and the Future of Legal Thought
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ABSTRACT

The claim that law "exists" is usually taken for granted. Legal systems, rights, duties, and institutions are commonly treated as elements of social reality. This paper argues that such confidence is misleading. Once legal discourse is analyzed in logical terms, the notion of existence becomes problematic. The difficulty is not metaphysical but logical: it results from applying standard quantificational logic to legal language.

In classical logic, existential commitment is tied to quantification. An existential statement presupposes a fixed, non-empty domain of objects. Legal discourse, however, does not satisfy this assumption. Expressions such as "legal person," "right," or "the state" do not designate independently existing objects. Their meaning depends on conditions of application internal to a normative order. This gives rise to a systematic confusion. Logical relations between legal propositions are often interpreted as carrying ontological consequences. Yet universal legal statements do not establish that the corresponding legal entities exist. Consider statements about persons granted diplomatic immunity. Such statements remain true even if no individuals satisfying the description exist in the relevant domain. Any existential conclusion requires an additional premise asserting that the class is non-empty, but this assumption is introduced by the logical framework rather than by the legal propositions themselves.

The paper argues that this problem is widespread because legal discourse frequently employs categories whose instantiation is contingent, exceptional, or institutionally created. Standard quantificational logic therefore inflates ontological commitments by treating quantification as sufficient for existence claims.

To avoid this, the paper proposes a minimal revision: quantification should be treated as neutral with respect to ontological commitment. Domains may be empty, partially specified, or context-dependent. Under this approach, logical form determines only inferential relations between legal propositions, not the existence of legal entities. The existence of law depends instead on conditions of application, institutional recognition, and normative validity, rather than on quantificational structure alone.

KAFKA AND THE ELECTRONIC JUDICIAL PROCESS IN BRAZIL

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SW52 · From Leibniz to the Digital Age: Logic, Law, and the Future of Legal Thought
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ABSTRACT

This paper examines the electronic judicial process in Brazil through a critical reading inspired by Franz Kafka's The Trial, arguing that the contemporary pursuit of technological modernization in the Brazilian Judiciary has increasingly transformed access to justice into a system governed by metrics, productivity indicators, and algorithmic rationality. Based on the analysis of recent regulations issued by the National Council of Justice, especially those concerning the 100% Digital Court, the Digital Platform of the Brazilian Judiciary, artificial intelligence, cybersecurity, and performance management, the paper investigates how quantitative models of public governance influence the effectiveness of judicial protection. Its central hypothesis is that, although technological tools may produce apparent gains in efficiency and control, the predominance of numerical measurement shifts judicial governance away from deliberation, legitimacy, and qualitative assessment, reducing the complexity of human conflicts to data flows and performance standards. The article therefore argues that the main challenge of contemporary judicial governance is not to reject technology or statistics, but to ensure that they remain subordinated to the public purpose of justice, the dignity of the human person, and the careful exercise of jurisdiction.

EVIDENCE LAW THEORY AND ARTIFICIAL INTELLIGENCE — SOME PRELIMINARY ACCOUNT

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ABSTRACT

For the past 50 years, Legal Argumentation has occupied a central place in the paradigm of methodological discussions in Legal Philosophy and Legal Theory. Theories such as those of R. Alexy, N. MacCormick, and M. Atienza established what is known as the Standard Theories of Legal Argumentation (STA). These theories are centered on the normative premises of legal reasoning. Only more recently have legal theorists focused their analyses on the factual premises of judicial reasoning, leading to a more detailed examination of Evidence-Based Reasoning in Law. Within the Civil Law framework, the theories of M. Taruffo, J. Ferrer Beltrán, M. G. Abellán, and C. Vázquez can be cited as references for Standard Theories of Evidence (STE); in Common Law, those of W. Twining, S. Haack, and L. Laudan. Given this theoretical overview of the discipline, a current challenge is to integrate the interferences and interactions caused by recent advances in Artificial Intelligence (AI) into the examination of judicial evidence. Traditionally, the production of factual statements in Law occurs through institutional and procedural means; that is, the truth of factual statements is a truth produced institutionally and through procedural rules. One of the great challenges of integrating AI as a new means of proof into the apparatus of judicial evidence lies in the challenging nature of this kind of proof. AI is produced in the architecture of the WEB, which is by nature open, non-institutional, and non-procedural. This paper will analyze this tension between the traditional view of proof and evidence in Law, and the challenges of AI as a new means of proof. Based on the examination of some concrete cases, some theoretical and epistemological generalizations can be established, although we are not yet able to offer a complete Theory

of Evidence based on AI, given the recent nature of AI as a new means of proof in judicial Courts.

WHAT LOGIC CAN CAPTURE OF JUDICIAL DISCRETION – A STUDY IN SYMBOLIC AI

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SW52 · From Leibniz to the Digital Age: Logic, Law, and the Future of Legal Thought
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ABSTRACT

Judicial discretion, until very recently, wasn't addressed by logic or other tools of knowledge representation; there has seemed to be a tacit settlement that discretion, as a limitation on rule-based derivation, constitutes also a limitation of logical modeling. The DISCREASON project challenges this view by looking for and into characteristics in discretionary decision making that logic can capture. In the talk, I highlight some of our considerations and results.

BEYOND CALCULABLE JUSTICE: LEIBNIZ, DEONTIC MODALITIES, AND THE LIMITS OF ALGORITHMIC DECISION-MAKING IN CRIMINAL LAW

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SW52 · From Leibniz to the Digital Age: Logic, Law, and the Future of Legal Thought
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ABSTRACT

Gottfried Wilhelm Leibniz holds a singular position in legal rationality. Both jurist and philosopher, he conceived a calculus iuris for resolving normative disputes through formal reasoning and drew, in the Elementa Juris Naturalis, an analogy between alethic modalities (necessary, possible, impossible) and deontic modalities (obligatory, permitted, prohibited), anticipating the architecture Alchourrón and Bulygin would develop in the theory of normative systems. The paper examines the tension between this aspiration to calculability and the demands of criminal decision-making. For Leibniz, God calculates among infinite possible worlds and selects the best. Transposed to law, this rationality selects normative patterns as optimal solutions. Yet Leibnizian metaphysics defines the subjects of decision through the union of a monad with an organic body: singular, unrepeatable beings of infinite complexity, what the calculus reduces to abstract type. Deontic grammar organizes normative vocabulary without exhausting the experience of deciding over singular bodies.

Formal equivalence tends to produce residual cases that the calculation fails to capture, particularly when deliberation bears on liberty. Three features resist full formalization: defeasibility, whereby conclusive reasons may be overridden by circumstances not anticipated by the normative antecedent; proportionality as contextual balancing irreducible to mere subsumption; and individualization as a guarantee against the mechanistic application of punishment.

As Clerk of a Criminal Chamber, the author attends deliberations on detention, release, and habeas corpus, taking jurisdictional experience as reflective horizon. This position suggests that judging involves dimensions

of justification and responsibility over real bodies, which algorithmic systems tend to obscure. The paper concludes that Leibniz's calculemus diagnoses a structural tension in algorithmic justice: exclusion does not emerge as technical failure, but as the effect of a calculation that operates by types and tends to treat singularity as residue. Defeasibility, proportionality, and individualization mark the limits of what formalization can legitimately capture in criminal law.

FROM SINN TO ANSPRUCH: RADBRUCH, ALEXY, AND THE IDEAL DIMENSION OF LAW

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SW53 · Law's Ideal Dimension. Robert Alexy's Philosophy of Law
Convenors: Carsten Bäcker; Jan-Reinard Sieckmann; Martin Borowski

ABSTRACT

This contribution examines the relationship between Gustav Radbruch's concept of Sinn and Robert Alexy's concept of Anspruch in the context of the ideal dimension of law. In his essay 'Gustav Radbruch's Concept of Law', Alexy interprets Radbruch's thesis that law is 'the reality whose sense is to serve justice' as implying a claim (Anspruch) to justice and correctness. This move plays a crucial role in Alexy's non-positivist theory of law, particularly in his account of law's necessary connection to moral correctness. The contribution asks whether the transition from Sinn to Anspruch can be justified philosophically and what it reveals about the ideal dimension of law. By comparing Radbruch's neo-Kantian concept of Sinn with Alexy's discourse-theoretical notion of Anspruch, the contribution seeks to clarify the conceptual relationship between the two notions and to explore their implications for contemporary debates on legal objectivity and the relation between law and morality.

FORMAL PRINCIPLES. A MATTER OF SIGNIFICANCE

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SW53 · Law's Ideal Dimension. Robert Alexy's Philosophy of Law
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ABSTRACT

In order to counter the objection of over-constitutionalism raised against his principles theory, Robert Alexy relies on formal principles. These formal principles are meant to govern discretion. They are supposed to answer the question of who is in charge to balance constitutional rights conclusively, the constitutional court or the legislator ('democracy', parliament, government). Thus, formal principles are supposed to shape the scope of politic(ian)s vs constitutional law(yers). There is, to date, no agreement in principles theory how these formal principles are to be understood, how they are to be reconstructed, and, most importantly, how they interfere with the balancing of constitutional rights. I suggest that the notion of formal principles is misleading and should be abandoned. They appear, by name, to be a second category of principles that is to be distinguished from constitutional rights or other kinds of material or substantial principles, leading to the problem of how to combine these two kinds of principles in balancing while keeping them categorically separated, and to the problem whether there actually are any merely formal principles without any substance.

I will argue that discretion is a matter of significance: In order to annul or overrule a former decision, its legal faultiness must be significant. This significance-rule applies for any kind of legal decision-making. It presupposes (1) a law of inertia (or preservation), which sets that no former decision should be overruled without being significantly faulty, and (2) the involvement of a given higher authority in procedural law (a court of appeal, a higher jurisdiction, a constitutional court). With an eye to balancing (constitutional rights), the degree of faultiness in balancing is determined by the factors of Alexy's Weight Formula: the intensity of an interference

with a principle (I), the abstract weight of the constitutional right(s) involved (W), and the reliability of the empirical and legal considerations (R). To determine the degree of faultiness which is necessary for a legal decision to be significantly faulty and, thus, defeasible calls for legal factors external to the balancing (and it interdepends on chosen scales and numbers in the reconstruction of balancing). Here, 'formal principles' become a matter of significance.

THE DUAL NATURE OF LAW: LEGAL OPERATIONS AND PRACTICES

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SW53 · Law's Ideal Dimension. Robert Alexy's Philosophy of Law
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ABSTRACT

Robert Alexy defends that law has a dual nature, comprising both a real and an ideal dimension. This paper discusses and presents an internal critique arguing that Alexy's framework focuses on the dual nature of legal operations, while leaving questions on the broader field of legal practices. It proceeds from Alexy's own methodological commitment to the participant (or normative) perspective.

The first part discusses Alexy's thesis on the dual nature of law, including the argument for the ideal dimension of law (Argument from Injustice) and Alexy's two central examples: framing a constitution and judicial decisions. I argue that Alexy's examples concern legal operations, namely the relatively active interventions of officials in creating, identifying and applying legal materials.[1] This reflects how Alexy (2011[1992], p. 48) builds upon Hart's internal point of view. However, Hart's internal point of view includes the legal operations of officials and experts side by side with obedience by the legal practices of legal subjects and officials. As an outcome of this first section, two questions emerge: Does Alexy's claim to correctness also extend to legal operations by non-officials? Call this question "Correctness for Non-Officials". Does it also cover legal practices by non-officials? Call this question "Correctness in Legal Practices".

In my view, both can be answered positively, if conditioned to accepting two modifications in Alexy's framework: First, introducing second-order principles as a more general category that includes formal principles as its main species. Second, recasting the claim to correctness as a spectrum.

The second part examines Alexy's discussion of transnational law through formal principles. This extension is an important and welcome development, as Alexy states, "in a great new field". However, I identify a

conceptual tension in Alexy's analysis of the case Delfi AS v. Estonia. Alexy (2019) poses "private triangles" as a "question of the constitutional distribution of competences or powers" (p. 213). However, Alexy (2021) redirects this question on competences and powers (hence, legitimacy and formal principles) to "whether a completely private internet triangle can provide a rational way to solve collisions of the rights connected in it" (p. 207). More precisely, Alexy embraces the reasoning of the European Court of Human Rights that online platforms are "better positioned" to manage certain risks, particularly in the moderation of user-generated content. This is an argument of subsidiarity: it appeals to the institutional capacity of private actors as intermediate bodies in the governance of online speech.

This is the rub: effectiveness (subsidiarity, institutional capacity) is different from Alexy's (2019) own starting question (competences, powers), and it escapes the main focus of his definition of formal principles, which, although recognizing social efficacy, emphasizes authority (legitimacy).[2] Hence, subsidiarity is a second-order principle, but regarding online portals, it does not seem to fully express a formal principle in Alexy's sense. For the sake of consistency, Alexy's discussion should include a broader category: second-order principles. This expands Alexy's theory, incorporating institutional capacities alongside legitimacy.[3] And this reconciles formal principles with subsidiarity.[4] As a result, "Correctness for Non-Officials" can be answered positively.

In a third, more tentative section, I conjecture what an extension of the dual nature of law would look like by looking at legal practices carried out by non-officials and participants more generally. My point of departure, again, are the forms of transnational law, private autonomy, and functional subsidiarity that operate beyond the traditional framework of state-centered legal operations. My suggestion is that the claim to correctness can be recast as a spectrum:

- Authoritative Correctness: Legal operations by officials and judges (creating, applying, identifying legal materials), at the "thicker" end of the spectrum.

- Functional Correctness: "Correctness for Non-Officials" (second-order principles such as subsidiarity and business and human rights obligations).

- Coordinative Correctness: "Correctness in Legal Practices" such as obedience, but also the protection of legitimate expectations and transnational arbitration can be considered its "thinnest" interpretation, more an expectation (instead of a claim) of non-arbitrariness (instead of correctness). (In this sense, even the citizen who pays taxes only to avoid a sanction also raises a claim to correctness: expecting non-arbitrariness.)

[1] Hart (1961), p. 61.

[2] Alexy (2014), p. 516.

[3] See, e.g., Fahner (2022), p. 469; cf Shany (2006), p. 908: "legitimacy and capacity concerns".

[4] Also, potentially, this can include other similar second-order principles such as toleration (including its institutional and historical examples, such as the Ottoman millet system). See, e.g., Walzer (1997, pp. 17ff); Barkey & Gavrilis (2018). A second-order principle may also hold in promising, seen as a non-institutional but content-independent source of obligations. See Valentini (2019). Likewise, moral autonomy fits this idea of second-order principles. See Sieckmann (2020), p. 278.

ROBERT ALEXY'S CLAIM TO CORRECTNESS AND EVIDENTIAL DISCOURSE

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SW53 · Law's Ideal Dimension. Robert Alexy's Philosophy of Law
Convenors: Carsten Bäcker; Jan-Reinard Sieckmann; Martin Borowski

ABSTRACT

In this presentation, I will discuss the possibility of applying Robert Alexy's theory of correctness to another context. My aim is to show that the fundamentals of Alexy's theory could inspire an evidential criterion for correct proof.

By this, I mean the following simple question: What constitutes correct evidence in adjudication? Or, what criteria must be met for a proof to be considered correct? Most evidential concepts conclude that evidence should be truthful and based on a sufficient standard of proof. However, it is difficult to define what "truthfulness" really means in this context.

Robert Alexy places correctness alongside truth as an objective condition in the ideal dimension of law. In opposition to persuasion as a possible tool of manipulation that could result in the unacceptable subjectivity of the evaluation of legal activity. He concludes that the claim to correctness is necessary. For legal practice, it shall be necessarily defining that it is assessed in terms of true or correct on the one hand and incorrect or wrong on the other.

I would also like to point out that Alexy's claim to correctness is also a claim to the justifiability of the correctness of a legal act. I will argue that the criteria for the correctness of the act itself should also be applied to the decision on the questions of fact of the case, not only to the questions of law.

My approach to the criterion of evidence is based on Alexy's ideal dimension of law, carefully preparing the elements of the claim to correctness compatible with probabilistic theories of legal evidence. I will explain that the notion that law postulates a claim to correct decision means that evidentiary findings should not only be reasoned but also epistemically

justifiable. It may not be surprising, but it is important to show the claim's so far neglected focus on evidence law.

It will be reasoned that:

1. A court decision must (understandably) be reasoned, i.e.

2. justified, because

3. it should fulfil the claim to correctness, which, according to Robert Alexy,

4. includes the claim to justifiability, which, in my opinion, also includes

5. the claim to epistemic justifiability, which, going back to point 1, means that court decisions, including fact-finding and evidence, must be

6. rationally epistemically justifiable.

RADBRUCH'S FORMULA AND ALEXY'S TWO 'TRANSPORT THEOREMS'. OR LEGAL CERTAINTY AS A FORMAL PRINCIPLE IN BALANCING

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SW53 · Law's Ideal Dimension. Robert Alexy's Philosophy of Law
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ABSTRACT

The prominent Radbruch formula is understood by contemporary scholars as the most significant non-positivistic thesis on analyzing the concept of law. This qualification, however, is not the whole story. Since there are certain earlier paragraphs concerning legal certainty and / or validity of law in Radbruch's Legal Philosophy of 1932 or even in his Outlines of Legal Philosophy of 1914, which might be incompatible with his later writings. The aim of this article is then an analytic attempt to reconstruct and justify the non-positivistic reading of Radbruch's formula and, moreover, its continuity with his earlier works. The core question is, firstly, how the somewhat positivistic conception of legal certainty is to be understood in relation to that of justice, both in Radbruch's earlier context and in the later Radbruch's formula. Second, I will show that Robert Alexy's theory of principles, which includes the term 'formal principle' (Alexy 1985; 2014) can contribute to the reconstruction of Radbruch's formula. In addition, Alexy points out later that Radbruch's formula creates a transport of the substantial individualistic value into what was once formal justice (Alexy 2018). I'll keep trying to explicate a second transport theorem in Alexy's own system, namely the transport of the formal correctness of the law – as its example, legal certainty – into the so-called 'second-order correctness' (Alexy 2009). On this basis, I will show to what extent the understanding of Radbruch's later position as a particularly qualifying inclusive non-positivist is already rooted in his earlier ideas, which can refute misinterpretations of his earlier position as legal positivism of any kind.

ALEXY'S IDEAL DIMENSION OF LAW: A CRITIQUE

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ABSTRACT

The first part of Robert Alexy's Law's Ideal Dimension is dedicated to the law's ideal dimension. In the collection of essays, he argues from the non-positivist position about the concept of law. Although the argumentation is attractive and largely plausible, there are some problematic points Alexy does not address or that are unclear in his account.

Most problems are connected to the claim to correctness and the argument from injustice. I argue that if the claim to correctness refers to an objective correctness and not merely an appropriateness, it is difficult to reconcile it with the discursive concept of law's ideal dimension. The argument from injustice suffers from a similar problem. No republic would claim in its constitution that it is unjust, but that does not make it just. Similarly, any legal order claims that it is correct (claim to correctness), but that alone does not make it correct. In both cases there is a relation to the ideal dimension of law, but we do not know yet what the ideal is. It seems that either anything can be ideal, or we need some another criterion for what is correct and just. For Alexy, the core of that lies in discourse, which for him implies human rights. But first, Alexy does not discuss much other source of such criteria, and second, discourse might lead to many different results, many of which can be in direct contradiction to our understanding of human rights. This raises the question under what conditions law can be considered objectively correct rather than merely subjectively appropriate.

The paper argues that this tension leads to a dilemma: either the content of the ideal dimension becomes excessively indeterminate, or it becomes so demanding that very few existing legal systems satisfy it. The aim of the presentation is to analyze these difficulties within Alexy's theoretical framework and to assess how serious they are for his non-positivist conception of law.

IDEAL 'OUGHT' AND OPTIMIZATION

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SW53 · Law's Ideal Dimension. Robert Alexy's Philosophy of Law
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ABSTRACT

In the chapter "Ideal Ought and Optimization", Alexy maintains his notion of principles as optimization requirements, however, defining it as equivalent to an ideal 'ought'. Thus, he returns to his initial account of principles. This, however, raises doubts regarding the distinction of optimization requirements and commands to be optimized, which he had made in reaction to a critique that optimization requirements are not reasons to be balanced, but - since they merely demand optimal fulfilment relative to competing principles - must be fulfilled completely. Alexy accepts that optimization requirements are rules, but regards the notion of commands to be optimized as problematic and in need of explication.

The question remains as to whether his account of principles as optimization requirements is adequate as an account of principles that figure as reasons for balancing judgements. I will suggest that it is not, and that the main problem underlying Alexy's theory is the interpretation of principles as a sort of propositions. This interpretation makes impossible to develop an adequate account of the notion of an ideal 'ought'.

BALANCING AND THE EXISTENCE OF HUMAN RIGHTS

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ABSTRACT

In the beginning of his works "Menschenrechte ohne Metaphysik" (published in 2004) and "The Existence of Human Rights" (originally published in 2012 and later republished as chapter 10 of the book "Law's Ideal Dimension" [2021]), Alexy claims that human rights are rights characterized by five properties: (i) universality; (ii) fundamental character; (iii) abstractness; (iv) morality or moral validity and (v) priority over positive law. The third character suggests, among other things, that human rights are rights foreseen only by (moral) principles, not by (moral) specific rules. Regarding constitutional rights, Alexy expressly affirms, in the famous Chapter 3 of the "Theorie der Grundrechte" (1985), that constitutional rights are foreseen by both principles and rules. Yet, in 1997, in his work "Grundrechte im demokratischen Verfassungsstaat", Alexy states that constitutional rights are characterised by four "extremes": they are rights that regulate, (i') with the "highest degree" and (ii') with the "greatest executory force", (iii') "the most important objects", (iv') with the "widest openness". The fourth feature suggests that constitutional rights are not foreseen by specific rules. Nevertheless, in the same work, Alexy adds that "what constitutional rights are today cannot be extracted from the text of the Basic Law alone, but rather from the ninety-four volumes of the decisions of Germany's Federal Constitutional Court". This brings us to some fundamental problems, that can be divided into two sets of questions: (a) the generality question and (b) the proportionality question. (i) Regarding the first set of questions, although Alexy does not use generality as a criterion for distinguishing rules and principles, in the "Theorie der Grundrechte", he relates generality to principles. The questions to be asked here are: what role does generality play in Alexy's distinction between

rules and principles? What is its relation to human and constitutional rights? (b) Regarding the second set of questions, although Alexy has developed his theory of principles for the application of constitutional rights, he himself has later applied it to a pre-positive procedure: the procedure of balancing legal certainty and moral correctness to reach a concept of law. The questions here to be asked are: how does proportionality work as a feature not only of legal application but also of practical reason? What is its role in the process of passing from moral human rights to positive constitutional rights? This work intends to investigate these questions and to connect them with the justification, and therefore with the existence of human rights.

WHAT IS THE CRITERION OF PROOF? ON WILLIAM TWINING'S THEORY OF EVIDENCE LAW

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SW54 · Understanding Law in a Changing World: Continuing William Twining's Project

Convenors: Raymundo Gama Leyva; Nadire Özdemir

ABSTRACT

In this presentation, I will focus on William Twining's explanation of the rationalist tradition of evidence law. Using this explanation, which is evident in Twining's works over the years, alongside comparison with the so-called new evidence scholarship, I will search for the criterion of successful proof in adjudication.

William Twining claims that the rationalist tradition is based on the correspondence theory of truth, and that the facts of the case should be ascertained to a high degree of probability. While Twining's claim may seem generally plausible, I believe that the compatibility of theories of truth with theories of probability is a question worth further exploring.

My examination focused primarily on the correspondence, coherence, redundancy, and minimalist theories of truth. Having also analysed the two main subtypes of correspondence theory (congruence and correlation), I have found that neither of the theories of truth is fully suitable for judicial evidence. This is because the nature of judicial belief does not permit the correct fulfilment of these theories.

As for probability theories, my research is primarily based on the work of Paul Horwich. It is important to note that the ideal of probability theories, the maximum value of probability, is certainty; whereas theories of truth aim at truth itself. The degree of certainty or probability, by its very nature, allows gradation, but truthfulness does not. I will explain that for the theory of evidence law we do not require a single theory of truth. We can fulfil the criterion using an appropriate theory of probability. Having examined the main concepts, I concluded that the most relevant is the rationalist theory of probability in its strong, but not ambitious form.

This conclusion is consistent with the rationalist tradition, as long as we interpret the features of rationalist theories stated by William Twining in a following way: Firstly, the condition of the truthfulness of fact-finding is not necessarily a matter of correspondence in the strong sense of the word, i.e., according to the correspondence theory of truth. Rather truth must be understood commonly as the conformity of belief with reality, or with awareness of reality. Secondly, truth in any form is not considered binarily as either true or false; on the contrary, it provides a space for probability. W. Twining explicitly noted that truth is not a matter of absolute certainty, but rather of probability.

With such an interpretation, it can be concluded that the rationalist tradition of evidence law is still an influential conceptual framework for evidence. However, truthfulness and, where applicable, correspondence must be understood in the general sense of the word. To preserve the main features of the rationalist tradition, it is necessary to interpret the concept of truth in a restrictive way and focus on probability, the theoretical content of which I will attempt to clarify.

CONTEXTUALIZING MEDICAL LAW: A TWININGIAN APPROACH

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SW54 · Understanding Law in a Changing World: Continuing William Twining's Project
Convenors: Raymundo Gama Leyva; Nadire Özdemir

ABSTRACT

This study aims to examine the problems experienced in contemporary medical law through William Twining's critiques of analytical jurisprudence. Contemporary medical law is largely shaped by doctrinal and analytical approaches and structured around concepts such as patient autonomy, informed consent, professional responsibility, rational choice, and individual will. However, analytical approaches overlook serious structural problems. In addition, they remain insufficient in explaining medical processes and the problems experienced within these processes from both the patient's and the physician's perspectives. Drawing on Twining's critiques of analytical jurisprudence and his contextual, empirical, and interdisciplinary understanding of law, this study argues that many of the fundamental problems in medical law stem from the disconnection between doctrinal abstraction and lived social reality.

According to Twining, analytical jurisprudence tends to abstract law from its social context and examine it merely at the level of conceptual analysis. Furthermore, it shows little interest in the actual functioning and consequences of law, focusing predominantly on rules and concepts. This leads analytical jurisprudence to neglect the specific dynamics of context and detach itself from social reality. The neglect of context, in turn, results in the exclusion of social and institutional functioning as well as individual experiences from legal analysis. Twining also criticizes the exclusion of socio-legal research from philosophical inquiry and argues that law should be understood within a holistic and contextual framework encompassing social practices, institutions, and processes. For this reason, through his "law in context" approach, Twining advocates that law should be examined in an empirical, interdisciplinary, and contextual manner.

Twining's critiques provide an important framework for the critical analysis of medical law. Medical law is not merely a technical field consisting of normative regulations; it is also shaped by information asymmetry, expert authority, institutional hierarchy, economic conditions, and social vulnerabilities. Nevertheless, current legal regulations and approaches tend to idealize medical processes and the subjects operating within them. Physicians are often idealized as competent, independent, ethically committed actors free from bureaucratic pressures and institutional constraints, while patients are conceptualized as autonomous and rational individuals. Similarly, medical processes are assumed to function independently of excessive workloads, institutional pressures, lack of resources, and broader social conditions, as though healthcare services could operate unaffected by such realities. However, when the broader context is considered, a very different picture emerges. Analytical jurisprudence and the legal approaches grounded upon it remain inadequate in addressing these realities.

Ultimately, this study argues that Twining's contextual understanding of law offers important methodological possibilities for making the structural problems of medical law visible. It contends that approaching legal concepts solely at the doctrinal level renders power relations, social inequalities, and institutional realities within medical law invisible. In contrast, a contextual approach to law enables a more realistic and critical evaluation of medical law.

TIME-TRAVEL WELL: LEGAL CONCEPTS ON TIME TRAVEL IN THE AGE OF ARTIFICIAL INTELLIGENCE

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SW54 · Understanding Law in a Changing World: Continuing William Twining's Project

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ABSTRACT

Twining's concept of "travel well" asks whether legal concepts can meaningfully and effectively travel across different legal cultures and traditions. Twining develops a test that asks how well concepts adapt and function in new environments: Does it fit? Does it work? At this point, Hohfeld's analytical concepts travel well, while more embedded concepts, such as corruption or the law student, travel less smoothly.

This paper extends Twining's framework to a second axis: the temporal axis. It asks the following question: do legal concepts travel well not only across cultures, but also across technological ages and historical ruptures? This extension is not arbitrary. Twining himself says that the metaphor of "travel" should not be understood only as a movement across physical space.

The concepts of time-travel well proposed in this paper, refers to the capacity of a legal concept to remain meaningful, functional and institutionally usable through historical ruptures and technological revolutions. This approach does not argue that legal concepts should stay unchanged. On the contrary, a concept can travel well through time only if it can preserve its core normative function while adapting, in a disciplined way, to new technological and institutional conditions. For this reason, I transform Twining's two tests into a three-part test: meaning, function, institution. First, can the concept still name the problem in the new age? Second, can it still perform its normative function? Third, can it still be used by courts, regulators and legal actors in new technological environment? This third dimension is especially important for the temporal axis.

In this paper, this test will be discussed through three different concepts: authorship, consent, and evidence. Classical copyright law is based on human creativity and originality, but generative AI makes the concept of authorship more ambiguous. Therefore, authorship needs to be reconstructed at the levels of function and institution. In today's digital world, although the concept of consent survives semantically, its ability to protect autonomy is weakened. Therefore, it is a concept that lives at the meaning level but is eroded at the function level. Synthetic images (deepfakes, etc.), automated risk scores, and inferences based on datasets also challenge the reliability and trustworthiness of evidence. This situation, especially in the context of institutions, prevents the concept of evidence from effectively time-traveling.

The main contribution of this paper is not to say that legal concepts change over time; that is already clear. The real contribution is to ask, in a more systematic way, which concepts remain legally usable after technological ruptures and under what conditions this is possible. Time-travel well proposes a third way between conceptual conservatism and radical break: legal concepts survive not by remaining timeless in the future, but by learning to transform in a disciplined manner over time.

Keywords: Travel-well, Time-travel well, Twining, Artificial Intelligence, Legal Concepts

WILLIAM TWINING'S ANTIREDUCTIONIST CONCEPTION OF JURISPRUDENCE: OVERVIEW AND CRITICAL ASSESSMENT

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ABSTRACT

William Twining (1934-2025) was a substantial figure who made significant contributions to jurisprudence, evidence, legal education, legal reasoning, and globalization. His latest book, Jurist in Context (2019), is the central locus for engaging with his work. It provides an autobiographical account of the development of his ideas and thinking, situating them within the moments, places, and personal contexts in which they emerged: Studying Law at Oxford during the fifties and attending Hart's lectures that were precursors of The Concept of Law; the University of Chicago during Edward H. Levi's deanship and the impact of Llewellyn's "Law in our Society" course on him; the experience of teaching law in East Africa; the rise of the law in context movement; the Queen's University Belfast in the late sixties; Warwick and its law faculty's mission of "broadening the study of law from within", as well as teaching Jurisprudence and Evidence at UCL, are just some of the themes explored in the book.

However, Jurist in Context seeks to be more than an autobiographical work. As stated in the preface and further developed throughout the book, a central theme of the book is "the health of the institutionalized discipline of Law" and "how the discipline and its many constituent sub-disciplines and enterprises is responding and might respond to its present situation and future challenges especially in respect of globalisation" (Twining, 2019, 256). To this purpose, Twining advances a broad conception of jurisprudence and argues that conceived in this way it can contribute to the understanding of law. Twining's conception of jurisprudence has not received sufficient scholarly attention, notwithstanding that he addresses a pertinent

and enduring question: To what extent are our conceptions of jurisprudence (including Twining's) adequate to contribute to the understanding of law.

This paper is part of a larger project on Twining's ideas. It focuses on one aspect of his jurisprudential project: his broad and antireductionist conception of jurisprudence. It examines whether Twining succeeds in articulating a solid conception of jurisprudence capable of resisting the main criticisms raised against it. I acknowledge that the breadth of his conception poses some risk on the identity and demarcation of jurisprudence as a distinct field. However, I will argue that Twining's proposal remains a valuable counterpoint to narrow conceptions of jurisprudence and a fruitful basis for rethinking the potential role and contributions of jurisprudence to the understanding of law.

FIELD PHILOSOPHY OF LAW: BEYOND SOCIO-LEGAL JURISPRUDENCE

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ABSTRACT

Debates on philosophical progress are typically framed between optimists, who claim that philosophy makes progress, and pessimists, who deny it. A third perspective challenges this dichotomy, arguing that it stems from problematic conceptions of philosophy held by both sides. From this standpoint, philosophy is not primarily a theoretical discipline oriented toward truth, but a practical activity aiming at social relevance. The problem of progress should therefore be reconsidered in this light. Within this approach, two models of progress have emerged: one that depends on time and serendipity to achieve societal impact while retaining philosophy's institutional foundations, and another that restructures those foundations in favor of direct, contextual, and impact-oriented practice—culminating in what is described as "field philosophy." This paper contends that the latter model is especially suited to the philosophy of law, where philosophical inquiry can more directly inform legal reasoning, institutions, and public discourse, in ways less accessible to areas such as metaphysics or epistemology. It then discusses the implications of this suitability for the metaphilosophical identity and aims of philosophy of law, with a particular focus on the similarities and differences between "the field philosophy of law" proposed here and socio-legal jurisprudence. The paper concludes that while socio-legal jurisprudence is an important progress over conceptual jurisprudence, the field philosophy of law is argued to go even beyond that through the reorientation of philosophy of law, which socio-legal jurisprudence falls short of.

FREEDOM OF RELIGION AS THE ORIGIN OF CONTEMPORARY HUMAN RIGHTS

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ABSTRACT

This presentation explores the historical origins of modern human rights, focusing on the pivotal role of religious freedom and the right to resistance. While these rights are often associated with the American and French Revolutions, this study examines deeper roots through the classic debate between Georg Jellinek and Émile Boutmy. Jellinek argued that human rights originated not from Enlightenment philosophy, but from the Anglo-Saxon legal tradition and the Reformation's demand for religious liberty.

Following this tradition, the German Twelve Articles of the Peasants (1525) is identified as an early expression of human rights, rooted in spiritual demands and the abolition of serfdom. Reform movements within Christianity—from Wycliffe and Hus to the post-Reformation era—functioned as comprehensive demands for spiritual freedom, including freedom of conscience and academic inquiry. The Treaty of Westphalia (1648) subsequently provided the framework for these demands to evolve into modern civil liberties.

Finally, the study offers a comparative perspective from Japan. Historically, Japanese Buddhism lacked the Western distinction between "orthodoxy" and "heresy," maintaining a unified spiritual fabric without violent doctrinal conflict. This absence of internal resistance may have hindered the inheritance of Western individualistic liberties, as social harmony often takes precedence over individual rights in non-Christian cultures. By raising this point in Istanbul—the historic crossroads of East and West—I invite scholars to reconsider the universality and cultural particularity of human rights through the lens of religious history.

RETHINKING THE PHILOSOPHY OF LAW FROM LEGAL PRACTICE: TOWARD A FUNCTIONAL RECONSTRUCTION OF LAW FOR PROFESSIONAL PRACTICE

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ABSTRACT

In the contemporary legal landscape marked by normative complexity, an increasing demand for the justification of decisions, and evolving dynamics in professional legal practice the philosophy of law faces a significant challenge: to redefine its role in relation to the practice of law. Its traditional understanding as an abstract discipline, concerned solely with conceptual clarification or theoretical reflection, has created a substantial disconnect from legal practice, thereby limiting its impact on the education and performance of judges, lawyers, and legal practitioners.

This project proposes a rethinking of the fields of the philosophy of law from a functional and practice-oriented perspective, with particular emphasis on its usefulness for effective professional performance, in line with the work of William Twining.

Accordingly, taking into account Twining's critique of narrow and state-centered conceptions of law, this paper argues that legal philosophy must be reconstructed as a tool that enables both understanding and effective action within real legal contexts. In this regard, the article contends that the traditional domains of the philosophy of law—such as theories of validity, interpretation, and justice—should be reconfigured in light of practical problems, including judicial decision-making, the construction of legal arguments, the identification of legal issues, and the resolution of disputes in complex settings.

Within this framework, the paper proposes to approach the philosophy of law at three practical levels: (i) as a tool for conceptual clarification applied to concrete legal problems; (ii) as a foundation for argumentation

and justification in decision-making processes; and (iii) as a critical framework for assessing the legitimacy of legal practices across diverse social contexts. This perspective entails not only rethinking existing domains but also developing new areas of reflection closely tied to practice, such as a "philosophy of litigation," an "epistemology of evidence," and a "practical theory of legal pluralism."

In conclusion, the paper argues that rethinking the philosophy of law from the standpoint of practice does not require abandoning its theoretical dimension, but rather reorienting it toward its most demanding function: contributing to the formation of legal professionals capable of reasoning, arguing, and making decisions in a rational, critical, and context-sensitive manner within an ever-evolving legal world.

THE CRISIS OF THE NORMATIVE UNIVERSALITY OF HUMAN RIGHTS: CULTURAL PLURALISM, RECOGNITION, AND POLICIES ON LIFE AND DEATH

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ABSTRACT

Modern human rights discourse, as one of the most influential normative narratives of the modern world, has established human dignity as the foundational principle of the ethical, political, and legal order. The assumption that human beings possess inalienable rights simply by virtue of being human constitutes one of the most powerful expressions of modern universalist thought. This perspective conceives of human rights as a common ethical, political, and legal foundation that encompasses all of humanity, transcending cultural, political, and historical differences. However, the claim of the universality of human rights has been the subject of intense criticism -not only due to failures in its implementation, particularly since the second half of the twentieth century, but also in terms of the ontological, epistemological, and political assumptions upon which it is based.

This presentation aims to examine the issue of the universality of human rights in light of the conceptual tools of contemporary critical legal and political theory. First, we will examine the concept of the autonomous, rational, and universal subject that lies at the foundation of human rights thought. The claim that the anthropological assumptions underpinning human rights discourse are a historical product of modern European thought will be examined within the framework of postcolonial theory and critical legal studies. In this context, Makau Mutua's approach -which interprets the human rights discourse through the "savages-victims-saviors" metaphor- demonstrates that the discourse of universality can at times devolve into a so-called "civilizing" project that reproduces colonial hierarchies.

Similarly, Boaventura de Sousa Santos's approach to the "plurality of epistemologies" and "counter-hegemonic human rights" argues that human

rights should be reimagined not as a normative system derived from a single cultural center, but as a pluralistic language of justice emerging from the encounter of diverse historical experiences and traditions of knowledge. At this point, the debate over cultural pluralism emerges as one of the central issues in human rights theory. While the universality of human rights is based on the assumption that all people possess equal ethical value, the approach of cultural pluralism emphasizes that conceptions of the human person, society, freedom, justice, and the good life vary significantly across cultures. From this perspective, human rights can be seen not as a set of neutral and universal norms that transcend cultural differences, but rather as the conceptual language of a specific historical world. Therefore, the fundamental issue goes beyond making a definitive or sharp choice between universality and cultural relativism; it is the question of how different normative worlds can converge on a shared horizon of justice without excluding one another. The current crisis of legitimacy in modern human rights thought also stems largely from this ontological tension.

One of the most radical critiques of the normative structure of human rights was developed by Costas Douzinas. According to Douzinas, human rights are modernity's last great universal narrative; however, they have also become one of the mechanisms through which the global capitalist order produces legitimacy. Despite the continuous expansion of the catalog of rights, the deepening of "exclusion, poverty, war, and inequality" reveals the unbridgeable gap between the normative promise of human rights and political reality. As Upendra Baxi has noted, the contemporary human rights regime is increasingly being encroached upon by global market forces.

The second axis of the presentation focuses on the biopolitical and necropolitical dimensions of the relationship between human rights and power. Michel Foucault's analysis of biopolitics demonstrates that modern power is not merely a mechanism for enacting laws and imposing punishments; rather, it is a productive form of power that regulates life, manages the population, and disciplines bodies. However, today's wars, border regimes, refugee camps, and emergency rule practices reveal a darker logic of power that goes beyond biopolitics.

Achille Mbembe's conceptualization of necropolitics aptly demonstrates that the ultimate form of sovereignty lies not in protecting life but in regulating the distribution of death. In necropolitical regimes, while some lives are deemed worthy of protection and preservation, others become expendable, disposable, or subject to death. This situation raises a fundamental question regarding the claim of the universality of human rights: If all human lives are of equal value, why are some lives deemed worthy of visibility and mourning in the global conscience, while others are silently abandoned to death?

At this point, Giorgio Agamben's conceptualization of "bare life" and Mbembe's approach to necropolitics offer a complementary critical framework. As Agamben demonstrates, modern sovereignty reduces human beings to mere biological existence by creating zones of exception where the rule of law is suspended. Mbembe, however, argues that this process entails not only exclusion but also the systematic management of death. Refugee camps, occupied territories, border zones, and war zones have become spaces where human rights are most frequently invoked yet simultaneously most intensely suspended. This situation highlights the structural contradiction between the discourse of universality and political practice.

Within this critical framework, Hannah Arendt's conceptualization of the "right to have rights" regains significance. According to Arendt, the fundamental problem of human rights stems not from the abstract quality of humanity, but from one's belonging to a specific political community. An individual who lies outside the political community, even if they theoretically possess human rights, is deprived of the public and political arena in which they could claim those rights. Today's refugee crises and mass displacements are bringing the tension between the universality of human rights and political belonging back into sharp focus.

Judith Butler's concepts of vulnerability, recognition, and "mournable life," meanwhile, offer an opportunity to rethink the universality of human rights from an ethical-political and ontological perspective. According to Butler, political communities produce hierarchical distinctions regarding which lives are deemed worthy of protection. Therefore, the issue of human rights is not merely one of the recognition of rights, but also one of who can be recognized as human. Universality can only gain meaning

through the recognition of lives that have been rendered invisible, devalued, and left to die.

Consequently, this presentation argues that the tension between the universality of human rights and cultural pluralism has deepened further due to the new challenges posed by biopolitical and necropolitical forms of power. Human rights are neither an absolute and transcendent normative truth nor a historical construct that can be entirely reduced to cultural relativism. On the contrary, human rights constitute a dynamic normative horizon that takes shape at the intersection of the search for a common ground of justice across different cultural spheres; the struggle between the claim to protect life and the political management of death; and the conflicts surrounding the concepts of "recognition, belonging, and humanity."

Keywords: Human rights, universality, cultural pluralism, biopolitics, necropolitics, postcolonial critique, recognition, normative legitimacy

IDEALIZED NORMS AND SILENCED EXPERIENCES: MECHANISMS OF INVISIBILITY IN HUMAN RIGHTS CULTURE AND A CRITICAL THEORY OF THE STATE

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ABSTRACT

In contemporary legal philosophy, human rights are predominantly presented as universal and inviolable normative values that constrain state sovereignty. However, this study argues that such normative idealization functions as a structural "politics of invisibility," obscuring the radical rupture between the "ought" (norm) and the "is" (socio-political reality). Drawing upon the critical frameworks of Boaventura de Sousa Santos and Costas Douzinas, the crisis of human rights implementation is problematized as a structural byproduct of the modern state's administrative power and hegemonic globalization.

The philosophical core of the study examines the dialectic between two opposing poles of human rights: Douzinas' radical critique, which views rights as a "cosmetic legitimacy" masking state violence, and Jürgen Habermas' discursive approach, which defends law as a shield for communicative action. Current legal culture centers on a liberal subject constructed upon an abstract and rational definition of "human". In doing so, it systematically condemns to silence those who fall outside this definition.

In this context, the study aims to analyze "invisibility" mechanisms through three main groups:

Epistemic Invisibility: How the technical and sterile structure of legal language pushes the experiences of the defeated out of the picture while telling the "story of the winners".

Ontological Invisibility (Homo Sacer): The condition of refugees and the stateless, whom the modern state traps in the void between "human"

and "citizen". Mirroring Agamben's concept of "homo sacer", these figures are excluded from the protective umbrella of law while remaining exposed to the bare violence of sovereignty.

Socio-Economic Silencing: The marginalization of the impoverished who lack the material and social capital to access the justice system, effectively rendering them invisible within the individual-property-oriented liberal rights regime.

Ultimately, the study proposes that true legitimacy is only possible through a counter-hegemonic praxis that transcends state-granted texts. For human rights to regain their emancipatory potential, they must be reconstructed as a multicultural "constellation" where the voices of the marginalized are heard through a transformative "struggle for recognition".

Keywords: Politics of Invisibility, Homo Sacer, Diatopical Hermeneutics, Human Rights Critique, Emancipatory Praxis

HUMAN RIGHTS IN WAR: DESIGNING A ZONE OF NONVIOLENCE

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ABSTRACT

Much of the knowledge that has emerged and been recorded throughout human history has been paradoxically shaped by violence. Wars involving states—the highest form of organized society—reveal the most destructive manifestations of violence. Throughout history, people have sought to impose legal rules on war in an effort to curb its destructive nature, which has never faded from the scene. The modern international legal order finds its foundations in this quest. In particular, Hugo Grotius, in his 1625 masterpiece *On the Law of War and Peace* (*De Jure Belli ac Pacis*), grounds this quest by defining war not as a state of chaos where law ceases to exist, but as a legal situation to which parties lacking a common authority resort to resolve their disputes. Grotius, who sought to justify the ever-present state of war, argued that events can be subjected to a rational scrutiny when war is undertaken as a means to secure peace, is grounded in legitimate reasons (jus ad bellum), and adheres to the boundaries of conduct during war (jus in bello). According to him, even war cannot be conducted independently of the principles of natural law, which aim to protect human dignity and the nature of society. Thus, by removing the sovereign rights of states from the realm of absolute arbitrariness, Grotius made war a component of international legal culture that needed to be disciplined, and sparked the first sparks of modern humanitarian law regarding the protection of civilians. However, the state of war could not be reined in by Grotius's proposal. The establishment of the human rights theory we are gathered here today to discuss within the legal culture is, tragically, a consequence of the global devastation wrought by World War II. The 1945 United Nations Charter and the 1948 Universal Declaration of Human Rights sought to end the unrestricted exercise of authority by states against their own citizens and enemies; they established the individual as a subject of international law.

The 1949 Geneva Conventions rebuilt the law of armed conflict (jus in bello) on the foundation of human dignity, thereby establishing that war is not a "state of lawlessness" but a process subject to strict humanitarian norms.

Unfortunately, despite all these developments, war continues to systematically disregard human rights with all its destructive force. In today's conflicts, technological asymmetry renders the principles of humanitarian law ineffective. Indeed, war has ceased to be merely a military operation and has transformed into a form of violence in which residential areas, hospitals, and basic living spaces are targeted. The current international system has proven inadequate in halting human rights violations, and a culture of impunity has deepened. War-mongering political regimes view civilian lives as expendable statistics for the sake of strategic interests, and states' rhetoric of national survival has pushed the civilian population's right to life and physical integrity to the sidelines.

Protecting civilians from war policies and geopolitical ambitions must no longer be merely an ethical imperative but a legal obligation of the international community. The right to sovereignty must not be used as a shield for civilian massacres. This declaration proposes the model of "Global Violence-Free Zones" (GVZ) as a way to break the current deadlock. This design goes beyond the classical concept of safe zones; it aims to create areas within the borders of modern states where no international actor, armed force, or paramilitary structure can intervene, and where sovereign rights are suspended for humanitarian reasons. These zones are not merely places of refuge but also "legal oases" where the entry of instruments of violence (weapons, ammunition, military technology) is absolutely prohibited under international oversight. Compelling all international actors to recognize the inviolability of these areas would constitute a revolutionary step toward geographically and operationally limiting war. The design of non-violent zones seeks to push the state's monopoly on violence outside the civilian sphere of life, thereby building permanent havens where human rights are realized in the midst of war.

Keywords: Law of War, Human Rights, Non-Violent Zones, Civil Protection, Culture of International Law.

TRADITION OF THE LAW IN EAST ASIA

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ABSTRACT

The system of rules necessary for human coexistence will be shaped by factors arising from the characteristics and needs of its own era and geographical context. The existence of rules, the conduct of trials in the event of rule-breaking, and the restoration of order are characteristics that belong not to a specific culture but to all cultures and are inherent to humanity. Although a Western-centric approach has long dominated our legal thought, it has become essential to incorporate the deep-rooted history of the Asian tradition into our studies and to utilize it as a resource in the search for alternative forms of state, rights and democracy.

The broad concept of 'legal culture' also refers to the entire context of written law (social, economic, historical, ideological…). In legal education and legal scholarship, it will be beneficial to draw upon legal culture when analyzing the law and resolving legal issues. This study will primarily examine and evaluate the legal culture in China and, to a lesser extent, Japan and other East Asian countries, and will seek to assess the impact of these East Asian cultural elements on our understanding of human rights. The two main pillars of the Chinese legal tradition are Confucianism and Legalism. The Confucian perspective, rather than seeking to maintain social control by issuing commands and imposing punishments in the sense we are familiar with, operates on the principle of persuading individuals to act in harmony with society. On the other hand, whilst the People's Republic of China has developed a legal system that resembles Soviet socialist law in its socialist legal philosophy and legislative activities, it has also diverged from it; in our view, it constitutes an important starting point for an alternative understanding of rights.

Understanding how law and social control function in Chinese society has been almost as difficult for academics in the fields of law and the social sciences as it is for the state to establish social control. Many academics in

the field of comparative law have noted that adherence to the socialist conception of law does not, on its own, explain legislative activity and legal practice, nor can it predict the radical transformations in patterns of social behavior.

The modernization of China's bureaucratic institutions and the Westernization of its legal system have also failed to establish a clear consensus on who is the decisive actor in shaping Chinese law.

Whether the modernization of law in a non-Western country such as China is equivalent to its Westernization remains a subject of debate in comparative legal studies. The rapid transformation exhibited by the Chinese legal system on its path to institutionalization presents an unprecedented opportunity for research into Chinese law and society. Many academics excited by China's economic development are still debating whether China will become a copy of the Western legal model. The Western legal model generally implies the absolute separation of judiciary from other institutions and the acceptance of an individual-based conception of rights. On the other hand, this approach consciously pushes the social dimension of the human being into the background. The potential for the non-individualistic understanding of socialist law—which conceives of democracy differently—to harmonize with the Asian legal tradition, thereby triggering the fourth globalization, is a matter that warrants discussion.

In the same context, the implications of the Westernization of law in East Asian societies remain a subject of ongoing debate.

As is well known, the process of the Westernization of law in East Asian countries dates back a long way. For example, the influence of Western law on Chinese law began in the eighteenth century. In the following century, the reception of Western law began to emerge during the Qing Dynasty and continued to develop throughout the first half of that century. However, the Western influence on Chinese law is not limited solely to the traditions of civil law and customary law. The current modernization of law in China has emerged as a blend of the Chinese imperial legal tradition, Western law, and Soviet and socialist legal concepts. Chinese law has been influenced by Anglo-American and European civil law to the same extent as it has been by Soviet socialist law. However, what exactly constitutes socialist law remains a matter of debate.

The Chinese legal tradition has developed from Confucianism and Legalism, two schools of thought that are incompatible yet equally influential. Whilst Confucian ideology formed the basis of traditional law, the Legalist school established the key framework of the traditional legal system. For example, the Legalists introduced the concept of governing by law to ancient Chinese society for the first time and established the judicial bureaucracy during the early periods of the Chinese empire. Although the Legalist school and Confucianism represent opposing philosophies regarding the political ideologies of how Chinese society should be governed, they share some important common ideas. In this paper, the similarities and differences in the legal philosophical principles of the two schools will be compared and examined in conjunction with their influence on Vietnamese and Korean legal cultures, thereby opening a discussion on the possibilities they could offer for a new understanding of rights. A similar discussion will be conducted with regard to Japanese legal culture, as although the contemporary Japanese legal system appears, at first glance, indistinguishable from a modern Western legal system as a result of legal modernization, Japan remains an Asian country despite modernization in law and the economy; therefore, it would be incorrect to evaluate this legal system solely through a Western lens whilst setting aside Japanese legal thought. The paper will also seek to assess the potential contributions of Japanese legal culture to a new and harmonious understanding of rights.

Keywords: Non-Western approach to rights; Confucianism; Legalism

THE CONCEPT OF BLOOD FEUDS IN TURKISH LAW WITHIN THE CONTEXT OF THE LAW-CULTURE RELATIONSHIP

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ABSTRACT

The claim that the subject of law is the human being can be easily justified. Since legal rules aim to regulate human life, they cannot ignore human behavior, human morality, human needs, or human psychology. The existence of the human being as a subject on Earth is not merely a biological phenomenon but also a cultural one. While our discussion of human nature often relies on biological and generalizable psychological phenomena, when we speak of a localized human nature—such as Turkish nature, Turkish women's nature, or the nature of Turkish middle-class women—we must necessarily take cultural elements into account. The legal order holds sway over the environment in which this individual nature is realized. In other words, the city in which a person lives; how public resources such as water and minerals are distributed, used, and how the individual is affected by this; what public facilities they have access to while sustaining their daily life; what cultural opportunities are offered to them; and even how they consume—all of these constitute the direct subject matter of law and necessitate the creation of rights to impose limits on the mechanisms that produce law. Given this, it would not be incorrect to say that a specific legal system creates a specific human formation, and that this is directly linked to that legal culture.

In this context, we must examine the relationship between our cultural identities and the law. The feeling of revenge can first be briefly addressed from its psychological dimension. This emotion exists to some degree in every person and is a common human issue. An individual may feel the urge for revenge not only due to a matter concerning themselves but also due to an action committed against the broader community to which they feel they belong. Blood feuds are a classic example of this. Although blood

feuds—a problem even for Romeo and Juliet—have reached a point of extinction in the Turkish legal system through a successful struggle, in our view, they continue in other forms as a cultural reflex. It would not be wrong to say that the "we" culture is widespread in Turkish society within a context of mechanical solidarity. This "we" culture persists across a very broad spectrum, ranging from football fandom to a sense of belonging to a religious community. From this perspective, it is considered just to retaliate against any "wrong" behavior directed at "us." Moreover, this justice is administered through the legal system. This situation, expressed in colloquial terms as "turning it into a blood feud," is closely linked to the "us" culture. In this study, the connection between the "us" culture and blood feuds will be explained within a cultural context, using examples from Turkey's recent history.

Keywords: Culture of "us", Sense of Revenge, Conception of the Law

THE LEGAL CONSTRUCTION OF THE FUTURE: THE TRANSFORMATION OF HUMAN RIGHTS PROTECTION PRACTICE ALONG THE AXIS OF INTER-TEMPORAL RESPONSIBILITY

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ABSTRACT

Human rights, beyond being a hierarchy of positive norms, constitute a dynamic sphere of meaning and legitimacy that is constantly reproduced within the tension between values and social reality. Whilst the 'praxis' dimension of this field ensures that the norm comes to life in concrete cases, phenomena such as Artificial Intelligence, the Climate Crisis and mass Digitalization are forcing a radical transformation of the classical logic of legal protection. This study analyses how the classical five-part framework centered on victim, harm, perpetrator/liability, compensation and state intervention has evolved into an inter-temporal practice of liability, transcending the 'present moment', and examines the risks of 'uncertainty' created by this evolution.

This transformation redefines the building blocks of the classical paradigm as follows:

Victim: From the Individual Subject to an Uncertain Future: The subject of the rights violation is no longer merely the 'concrete individual of the present moment', but 'future generations' who do not yet exist, or 'potential masses' who will be affected by the outputs of algorithmic systems. The right is evolving away from the present subject towards the preservation of a temporal continuity.

Harm: From Material Loss to Systemic and Irreversible Risk: Harm ceases to be a physical act that has already occurred in the past; it becomes a structural 'loss of possibility' - such as ecosystem collapse or the infinite circulation of data- where 'restoration to the original state' is technically

impossible, thereby mortgaging the dignity of future life from the present day.

Agent and Liability: From Visible Power to Algorithmic Uncertainty: As the agent ceases to be a concrete organ of the state and becomes concealed within lines of code or global corporate structures, liability shifts from 'fault'-based punishment to the 'duty of due diligence' -the anticipation and management of future risks.

Compensation: From Restitution to Prudence-Based Prevention: The classical principle of restitutio in integrum (restoration to the original state) is losing its function in the face of temporal and ecological constraints; it is being replaced by proactive, 'risk-based' intervention models that prevent harm from occurring in the first place.

State Intervention: From Negative Obligation to Active Rights Architecture: The state's duty to merely 'refrain from intervention' is giving way to a requirement for 'active intervention' in social life and technology to protect the individual from future technological and environmental threats.

However, this proactive transformation also carries the risk of the 'excessive legalization of life and time'. The reflex to 'protect the future from the present', as observed in recent judicial decisions (the European Court of Human Rights and various national constitutional courts such as Germany[1]), harbors the danger of freezing the future by confining it within today's normative frameworks[2]. Defining the future excessively through 'rights' from the present may deprive future generations of the opportunity (epistemic authority) to freely negotiate their own rights and ways of life.

In conclusion, the study argues that human rights practice is not merely a judicial 'risk management technology', but rather a fluid field where the epistemic spheres of authority of law, science and politics intersect. The process of the norm's concretization now entails greater uncertainty, and this situation places law under the tutelage of the 'premature' decisions of science or technocracy. In this context, in the intertemporal construction of human rights, it is imperative to seek a legitimate foundation that is open to negotiation and flexible, one that does not colonize the freedom of the future from the present.

[1] BVerfG, Beschluss des Ersten Senats vom 24. März 2021 - 1 BvR 2656/18, 1 BvR 96/20, 1 BvR 78/20, 1 BvR 288/20 - Rn. (1 - 270), http://www.bverfg.de/e/rs20210324_1bvr265618.html.

[2] One of the most frequently cited examples in this regard is the 'Great Horse Manure Crisis'. In 1894, the fact that transport in London and New York relied entirely on horse-drawn carriages gave rise to a doomsday scenario predicting that within 50 years, the cities would be buried under meters of manure. Newspapers of the time, along with urban planners and lawyers, had embarked on a search for strict legal restrictions to address the issue. However, the invention of the motor car rendered all these fears and legal preparations, built upon this "technological given", obsolete overnight. See "The Great Horse Manure Crisis of 1894", Historic-UK, https://www.historic-uk.com/HistoryUK/HistoryofBritain/Great-Horse-Manure-Crisis-of-1894/ (accessed: 07.04.2026). Similarly, the strict data deletion policies centered on the "right to be forgotten" currently accepted by the courts may deprive the medical world of the future of vast datasets capable of solving rare diseases, and may carry the risk of eliminating the possibility of "scientific progress" in the future from the present day. Or, the prohibition of permanent genetic interventions on human embryos in the name of "preserving naturalness" may amount to shackling, from today, the human species' capacity for biological adaptation against future existential threats with a legal chain. In other words, the protective shield that the law deems "most ethical" today could become one of the greatest obstacles for the next generation. The question raised in this study is therefore as follows: Is the practice of human rights about 'designing' the future from the present, or is it about 'liberating' the future from any form of design?

RAZ'S TWO-PRONG DEFECT IN THE METAPHYSICAL STRUCTURE OF AUTHORITY: A HEGELIAN INFERENTIALIST ANALYSIS

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ABSTRACT

Joseph Raz's jurisprudence is one of the most developed and influential accounts of the nature of law and the role of norms and authoritative pronouncements in the practical reasoning of officials and individuals in a political community. Authoritative legal pronouncements are described as 'preemptive' or 'protected' reasons for action, which are a special kind of secondary reasons that are both exclusionary, in that they exclude first order reasons for acting in a certain way, and additional reasons to act for a certain first order reason. Authoritative pronouncements are products of an intentional act of an official or institution that aims to balance the ordinary reasons a person has for doing something or abstaining from a certain deed in a certain case. Although these preemptive reasons do not create first order reasons for action, they alleviate the burden of an individual who is in a position to act but is better-off without the burden of balancing reasons for action herself and making an autonomous judgment about which is the right course of action in a given case. Legal authorities are justified, on this model, if they are justified at all, because of their capacity to replace the subject's judgment about the right balance of reasons in a given case providing them with better access to those reasons.

RULE-FOLLOWING PARADOX, PRACTICAL ATTITUDES, AND THE CONSTITUTION OF LEGAL NORMS

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ABSTRACT

The rule-following paradox, popularised by Saul Kripke (1982), based on Ludwig Wittgenstein (1953), shows that no sequence of prior applications determines a rule, since any such sequence is compatible with multiple —perhaps infinitely many— rules. This paper argues that the paradox involves at least three conceptually distinct problems, and that the answers offered by socio-normativist neo-pragmatism —reconstructed mainly, though not exclusively, from the work of Robert Brandom (1994, 2000)— rest upon a metapragmatic notion, that of 'practical attitudes', whose metaontological dimension has not so far been sufficiently made explicit. The paper concentrates on the metaontological reading of the paradox and defends four theses. First, practical attitudes should be understood as hybrid entities, endowed with a constitutive normative character (which will be called "normativity$_1$") and with a factual dimension in their mode of expression, since they are manifested by situated human beings who implicitly express personal criteria of correctness. Second, this normativity$_1$ is constituted by rationality, understood as the human capacity to know, conceptualise and evaluate reality. Third, this rationality is neither a brute fact nor an abstract Platonic entity, but rather a conceptual truth about the characteristic features of human beings. Fourth, practical attitudes constitute personal criteria of correctness, and these personal criteria —once related to one another socio-historically and inferentially— constitute the social criteria of correctness that contain social rules (understood in a sense that will be called "normativity$_2$"). With the aid of Amie Thomasson's metaontology (2014, 2025), it is argued that this reading dissolves the difficul-

ties faced by Brandom's proposals. Finally, the paper projects this framework onto legal theory: practical attitudes of recognition operate as the substratum of the mechanism by which a community's legal practices are instituted, whereas practical attitudes of acceptance operate as the substratum of the mechanism by which the meaning of legal norms is constituted.

THE RULE-FOLLOWING PARADOX AND THE THEORIES OF LEGAL INTERPRETATION: AN INFERENTIALIST PERSPECTIVE

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ABSTRACT

This article examines the relationship between the Wittgensteinian "rule-following" paradox and the main theories of legal interpretation. The first part shows how each theory of interpretation — radical skeptical, moderate skeptical, cognitive, intermediate, and hermeneutic — presupposes a distinct solution to the paradox, corresponding respectively to the positions of Kripke, Lewis, Boghossian, Wright, and McDowell. The second part focuses on Robert Brandom's inferentialism, whose theory of linguistic content offers an original response to the problem: the content of a linguistic expression is not determined by facts external to the practice, but by the web of inferential commitments and entitlements that participants ascribe to one another in the "game of giving and asking for reasons." However, it is argued that the inferentialist model, in its general formulation, is insufficient to account for the specific normativity of legal interpretation. Drawing on MacCormick's distinction between informal normative order and institutional normative order, the article contends that legal reasoning is characterized by a structural asymmetry in the normative force of interpretive moves and by the binding quality of institutional facts — features absent from the ordinary discursive practice described by Brandom. On this basis, the notion of "second-level institutional rules" is introduced — entry rules, exit rules, and structural rules — which establish the conditions of possibility for the exchange of reasons in adjudication. The concluding thesis is that the correctness of an interpretive statement in the legal domain depends on a twofold condition, inferential and institutional: the inferential consequences of the interpretation must be consistent with

the commitments accumulated in the exchange of reasons, and the interpretation must be adopted in accordance with the institutional rules that structure that exchange.

THE LEGAL POINT OF VIEW: PERSPECTIVES AND COMMITMENTS

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ABSTRACT

The article offers an interpretation of the perspective of participants in legal practice, considering certain developments in contemporary social philosophy and ethics. It is argued that an agent performing an intentional legal action (such as filing a claim in court) integrates four perspectives into their conduct: (a) the first-person singular perspective, concerning what is directly intended by the action (for example, securing payment of compensation); (b) the second-person perspective, involving acting upon the will of others (such as obtaining a favourable ruling from a judge); (c) the first-person plural perspective, where it is justified to attribute a 'we-intention', referring to the existence and maintenance of the legal system as a means of regulating communal life; and (d) the third-person perspective, which allows others to attribute obligations related to that person's position within the group, as well as the consequences of their actions.

LEGAL REASONING AND ADJUDICATION: A REALIST (AND PRAGMATIST) OUTLOOK

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ABSTRACT

According to a widespread opinion in legal theory, Hart's The Concept of Law struck a fatal blow to legal realism by exposing the (supposedly) serious weaknesses of its account of legal and especially judicial reasoning. Despite this common view, however, legal realism's contribution to legal theory is far more sophisticated than Hart's image of it seems willing to acknowledge. To understand the true scope of some of its main theses, it is important to grasp the pragmatist influence that was instrumental in shaping them through the legacy of Oliver Wendell Holmes jr. and the decisive influence of John Dewey's work. This pragmatist side of legal realism is especially evident in the theory of judicial decision-making (with a particular emphasis on legal interpretation) developed by authors such as Karl N. Llewellyn, Felix S. Cohen, Jerome N. Frank and Max Radin, among others.

Taken together, the approaches of these authors provide a distinctive theoretical model of legal reasoning and an anti-formalist, functionalist and contextualist account of adjudication, from which many valuable insights for debates in the philosophy of law can still be derived today.

Just to give a few examples of those valuable insights, after a brief analysis of the realist approach to the "concept of law" (1), the paper will concisely take into consideration the benefits of adopting such an approach with regard to (2) the examination of legal indeterminacy and its various sources, with particular attention on the critical assessment of the notion of "plain meaning" and, finally, (3) a realist view on judicial interpretation and legal certainty.

ON THE IMPOSSIBILITY OF KEEPING IT IMPLICIT

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ABSTRACT

In this paper, I revisit H.L.A. Hart's (2012) contrasting account of the command theory of law (which he calls the "simple model") and his own rules-based conception of legal systems, and consider how each can be understood as a response to the rule-following problem (pp. 18-21). This framing may seem unusual, given that Hart's critique of the simple model—featuring a mysteriously super-positional sovereign (at once 'outside' and 'above' the law) and subjects endowed with a seemingly non-cognitive capacity to develop a "habit of obedience"—is that it fails to yield the very idea of a rule (pp. 50-51). But this theoretical inadequacy should not lead us to dismiss it as a possible form of practice. One can, in fact, play a kind of pathological version of a rule-following game grounded in orders, obedience, habits, and threats. Yet, as I will argue, this game is parasitic on existing rule-following practices—practices it simultaneously obscures and distorts.

MATERIAL INFERENCE IN THE IDENTIFICATION OF LAW

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ABSTRACT

In the domain of law, the question of whether, beyond what is explicitly stated by legislative authority, the law also provides implicit content—whether we are entitled to attribute to the legislator inferentially connected meanings—has been examined almost exclusively in relation to logical inference. This paper addresses questions about the meaning of non-logical terms (i.e., natural language expressions such as, for instance, "violence", "vehicle", "torture", "weapon", "woman", etc.) -usually classified as interpretive issues- through the notion of material inference, which allows to give a non-trivial or merely literal answer to the question of what conducts a given legal system allows and/or prohibits. Such an inferential approach opens a space for deliberation on the identification of legal norms (i.e., the practice of giving and asking for reasons about which implicit commitments we are justified in attributing to the legislator) in terms that are simultaneously normative, substantive, and specifically legal (i.e., non-moral). The combination of these three elements, together with a diachronic perspective, would shape a "constructivist" form of legal positivism, distinct from other versions such as "simple" or conventionalist positivism, interpretive legal skepticism, and inclusive legal positivism, each of which omits one or more of these dimensions.

RECONCILIATION AND THE SPECTRE OF LEGAL SKEPTICISM: A PRAGMATIST READING OF RULE-FOLLOWING AND LEGAL AUTHORITY FROM HART TO BRANDOM

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ABSTRACT

This paper re-examines H. L. A. Hart's theory of legal authority by isolating the problem that sits at its core: the relation between rule-following and the authority of law. Hart's decisive advance over John Austin—the distinction between coercion and obligation, articulated through the internal point of view—remains one of the most powerful practice-based accounts of normativity in analytic jurisprudence. Yet Hart tries to combine that practice theory with an empiricist-descriptivist epistemology and a non-cognitive rendering of the separation thesis. The result is an unstable asymmetry: officials "accept" secondary rules in a normatively loaded way, while citizens "obey" primary rules in a way Hart treats as externally observable regularity. This bifurcation produces two familiar pathologies: semantic skepticism about rule application (unity is exaggerated, pluralism misdescribed as instability) and an other-minds skepticism about ordinary rule-following (citizens become legal "zombies").

Using resources from Wilfrid Sellars and Robert Brandom, I propose a pragmatist retrofit. The retrofit keeps Hart's internal point of view and his practice theory of rules, but drops the descriptivist machinery that forces normativity to answer to an observational foundation. Replacing it with pragmatist inferentialism shifts the criterion of legal authority from patterns of compliance and official convergence to the structure of justificatory practices—giving and asking for reasons. On this view, legal "pathology" is not deviation from behavioral regularity or semantic unity, but deformation in the relation between authority and responsibility. The payoff

is a diachronic account of legal meaning—closer to common-law reasoning—on which precedent and historical development are not sources of skepticism but the materials of rational reconstruction.

NEGATIVITY AND LEGAL REASONING: BRANDOM'S READING OF HEGEL

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ABSTRACT

The objective of this study is to investigate how Brandom understands Hegelian negativity in his work A Spirit of Trust and what role negativity plays in an inferentialist model of determining legal concepts. Hegel's solution in The Phenomenology of Spirit to the impasse between empiricism and conceptualism lies in the understanding of negativity (Negativität) for the justification of rational knowledge or for the determination of conceptual content. Negativity is the second movement of Hegelian dialectics, also called negation (Negation) or contradiction (Widerspruch). The dialectical method has as its starting point the immediate unity of the conceptual statement. In its second moment, that of negativity, the concept detaches itself from its internal constitution and begins to focus on radically opposed determinations in order to achieve, in a third moment, a more complex unity, which results from the synthetic elaboration of the opposing terms, derived, in turn, from the intimate configuration of the previously opposing terms. Thus, while negation can be read as a negative determination with respect to the first affirmative determination, it is equally mediating, since the complexity of the conceptual unity that emerges in the third moment of dialectics depends on the nexus or relationship established by negativity. The concept of determined negation can thus be understood as an action of separating or dividing that which, in its immediacy, presents itself as a simple unity. Robert Brandom understands negativity based on the idea of space of reasons, in which being a subject from a normative point of view ultimately means authorizing the other to take responsibility and, at the same time, claiming recognition of authority to make commitments to certain claims and actions. This process, through which commitments made by members of a community change and develop over time, is called, in the Hegelian tradition, experience (Erfahrung). In the field of

practical rationality, this imposes the need to develop a diachronic integration of material incompatibilities (determined negation) and the necessary consequences of the commitments made within an institution, so that historical experience can be modified at any time by the subjects participating in the practice. Considering that experiences of violence or suffering play a central role in justifying legal rights, especially fundamental and human rights, the question that persists and will be discussed in this text is: to what extent can experiences of violence or denial of dignity play a role in this Hegelian-inferentialist model of determining legal concepts?

INFERENTIALISM AND THE ONE-SYSTEM PICTURE

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ABSTRACT

While it is probably too early to declare a consensus, one could plausibly say that in recent years legal theorists seem to have reached broad agreement on what divides positivists and non-positivists (e.g. Dworkin). Positivists hold that law and morality are two different normative systems or domains. Non-positivists believe that this claim is false, and that law is a subset of the moral domain. Positivists endorse a two-system picture, non-positivists endorse a one-system picture. My aim in this paper will be to explore some links between one of the arguments in favour of the one-system picture and certain aspects of inferentialism. The argument I have in mind has been made in different versions by Mark Greenberg and Adam Perry, but I propose to focus on the version offered by Ronald Dworkin. Dworkin argues that the two-systems picture suffers from a fatal flaw:

"Once we take law and morality to compose separate systems of norms, there is no neutral standpoint from which the connections between these two supposedly separate systems can be adjudicated. Where shall we turn for an answer to the question... of how the two systems relate? Is this a moral question or a legal question?" Justice for Hedgehogs (2011) at 402-3.

If Dworkin is right, the two-systems picture does not allow us to give meaning to claims that we typically take to have meaning. "How, if at all, are law and morality related?" is a question that makes sense, and only the one-system picture can explain why. An inferentialist about meaning would, I believe, nod in agreement. Inferentialism holds that different normative systems are not separate or self-contained realms. They are integrated because they belong in the same, unified space identified by the discursive social practice of holding oneself and others accountable to reasons. If the meaning of a concept is determined by its inferential connections to other concepts and the commitments and entitlements that follow

from taking some fact to be a reason for some belief or action, we should expect an account of the concept of law to track the various ways in which law and morality are linked in our reason-giving practices. That would seem to validate the conclusion that, as long as questions about the relation between law and morality make sense, the one-system picture is the only game in town. I do not yet know what the core claim of the paper will be, but my hunch is that inferentialism is mostly but not completely neutral in the debate between the one- and the two-system picture. The notions of an inferential role and a commitment or entitlement seem to me flexible enough to accommodate certain versions of the two-system picture. My aim will be to try to identify which versions these are.

A GOING CONCERN. TOOLS FROM DEWEY'S VIEWS ON THE METHODOLOGY OF SOCIAL INQUIRY

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ABSTRACT

As Robert Brandom pointed out, at the core of classical Pragmatism lies a distinctive and fertile blend of rationalism, naturalism, and Darwinism. Indeed, reflecting on Darwinian evolutionism, John Dewey conceives "experience" as a dynamic process of creative adaptation to a troublesome and changing environment. From this perspective, scientific research constitutes an enhancement and refinement of such adaptive process, transforming the confused situations of experience into clear and resolved ones. It is worth noting that, far from any epistemological naiveté, Dewey emphasizes the intrinsically disordered character of experience, underscoring that the very "identification" of the object of research ("the problem") is the result of the analytical, selective, and interpretive construction activity of the researcher. Such activity is guided by the research goals, that provide the indispensable criteria for defining the problem and determining certain elements as relevant "data". From this perspective, the notion that conceptual frameworks reflect and describe something that actually exists is entirely rejected. Rather, these are intellectual tools, developed by researchers within the context of their inquiry, to carry out cognitive operations such as formulating predictions to be tested empirically.

Regarding the outcome of the research, Dewey emphasizes that it culminates in the formulation of a proposition (or a set of propositions) endowed with "warranted assertibility." What "warrants" the "assertibility" of such proposition is the research process upon which it is based. Dewey's instrumentalist perspective, then, results in a conception that locates the "objectivity" of knowledge at the methodological level, rather than at the content level. As Enzo Campelli observes, according to Dewey, "rather than in terms of a more or less complete adaptation to an absolutely given

reality, the objectivity of an investigation rests on the possibility of arguing, in a public, traceable, and verifiable way, the inferential steps that comprise it." The aim of the paper is, therefore, to analyze the procedure of intersubjective justification of research results within the scientific community that Dewey refers to as a "honest empirical method". Such a method allowed the establishment, in the natural sciences, of that "cooperative tendency towards consensus" which, in Dewey's view, should also be pursued in philosophical investigations, as well as in the social sciences. The analysis of Dewey's methodological approach (focusing especially on two of his main works, namely Experience and Nature and Logic. The Theory of Inquiry) aims to highlight not only its historical importance but also, based on interesting Brandomian insights, some valuable tools for the contemporary debate in philosophy of law and legal epistemology.

TWO VIEWS ON PRAGMATISM AND THE CONTENT OF LAW: A DEBATE BETWEEN JULES COLEMAN AND RONALD DWORKIN

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ABSTRACT

Ronald Dworkin and Jules Coleman have similar views on the role of moral principles in the justification of legal propositions. But there is an important disagreement on how the content of legal propositions is fixed and on the relation between pragmatics and semantics. For Coleman, Dworkin confuses the existence conditions of legal propositions with questions of content of law, and he resorts to an implausible criterion to determine that content: Davidson's principle of charity. Dworkin offered two replies to those criticisms: first, he says that although sometimes there is sense to distinguish disagreements about content from disagreements about application, in the most important controversies about law there is no sense to make such distinction; second, he denies that his account of legal interpretation is dependent on Davidson's principle of charity. I will argue that the first response is sound but the latter is incorrect, and that a non-psychological account of intentional action, like the one proposed by Robert Brandom to make sense of Hegel's account of intentions in A Spirit of Trust, could make Davidson's account of intention not only plausible, but essential to defend the kind of view about interpretation that Dworkin defended in Law's Empire.

AN INFERENTIALIST APPROACH TO LEGAL ARGUMENTATION

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ABSTRACT

In the second half of the 20th century argumentation theory presented itself as a critique of formal accounts of human reasoning and discussion: formal logic provides powerful tools for the study of reasoning but is insufficient to capture the features of argumentation and the function of argumentative practices in societal life. Since that groundbreaking standpoint, argumentation theory has grown impressively and constitutes a major field of research at present time. The contemporary landscape goes from dialectical and rhetorical perspectives on argumentation to more formal accounts affiliated with artificial intelligence and cognitive science research. One of the most prominent approaches is the "pragma-dialectics" of the Amsterdam school, where argumentation is assessed in terms of a pragma-dialectical model of critical discussion. Another important perspective is the analysis and classification of common argumentation schemes.

Legal argumentation theory shows similar trends. Some scholars express serious doubts about the application of formal logic to legal reasoning and argumentation. Others are keen to carry out a logical analysis of legal arguments. In any case it seems important to give an account of both the semantics and pragmatics of legal argumentation, and of both its logical and dialectical features. In our research we provide a battery of ideas and methods to analyse and assess legal arguments like the argument from literal meaning, the a contrario argument, the a simili argument, the argument from purpose, the argument from legislative intention and the argument from intratextual coherence. The general idea is to provide a "rationalization" of argumentative practices in law. What does this mean? We do not simply describe the arguments used by judges and other legal practitioners, nor we try to identify the mental states (beliefs, desires, intentions)

that explain the choice of a certain argumentative path. Furthermore, we do not put forward a normative theory of argumentation based on the general principles of linguistic communication and rational agency. The aim of our approach is to provide an inferential analysis of the argumentative patterns actually used in legal practice, and to make explicit the rules of inference or the inferential roles that are internal to the practice, i.e., that govern it on the basis of what judges and other legal practitioners actually do. As this applies to any argument used in legal practice, the approach does not suffer specific limitations and provides a unified account of legal argumentation.

INSTITUTION OF A COMMUNITY, INSTITUTION OF THAT COMMUNITY'S LEGAL PRACTICES, AND CONSTITUTION OF THAT COMMUNITY'S LEGAL NORMS

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ABSTRACT

Constitution of that Community's Legal Norms. This article proposes a novel explanation of the institution of a community, the institution of that community's legal practices, and the constitution of that community's legal norms. This explanation is constructed from the philosophical perspective of socio-normativist and inferentialist neo-pragmatism. In particular, Robert Brandom's normativist theory in pragmatics and inferentialist theory in semantics (1994, 2000, 2002, 2014, 2019) and Amie Thomasson's deflationist theory in metaphysics, specifically the simple ontology theory for abstract and social entities (2013, 2015, 2020, 2025). This article combines the neopragmatist perspective in philosophy (particularly the theories mentioned above) with a general theory of law extended and developed from them, as outlined in Caballero Elbersci (2025). For the construction of this article's specific proposals, a fundamental distinction is proposed between practical-normative attitudes of recognition (relevant for explaining the institution of a community and the institution of that community's legal practices) and practical-normative attitudes of acceptance (relevant for explaining the constitution of that community's legal norms).

A TALE OF TWO 'POSITIVISTS': IS INFERENTIALISM COMPATIBLE WITH LEGAL POSITIVISM?

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SW57 · Inferentialism in the Legal Domain
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ABSTRACT

In a previous paper, I argued that Hart's analysis of the semantics of internal legal statements can be reconstructed as an inferentialist account using Brandom's inferential role semantics. The kind of internal legal statements I focused upon are statements that apply legal rules whose validity under the rule of recognition is presupposed. In this paper, I endeavour to extend the inferentialist analysis to another type of internal legal statements, i.e., statements that apply the rule of recognition to determine whether a particular rule is valid. This is not a reconstruction of Hart's view, for regarding this second type of internal legal statements, Hart explicitly espoused a descriptivist—instead of inferentialist—approach. The project is nonetheless meaningful for it could lead to either of the following conclusions that would have important implications: that Hartian positivism can be sustained as a broadly pragmatist theory that contains a unified, inferentialist, analysis of internal legal statements, or alternatively, Hartian positivism crumbles under an inferentialist analysis of statements of legal validity, and as such, inferentialism provides a novel way of refuting Hartian positivism that has not been sufficiently explored in analytical jurisprudence. Here is the crucial question that needs to be addressed in this project: given that Hart's account of the rule of recognition is a phenomenalist account whereby the rule of recognition is constituted by official behaviour but nonetheless binding on them, does this account hinge upon a regularist notion of normativity that Brandom rejects? My tentative view is that it does not, for Hartian positivism is compatible with what Pippin calls 'inferential positivism', a position that is sometimes attributed to Brandom by his critics. The affinity between inferential positivism and Hartian positivism lies not only in the fact that both commit to phenomenalism about norms while averting regularism (this is done, in Brandom's

case, by incorporating Hegelian historicism, and in Hart's case, by incorporating the internal perspective of participants). It also lies in the fact that neither account explicitly commits to an underlying ethical ideal. The lack of such commitment creates similar problems for Hart and Brandom: for Hart, it makes his notion of critical morality a largely formal one that cannot adequately substantiate his ethical arguments for choosing a positivistic concept of law. For Brandom, it deprives inferentialism of a critical standpoint that distinguishes genuine norms from illusory ones, a deprivation that makes inferentialism defective in the eyes of Brandom's Hegelian critics.

DOES THE UNFORTUNATE KNOW MORE? EPISTEMIC SIDE-EFFECT EFFECT AND ITS IMPLICATIONS FOR LAW

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SW58 · Experimental Jurisprudence of Legal Interpretation: Empirical and Theoretical Perspectives on Understanding and Applying Legal Rules
Convenors: Piotr Bystranowski; Ivar Hannikainen; Bartosz Janik; Karolina Prochownik; Kevin Tobia

ABSTRACT

My presentation will focus on the Epistemic Side-Effect Effect (ESSE) and its implications for legal theory and legal decision-making. People are generally more inclined to attribute knowledge when an action leads to a norm violation than when it leads to norm compliance. ESSE constitutes an epistemic analogue of the Knobe effect (Knobe 2003).

The effect has been replicated in numerous experiments, and its occurrence has been confirmed by meta-analysis (Maćkiewicz, Kuś, Paprzycka-Hausman, Zaręba 2024). Another related phenomenon is the severity effect, namely the asymmetry in attributing intentionality between bad and very bad outcomes. Both effects have also been replicated among professional judges (Kneer & Bourgeois-Gironde 2017).

In my presentation, I will discuss the results of my own study concerning knowledge attribution in bad versus very bad scenarios, that is, a severity effect within ESSE itself. I will conduct a study using vignettes similar to those used in experiments conducted by (Kneer and Bourgeois-Gironde 2017).

The research addresses the core question of whether shifting a negative result from "bad" to "very bad" leads to a stronger ascription of knowledge to the agent. To test this, the theoretical hypothesis is operationalized through a between-subjects experimental design involving Polish-speaking volunteers. Participants are randomly assigned to one of two versions of a scenario detailing a mayor's actions, where the independent variable is manipulated solely by the description of the environmental outcome (bad vs. very bad). The operational hypothesis predicts that participants in

the "very bad" condition will attribute knowledge to the protagonist more frequently and intensely than those in the "bad" condition. This dependent variable is operationalized and measured using two distinct indicators: a dichotomous (yes/no) question regarding whether the mayor knew his actions would cause harm, and a 7-point Likert scale (ranging from "strongly disagree" to "strongly agree") assessing the degree of agreement with that statement. Statistically significant differences between the two groups across both measures will serve to confirm the hypothesis.

From the legal perspective, guilt may generally be understood as expressing the agent's attitude toward her action and its consequences. In legal adjudication, particularly in criminal law, crucial importance is attached to whether the agent knew about the possible consequences of her conduct and whether she intended to bring them about. ESSE suggests that knowledge attribution may be sensitive not only to the epistemic situation of the agent, but also to the severity of the outcome. This raises the possibility that agents associated with more harmful outcomes are perceived as "knowing more," and consequently as more blameworthy or guilty.

LEGAL INTERMEDIATION IN THE PROCUREMENT CONTRACT: EXPERIMENTAL EVIDENCE ON REGULATORY INTERPRETATION

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ABSTRACT

The meaning of a regulation is never settled by its text alone: what a standard requires in practice is shaped by the governance structures through which it reaches those who must act on it — the process Talesh and Pélisse (2019) call "legal intermediation". Across many intermediation sites, research finds that regulatory meaning is constructed through this process rather than transmitted by the text. One common site has received comparatively little attention in the legal intermediation literature: procurement contracts that have a regulatory standard embedded in them. We argue the contract is itself an intermediation device — its financial structure gives the contracting parties opposed reasons to read an embedded standard differently — and we test this with the methods of experimental jurisprudence (De Almeida et al. 2025), using a naturally occurring ambiguity in an Estonian road-maintenance standard.

Our experiments have so far established two things. First, contract role drives interpretation. Under a fixed-price (price-cap) contract the contractor is the residual claimant: payment is fixed, so every unit of activity the contractor can avoid is cost saved (Laffont and Tirole, 1993). Contractors therefore read underdetermined standards leniently — toward whichever licensed reading demands less — while clients, who get more service for the same price under the stricter reading, read them strictly. This gap between the two roles is moderated by fairness: clients soften toward contractors whom a strict reading would push below cost recovery. Second, a prior violation by the contractor shifts interpretation toward leniency — and it moves both parties alike, the client included, for whom a lenient

reading runs against their self-interest. Because the shift reaches even the party it does not benefit, it cannot be put down to self-serving rationalisation by the violator. Organisational practices such as checklists, standard protocols, and monitoring routines are widely understood, in safety and high-reliability research (Reason 1990; Weick and Roberts 1993; Gawande 2009), to guard against breach. Our findings suggest they serve a semantic function as well: by forestalling the violations that would otherwise pull interpretation toward leniency, they hold the standard's operative meaning in place.

We close our talk by describing a stage of our research that is currently underway but not yet finished. We hypothesise that altering the payment structure of a contract — from price-cap to per-unit — inverts the parties' interpretive preferences. Joined to an account of why particular payment structures are adopted, and of how they are distributed across jurisdictions and over time, this should yield an explanation of how, and why, the operative meaning of one and the same national standard varies from one jurisdiction to the next. We report where our theoretical, corpus, and interview work currently stands.

UNCERTAINTY REPRESENTATION AND STRATEGIC CHOICE IN PRE-LITIGATION BARGAINING

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ABSTRACT

This paper presents the design of a human experiment in experimental jurisprudence on graded uncertainty representation in legal decision-making in pre-litigation bargaining. The study asks a simple yet underexplored question: when the economic structure of a dispute is held constant, does the way uncertainty is represented change the strategies chosen by the respondents? The project is motivated by the claim that legal uncertainty is not binary. Instead, it operates across distinct levels, from clear probabilistic assessment to conflict between precise models, to Ellsberg-style ambiguity, to potentially irreducible verbal uncertainty. The experiment, therefore, tests whether strategic choice depends not only on expected value, but also on the representation of the uncertainty itself.

The study uses a matched 2x4 between-subjects design. The first factor is context: a legal consumer dispute or a non-legal gambling choice. The second factor is uncertainty representation: point estimate, deep uncertainty, Ellsbergian mixed uncertainty, and natural-language ambiguity. In the legal scenario, participants act as claimants in a dispute. They receive some evidence supporting their claim, while the retailer offers alternative explanations. In the gambling scenario, participants face a structurally matched lottery. Across all conditions, participants choose between accepting a given sum immediately or continuing to a later outcome. If they continue, they have to pay the continuation value mimicking the costs of legal proceedings. The benchmark point-estimate condition is calibrated so that a simple expected-value reasoner should be exactly indifferent.

The core manipulation concerns only how uncertainty is shown. In the point-estimate condition, participants see one clear favorable probability.

In the deep-uncertainty condition, they see three precise but conflicting models. In the Ellsbergian condition, they see a direct contrast between a single admissible point estimate and an admissible ambiguous ensemble spanning different probabilities. In the ambiguity condition, they receive three natural-language readings of the same situation using calibrated probability words. The experiment measures accept-versus-continue choice, reservation values, confidence, and self-reported decision logic. This allows a direct test of the paper's central claim: whether uncertainty representation continues to predict pre-litigation bargaining choice.

The expected contribution is twofold. Empirically, the study provides a controlled test of whether graded uncertainty representation has distinct behavioral effects in legal and non-legal settings. Theoretically, it helps connect modes of representation of predictive models of legal outcomes with prescriptive questions about how rational agents should act under shallow, deep, mixed, and fully ambiguous uncertainty. In that sense, the experiment functions as a mechanism study linking prediction, uncertainty representation, and human strategy in conditions of uncertainty.

THE INTERPRETATION OF PRECEDENT: CONCEPTUAL AND EMPIRICAL ANALYSIS

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ABSTRACT

Objective: my thesis provides a conceptual analysis of the expression "the interpretation of precedent" using the methodological tools of analytic philosophy. The thesis argues that the meaning and explanatory scope of the expression vary depending on how its two core components, interpretation and precedent, are understood. To carry out a conceptual analysis it is necessary to systematize what legal scholars have written regarding the interpretation of precedent. By reconstructing the main positions developed by legal scholars, the thesis seeks to clarify conceptual ambiguities that currently characterize the debate. This analytical effort allows for the proposal of a more refined conceptual and terminological apparatus capable of accounting for the full range of interpretive possibilities identified in the literature. Now, to propose a conceptual apparatus, it is necessary to present an overview of the main theories of interpretation. In examining these theories, I will explain their historical background and philosophical assumptions. The expression "the interpretation of precedent," obvious as it may seem, contains two terms that have received significant attention in the philosophy of law: interpretation and precedent. In the thesis, I aim to outline the ideas of the main legal theorists concerning interpretation and their approaches to precedent. In the second part of my thesis, I carry out an empirical study of judicial decisions, focusing on precedents of the Inter-American Court of Human Rights concerning the doctrine known as conventionality control. Over time, the Court has developed and consolidated this doctrine through a series of contentious cases. The aim of this part is to examine how the Court interprets and applies its own precedents and to explain these practices using the conceptual framework developed in the first part of the thesis. Through a focused examination of selected

cases, the thesis analyses the interpretive techniques employed by the Court, particularly in decisions in which the ratio decidendi is interpreted and expanded. I will corroborate the thesis that judges, rather than merely applying, following, or citing precedents, in fact carry out complex operations that are often overlooked or explained through an inadequate conceptual framework. To this end, I will analyse judicial decisions and corroborate several theses advanced by Llewellyn and Chiassoni concerning the interpretation of precedent.

Hypothesis: the understanding and explanation of the expression "the interpretation of precedent" vary according to the theory of interpretation one endorses. Different theories of interpretation assign greater or lesser importance to the object-documents susceptible to interpretation. Consequently, when explaining the interpretation of precedent, different interpretive theories may offer divergent accounts of what judges actually do. Conceptual analytical methodology: I will take care to avoid answering metaphysical questions and instead focus on a conceptual problem: what does the interpretation of precedent mean? I will begin from a position of scepticism toward the existing conceptual and terminological framework surrounding the expression "interpretation of precedent." I will seek to propose a framework that allows for a clearer understanding of the expression "the interpretation of precedent".

INSTITUTIONAL MEDIATION IN LEGAL INTERPRETATION: RETHINKING EXPERT LEGAL REASONING IN THE AGE OF AI

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ABSTRACT

Recent debates in experimental jurisprudence have increasingly examined how legal rules are interpreted and applied by both ordinary citizens and legal experts. Much of this research focuses on the contrast between textual and purposive reasoning, the role of morality in legal interpretation, and the cognitive processes underlying legal judgment. Empirical approaches such as survey experiments may offer one possible way to investigate professional legal reasoning as well. However, in the context of judicial practice, particularly in civil-law adjudication, it remains unclear whether tacit and institutionally embedded forms of reasoning can be adequately captured through questionnaire-based methods alone.

This paper seeks to contribute to these discussions from a different perspective. Rather than focusing primarily on the contrast between laypersons and experts, it examines the institutional structure of expert legal reasoning itself, particularly in judicial practice. In civil-law jurisdictions, legal education traditionally emphasizes legal syllogism, logical consistency, and deductive reasoning. Even in common-law systems, rule-oriented reasoning continues to play an important role, despite differences in doctrinal structure and legal culture.

At the same time, however, it has long been recognized that actual judicial reasoning cannot be fully explained by formal deduction alone. Judicial interpretation and adjudication are also influenced by tacit orientations, practical intuitions, and institutionally shared professional practices. In Japanese civil litigation, for example, legal reasoning is formally structured through the framework of youken-jijitsu (issues of legally relevant

facts and claims), yet judges and practitioners have also referred to less formal but practically important orientations such as suji and suwari—roughly corresponding to the perceived coherence, direction, or "fit" of a case within institutional legal practice. These elements often function reflectively in the process of adjudication, shaping how arguments are organized, revised, and evaluated.

Despite their practical importance, such orientations remain largely implicit and undertheorized. Moreover, it remains unclear whether they can be adequately captured through conventional survey-based approaches alone. This paper therefore explores the possibility that experimental jurisprudence may be expanded through the analysis of judicial decisions, doctrinal structures, and institutional legal practices themselves, including corpus-based analyses of judicial reasoning and legal discourse.

This issue becomes particularly important in the age of AI-assisted adjudication. Current legal AI systems tend to model legal reasoning primarily in terms of rule application and formal inference. However, if actual judicial reasoning also depends upon tacit institutional orientations and reflective professional judgment, existing AI approaches may fail to capture important dimensions of legal interpretation and adjudication.

This paper proposes that experimental jurisprudence may be expanded through the analysis of judicial decisions and institutional legal practices, particularly in the context of AI-assisted adjudication.

HOW DO WE EXPECT PEOPLE—AND MACHINES—TO RESOLVE TEXT/PURPOSE TENSIONS IN RULE INTERPRETATION?

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ABSTRACT

Rules are often over- or under-inclusive relative to their purpose, forcing interpreters to choose between the text and the underlying goal. We investigated how laypeople expect this tension to be resolved, and whether those expectations differ depending on whether the interpreter is a human or a large language model (LLM). These findings shed light on folk theories of machine judgment and have implications for how AI systems are deployed in rule-governed contexts.

TEXTUAL COMPLIANCE AND ITS LIMITS: A BEHAVIORAL STUDY

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ABSTRACT

The interpretation of (legal) norms has only recently become the subject of experimental investigations. So far, they are based on vignette studies, asking participants whether a rule was violated in a fictional scenario. The results speak more to legal judgment than legal compliance: Participants evaluate the behavior of others as a third party, and both judgment and fictional decisions have little consequence. This may change the way rules are interpreted: One of the main findings in vignettes is that subjects interpret a norm primarily in line with its text instead of its purpose, especially when asked to coordinate with one another. The salience of textual meaning may, however, be diminished if it disregards the purpose of a norm at the (real) expense of others or themselves.

This study addresses some of those shortcomings by introducing a real-life behavioral task (dictator game) during which participants choose from available options for resource allocation with a predetermined rule to follow and with a clearly stated purpose of this rule. The main manipulation of the study consists of giving participants scenarios in which the text and the purpose of a rule are aligned and three types of cases in which text and purpose diverge. We also used the social value orientation measure and simple rule-following task to control for other possible explanations for assumed differences between cases.

CURSOR KINEMATICS CAPTURE THE INTERPLAY BETWEEN LETTER AND SPIRIT

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ABSTRACT

When facing philosophical dilemmas, we are often torn between opposing answers. One such dilemma arises in the domain of legal interpretation when forced to choose between applying a law's letter vs. its spirit. How do people arbitrate between these conflicting intuitions? We develop a method to answer this question by deriving the "force" of intuitions from cursor trajectories obtained in a web-based, mouse-tracking experiment, using inverse dynamics. Participants were invited to apply a variety of rules in both easy and difficult cases. Their trajectories revealed distinct phases of conflict detection and resolution, and we documented the roles of working memory capacity and inhibitory control throughout these processes. Cursor kinematics goes beyond the dominant methods in mouse-tracking, offering a promising toolkit to trace the causal effects of distinct, i.e., competing and/or reinforcing, intuitions over the course of a decision.

NEGATIVE DUAL CHARACTER CONCEPTS: AN EXPERIMENTAL INVESTIGATION

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ABSTRACT

Dual character concepts have received significant attention from experimental philosophers (e.g., Knobe et al., 2013; Liao et al., 2020; Phillips et al., 2017) and experimental jurists (e.g., Flanagan & Hannikainen, 2020; Almeida et al., 2022; Skoczeń, 2026). They are defined as possessing two independent criteria for categorization, each associated with a distinct sense of the concept. One of these criteria is descriptive, the other is normative. Almost all examples discussed in the literature involve a positively valenced normative element (e.g., friend, art, happiness, law, rule; see Knobe et al., 2013; Liao et al., 2020; Phillips et al., 2017; Flanagan & Hannikainen, 2020; Almeida et al., 2022; but see Skoczeń, 2026). For instance: the normative criterion associated with the concept of scientist is the pursuit of empirical truth and knowledge. Presumably, pursuing empirical truth and knowledge is a good thing. But can dual character concepts also involve negatively valenced elements? For instance: there is a sense in which someone who betrays another's confidence without nurturing ill-will towards them is not a true traitor. In this paper, we report data suggesting that negatively-valenced concepts such as enemy and traitor behave very similarly, but not identically, to positively-valenced dual character concepts such as friend or a loyal person.

Besides making a contribution to the cognitive science of dual character concepts, the paper also connects the experimental data with philosophical analysis of their implications for the existing explanatory models of dual character concepts (as encoding abstract values realized by descriptive fea-

tures — Knobe et al., 2013; idealized primary functions connected to social roles — Leslie, 2015; commitments to perform idealized functions — Del Pinal & Reuter, 2015; 2017), including more recent critical perspectives (Phillips & Plunkett, 2023; Baumgartner, 2024), and discusses the implications of negative dual character concepts for dual character models of legal concepts specifically.

AI-MEDIATED LEGAL REASONING AND THE PROBLEM OF "AS-IF" EPISTEMIC AUTHORITY IN THE CASE OF LLMS

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ABSTRACT

Recent work in experimental jurisprudence has yielded important empirical insights into how individuals interpret and apply legal rules, particularly with respect to ordinary meaning, textual purposive conflict, and the role of moral evaluation. Yet this body of research largely proceeds under an implicit assumption: that legal interpretation is a process of relatively unaided individual cognition. This assumption sits uneasily with contemporary reasoning practices.

Across a wide range of contexts, individuals now turn to large language models when interpreting rules, resolving ambiguity, or evaluating the permissibility of actions. This phenomenon is not confined to lay reasoning. Emerging evidence suggests that model-generated outputs are also entering expert legal contexts, including instances in which judges engage with such outputs when interpreting contested legal terms. Taken together, these developments raise a broader question about the conditions under which legal judgments are formed today.

At the same time, recent work has explored how individuals come to attribute epistemic authority to AI systems and defer to their outputs, particularly in high-stakes or uncertainty-laden contexts. Other studies suggest that opacity and limited interpretability may further increase such deference, shaping patterns of reliance that are not reducible to simple trust or information seeking. More broadly, algorithmic systems have been shown to participate in the reconfiguration of epistemic authority within contemporary knowledge environments, influencing what is treated as credible or authoritative. These findings suggest that the use of large language models

is not only a matter of cognitive assistance, but also of how epistemic authority may be treated or ascribed in practice.

Importantly, this does not require treating such systems as epistemic agents or as bearers of knowledge. They generate structured informational outputs rather than knowledge in the strict sense, and they lack the agential and normative capacities typically associated with epistemic subjects. The relevant phenomenon instead concerns how human agents come to rely on such outputs as if they carried epistemic authority in their own processes of judgment, justification, and interpretation. The issue is therefore not whether such systems genuinely possess epistemic authority, but how and why they come to be treated as authoritative within human reasoning practices.

Against this background, the inquiry pursued here concerns how experimental jurisprudence should understand legal interpretation under conditions of AI-mediated reasoning. If interpretive judgments are increasingly formed in interaction with systems whose outputs are treated as authoritative in practice, then the distribution of epistemic authority in legal reasoning becomes a central, yet underexplored, problem. This raises a further concern for experimental jurisprudence. If the field aims to capture how individuals actually reason about legal rules, then it must take into account that such reasoning increasingly occurs in interaction with AI systems. Ignoring this interaction risks studying legal interpretation under epistemic conditions that no longer accurately reflect real-world reasoning practices.

The aim is not to offer a prescriptive account, to propose specific experimental designs, or to argue that such systems improve or replace human judgment. Rather, the contribution is diagnostic and programmatic. It seeks to draw attention to an emerging but insufficiently theorized feature of contemporary legal cognition and to motivate its systematic investigation. By identifying this shift, the inquiry aims to invite further empirical and theoretical engagement within experimental jurisprudence. Failing to account for this development risks mischaracterizing the conditions under which legal reasoning now occurs and limiting the explanatory scope of the field.

WHY MIGRANT GIRLS' ACCESS TO JUSTICE MATTERS: AN ANALYSIS OF SELECTED COURT DECISIONS CONCERNING MIGRANT WOMEN, CHILDREN, AND GIRLS

Hande Evsen

SW59 · Justice and Mobility: Access, Rights, and Barriers
Convenors: Nadire Özdemir; Ben Hudson

ABSTRACT

At the heart of this study are girls fleeing their countries of origin due to factors such as persecution, inhumane treatment, and the threat of gender-based violence to seek protection in other countries. Within host countries, these individuals encounter formidable barriers and inequalities in accessing justice, exacerbated by their intersectional vulnerabilities. Both their status as girls and their different legal status create multifaceted challenges in accessing justice. For these girls who encounter significant obstacles, judicial decisions serve as a key instrument in strengthening their access to justice.

Within this framework, the study first examines the concept of access to justice and its implications from a gender perspective. Once this foundation is established, the inquiry shifts to the fundamental principles governing international legal frameworks, particularly regarding the status of individuals as children, female, and migrant. Within the framework of the examined principles, conventions, the study will focus on migrant girls who occupy the intersection of migrant 'child' and 'woman' categories. Given that the status of a 'girl' inherently encompasses being both a child and female, the study will conduct a specific analysis by identifying the barriers to access to justice and their reflections in judicial decisions addressing children, women, and migrants; thereby addressing the unique intersectional vulnerabilities of this demographic.

The primary objective of this research is to demonstrate how access to justice for migrant girls subjected to intersectional injustice can be more effectively ensured through judicial decisions. To this end, the study will analyze relevant court decisions to address existing uncertainties in both theory and practice, formulate interpretations aimed at reinforcing migrant

girls' access to justice, and offer normative recommendations for improvement.

UASC HOTELS: AN ECHR CHILDREN'S RIGHTS ANALYSIS OF A NOT SO 'TEMPORARY' EMERGENCY MEASURE

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SW59 · Justice and Mobility: Access, Rights, and Barriers
Convenors: Nadire Özdemir; Ben Hudson

ABSTRACT

Any child who is in need of the care of the state should always be placed both in age-appropriate and safe accommodation and in the care of staff who are properly trained; Unaccompanied asylum-seeking [UAS] children are no different. In the UK these functions are typically performed by local authorities through their social work departments. However, the UK's previous Conservative government's practice of using hotels to accommodate UAS children in England between 2021-2024 discriminated against UAS children and arguably fell short of its human rights obligations towards them. What is worth discussing at this panel includes how the UK's practices compare to other member states of the ECHR; What are some aggravating factors for UAS children having their rights protected by a host state; How does one reconcile the UK High Court's approach to discrimination with use of Article 14 ECHR in a similar UAS child's case before the ECtHR; to what extent is subcontracting to the private sector a concerning development in the governance of asylum & immigration.

ANNEXATION OF TERRITORY IN THE MIDDLE EAST UNDER INTERNATIONAL LAW

Jessica Hellani

SW59 · Justice and Mobility: Access, Rights, and Barriers
Convenors: Nadire Özdemir; Ben Hudson

ABSTRACT

The contemporary Middle East is witnessing significant territorial, political, and demographic developments that raise fundamental questions concerning sovereignty, territorial integrity, international law, and the protection of civilian populations during armed conflict. This presentation examines the extent to which ongoing conflicts in Palestine, Lebanon, and Syria affect territorial realities in the region and challenge established legal frameworks governing the use of force, occupation, and territorial administration.

Beginning with the United Nations Partition Plan for Palestine (UN Resolution 181) of 1947, the study traces the evolution of territorial disputes and competing claims over land from the end of the British Mandate to the present day. It then analyzes three major legal and diplomatic frameworks intended to regulate conflict and preserve regional stability: UN Resolution 181, United Nations Security Council Resolution 1701 governing the cessation of hostilities between Israel and Lebanon following the 2006 war, and the 1974 Agreement on Disengagement between Israeli and Syrian Forces concluded after the 1973 Arab-Israeli War.

The presentation evaluates contemporary developments in Gaza, South Lebanon, and the occupied Syrian Golan through the lens of these instruments, examining allegations raised before international institutions, states, and human rights bodies concerning military operations, settlement activity, territorial control, and prolonged occupation. Particular attention is given to the legal relationship between military control, territorial administration, and demographic change under international humanitarian law and international human rights law.

Using case studies from Palestine, Lebanon, and Syria, the paper investigates documented allegations of serious violations of international hu-

manitarian law and international human rights law, including forced displacement, attacks on civilian infrastructure, collective punishment, settlement activity, and restrictions on civilian populations. It further examines how these practices have been assessed by international institutions, legal scholars, and human rights organizations in relation to the principles of occupation law, self-determination, territorial integrity, and the prohibition of the acquisition of territory by force.

By connecting historical agreements with contemporary realities, this presentation argues that the current conflicts cannot be understood solely through a security lens. Rather, they raise important legal questions regarding the interpretation and implementation of international legal norms governing occupation, territorial change, civilian protection, and state responsibility, as well as their implications for the future legal status of disputed territories in the Middle East.

RETHINKING HEADSCARF BAN: IS IT NECESSARY STATE POLICY FOR A DEMOCRATIC SOCIETY OR MANDATORY VISIBILITY OF THE HAIR?

Zeynepgül Acar

SW59 · Justice and Mobility: Access, Rights, and Barriers
Convenors: Nadire Özdemir; Ben Hudson

ABSTRACT

Focusing in particular on European countries, legal regulations aimed at interfering the clothing of Muslim women, many of whom are immigrants, can be divided into three groups: the prohibition of burqa/niqab-style clothing that veils full face in public spaces, the ban on headscarves in certain educational institutions, and the prohibition of public officials wearing any religious symbols, including headscarf, in public institutions. Courts emphasize the "principle of coexistence" (vivre ensemble) and the concept of "public security" as legal grounds for prohibiting face-covering headscarves. The headscarf ban in educational institutions is considered a regulation within the state's margin of appreciation to protect the secular structure of schools and the "democratic social order." The prohibition of public officials wearing any religious symbols, including headscarves, is mainly explained by the principle of "state neutrality." The ambiguity in the definitions and scope of all these principles and concepts used to ground state policies and to justify judicial decisions, makes headscarf bans even more controversial.

In general, this study recognizes these bans, which aims regulating the visibility of Muslim women in the public sphere through state intervention, as essentially "state intervention against the individual's will to decide how much of their body they will expose to the public." Thus, considering the headscarf not as a "religious symbol" but as "a person's choice not to show their hair" undermines the legal justifications upon which these bans are based. The "motivation not to show one's hair" is purely related to the individual's inner world, and determining whether this motivation stems from a religious belief is outside the realm of state intervention and regulation, both practically and theoretically. This study examines the difference between covering any other part of the body and covering the hair,

and discusses the impact of this difference on how hair covering is interpreted by the legal system as a “religious symbol”; it argues that the only thing that can prevent an individual from freely covering any part of their body is limited to situations where public safety is at stake. Furthermore, this study claims that, from an individual's perspective, headscarf bans point to an aggressive policy that forces the display of one’s hair in order to have equal rights and equal access to public services as other citizens do.

NON-DOMINATION AND THE ETHICS OF MIGRATION

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Convenor

SW60 · Egalitarianism and Its Discontents: Exploring Ambivalent Outcomes of Equality-Oriented Policies
Convenors: Pedro Moniz Lopes; Jakub G. Firlus; Katarzyna Eliasz

ABSTRACT

This presentation builds on Iseult Honohan's account of non-domination as a framework for analyzing migration controls. Starting from the tension between human rights and states' claims to self-determination, it argues that Philip Pettit's dignity-based republicanism offers the most principled framework for reconciling these demands. After a critical survey of four competing approaches – open-border liberalism (Carens, Oberman), democratic cosmopolitanism (Abizadeh), communitarianism (Walzer), and liberal nationalism (Miller) – the presentation turns to three variants of non-domination theory, defending Pettit's account as best suited to migration policy analysis. It then identifies the specific vulnerabilities migrants face – weaker legal protections and limited means of contestation – and proposes seven criteria for evaluating migration law: legal status, equality, administrative discretion, accountability, contestability, reasons, and representation.

TWO FACES OF EQUALITY, TWO SOURCES OF INEQUALITY

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Convenor

SW60 · Egalitarianism and Its Discontents: Exploring Ambivalent Outcomes of Equality-Oriented Policies
Convenors: Pedro Moniz Lopes; Jakub G. Firlus; Katarzyna Eliasz

ABSTRACT

Constitutional equality has at least two different meanings: equality-equivalence, as in "all citizens are equal", and equality-similarity, as in "the State has the duty to promote equality between men and women". The main claim sustained here is that equality reasoning must be sharply divided into a theory of category quality, on the one hand, and a theory of constitutional balancing, on the other. This division should clarify both (i) the abductive conditions of sound classification in equality-equivalence and (ii) the proportionality trade-offs behind similarity-promoting measures in equality-similarity.

Equality-equivalence is not itself scalar, although the properties on which it is constructed often are. The legal act of classification converts degrees of similarity into categorical equivalence. Equality-equivalence is then not a freestanding substantive value, but the iceberg tip of a technique of categorization. Equality judgments always presuppose a standard of relevance that selects some properties and suppresses others. Before law can demand equal treatment, it must first construct the class whose members count as equal.

The key implication is that equality-equivalence depends on the abductive quality of legal categories, and on the strength of the underlying theories, rather than on an independent ideal of sameness. The real philosophical problem is not whether equality requires sameness, but whether the relevant category is justified. Good categories unite cases through adequate thresholds of similarity though one must accept the inevitable cost of excluding near-similar cases or those costs underlying analogy-making.

Equality-similarity, by contrast, is based on a constitutional goal akin to reducing factual disparities between persons or groups. Unlike equality-equivalence, it does not operate through logical structures of classification, but through interventions (means) designed to make social outcomes "more" alike. Measures such as gender / racial quotas or redistributive policies seek to increase similarity along a selected dimension (income, representation, opportunity, or social status). They entail differences of treatment through the limitation of certain prima facie constitutional rights (i.e., electing representatives of any gender, right to property, access to university, etc.). Reasoning with equality-similarity goals then amounts to assessing the suitability and necessity of means to achieve the goal and, ultimately, to balancing the legal costs in limiting a constitutional right (that which is limited by the different treatment qua a causally apt measure for obtaining equality-similarity) against the legal gains in promoting another constitutional right (that which is promoted by the different treatment). Similarity-promoting measures therefore function through means-end reasoning and inevitably involve trade-offs with other constitutional rights, liberties, or principles.

BEYOND MERIT: THE LIMITS OF EQUALITY OF OPPORTUNITY

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SW60 · Egalitarianism and Its Discontents: Exploring Ambivalent Outcomes of Equality-Oriented Policies
Convenors: Pedro Moniz Lopes; Jakub G. Firlus; Katarzyna Eliasz

ABSTRACT

The presentation provides a critical examination of the two main variants of the principle of equality of opportunity, namely formal equality of opportunity, which forbids discrimination on irrelevant grounds, and Rawlsian fair equality of opportunity, which seeks to neutralize the effects of social background on individuals' chances of success in competition for social positions and offices. The main claims defended in the presentation are as follows. First, it is argued that formal equality of opportunity may sometimes require less extensive enforcement than is commonly assumed, since competitive markets can penalize irrational discrimination, although legal protection remains essential where market failures persist. Second, fair equality of opportunity, when pursued without sufficient limits, may entail deep and continuous state intervention in social, especially family, life and may intensify the moralization of outcomes: success comes to appear fully deserved, while failure exposes individuals to humiliation. In short, meritocracy-the outcome of a consistent implementation of fair equality of opportunity-promises fairness, yet it can humiliate as much as it rewards. Drawing on Michael Young's critique of meritocracy and Simone Weil's account of non-comparative dignity, the presentation argues that, in order to prevent the transformation of social hierarchy into moral hierarchy, equality must be complemented by the recognition of social roles as distinct vocations and by honoring hardship rather than ranking individuals according to competitive success. Accordingly, fair equality of opportunity should remain a legal and political ideal. However, only by pairing equality of opportunity with a conception of non-comparative dignity can we preserve fairness while mitigating the moral costs of meritocracy.

THE PARADOX AND CONTRADICTION OF PROTECTION: INEQUALITY AND PROCEDURAL JUSTICE

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SW60 · Egalitarianism and Its Discontents: Exploring Ambivalent Outcomes of Equality-Oriented Policies
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ABSTRACT

This paper examines how informal anonymous reporting mechanisms, designed to promote equality, can potentially produce and entrench new forms of inequality. These mechanisms are intended to make reporting easier, protect complainants from retaliation, and enable early, non-adversarial resolution. Yet in practice, they may also undermine procedural fairness in ways that call into question their legitimacy as instruments of justice.

Drawing on Niklas Luhmann, the paper distinguishes between paradox and contradiction. A paradox is a tension that a system can absorb and manage; a contradiction is more disruptive, marking a point at which the system struggles to reconcile its own principles and risks losing coherence. Informal anonymous reporting mechanisms operate within a tension between accessibility and fairness. While they expand opportunities to report, they may also restrict disclosure, limit opportunities for response, and reduce evidential transparency.

Inequality does not arise at the level of access, since complainants, whether employees or managers, can initiate these procedures. Rather, it emerges in how the process operates once it begins. Respondents may be required to answer allegations that are only partially specified, while those initiating the complaint remain protected from scrutiny. This can produce asymmetries of information, accountability, and exposure that place one party at a structural disadvantage. What appears as equality at the point of entry may become inequality in the conditions of response.

Through a complementary reading of Michel Foucault, the paper argues that these procedures also function as techniques of disciplinary power.

They organise visibility: the respondent becomes observable and accountable, while the source of accusation remains concealed. Procedural thresholds and safeguards do not necessarily eliminate this imbalance; rather, they may relocate it within the operation of the process itself.

The paper argues that these mechanisms are best understood as paradoxical because they seek to stabilise competing goals of protection and procedural fairness. However, where these tensions intensify, they approach contradiction: a point at which the system's commitment to equality and its procedural operation can no longer be reconciled without undermining its own legitimacy. Informal anonymous reporting mechanisms do not merely manage disputes; they may also reorganise relations of inequality through the very mechanisms designed to mitigate them.

STOP COMPARING YOURSELF TO OTHERS: THRESHOLD-BASED APPROACH TO INTERGENERATIONAL JUSTICE

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SW60 · Egalitarianism and Its Discontents: Exploring Ambivalent Outcomes of Equality-Oriented Policies
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ABSTRACT

This paper will discuss egalitarian approaches to intergenerational justice and what ethical and metaphysical assumptions they require. In particular, I will explain their relation to the non-identity problem, i.e., the issue of benefits or harms to persons, whose existence depends on the action causing those benefits or harms. I argue that threshold-based approaches allow us to justify equality-oriented policies without relying on specific metaphysics of possible persons. These questions have significant implications for the debate on climate change mitigation, use of non-renewable resources and protection of ecosystems.

Firstly, I consider leximin (lexical maximin) egalitarianism, which stipulates that we should choose public policy that would be best for the worst-off people across all generations. As Derek Parfit argued, such society-wide policies influence the very identity of future persons; therefore, they may be considered better overall, but not better for those persons (since they would not exist otherwise). A leximin egalitarian has to provide an answer for that so-called non-identity problem and explain whether such non-comparative benefits have equal value to comparative ones. This may require rejection of the person-affecting principle or granting merely possible persons a strong metaphysical status. Both approaches are highly controversial.

I want to contrast this with another egalitarian account present in the literature, which requires us to ensure that the next generation is at least equally well-off (whether in welfare or access to goods) as we are. I call this the non-decline principle, for it is based on a threshold set by what the previous generation left us. It is obligatory for the current generation to

satisfy the threshold, while providing benefits above that is supererogatory.

I will inquire into the inner workings of this account – in particular, which of its assessments are axiological in nature and which are not. In my view, the axiological evaluations are limited to the comparison between how well-off the next generation will be in the assessed outcome and how well-off the same individuals would be if the threshold were satisfied. It is crucial to note that we are comparing this possible outcome not with another possibility but with an idealised scenario that serves as a normative standard. In non-identity cases, realising this scenario is metaphysically impossible: satisfying the threshold would require choosing a different policy, which would alter the identities of the persons in question. We can nonetheless make such a comparison and use it to establish the permissibility of choosing a given outcome. All further analysis concerns only permissibility and not the goodness of available choices: rather than asking 'Is outcome A better than outcome B?' (axiological), we ask 'Is outcome A permissible given threshold T?' (deontic). In this way, threshold-based accounts avoid asking whether non-comparative benefits have equal value as comparative ones. This limited reliance on the axiological dimension also limits its reliance on specific metaphysics of possible persons and harm.

Finally, I will consider an important objection to my view: whether drawing normative conclusions from comparisons between possible and impossible worlds violates the ought implies can principle.

TURNING SWORN ENEMIES INTO MERGING STRENGTHS? CARE ETHICS VIS-À-VIS LIBERALISM

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ABSTRACT

Certainly, the significance of care serves as a fundamental cornerstone in defying the conventional scholarly understanding spanning diverse fields. At its core, care ethics has questioned whether and how moral development may rest on gender differences, thereby exemplifying two very distinct normative ethical frameworks: the ethics of rights and the ethics of care. By doing so, care ethicists have set the stage for a more profound challenge on the level of fundamental philosophical (anthropological and political) positions. In a nutshell, care ethics radically dismisses the pernicious 'myth of autonomy' as it disregards the unavoidable relatedness between individuals, meaning the individual autonomous rationality as the exclusive reason for acting morally. Built on the premise of relational ontology, in a more explicit political level care ethics has challenged the Liberalism's hyper-focus on detached rationality, individual rights and (negative) liberty. For care ethicists, prioritising substantive contextual equality over formal abstract equality, is crucial from a welfare state perspective that genuinely addresses human dependency, equality and shared needs. That Liberalism expresses its preference for individualistic anthropology and the axiological primacy of the individual over the group, is beyond dispute. But: is Liberalism the antithesis of egalitarianism? Are rights and freedom favoured to the detriment of care and equality? Can the emphasis on needs rule out or supplant the language of rights, and if it can, would this enable democracy to get its rightful foothold worldwide?

EQUAL TITLES, UNEQUAL HOMES: THE FAILURE OF DISTRIBUTIVE JUSTICE IN THE RIGHT TO HOUSING

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ABSTRACT

The right to housing is widely understood as an egalitarian commitment, namely that no one should be without a place to live. The dominant philosophical accounts translate this commitment into a distributive program, where the state secures equality by allocating legal property titles, whether leases or ownership rights, to everyone. I call this approach the Property-Title View (PTV), exemplified by Katy Wells's Rawlsian defense of lease rights and Christopher Essert's Republican account of property and homelessness. I argue that the PTV is an equality-oriented proposal whose outcomes are self-defeating: while it promises to end homelessness by ensuring that every person holds a legal title to some space, it entrenches the very condition it claims to remedy, that is, the financialization of housing. I develop this critique by addressing two connected puzzles. The first is the value puzzle: what does the right to housing protect, housing-as-home or housing-as-asset? The second is the causation puzzle: what actually produces housing deprivation? How we describe the protected interest determines how we diagnose the threat. The PTV adopts a legalistic conception of home, where legal title is treated as constitutive of home-related activities, and therefore frames housing deprivation as a problem of unequal allocation. On this view, equality is achieved by handing out more titles. To map the terrain, I distinguish three approaches to the housing question. The Neoliberal approach treats housing as a market commodity and locates tenure security in individual ownership. The Welfarist approach treats housing as a market good requiring state correction, distributing legal titles to those the market underserves. Both share a legalistic conception of home and frame the housing crisis as a problem of al-

location. The Socialist approach rejects this framing and identifies the financialization of housing, where exchange value crowds out use value, as the systemic cause of housing deprivation. I argue that home is constituted by social relationships, not by legal status. The equal distribution of property titles, therefore, fails to track what the right to housing actually protects. I then contrast the PTV with the Human Rights Framework in international human rights law, especially under the ICESCR, the European Social Charter, and the ECHR. This framework protects diverse tenure arrangements, locates home in factual social ties rather than legal status, and secures occupants through protection from eviction rather than through ownership. It thus aligns with the relational conception of home and with the Socialist diagnosis. The upshot is a cautionary lesson about distributive justice in housing. A policy that distributes property titles equally still operates within, and helps to reproduce, a market that turns dwellings into assets. Genuine egalitarian protection of the home requires not more titles for more people, but legal mechanisms that protect occupation regardless of title, and that resist the financialization of housing. An equality-oriented framework can, paradoxically, sustain the inequalities it sets out to dissolve.

DO LEGALISM AND EGALITARIANISM GO HAND IN HAND? REMARKS ON FORMAL AND SUBSTANTIVE JUSTICE IN THE ERA OF DIGITAL TRANSFORMATION OF PUBLIC ADMINISTRATION

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ABSTRACT

This article attempts to deconstruct the relationship between the formalistic adherence to legal procedures (legalism) and the pursuit of substantive social equality (egalitarianism). The primary research objective is to determine whether, in the face of dynamic socio-technological transformations, the law alone is sufficient to realize the postulate of equality, or whether—as integrative jurisprudence argues—it is necessary to systemically integrate extra-legal factors into the processes of lawmaking and legal application. The study employs a methodological triad. A dogmatic-legal analysis and an examination of the doctrine of the philosophy of law are combined with a comparative legal approach regarding models of public administration. This theoretical perspective is complemented by an empirical analysis of secondary quantitative and qualitative data examining the level of citizen trust in public institutions and the dynamics of social exclusion. The discussion is centered around the theoretical tension between procedural (formal) justice and substantive (material) justice. The author demonstrates that blind legalism, rooted in a positivist belief in the self-sufficiency of the legal norm, often preserves structural inequalities. This theoretical conflict of paradigms is then applied to practical ground—the analysis of contemporary public policies shaped by profound social changes and the rapid development of new technologies in administration (GovTech). In this context, the phenomenon of a new social stratification caused by the digital divide, the mechanisms of social polarization, and the issue of algorithmic fairness are discussed in detail. The analysis of automated decision-making (ADM) systems and artificial intelligence (AI) in

the public sector proves that algorithms—under the guise of mathematical neutrality and legalistic objectivity—can replicate and deepen historical biases. The article redefines the structure of normative concepts, pointing to the necessity of shifting from the concept of "equality before the law" to "equality through law." The final conclusion states that law as a closed system is incapable of securing inclusivity on its own. For the full realization of egalitarianism, it is essential to move beyond the traditional legal syllogism and flexibly incorporate extra-legal criteria: the sociology of exclusion, technological ethics, and active antidiscrimination policies. This study constitutes an original contribution to the international debate on the legitimacy crisis of the Rule of Law in the digital era.

WHY LAW DOES NOT GOVERN BY FIAT: LEGAL UPTAKE, OBLIGATION, AND AUTHORITY

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ABSTRACT

Law is often taken to govern by issuing directives whose authority derives from their enactment. Yet this picture leaves unexplained how legal obligation and legal authority can arise without collapsing into fiat. This limitation becomes especially pressing under contemporary conditions in which legal authority operates across pluralistic societies, complex institutional settings, and diffuse structures of coordination that resist simple models of command. This paper develops an account of legal obligation—and, through it, a reconstructed account of legal authority—that explains how law exercises normative control without relying on command, coercion, or mere social acceptance. Building on recent practice-sensitive approaches in analytic jurisprudence, especially Mark Greenberg's Moral Impact Theory, it argues that existing accounts do not adequately explain which aspects of legal institutional action genuinely alter the normative landscape, nor how to distinguish those that generate legal obligation from those that merely impose constraints by institutional force.

The paper proposes that legal obligation arises through a distinctive structure of joint action between enactment and uptake. It shifts the explanatory focus away from the conditions of legal validity toward the conditions under which enactments and responses count as intelligible legal actions within a practice capable of generating obligation. Legal enactments function as invitations to trust that a publicly identifiable pattern of action improves the moral situation, while uptake by officials and citizens stabilizes the conditions under which responding to those enactments remains intelligible as acting for reasons that apply independently of the legal act itself. In this way, legal practices do not generate reasons ex nihilo but structure the coordinated realization of reasons that already apply within a political community.

This interaction exhibits a form of constitutive indecomposability: enactments and their uptake become intelligible only through their reciprocal relation within an ongoing institutional practice. This structure explains how legal norms can remain intelligible and action-guiding even under conditions of disagreement, partial compliance, and persistent violation—conditions that are increasingly characteristic of contemporary legal orders. At the same time, it clarifies why not every instance of institutional action that alters the moral landscape counts as lawgiving in the relevant sense.

On this view, legal authority is not the power to create reasons by sheer issuance, but the institutional capacity to organize uptake under conditions that preserve the independence and public intelligibility of the reasons law coordinates. To prevent legality from collapsing into fiat, the paper introduces two structural constraints on this interaction. The interpersonal constraint governs the permissible direction of civilian agency, requiring that enactments be justifiable as part of a shared scheme of action. The intrapersonal constraint governs the structure of practical reasoning, requiring that uptake not render compliance self-defeating or circular. Together, these constraints identify the conditions under which enactment and uptake can jointly generate not only legal obligation but a non-arbitrary form of legal authority.

By locating the normativity of law in the structured interaction between enactment and uptake, the paper offers a unified account of obligation and authority that explains how legal systems can retain their normative grip under contemporary conditions in which traditional models of centralized, command-based authority face increasing strain. Law governs, on this account, not by fiat, but by sustaining the institutional conditions under which enacted decisions can be taken up as reasons within a shared normative practice of action.

I SOLEMNLY SWEAR, YOUR HONOR: THE THREAT OF DEEPFAKE-INDUCED UNCERTAINTY TO JUDICIAL FACT-FINDING AND EPISTEMIC AUTHORITY IN ADJUDICATION

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ABSTRACT

In recent years, the so-called "deepfakes" has rapidly evolved into tools that can convincingly replicate a person's face, voice and behaviour, with minimal technical skills and at very low cost, thereby challenging long-standing assumptions about what can be trusted as evidence of reality, both in everyday communication and in formal institutional settings. Deepfakes are usually defined in the literature as fabricated audiovisual content created or altered to appear to a reasonable observer to be a genuine account of the speech, conduct, image, or likeness of an individual or event (Delfino, 2019, 889-894).

Although deepfakes contain certain advantages, they can also be used to disinform voters and manipulate elections, damage reputations, coerce or blackmail individuals, undermine trust in institutions and even disrupt international relations (Chesney, Citron, 2019, 1758). In addition, they constitute an unprecedented challenge to legal systems, which traditionally rely heavily on documentary, audio and video evidence. Hence, courts and other legal institutions are under growing pressure to react quickly to this phenomenon, even though many jurisdictions have yet to adopt any form of regulation on artificial intelligence (hereinafter: AI).

Since traditional law responses alone are unlikely to be sufficient and the increasing use of deepfake technologies poses an obvious challenge to judicial fact-finding, as audio-visual evidence can no longer be treated as presumptively reliable, it is apparent that novel institutional solutions, procedural safeguards, and broader deterrent mechanisms, which balance innovation with accountability, will be needed at short notice.

This paper will also argue that deepfakes expose a deeper jurisprudential problem concerning the structure and legitimacy of epistemic authority in adjudication. Courts have so far exercised authority not only by applying legal norms, but also by publicly determining facts through procedures meant to be intelligible, contestable, and institutionally accountable. The rise of convincing synthetic media weakens the epistemic standing of ordinary perception and judicial common sense, while increasing dependence on forensic experts, technical authentication methods, and potentially AI-based detection systems. As a result, epistemic authority within adjudication is progressively being undermined or even displaced.

Against this background, the proposed research aims to examine the phenomenon of deepfakes from a legal standpoint, by mapping the gaps in the current regulation and developing suggestions for the future legal framework that may try to solve identified challenges. More specifically, it will explore particular risks that deepfakes create in evidentiary proceedings and how courts can, and should, identify and verify the authenticity of evidentiary material that can now be easily manipulated. Furthermore, it will analyse whether deepfaked evidence can be considered unlawful based on existing norms within continental legal systems, as well as whether the current procedural safeguards provide any basis for the treatment of such fabricated evidence.

From a broader perspective, it remains to be determined whether the growing reliance on expert and algorithmic mediation strengthen adjudication by improving accuracy, or it purely undermines judicial authority by making the establishment of facts less transparent and less contestable, making procedural fairness and the credibility of evidence completely dependent on highly specialised or nonhuman forms of assessment.

ISN'T MORALITY THE GREATEST CHALLENGE TO LEGAL AUTHORITY?

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ABSTRACT

One of the central ways in which legal philosophy assesses law's potential authoritativeness is by considering its capacity to provide (justificatory) reasons for action. However, most of the literature on this topic typically assumes that such potential authoritativeness is ultimately a function of morality: the law may perhaps provide reasons for action insofar as it directs us to act in ways that do not conflict with morality. Indeed, many hold that whether the law can be authoritative depends on its ability to serve as a kind of proxy for morality. I submit that this assumption rests on a prior assumption concerning the unitary character of practical reason.

Interestingly, this assumption is seldom discussed in legal philosophy, and perhaps it ought to be questioned. David Copp, for instance, has offered an interesting argument in favour of the thesis that practical reason is fragmentary rather than unitary—that is, that there is no necessary overridingness among reasons of different kinds and that, consequently, there are no duties simpliciter, but rather duties relative to different sources corresponding to different types of reasons.

Copp has also explored the possibility that law may constitute a genuinely autonomous source of reasons for action. In doing so, however, he seems to incur what I take to be a tension—if not a contradiction—with the former idea: he maintains that law provides genuine reasons which are nonetheless, in a certain specific sense, subordinate to moral reasons.

My aim is to present this package of ideas, identify that tension and offer some critical reflections on it, and then use the discussion as a springboard for proposing a conjecture about one possible path—among others—by which the law might be capable of providing autonomous and genuine reasons for action.

REGULATORY REGIMES: THE TWILIGHT ZONES BETWEEN SCIENCE AND POLITICS

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ABSTRACT

This article develops a concept of regulatory regimes as institutional configurations structured around the management of risk through the systematic incorporation of scientific expertise into political decision-making. It situates the emergence of such regimes within the historical transformation associated with the rise of the regulatory state and argues that they institutionalize a distinctive form of authority—epistemic authority—through which expertise contributes not only to the implementation of regulatory objectives but also to their specification. Challenging the Weberian division of labour between facts and values, the article shows why the value-free ideal of science provides an inadequate account of expertise in policy-relevant contexts characterized by uncertainty and inductive risk. It then analyses indicators as paradigmatic instruments through which regulatory regimes structure expectations and behaviour across jurisdictions. The article concludes by identifying conditions under which expertise-based authority can be reconciled with legitimacy requirements in contemporary transnational risk governance.

LEGAL AUTOMATION AND RECOGNITION: ON THE RELATIONAL STRUCTURE OF LEGAL AUTHORITY

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ABSTRACT

In this contribution, I develop a relational argument against machine authority and use it to reassess foundational debates about the normative structure of legal authority.

The rise of AI-based decision-making raises a fundamental question: if AI systems can make functionally better legal decisions, can a human legal community subject itself to machine authority? The question is not merely whether such systems may assist public officials, but whether their outputs can acquire the standing of authoritative legal directives. Many legal orders resist this possibility. Article 14 of the EU AI Act requires human oversight of high-risk AI systems, while Article 22 GDPR reflects a related concern with solely automated decisions.

Yet, such norms offer little substantive justification for this rejection of machine authority. Most scholarship defends such rules on consequentialist grounds—concerns about flawed models or algorithmic bias. Suppose, however, that a machine is less biased, less noisy, and yields more freedom-preserving outcomes (e.g., a bail algorithm that prevents more crimes while jailing fewer people). In such cases, outcome-based objections would seem to lose their force. If the machine reliably helps us better conform to the reasons that apply to us, why should we refuse to treat its outputs as authoritative? Given that existing norms treat the human element as a deontological requirement, which holds irrespective of a machine's output quality, this leaves us with an unsettling explanatory gap: Why should we, as a matter of principle, insist that the state not delegate significant legal decisions to machines? Our inability to justify our aversion to machine authority makes it difficult to clearly articulate when human involvement is legally significant and what form it must take.

In my contribution, I reject arguments based on the ontology of machine cognition – the notion that machines cannot make legal decisions because they lack the capacity for semantic understanding. Instead, I develop a relational argument against machine authority. Inspired by theories of recognition and relational autonomy, it holds that the most rights-sensitive legal questions must be decided by humans, not because machines think differently, but because they are experienced differently. Whenever the state owes us expressions of respect, machines cannot deliver because they are not recognized as our moral and legal equals.

This relational argument also illuminates broader debates about the normative structure of legal authority. In particular, a relational rejection of machine authority functions as a stress test for Joseph Raz's Normal Justification Thesis, according to which authority is justified when subjects are more likely to conform to the reasons that apply to them by accepting the authority's directives. Stephan Darwall has argued that Raz's account fails to capture the directional, irreducibly second-personal nature of practical authority which consists in being responsible specifically to that authority. I argue that the relevance of recognition-respect within the realm of legal automation lends further credence to Darwall's argument and investigate to which extent the Razian account of practical authority can accommodate such relational worries.

IS THERE A PLACE FOR NON-HUMAN AUTHORITY?

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ABSTRACT

Authority in law has traditionally been conceived as (1) public authority, (2) claiming political, practical, and comprehensive authority over (3) natural persons within (4) a given national (physical) jurisdiction context. However, the growing complexity of political and legal phenomena over the last decades has given rise to a very different picture. In this contemporary landscape, we have seen a steady increase in the number and importance of authorities that diverge significantly from that traditional conception. For example, these authorities may be (1) non-public authority; may (2') claim not political (practical) but technical (epistemic) authority or (2'') not a comprehensive but a limited authority; (3') their claims may be over not only vis-à-vis natural persons but, for instance, vis-à-vis legal persons or nonhuman animals or (3'') they may be not necessarily backed or constituted by natural persons; and their claims may be (4') not necessarily limited to national jurisdictions or (4'') not necessarily limited to physical territories.

This paper aims to address only one part of this complexity by exploring the question of whether there is a place – both theoretical and practical – for nonhuman authority. It will depart from the reconstruction of four different contemporary discourses on authority in legal theory and philosophy, based on different methodological, conceptual and substantive commitments. Then, it will analyse whether the elements they propose are compatible with the possibility of a nonhuman authority and, if so, under which conditions.

THE VENICE COMMISSION AS PRACTICAL AUTHORITY

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ABSTRACT

In this article, we ask whether the Venice Commission, the Council of Europe's advisory body on constitutional matters, can be treated as an instance of practical authority. In doing so, we proceed from the mainstream jurisprudential distinction between theoretical and practical authorities, challenging Raz's claim that the former 'do not have authorities over anyone', and Himma's claim that the point of utterances of the latter is to guide behaviour by telling subjects what they must do, and not merely what they should do. We argue that the key to detecting an authority relationship is the concept of recognition, as recently espoused by Roughan. After critically assessing her account, we use the example of the 2022 Serbian constitutional reform to demonstrate how the VC, as a seemingly theoretical authority in constitutional matters, was transformed into a full-blown practical authority, despite being equipped merely with advisory utterances of what should be done.

EMERGING RIGHTS: APPROACHES TO A CATALOGUE

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SW62 · Emerging Political Rights: From Theoretical Foundations to Judicial Recognition
Convenors: José María Sauca Cano; David García García

ABSTRACT

Emerging rights delineate the boundaries of the general theory of fundamental rights' current stage of development. This border dimension operates on several levels. On the one hand, from an epistemic perspective, it redefines new strategies for justifying rights, tending to replace abstract theoretical foundations with pragmatic, teleological, and procedural new ones. On the other hand, from an ontological perspective, it redefines the characteristics of rights (human rights, fundamental rights, or simply rights) and, of course, identifies their concrete specificities (new, emerging in the strict sense, expanded) as well as their holders. All these factors imply a reconfiguration of the theory of emerging rights both externally, regarding the relationship between rights and theories of justice, and internally, regarding the redistribution of the normative space occupied by these rights. In this context, new participatory rights—or, more strictly, new political rights—clarify these dimensions in the areas of collective decision-making and contribute decisively to the definition of the general category of emerging rights.

AN OUTLINE OF THE STRUCTURE OF EMERGING RIGHTS FROM THE PERSPECTIVE OF NOMADOLOGY

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SW62 · Emerging Political Rights: From Theoretical Foundations to Judicial Recognition
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ABSTRACT

The issue of emerging rights and the conditions under which they emerge from the factual-social order into the normative-legal one has been usually studied within one theoretical framework: on the one hand, the material conditions of their relevance—usually within the social sphere—and, on the other, the formal elements for their institutional inclusion in the legal system. This matter-form dichotomy implies, on the one hand, the conditioning of the former by the regulatory elements of the latter (legal hylomorphism) and, on the other, the existence of a communication between both fields (socio-material and legal-formal) that allows for the transfer of the former into the latter. Both characteristics will be analyzed within the so-called nomadology of Gilles Deleuze and Félix Guattari, particularly with regard to their distinction between the Nomad as an anomaly and the State with its apparatuses of capture aimed at incorporating the former into its logic. Using this classification, I will seek to analyze the discourse of emerging rights as one that originates from the logic of the State: under its apparent communicative homogenization (when dealing with two irreducible units) and due to the central role it is granted in the process.

IUSGENERATIVE DIMENSION OF THE RIGHT OF ACCESS TO JUSTICE AND PARTICIPATION IN THE CONFIGURATION OF LEGAL NORMS

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SW62 · Emerging Political Rights: From Theoretical Foundations to Judicial Recognition
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ABSTRACT

The generative dimension of the right of access to justice makes it a potential pathway for the configuration of new legal concepts and rights. Based on a complementary understanding of the legislative and judicial spheres, access to justice contributes to the adaptation and development of law regarding problems that are insufficiently or inadequately addressed by the legislation. As an instrument of participation in the creation of new legal meanings and conceptualizations, access to the courts—whose function is directed toward resolving concrete cases—allows legal deliberation to incorporate the voices of those who perceive that their experiences and needs have not been taken into consideration or have been distorted.

THE CULTURAL AS POLITICAL: JUDICIAL RECOGNITION OF THE INDIGENOUS RIGHT TO PUNISH AS AN EMERGING POLITICAL RIGHT

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SW62 · Emerging Political Rights: From Theoretical Foundations to Judicial Recognition
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ABSTRACT

Over the last several decades, international and regional human rights bodies have significantly expanded the protection of Indigenous peoples' cultural rights, outlining cultural survival as a guiding principle and establishing that it should include communal property or the right to water. To date, international courts have largely ignored the right to administer justice and impose culturally distinct forms of punishment.

The consolidation of modern states included the imposition of uniform criminal law with the state holding overriding authority - a process that actively marginalized Indigenous legal tradition. Despite this historical erasure, Indigenous peoples have maintained and/or revived distinct legal institutions such as int the case of the System of Communal Security, Justice and Reeducation (SCSJR) in Mexico and Māori Tikanga in Aotearoa New Zealand.

This paper argues that the Indigenous right to punish must be judicially recognized as it is a direct implication of the guiding principle of cultural rights – the protection of distinct ways of life. By analysing the jurisprudence of the UN Human Rights Committee, the Inter-American Court of Human Rights, and the African Commission on Human and Peoples' Rights, this study employs analogical reasoning to demonstrate a critical legal parallel: if communal property is protected as a necessary element of preserving a distinct way of life, then Indigenous punitive institutions must be afforded the same protection.

Drawing on examples such as the Cree Wetiko concept, Guerrero's Community Police, and Tikanga Māori, the paper illustrates that these legal orders are inextricably embedded within both the cultural identity and

the political autonomy of these communities. Ultimately, this study challenges the artificial separation of cultural and political rights. It concludes that the judicial recognition of Indigenous punitive authority is not merely a cultural accommodation, but the realization of an emerging political right to self-determination and legal pluralism, essential for the continued existence of distinct political communities.

IS DEMOCRACY AN EMERGING HUMAN RIGHT?

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ABSTRACT

In the last decade of the twentieth century, a significant number of countries became legally committed to holding free, multiparty, and secret-ballot elections. In the aftermath of that historical shift, an influential trend in international legal scholarship maintained that we were witnessing the emergence of a "democratic entitlement", moving "from moral prescription to international legal obligation". At the same time, the publication of John Rawls's works on "the Law of Peoples" gave rise to an influential strand in moral and political philosophy, particularly among human rights theorists, that refused to recognize democracy as a constitutive component of the human rights paradigm, even in an emerging form. In this intervention, I defend this approach, usually referred to as the "practical" or "political" conception of human rights, according to which the content and scope of international human rights are determined by their role as public reasons in the international context, where liberal democracy is not the only legitimate basis of political authority. However, in my view, this approach should be corrected in two connected respects. Unlike Rawls, I argue that international law should not be grounded in the equal moral value of peoples or national groups, but rather in the equal moral value of individuals. This basic modification leads to a very different account of the subset of fundamental rights that should make up the list of human rights. More specifically, I argue that, regardless of its level of compliance with the standards of free and open elections, a "decent" non-liberal or hierarchical regime should include minimal protection for the basic freedoms associated with political participation —namely, freedoms of expression, association, and political opposition— in order to qualify as an equal member of a reasonably just Society of Peoples.

¿EXISTE UN DERECHO HUMANO A LA DEMOCRACIA?

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ABSTRACT

Me propongo abordar el tema del derecho a la democracia, como un derecho con una proyección institucional distinta de otros derechos en materia política. En 2024, Guatemala solicitó a la Corte Interamericana de Derechos Humanos una opinión consultiva, OC 33, sobre democracia y su protección en el Sistema Interamericano de Derechos Humanos. Del pasado 17 al 20 de marzo del presente año, la Corte Interamericana celebró la audiencia pública sobre dicha opinión consultiva. La Corte ha sostenido una línea jurisprudencial constante en materia de la protección de los derechos políticos. Entre otros, destaca el caso Gadea Mantilla vs. Nicaragua, en el que la Corte declaró la responsabilidad del Estado de Nicaragua por la violación a los derechos políticos y al derecho de igualdad, por la falta de acceso a los cargos públicos en condiciones de equidad, en perjuicio de Fabio Gadea Mantilla, candidato presidencial durante las elecciones de 2011. Lo anterior indica la importancia de discutir el tema del derecho humano a la democracia como un derecho autónomo. Antes de considerar el posible contenido de ese derecho y sus alcances, es necesario plantear la cuestión acerca de si es o no necesario —desde un punto de vista conceptual— el reconocimiento de un derecho humano a la democracia como un derecho con rasgos distintivos. Están fuera de la discusión las virtudes de la democracia como un régimen político (frente a la autocracia) y la necesidad y legitimidad de fortalecerlo, de cara a los desafíos y retrocesos democráticos que lo aquejan en muchos países. Sin embargo, pretendo discutir y evaluar críticamente las razones a favor de la existencia de ese derecho. Una hipótesis por explorar es si es un derecho realmente necesario. Por un lado, ya existe un entramado de derechos de carácter político-electoral que sustentan el régimen democrático y que —siguiendo a Bovero— constituyen las precondiciones y condiciones necesarias de la democracia.

En primer lugar, en tanto precondiciones para el ejercicio de la democracia, están la libertad personal, la libertad de opinión, la libertad de reunión y la libertad de asociación, así como los derechos sociales, como el derecho a la educación. En segundo lugar, como condiciones, están los derechos a la participación política, destacadamente el derecho al sufragio. Además, están los principios, reconocidos convencionalmente, tales como los de elecciones libres, auténticas y periódicas, así como el derecho de acceso a la justicia y a la independencia de la jurisdicción electoral. Este haz de derechos y principios, en su conjunto, parecen ser suficientes para cimentar la democracia o, en su caso, para integrar el núcleo de un derecho a la democracia. Por otro lado, considero que el establecimiento de un derecho sin necesidad, desde un punto vista metodológico, o sin las suficientes garantías, puede conducir a una hiperinflación de derechos, que no implica necesariamente una mejor defensa de la democracia.

ON AN EMERGING RIGHT TO A CORRUPTION-FREE SOCIETY

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ABSTRACT

Over the past two decades, the convergence of agendas to combat corruption and protect human rights has challenged traditional approaches exclusively focused on criminal justice and the punishment of offenders (Pearson, 2013). In its 2019 report, the Inter-American Commission on Human Rights (IACHR) expressly recognized the positive convergence between human rights protection and the fight against corruption, affirming the duty of states to "adopt all necessary and appropriate measures to prevent acts of corruption that may constitute human rights violations" (p. 98, para. 255). The link established between acts of corruption and the violation of specific human rights has led some scholars to argue that all individuals possess a basic human right to live in a corruption-free society (Gebeye, 2012; Kinley, 2014, Spalding, 2014, Roth-Arriaza, 2025). The emergence of this right raises several relevant questions. What is the content and foundation of such a right? Is there sufficient state practice to support the emergence of a rule of customary international law universally prohibiting corruption, or is the creation of a specific legal instrument, such as a treaty or an additional protocol, necessary for its recognition and protection? What obligations would it impose on states and corporations? And, finally, is it inherently an individual right, or should there be avenues for collective redress and accountability?

LEGAL DISPUTES: BETWEEN DISAGREEMENT AND FAULT

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ABSTRACT

Imagine a discussion between two participants in legal discourse – A and B – concerning the legality of a type of action α. Suppose that, based on how A interprets the relevant sources of law, A claims that α is legally prohibited. Prima facie, B has several possible ways of expressing their position:

1. You are right; nonetheless, I believe that α is legally permitted.
2. No, α is legally permitted.
3. What you said is false – α is legally permitted.

While it may not be immediately obvious, I argue that each of these responses can be the most accurate one, depending on the case. The first indicates that B acknowledges the correctness of A's utterance and does not regard A as being at fault, yet holds a different view on the legal status of α. The second reveals disagreement while leaving open whether A is at fault. The third employs an alethic disagreement marker, indicating that B not only disagrees with A but takes A's utterance to be false – and thus takes A to be mistaken, to be at fault. Accordingly, we may distinguish three types of dispute concerning the legal status of α: 1) dispute without disagreement and without fault-attribution; 2) dispute with disagreement and without fault-attribution; and 3) dispute with disagreement and with fault-attribution.

The question then arises: how can we account for this variety of responses and cases? I begin by surveying different theoretical approaches to (dis)agreement, examining how parties can (dis)agree at the level of beliefs, attitudes, and metalinguistic usage, and considering how these accounts relate to the faultlessness of the disputing parties. I then turn to key

manifestations of disagreement in law, arguing that both attitude-based and metalinguistic approaches struggle to fully capture the felicity of alethic disagreement markers in disputes concerning the legal status of α. The heart of my analysis focuses on three main belief-based frameworks for explaining disagreement – content relativism, truth relativism, and aspirational contextualism. I argue that aspirational contextualism is the most plausible of the three, and I demonstrate how it best explains the full range of possible responses available to B, while also providing a basis for drawing the boundary between faultless disagreements and disagreements in which one party is at fault.

EVIL LAW IN ST. THOMAS AQUINAS' PHILOSOPHY

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ABSTRACT

In this paper, I argue that St. Thomas Aquinas's account of evil as privation holds a key to understanding the nature of extremely morally iniquitous (or 'evil') law of the kind found in regimes such as Nazi Germany and Soviet Union under Stalin. I aim to present the Thomistic account of evil as valuable across philosophical divides, not just by teasing out the implications of Aquinas's theory when it comes to examining the nature of evil law, but also by demonstrating how that processing can aid us in both understanding evil law and countering it. Firstly, I clarify the relationship between different ways in which the concept of evil can be framed, from the broad concept of malum to a narrower one of iniustitia to the most specific of extreme moral iniquity central to my concept of evil law, arguing that Aquinas's remarks apply to all. Secondly, I identify two propositions about evil presented by Aquinas – that good is prior to evil (that I call Primacy Thesis) and that good causes evil (Causality Thesis). Thirdly, and most extensively, I apply these propositions to evil law, arguing that it could be beneficial both descriptively and normatively. On the Primacy Thesis, I claim that while evil law is law proper contra Aquinas, it is nevertheless parasitic on good law in that the former cannot exist without the latter. On the Causality Thesis, I argue that the very legal form, through providing coercive and coordinative powers, is inherently risky as it can be misused by evil regimes for their aims. Of course, not all of these conclusions are in complete congruence with Aquinas's thought – yet, nevertheless, they show that we can gain a lot by studying his theological writings.

COMMUNIS ERROR FACIT JUS: APPEARANCE THEORY IN LAW AND THE PRACTICAL REPAIR OF COLLECTIVE ERROR

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ABSTRACT

Appearance theory in law holds that legally relevant consequences may follow from a situation that reasonably appears valid, even if it is not, in order to protect good-faith reliance and the stability of transactions. Similarly, estoppel ensures that a party cannot later ignore the consequences of the appearances they created. Using the tools of analytic pragmatism, this paper explores the maxim communis error facit jus as a bridge between the legal doctrine of appearance and a Brandomian account of how social practices correct their own mistakes. It argues that validating socially credible appearances turns collective error into a source of practical legal validity. Read through a pragmatist lens, misrecognition is treated not as a defect outside the system but as a moment within the development of normativity. Legal recognition of appearances thus functions as a form of practical repair that preserves continuity while integrating past errors. The analysis highlights the roles of public trust, intersubjective recognition, and the allocation of risk to those closest to producing misleading appearances. From this perspective, the law's treatment of common error reflects a process in which validity emerges from resolving incompatibilities in practice. The paper concludes that communis error facit jus captures the law's capacity to repair, rather than simply negate, what collective practice has gotten wrong.

DEBUNKING THE HARD PROBLEM OF PROPORTIONALITY. PROPORTIONALITY HAS A MEASUREMENT, NOT AN INCOMMENSURABILITY PROBLEM

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ABSTRACT

Even though the critique of proportionality in the strict sense based on incommensurability is one of the central points of the discussion, it is plagued by two fallacies. On the one hand, the incommensurability problem is not taken seriously enough. Rather than emphasising the horrendous conceptual mistake to which it would subject every judgement of proportionality in the strict sense, the incommensurability issue is often glossed over or confounded with measurement issues. On the other hand, proportionality judgements in the strict sense are misconceptualized as comparisons of infringement intensity and state aims.

TESTIMONY AND AD HOMINEM ARGUMENTS

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ABSTRACT

Ad hominem arguments (AHA) are fallacious in that they regard not the content of what is claimed but the person claiming it or some trait of this person (including honesty and sincerity). They are also called "personal attacks", when they take a negative form, and can be psychologically persuasive. In the standard account, they are guilty of a fallacy of relevance since personal traits are not relevant to the truth of what persons claim.

But in legal practice AHA are part of standard ways of arguing against a claim (negative form) or in favor of it (positive form). Is this fallacious? I will focus on their negative form addressing witnesses and will argue that those arguments are fallacious if meant as deductive or conclusive. They are not fallacious if presented as arguments that weaken someone else's claims, or raise critical questions about them, or put them into doubt in some respects. Logically speaking, AHA can be taken as abductive attacks on someone else's claims, notably of witnesses (e.g. suspecting that these are motivated by economic interests, friendship, personal or political convenience, and so on).

SAFEGUARDS AGAINST ERROR: ON THE EPISTEMIC ARCHITECTURE OF LEGAL PROTECTION

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ABSTRACT

Legal safeguards are ubiquitous across contemporary legal orders. They are invoked in the protection of human rights, in market regulation, and in environmental governance. Yet their conceptual status remains curiously under-theorised. What, precisely, is a legal safeguard? Is it merely a procedural device, a structural guarantee, a normative standard, or something more foundational?

This paper argues that legal safeguards are best understood as institutional responses to anticipated error. While standard accounts of legal error focus on adjudicative mistakes - misapprehension of facts or misapplication of rules - this paper broadens the lens. Legal safeguards do not merely constrain judicial discretion or secure correct application of the law. They also disclose a prior and deeper anxiety: the possibility of legislative error. Safeguards thus reveal the types of failure a legal system expects in the pursuit of its regulatory aims.

In the human rights context, safeguards are typically framed as protections against infringement or abusive interpretation. As suggested by Chaim Perelman, their meaningful implementation presupposes an independent judiciary. Yet adjudication is not a purely subjective enterprise; it must remain responsive to the "conceptions and reactions of the community". Safeguards therefore depend not only upon institutional design but upon a community prepared to sustain them.

Extending this analysis, the paper distinguishes between adjudicative errors (errors of fact and application) and legislative errors (failures to foresee, prevent, or adequately structure against infringement). In certain domains - particularly within the soft-law architecture of international gov-

ernance - the binding force of safeguards is itself uncertain. This indeterminacy shifts attention from interpretation to legislative responsibility: from how norms are applied to how they are framed, calibrated, and equipped with protective mechanisms at the level of policy and guidance.

By conceptualising legal safeguards as signals of anticipated error, the paper offers a unifying account across doctrinal fields. Safeguards share a common function not because of their subject-matter, but because they express institutionalised distrust of fallibility - judicial, administrative, and legislative alike. To theorise safeguards, therefore, is to theorise the legal system's self-understanding of its own limits.

ERRORS IN EVIDENTIAL LEGAL REASONING AND WHAT TO DO ABOUT THEM

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ABSTRACT

This paper examines logical, psychological, and legal errors in evidential reasoning and their contribution to unreliable factual findings. Drawing on a pluralistic account of legal proof, it argues that such errors cannot be remedied by any single theory of inference. Their reduction instead requires the combined use of probabilistic, argumentative, narrative, and abductive methods, supported by procedural safeguards and greater transparency in the evaluation of evidence.

HOW TO BUILD A TYPOLOGY OF LEGAL ERRORS?

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ABSTRACT

In my paper, I will try to corroborate the view that legal errors can be divided into two categories: theoretical and practical. The first category is distinguished due to the existence of different theoretical claims concerning law's nature as well as descriptions and explanations of various legal phenomena, or postulates related to these phenomena. The second category of legal errors is made possible due to the infelicities, fallacies, or mistakes that arise in legal practice, i.e. when we are doing something with law.

Both categories are inspired by the kinds of practices highlighted in Aristotle's Nicomachean Ethics, namely: (1) theoria (gr. θεωρία), comprising the act of experience and observation, corresponding to thinking; (2) poiesis (gr. ποίησις), aimed at creating something that did not exist before; and (3) praxis (gr. πρᾶξις) corresponding to doing something. The reduction of this tripartite division into a dualism of theoretical and practical reflects a longstanding philosophical tradition of dividing philosophy itself into its speculative and practical branches - a distinction famously articulated by Boethius in his In Isagogen Porphyrii Commenta, where philosophy is understood as either contemplating truth or directing action.

This picture is, however, an oversimplification. Both theoretical and practical errors are deeply rooted in divergent activities. There is (at least sometimes) a feedback loop between these activities. Moreover, thinking about errors in terms of experiencing them (see Hegel's Erfahrung, and R. Brandom's experience of error), directs us to the characteristics of agents who get something wrong, and whether they are justified or not in doing so.

Finally, if there is the connection between theoretical and practical errors on the level of the activities, we have to ask about the role of these

activities: whether these activities are able to rectify the problems caused by the errors. These rather obscure relations delimit the intellectual space in which we can draw the proper picture of legal errors. Having corroborated the view about two categories of legal errors, it would be possible to go deeper, and highlight the role errors have for legal theory and legal practice.

EPISTEMOLOGY OF ERROR: CORRECTNESS AND ADEQUACY OF JUDICIAL DECISIONS

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ABSTRACT

In this work, I will examine the concept of the quality of judicial decisions, focusing on three approaches: the Justification Approach (J-Approach), the Epistemic Injustice Approach (EI-Approach) and the Correctness Approach (C-Approach).

I will argue that the correctness of judicial decisions is a complex concept involving three elements: justification, accuracy and fairness. I will also argue that it can be distinguished from the concept of the adequacy of judicial decisions.

I will then focus on the quality of the justification of facts, adopting a 'weak' conception of justification in which truth is not a necessary condition for judicial decisions. In particular, I will analyse the impact of epistemic injustices on the justification of facts and explain why errors and flaws should be distinguished. This distinction is connected to the concepts of excusable and non-excusable errors in epistemology and is functional to a non-sceptical approach to processual knowledge. This distinction highlights two scientific points: 1) the difference between a reasonable decision and a decision that is connected to truth in the right way, and 2) the graduality of the epistemic responsibility of decision-makers.

The main purpose of this work is to demonstrate the usefulness of integrating the concepts conveyed by works on epistemic injustice with those of rationalistic evidence theory and classic epistemology. This integration could serve as a guide for legal practitioners, encouraging more efficient practices.

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: AN EXAMINATION OF HUMAN DIGNITY

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SW64 · Human Dignity: Concept and Conceptions
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ABSTRACT

The Universal Declaration of Human Rights (UDHR) constitutes a landmark document in the history of human rights. Drafted by representatives from around the world with diverse legal and cultural backgrounds, it was adopted by the United Nations General Assembly in Paris on 10 December 1948. The Declaration was conceived as a universal normative framework to which all peoples and nations ought to aspire. The aim of the declaration was to ensure that the atrocities and widespread devastation of the Second World War would never be repeated. As well as setting out rights that must be universally protected, the UDHR has also inspired numerous human rights treaties. The preamble to this core document begins as follows: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world…" In other words, the Declaration identifies "inherent dignity" and the "equal and inalienable rights of all members of the human family" as the basis of freedom, justice and peace in the world. Many scholars therefore argue that human dignity has become the essence of the human rights regime, since human rights may be understood as its practical implications. This study examines the concept of dignity within the UDHR, paying particular attention to its drafting history and the way in which it has contributed to the evolution of human rights law. The study therefore seeks to contribute to contemporary discussions concerning the philosophical and legal foundations of human dignity.

ON LIFE, DIGNITY AND DISABILITY: THE CRPD IN A CASE CONCERNING REPRODUCTIVE CHOICE

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SW64 · Human Dignity: Concept and Conceptions
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ABSTRACT

Although references by Turkish courts to international human rights conventions remain limited, references to the United Nations Convention on the Rights of Persons with Disabilities (CRPD) can, only upon closer reading, be identified in certain Court of Cassation (Yargıtay) decisions over the last decade, particularly in some dissenting opinions.

In this context, the presentation takes as its point of departure a reference to the CRPD in a medical malpractice case, concerning the birth of a child with Down syndrome. The aspect of the judgment that is of particular interest is its implicit engagement with the human rights of persons with disabilities through the concept of wrongful life. This concept is typically articulated on behalf of children with disabilities in comparative legal contexts and has received limited attention in Turkish law.

In this respect, the presentation evaluates the compatibility of this approach with contemporary universal standards and draws attention-through the dissenting opinion-to a dimension of the issue that is often overlooked yet remains highly susceptible to instrumentalization.

The presentation briefly engages in a conceptual analysis of wrongful life from the perspective of human rights and human dignity, in particular the disability rights paradigm and universal norms. It then examines how the "value of human life" argument, frequently invoked in this context, may operate as a justification in tension with a woman's right to choose and to determine her own future. This inquiry draws on comparative examples and the relevant cautions articulated in the literature, as well as the dissenting opinion in the case at hand. In other words, while upholding the equal dignity of persons with disabilities, this presentation seeks to explore what may lie beyond what is apparent.

FROM 'THE RIGHT TO HAVE RIGHTS' TO STATUS SUBIECTIONIS: A JUSTIFICATION OF HUMAN DIGNITY AS THE FOUNDATION OF BASIC RIGHTS BASED ON GEORG JELLINEK AND HANNAH ARENDT

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ABSTRACT

As the keystone of contemporary liberal democracies governed by the rule of law, human dignity and the human rights derived from it primarily aim to safeguard individual rights. Yet questions remain regarding the nature of human dignity and its relationship to human rights: How should its inviolability be understood? Does it constitute a fundamental right or the very foundation of fundamental rights? The subjective public rights system grounded in Georg Jellinek's status theory has become the primary framework for interpreting contemporary fundamental rights systems. Yet its "passive status" (status subiectionis) receives scant theoretical attention, as it may conflict with fundamental rights protections. According to it, individuals are expected to submit to the state, which appears to contradict the widely held notion that fundamental rights protect individuals from state encroachment. Consequently, it has received scant attention. Nevertheless, since passive status serves as a prerequisite for other statuses and should not be overlooked, it is necessary to reexamine the relationship between passive status and fundamental rights. In this regard, Hannah Arendt, drawing from her own experience of being a refugee, questioned the abstract and ineffectual nature of natural rights, arguing that they fail to genuinely safeguard individual rights. She advanced the concept of "right to have rights" (Recht, Rechte zu haben), proposing that an individual's entitlements as a member of a political community should serve as the basis for the evolution of rights protection. The present paper seeks to synthesize both theories, arguing that human dignity pertains not merely to a human being but specifically to a moral and legal subject. This dual nature entails two requirements: first, that individuals adhere to behavioral norms

and share responsibility for co-creating ideal norms and worlds; while also demanding that the political community recognize each individual as a member and rights-bearing subject, prohibiting arbitrary exclusion or deprivation of their status as a protected rights holder. This demonstrates the absolute nature of safeguarding human dignity.

Keywords: Georg Jellinek, Hannah Arendt, Status Subiectionis, Right to have Rights, Human Dignity.

HUMAN DIGNITY: WHAT KIND OF NORMATIVE CATEGORY IS IT?

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ABSTRACT

The meanings and contents that concepts carry from a philosophical perspective directly affect their place and conceptualization within legal theory. In other words, the philosophical meaning attributed to a concept also shapes its function within law. In this respect, human dignity finds its place alongside other well-known concepts such as liberty, equality, justice, fairness, honesty, and trust. The legal understanding of human dignity is often shaped by its philosophical interpretation, which, in turn, affects how the law is understood and interpreted. It seems reasonable to suggest that such philosophical characterizations –or, in other words, the act of assigning a conceptual name– play a crucial role in shaping legal reasoning, especially in legal interpretation.

In this presentation, I will approach this act of "philosophical naming/labeling" as a form of normative characterization of the concept of human dignity. Specifically, I will examine various attempts in legal theory and legal practice to define or characterize human dignity as "a right in itself", "a value", "a principle or a supra-principle", or "a concept closely related to status". By this way, I aim to outline the different ways in which human dignity has been characterized normatively. Through this exploration, I will seek to open a discussion on the following question: What legal consequences arise from these different characterizations and the corresponding understandings they entail within legal discourse? I also intend to assess the strengths and weaknesses of these competing approaches.

This discussion seems particularly important from a legal perspective, as different ways of defining and conceptualizing human dignity lead to various interpretations and applications within the law. For example, if we consider human dignity as a right in itself, this sparks debates concerning its place within the classification of rights, its legal status, and the types of

violations it may encompass. If it is viewed as a legal principle, questions arise about its position among other principles of law and whether it could lead to conflict between them. Likewise, defining human dignity as a status concept may cause legal debates regarding the potential ambiguities between dignity and honor –since "status" is rarely neutral– and how these ambiguities could influence legal interpretation. This presentation aims to demonstrate that discussions about human dignity are not merely terminological. Rather, the particular normative status ascribed to this concept may directly impact the direction of legal argumentation, its role in justification human rights, and the overall function that human dignity serves within legal thought.

A NEGATIVE THEORY OF HUMAN DIGNITY

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ABSTRACT

This article develops a negative theory of human dignity as a novel framework for grounding and interpreting human rights. It argues that dominant approaches—both moral (orthodox) theories, which rely on controversial claims about human nature, and political (practice-based) theories, which risk normative indeterminacy—fail to adequately account for the justificatory and critical functions of human rights. In response, the article proposes a transversal approach that combines inferentialism and critical theory. Drawing on the philosophy of Robert Brandom, the article conceives normativity as emerging from social practices of giving and asking for reasons. Within this framework, human dignity is not understood as an intrinsic property or metaphysical status, but as a normative construct whose content is determined through justificatory practices. The core claim is that the meaning of dignity is best reconstructed negatively, that is, through experiences of humiliation, degradation, and dehumanization. These experiences are treated not as merely subjective states, but as objective normative failures that reveal the boundaries of a dignified life. It argues that a negative, inferentialist account of dignity can reconcile contextual sensitivity with universal normative claims by grounding human rights in historically situated practices while preserving their critical force. By shifting the focus from abstract foundations to concrete violations, the article offers a theoretically robust and practically relevant account of human dignity, capable of informing both legal theory and human rights practice.

FROM THE LEVIATHAN GAZE TO THE MENINA GAZE: VELÁZQUEZ AND THE VISUAL FOUNDATIONS OF HUMAN RIGHTS

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SW64 · Human Dignity: Concept and Conceptions
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ABSTRACT

This communication advances a legal-political interpretation of the work of Diego Velázquez, proposing that his painting may be understood as a cultural precursor to the modern idea of Human Rights. Specifically, it argues that Velázquez's work anticipates two fundamental dimensions of the contemporary doctrine of Human Rights: the recognition of human dignity as its foundation and the political responsibility of individuals in its protection.

Focusing on the Portrait of Juan de Pareja and Innocent X, the analysis suggests that these works do not merely represent individuals but reveal the intrinsic dignity of the human person, independent of social hierarchy. In doing so, they visually articulate the moral truth that later becomes central to the philosophy of Human Rights.

Regarding the political dimension, the article proposes an interpretation of Las Meninas, identifying a "Menina gaze." Through this visual configuration, any viewer of the painting—potentially any human being—is symbolically placed in the position of sovereign agency. This contrasts with the Hobbesian "Leviathan gaze," in which political agency is transferred to a sovereign authority. In Las Meninas, individuals retain the capacity to exercise political responsibility.

Keywords: Human dignity, Human Rights, Leviathan gaze, Menina gaze, political power.

(NO LONGER) UNTHINKABLE? AI BASED AUTOMATION OF COURT DECISIONS FROM A CONSTITUTIONAL PERSPECTIVE

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SW65 · Artificial Intelligence and Challenges to the Rule of Law
Convenors: Pascal Felix Meier; Matthias Hächler

ABSTRACT

The presentation summarises my current PhD research and brings forward the idea that AI-based judicial decisions are not as unthinkable as they're often depicted: I suggest an argumentation-based understanding of court decisions that conceptually allows a large-scale replacement of human judges by language-generating machines. The lacking of human features like a semantic understanding or empathy does not necessarily impact the machine's ability to replace a human judge, nor do the questions that are often discussed as 'algorithmic discrimination'. While I acknowledge the existence of conceptual limitations to the automation of court decisions namely in atypical cases, I argue that under certain constitutional conditions these 'conceptual shortcomings' can be sufficiently mitigated.

THE ETHICS OF AI IN LEGAL JUDGMENT: A CASE AGAINST ROBOT JUDGES

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SW65 · Artificial Intelligence and Challenges to the Rule of Law
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ABSTRACT

AI's rapid development is fundamentally changing how social institutions function. Increasing use of AI in legal systems specifically raises questions about the morality of mechanizing institutions that uphold human rights and instantiate the rule of law. While many scholars agree that AI as a tool which can conduct research and perform administrative tasks should be implemented in legal systems to improve the efficiency of legal processes, using AI for judicial decision-making is more contested. Some governments, like Estonia's, are already seeking to employ "robot judges" for small case disputes, demanding further ethical analysis before these technologies change the rule of law as we know it. In this paper, I argue against the implementation of "robot judges" in legal institutions. By translating legal judgment into statistical inferences of precedent, we undermine the open and shifting nature of judgement within the common law which underlies the rule of law. Judicial practice allows society to negotiate and establish its changing moral norms through new rulings. Automating this practice would stunt legal institutions' ability to accurately represent society and its evolving concepts of law and morality. Even in small case disputes, reducing judgement to algorithmic or computational decision making limits social progress, the right to a fair trial, and considerations of morality in legal systems. Though some argue that machines may be more effective at providing a fair, or less biased, trial than humans, I present empirical support that machine bias is no better and may be even worse than humans as seen with the deployment of COMPAS software in judicial spaces in parts of the US. I conclude that judicial decisions must remain the responsibility of human judges capable of flexible interpretation, moral reasoning, and responsiveness to the evolving demands of justice worldwide.

THE RULE OF LAW WITHOUT HUMAN JUDGMENT?

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ABSTRACT

Artificial intelligence is often presented as a means of improving legal decision-making by increasing efficiency, reducing inconsistency, and limiting certain forms of human bias. This paper argues that such advantages, even where real, are insufficient to establish compatibility with the rule of law. The rule of law is not exhausted by accurate or uniform outcomes. It is also a procedural ideal requiring that the exercise of public power be intelligible, justifiable, and answerable to those subject to it.

On this view, the central question is not simply whether AI systems can generate decisions that conform to legal norms, but whether they can participate in the forms of legal justification that make authority legitimate. The paper examines three respects in which AI places pressure on rule-of-law values: explainability, answerability, and reciprocity. First, AI systems often function as epistemic black boxes, relying on statistical correlations rather than the normative, reason-giving justification expected of legal decisions. Second, AI lacks the kind of agency required for answerability: unlike human judges, algorithms cannot assume responsibility for their decisions or be held to account in the same way. Third, AI risks weakening the reciprocity and rational partnership between officials and citizens that adjudication is meant to sustain.

The study concludes that, although AI may offer important efficiency gains, its use in legal adjudication should be piecemeal and context-sensitive rather than a wholesale replacement of human judgment. If the rule of law is to be preserved, the pursuit of consistency must not come at the expense of the procedural values through which people are recognized as responsible agents.

THE CONCEPTUAL LIMITS OF ADJUDICATIVE AI

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SW65 · Artificial Intelligence and Challenges to the Rule of Law
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ABSTRACT

I discuss three fundamental problems for adjudicative AI. First, adjudication necessarily involves moral evaluation – not only where law refers to moral standards, but in all cases, and even from a legal positivist perspective. But AI cannot make value judgements, because it lacks the moral intuition required for this. Second, AI is designed to reproduce patterns found in existing data. But legal reasoning is potentially innovative. Doctrinal progress often consists precisely in breaking with established patterns. Third, adjudication concerns core aspects of what it is to be human. Deciding legal questions sometimes requires intimate familiarity with the human lifeworld. AI lacks epistemic access to it. These problems are fundamental in nature. They would affect even far more capable AI than that available today. It follows that while AI might be suited for resolving 'easy' cases, it cannot be relied on to solve 'hard' cases. The potential to save time and costs and improve access to justice through AI is limited, partly because, given the problems mentioned, AI cannot reliably distinguish between 'easy' and 'hard' cases.

AUTONOMY, RESPONSIBILITY, AND LEGAL CERTAINTY IN THE AGE OF HUMAN–MACHINE DECISION-MAKING: A KANTIAN INQUIRY

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ABSTRACT

This paper examines the impact of distributed human–machine decision-making on the foundational legal values of autonomy, freedom, responsibility, and legal certainty, as understood within a Kantian framework. In Kant's philosophy, autonomy denotes the capacity of a rational subject for self-legislation, while responsibility presupposes imputability grounded in free will. These concepts are not only moral but also constitute the normative core of modern legal orders, where they are institutionalized through principles such as legality, accountability, and the predictability of legal consequences.

The paper argues that contemporary forms of algorithmically mediated decision-making challenge these foundational assumptions by fragmenting agency and obscuring causal chains. In such contexts, the Kantian notion of the autonomous subject as the bearer of rights and duties becomes increasingly difficult to sustain in its traditional form. This has direct implications for the legal articulation of responsibility, as well as for the preservation of legal certainty, understood as a condition of foreseeability and stability of legal norms.

Particular attention is devoted to the manner in which fundamental legal values—freedom, responsibility, and legal certainty—are normatively embedded within legal systems and how their coherence depends on the presupposition of a rational and accountable subject. The involvement of non-autonomous algorithmic systems in decision-making processes introduces structural tensions into this framework, potentially weakening the link between norm, subject, and consequence.

The paper further explores whether these values can be reconceptualized without abandoning their Kantian foundations, or whether their

preservation requires reinforcing human-centered models of accountability. It concludes that while legal systems may adapt procedurally, the normative core of these values remains dependent on the idea of human autonomy, which must be explicitly safeguarded in the design and regulation of human–machine decision-making systems.

EXPLORING THE CONCEPTUAL ISSUES ON LEGAL PERSONALIZATION

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SW65 · Artificial Intelligence and Challenges to the Rule of Law
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ABSTRACT

Among the various projections of digital, AI-driven transformation in contemporary law, one of the most prominent is the project of Legal Personalization (LP). This project envisions a departure from the traditional one-size-fits-all paradigm—under which legal rules are applied uniformly—toward a system in which different rules apply to different individuals. Unsurprisingly, such a proposal may strike many as not only novel, but also deeply provocative.

First of all, this presentation surveys the ongoing debates surrounding the prospect of legal personalization and examines the principal arguments advanced by both its proponents and its critics. Proponents maintain that personalized legal rules can enhance legal clarity, improve public understanding of the law, and dramatically reduce the cost of legal services. More ambitiously, they suggest that individually tailored rules bring us closer to an ideal of perfect and precise legal regulation. On this view, the drive toward maximal precision and completeness in legal norms reflects an aspiration toward a kind of legal utopia—an ideal legal order free from ambiguity, inefficiency, and injustice.

Critics, by contrast, warn that legal personalization threatens to abandon the law's inherently public and social character, particularly its commitment to the rule of law and to justice. They argue that personalization may erode the shared normative framework that underpins legal legitimacy and exacerbate inequalities among individuals. At a deeper level, critics contend that legal personalization risks hollowing out the moral core of law itself, reducing human beings to data points within a compliance regime—and thereby gesturing toward a legal dystopia.

Against this background, my presentation goes on to address the conceptual, rather than the above-mentioned normative (broadly), issues

raised by legal personalization. Focusing on the notion of "personalization" itself, it seeks to clarify what kind of project LP actually represents. In doing so, the presentation aims to show that, contrary to initial impressions and to the claims often advanced by its principal proponents, (i) legal personalization may not be as extreme or radical a departure from existing legal paradigms as it is commonly portrayed to be, and (ii) there remains meaningful room for articulating a plausible point of compromise between those who defend this project and those who criticize it.

ZHUANGZI AND MEDICAL AI

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ABSTRACT

In this presentation, I will explain the implications of the Zhuangzi to the ethics and epistemology of AI. Zhuangzi is a text that understands knowledge as always under construction, limited and which requires the input of several viewpoints to our perception approximate to the knowledge of reality. In other words, it recommends broadening our perspectives, in face of our own perspective being limited. It further recommends humility because we are never able to gain full knowledge. Ethically, the Zhuangzi recommends what the contemporary Chinese philosopher Huang Yong called ‘patient moral relativism’. This form of relativism focuses on the recipient of an action as the measure of the goodness of the action. Grounded on this, Huang Yong formulated a copper rule for ethical behaviour as following "Do (or don't do) unto others what you would (or would not) have them do unto you".

With this philosophical groundwork in mind, I will tease out the implications for medical AI. Particularly, the implication of this theory to medical AI is that algorithms should be built based on a principle of epistemological humility, inclusion, and ethically diverse view. Particularly, programmers should foster to include diverse individuals in their teams and data. It also should regularly inspect outcomes, data and results. This approach can help mitigate bias and paternalism in medical AI.

SYSTEM ERROR: WHY AI CANNOT RESPECT THE RULE OF LAW

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ABSTRACT

The paper argues that AI cannot respect the rule of law since it does not comprehend the conception and its normative implications: AI has no understanding of normative phenomena such as values, principles and obligation – it is a mere automated application of a predetermined set of rules. Understanding normative phenomena implies an inborn capacity to creatively structure the world along a normative matrix which is, as far as we know, exclusive to human beings and their specific cognitive abilities. While certain aspects of the rule of law (e.g. formal equality and legal certainty) may profit from rigorous AI-mechanics, other aspects – e.g. substantial equality or the protection of human rights – might be neglected or even undermined (e.g. through "data biases" and fortification of discriminatory practices).

The assumption that AI is able to respect the rule of law could be based on the following two premises: (1) It is irrelevant for a legal participant to understand the concept of the rule of law. (2) The content of the rule of law is defined procedurally through the legal system in which AI participates as a contributor of legal communication. The paper argues that both premises are present in current outlooks on the law rooted in system theory. However, it is argued that these positions are not defendable since any valid conception of the rule of law must be traced back to the ability to form a morally grounded, intersubjectively valid framework of the law which rules out AI as a participant. Any other approach is, put bluntly, oversimplifying legal reasoning.

LEGAL FORMALITY BEREFT OF ALL SUBSTANCE? A DISCUSSION ON THE ROLE OF DISINTERESTED UNIVERSALIZATION IN THE RULE OF LAW AND ITS RELATION TO "ARTIFICIAL INTELLIGENCE"

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ABSTRACT

This paper starts out with a discussion on Dicey's account of the rule of law, distinguishing key problems like his purported lack of a substantive moral normative embedding of said concept. Said notion will be criticised by taking Kant's account on the categorical imperative and duties as an illustration of why universalization, which abstracts from contingent interests or inclinations, is at the heart of many aspects of the rule of law, such as priority, transparency, publicity, certainty of the law, the prohibition of arbitrariness or equality before the law. Therefore, its key purpose must be seen as serving the dignity of free, equal and autonomous human beings, which makes it far from being purely formal. An anticipated retort by certain positions of evolutionary psychology on the genesis of morality, which deny the possibility of its universalistic outlook, will be criticised based on considerations pertaining the lack of paleoanthropological evidence of such claims, as well as their teleological confusion. In an interim chapter, the established connection between the process of universalizing and the rule of law will be measured against current developments of Large Language Models (LLMs, colloquially branded as "Artificial Intelligence"). The claim that said models could serve the end of universalization by virtue of being machine algorithms – hence without any human interest or flawed values – will be refuted mainly based on the notion that these algorithms lack the (human) moral faculty (or 'practical reason') necessary for value-judgements in the process of legal subsumption. All in all, the paper therefore establishes key normative points and analytical clarifications pertaining the idea of the rule of law in times of its factual regression, reminding in its last section that whilst the latter will possibly never be

avoided, a strengthened reflective normative outlook may help, at least potentially, in its gradual factual establishment.

IS THERE SOMETHING WRONG ABOUT "ASKING CHATGPT" ON MORAL AND LEGAL JUDGMENTS? ON PRACTICAL REASON, AUTONOMY, AND AUTHENTICITY

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ABSTRACT

Imagine a bystander who notices a child drowning in a shallow pond. Before acting, the bystander "asks ChatGPT" what to do, which recommends saving the child. The bystander rescues the child. The outcome is unquestionably good. But is there something morally wrong about the way the decision has been reached? This presentation shall argue that there is. And it develops its argument by the means of three concepts: Practical reason, autonomy, and authenticity.

First, practical reason and AI shall be examined. Engaging with thought experiments such as the Turing Test and the Chinese Room and asking the question of whether AI can have practical reason understood as the capacity for moral judgment, the focus shall be shifted to the preconditions of the capacity for moral judgment.

Second, moral autonomy as a precondition of the capacity for moral judgment shall be investigated. It shall be argued that moral autonomy is a necessary precondition of the capacity for moral judgment, one that AI fundamentally lacks, concluding that AI cannot possibly have practical reason.

Third, authenticity shall be addressed turning towards the implications of AI lacking practical reason. It shall be argued that moral autonomy and its flipside of moral responsibility give rise to a distinct notion of moral authenticity: A duty to make use of one's own practical reason in deliberating about moral questions. Elaborating on suspension, deferral, and rejection of moral responsibility, it shall be argued that consulting AI on

moral questions acting "as if" it had practical reason amounts to undermining moral authenticity.

By combining practical reason, autonomy, and authenticity, it shall be concluded that even if AI delivers the correct answer to moral questions, something essential is lost: The authentic exercise of moral judgment by an autonomous agent capable of practical reason.

REPUBLICAN FREEDOM

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SW66 · Positive Freedom, Democracy, Republic and the Law
Convenors: Stephan Kirste; Konstantinos A. Papageorgiou

ABSTRACT

The neo-Roman republican account of freedom, developed by theorists such as Quentin Skinner and Philip Pettit, defines freedom as non-domination and contrasts it with the liberal view of freedom as non-interference. On this account, freedom is not secured merely by the absence of actual interference, since a person can already be unfree if another holds an arbitrary capacity to interfere. Conversely, not all interference is freedom-reducing; only arbitrary interference is. Pettit's response is to define non-arbitrariness through the "tracking" of citizens' interests, which allows control and requires a certain institutional architecture, most notably realized in a contestatory democracy. After having introduced this neo-Roman account, the presentation advances the hypothesis that, once republican freedom is reconstructed in terms of control, it begins to incorporate key features of positive freedom, especially Kantian ideas of autonomy and self-determination. This possible convergence with positive freedom does not appear to be sufficiently recognized either by neo-Roman theorists or by their critics.

ON THE PRIMACY OF POSITIVE FREEDOM OVER NEGATIVE FREEDOM IN THE JUSTIFICATION OF LAW

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ABSTRACT

This paper tries to establish a primacy of positive freedom over negative forms of freedom. For this purpose it aims to present an inclusive theory of freedom that distinguishes, within the concept of freedom, between negative and positive dimensions, and within these, further differentiates between individual and collective dimensions. This differentiation also shows that there are philosophical possibilities for individual positive freedom that can address the concerns of Rousseauean, Marxist, and socialist-republican theories of positive freedom—taking into account political participation and the prerequisites for freedom—without paying the price of collectivism, which subordinates private initiative. At the same time, justice does not approach this freedom as a restrictive demand but rather finds its foundation and measure within freedom itself. The exclusive theories of negative freedom are therefore insufficient to understand freedom in a social and democratic state under the rule of law.

FREEDOM AND STATUS: THE PROBLEM OF TITLES

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ABSTRACT

Many countries have abolished nobility titles and ban their use. Some, as the UK, have sought to introduce merit-based titles, as part of an honours system. And most countries use titles for certain professions (doctors and professors) and for certain political offices (senator or president). But what is the role of titles and are they acceptable in an egalitarian society? Both Montesquieu and John Adams have offered arguments in support of the use of titles. I argue that their arguments are instrumental and cannot be based on a putative moral right to be publicly esteemed. In fact, honorific titles violate the individual moral right to decide for oneself who is worthy of esteem and when and where to express this. I propose, instead, a public ecology of esteem, where ranking of esteem is informal and diffuse, created from the bottom-up, and independently of government.

MONTESQUIEU'S THEORY OF LIBERTY: TOWARDS AN ARTICULATION OF NEGATIVE AND POSITIVE FREEDOM

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ABSTRACT

Montesquieu's political philosophy has generally been regarded as a cornerstone of liberalism. This assessment rests primarily on his theory of the separation of powers and his proposed reforms of penal law. Contrary to that partly justified but one-sided interpretation, we will attempt to examine his comprehensive theory of liberty from the perspective of Berlin's dichotomy between negative and positive freedom. After clarifying the often-misunderstood refusal of the French philosopher to identify that political ideal with democratic self-government, we will reconstruct the conceptual elaboration of liberty in The Spirit of the Laws, indicating its primarily negative character, which nevertheless coexists with a positive one. Moreover, we will try to argue that Montesquieu proposes the assurance of the former, that is a certain degree of non-interference in citizens' personal sphere, not only by the liberalization of penal law, but also through: i) the principle of the distribution of powers, which is realized in the best possible way in a moderate and participatory form of government and ii) the protection of a nation's collective customs. Finally, we will argue that in Montesquieu's thought negative and positive freedom are closely interconnected and suggest the relevance of such an articulation for contemporary democratic societies.

FREEDOM AS SOVEREIGNTY AND THE REPUBLICAN INSIGHT

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ABSTRACT

The modern history of “liberty” has been burdened with several misunderstandings that distorted its meaning and obscured its preconditions. One serious misunderstanding is that which fully identifies liberty with "economic freedom", thus positioning equality as its political opposite. Perhaps the most serious misunderstanding is the one that has its roots in Hobbes but then went on to afflict the utilitarians' perception of liberty, particularly that of Bentham. At the opposite end of this conceptual restriction of the meaning of freedom, we find its conceptual inflation in some philosophers of German idealism after Kant. In post-war philosophical discourse, these two main meanings of liberty prevailed thus forming two dominant traditions in the interpretation of the idea.

In my paper I will adopt a sense of liberty that has the advantages and avoids the defects of freedom as non-interference. I shall not call it positive liberty, even though certain objective and subjective conditions must be met for us to consider a subject as free. We assume that the fulfilment of these conditions is necessary for a subject to be considered free in the sense that interests us. But to avoid the complications and side-effects of classical approaches to positive liberty, my focus will be mainly on the absence of “negative” influences that can undermine individual liberty. Thus, the sense of freedom I am seeking has a negatory appearance, i.e. it resembles negative liberty even though I do not perceive freedom as the unimpeded realization of the individual's will but rather as the right to exercise control over matters of jurisdiction.

RECOGNITION, NORMATIVITY, AND FREEDOM IN CRITICAL THEORY AGAINST LIBERAL CONCEPTIONS OF FREEDOM

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ABSTRACT

The COVID-19 pandemic reignited longstanding debates concerning the relationship between the individual and society. The health crisis in question has turned the regime of fundamental rights and freedoms in Western legal systems upside down; it has also brought to the fore numerous definitions of a state of emergency and depictions of a dystopian future, drawing on the thought of Hobbes, Schmitt, and Agamben. On the other hand, it has been argued that, because this pandemic has exposed the contradictions of capitalism, it has significant potential to lead to questioning the system. Some thinkers have emphasized the need for a new social order that values freedom and human life, rather than being driven by rent-seeking and profit. At the same time, this crisis has reinvigorated interest in alternative conceptions of freedom that reconcile individual autonomy with social well-being. In this context, Hegel's philosophy has reemerged as an important resource for reframing freedom beyond the limits of liberal individualism.

This paper argues that Hegel's theory of recognition (Anerkennung) provides a powerful normative framework for understanding the social conditions of human freedom. Contrary to liberal theories that define freedom primarily in negative terms as the absence of external interference, Hegel conceives freedom as a socially mediated achievement realized through institutions, reciprocal recognition, and participation in ethical life (Sittlichkeit). Therefore, this study examines how Hegel's conception of freedom challenges the individualistic assumptions that continue to shape dominant theories of law and politics.

The contemporary Hegelian interpretation begins by highlighting the limitations of neoliberal approaches to rights and justice. A typical example of this is Robert Nozick's libertarian theory, which prioritizes property rights and negative liberty while rejecting redistributive measures to address social inequalities. Individual freedom is defined primarily as the ability to act freely from state intervention, and while individuals are treated as self-sufficient actors, structural issues, social exclusion, and forms of inequality are not sufficiently addressed. Consequently, the social dimensions of freedom are largely neglected. These approaches, which treat individuals as atomized subjects detached from their social relationships, disregard the structural inequalities and exclusions that undermine genuine autonomy.

Against this background, the paper reconstructs Hegel's account of recognition as a constitutive condition of self-realization. Recognition is not merely a legal status but a broader intersubjective process through which individuals acquire self-consciousness, self-respect, and social membership. The experience of misrecognition, exclusion, or denial of equal worth, therefore, appears not only as a moral injury but also as an obstacle to freedom itself. This perspective allows us to move beyond the traditional opposition between individual and society that characterizes much of the social contract tradition.

This study examines contemporary interpretations of Hegel's philosophy, particularly those developed by Axel Honneth, Frederick Neuhouser, and Klaus Vieweg. Within the tradition of Critical Theory, Axel Honneth reinterprets Hegel's theory of recognition from a left-Hegelian perspective, aiming to construct social freedom. On the other hand, Hegel's philosophical system, which is grounded in freedom, has been examined by Frederick Neuhouser through the lens of social freedom and by Klaus Vieweg as a pioneer of the concept of the social state.

In this presentation, the connection between Hegel's theory of recognition and the concept of freedom will be examined, taking into account the views of contemporary Hegelian thinkers. Furthermore, the rule of law—to which Hegel ascribes a protective and regulatory role against conflicts and class inequalities in the civil society phase—along with the positive obligations attributed to the state and the concept of substantive freedom, also called social freedom, will be analyzed.

POSITIVE FREEDOM: THE SPECTRUM OF MORALISM

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ABSTRACT

According to a widely held view, the concept of positive freedom leads to moralism. This is viewed negatively not only by legal positivists, but also by anti-positivists, who are wary of the corrosive dynamics of morality. However, I will argue that this is not an inevitable consequence and can be avoided by accepting that a constitutive element of the concept of a legal right is the right not to be interfered with — to a certain extent — even when acting illegally. Furthermore, I will contend that this conception of legal rights is consistent with Immanuel Kant's fundamental moral principles.

POPULISM AS FREEDOM: THE NEGLECTED LEGACY OF CHESTERTONIAN DEMOCRATIC THOUGHT

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ABSTRACT

Populism is commonly framed as an antagonist of freedom—an anti-liberal impulse that erodes constitutional norms through emotional manipulation, resentment politics, and the instrumentalization of "the masses" by ambitious elites excluded from institutional power. In this dominant register, populism appears less as a political philosophy than as a strategic pathology of democracy—what may be termed manipulative populism. While identifying a real problem, this association of populism with manipulative politics, obscures, however, a second, original, and now largely forgotten conception of populism, which may be called democratic populism, associated in particular with Gilbert K. Chesterton (and later, among others, Christopher Lasch), and which merits renewed theoretical attention, especially in light of contemporary debates on positive and negative freedom. The paper reconstructs this respectable strand of populist thought and argues that it is not only compatible with freedom but systematically structured by multiple conceptions of liberty. At its core, democratic populism rests on four interconnected assumptions. First, it presupposes a strong anthropological egalitarianism: the "common man" possesses moral and political judgment broadly equivalent to that of "elites". Second, it advances distributism, understood not as radical egalitarianism but as a social and economic order grounded in widely distributed property, enabling citizens to develop and exercise their capacities as independent agents. Third, it affirms fraternity or solidarity: a form of social unity that does not suppress difference but sustains it through mutual recognition and shared vulnerability. Importantly, this emphasis on solidarity offers an alternative to an excessive focus on equality, which, as already noted by Tocqueville and others, may itself generate new forms of dependency, insofar as it is often accompanied by the expansion of state competences and

continuous regulatory vigilance aimed at preserving egalitarian outcomes, and thereby may ultimately threaten freedom. Fourth, it defends state sovereignty and patriotism conceived as attachment to one's political community and traditions without hostility toward others—positioned equally against cosmopolitan abstraction and exclusionary nationalism. The central thesis is that these assumptions map onto distinct yet interrelated dimensions of freedom. Distributism aligns with negative (and republican) freedom insofar as material independence protects against domination. Anthropological egalitarianism and patriotism ground a conception of positive political freedom as democratic self-government, opposing both oligarchic expertise and technocratic governance. Distributism further supports positive inner freedom as self-mastery under conditions of autonomy. Finally, many populist thinkers implicitly—or, in the case of Chesterton, explicitly—rely on a metaphysical conception of freedom (libertarian free will), which further deepens the normative structure of this view. Revisiting this tradition complicates the standard opposition between populism and liberty, suggesting that democratic populism may be read as an undertheorized theory of freedom itself.

POLITICS AND LEGAL REASONING: HOW TO PLACE GENDER ISSUES WITHIN LAW

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Convenor

SW67 · Third International Workshop on Gender Issues in Philosophy of Law and Legal Reasoning (GePhiL2026)
Convenors: Jessica Holl; Diogo Campos Sasdelli

ABSTRACT

This paper aims to discuss a relation, frequently presented as a tension, between the development of methodologically rigorous legal reasoning and the incorporation of the debates and demands of gender studies within the legal practice. The main argument to be here developed is that there can be political reasons for incorporating gender perspectives into law, in the same way as opting not to do so is also a political choice. Law is ultimately shaped and designed by political choices. However, such incorporation of gender-based demands and perspectives does not prevent the development of a legal reasoning that is rigorous and still promotes a differentiation between the realms of law and politics.

To respond to this challenge, this paper proposes the incorporation of sensibility as a complementary dimension to rationality in legal reasoning. Sensibility is defined as an openness to perceiving and understanding social transformation through experience and awareness of its concrete effects. In an acceleration society, change occurs in the sensible world and must be perceived before it can be normatively assessed. Sensibility does not replace rationality but informs it, enabling legal actors to recognize emerging forms of social relations and conflicts and to adapt legal frameworks accordingly.

Further on, the paper argues that sensibility alone is insufficient to ensure that legal change promotes justice. To avoid reproducing historical inequalities, sensibility must be guided by gender-mainstreamed and intersectional perspectives. These approaches emphasize the social construc-

tion of gender and the interaction of multiple axes of social differentiation—such as race, class, age, disability, and sexuality—in the production of inequality. Integrating sensibility with gender-mainstreamed and intersectional lenses allows law to remain responsive to accelerated social change while pursuing emancipatory outcomes and maintaining its stabilizing function in contemporary societies.

ROSE RAND'S AND ELIZABETH LANE BEARDSLEY'S EARLY CONTRIBUTIONS TO LOGIC OF NORMS

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SW67 · Third International Workshop on Gender Issues in Philosophy of Law and Legal Reasoning (GePhiL2026)
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ABSTRACT

The talk discusses Rose Rand's and Elisabeth Lane Beardsley's largely overlooked contributions to logic of norms. Rand's analysis of "Forderungssätze", or “demand-sentences,” anticipated central questions of deontic logic, e.g., how non-descriptive sentences can enter logical relations, and how obligation-like contents differ from truth-apt propositions. Beardsley's work on imperative sentences, in its turn, similarly challenged the reduction of commands to indicatives, clarifying the inferential role of directives in practical reasoning, while criticising a system of imperative logic proposed by Albert Hofstadter and J. C. C. McKinsey. Rand's and Beardsley's contributions reveal how early developments of modern deontic logic were substantially influenced by women.

LAW'S A DRAG: PARTICIPATORY RESEARCH, FORUM THEATRE, AND QUEER LEGAL THEORY

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SW67 · Third International Workshop on Gender Issues in Philosophy of Law and Legal Reasoning (GePhiL2026)
Convenors: Jessica Holl; Diogo Campos Sasdelli

ABSTRACT

In this paper we share the current work of the Law's a Drag ("LAD") research network, exploring its importance in tackling current and future injustices within the LGBTQ+ community in the United Kingdom. LAD is a collaborative network of drag artists and academics, co-producing impact-focused research with a view to identifying and addressing legal problems faced by drag artists. Our two current projects are a) researching drag artists' lived experiences of law, and b) co-creation of pedagogic materials and public legal educational materials that can benefit artists and wider society. We explain the queer legal phenomenological grounding of this work, taking queer people's lived experiences as the starting point of its inquiry - noting how legal philosophers can neither identify the complex legal problems of the modern world, nor examine their origins and possible solutions from an ethical perspective, without centring the voices, experiences, and wishes of those affected by those problems. We demonstrate LAD's methodological basis in emancipatory participatory research methods, where the drag artists themselves direct the research aims, methods, and outputs. We showcase how artists' own expertise in theatrical methods, such as forum theatre, have enriched this research agenda with a truly interdisciplinary, queered approach, that celebrates queer joy, playfulness, and creativity. We present an outline of our current research and scholarship projects, and an invitation to join us in future opportunities for international research collaboration.

DECRIMINALIZING HOMOSEXUALITY WITHOUT GENDER STUDIES? LEGAL POSITIVISM, CONSTITUTIONALISM, AND THE LIMITS OF GENDERED APPROACHES IN THE COMMONWEALTH CARIBBEAN

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SW67 · Third International Workshop on Gender Issues in Philosophy of Law and Legal Reasoning (GePhiL2026)
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ABSTRACT

This paper examines the decriminalization of homosexuality in the Commonwealth Caribbean from the perspective of legal philosophy, with particular attention to its limited engagement with contemporary gender studies and queer theory. While interdisciplinary scholarship increasingly emphasizes the importance of gendered and queer perspectives in legal analysis, the Commonwealth Caribbean experience presents a distinct trajectory: decriminalization has been driven primarily by constitutional adjudication, legal positivism, and classical human rights reasoning rather than by identity-based or gender-theoretical frameworks.

Historically, criminal prohibitions on same-sex relations in the region derive from colonial legislation and have persisted long after independence. Legislative reform has been largely absent. Instead, decriminalization has occurred through judicial decisions, with courts striking down such laws as incompatible with fundamental constitutional rights, including dignity, liberty, privacy, and equality. This judicial pathway reflects a distinctive model of legal change in which courts, rather than legislatures, serve as the principal agents of reform.

Building on the work of Simeon McIntosh, the famous regional legal philosopher, the paper argues that Commonwealth Caribbean constitutional reasoning is grounded in a classical rights-based framework centered on autonomy, the dignity of the human person, and the "right to justification." Within this framework, the criminalization of consensual same-

sex relations is rejected not because of an affirmative recognition or normalization of homosexuality, but because the State fails to provide morally and politically sufficient justification for the use of coercive criminal law. Religious condemnation, moral disgust, and appeals to tradition are treated as inadequate grounds for criminalization within a pluralistic constitutional order.

The paper situates this approach within the broader Hart–Devlin debate on the enforcement of morals and Dworkin's critique of majoritarian morality. It argues that the Commonwealth Caribbean jurisprudential trajectory aligns with liberal constitutionalism, emphasizing limits on state power rather than the transformation of social norms. In this sense, judicial and jurisprudential reasoning does not aim at normalizing homosexuality, but rather at establishing that such conduct—however morally contested—falls outside the legitimate scope of criminal law.

While Commonwealth Caribbean scholarship has increasingly engaged with gender and queer theoretical perspectives, the jurisprudence of decriminalization itself remains grounded in classical constitutional reasoning. Courts have not adopted gender theory as a methodological framework, instead relying on doctrinal analysis and justificatory reasoning rooted in constitutional law. This reveals a gap between evolving academic discourse and judicial practice.

A further complication arises from the persistence of "savings clauses," which shield pre-independence criminal laws from constitutional review. The paper argues that these clauses must be reconceptualized as normative anomalies incompatible with contemporary human rights commitments.

By analysing the Commonwealth Caribbean experience, the paper contributes a critical perspective to interdisciplinary debates, showing that significant legal change can occur without reliance on gender theory, while also raising questions about the limits of such an approach.

THE LIMITS OF LEGAL REASONING IN CONSTITUTIONALISM: BALANCING, DEFEASIBILITY, AND MORAL REASONS

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SW68 · Argumentation, Constitutionalism, and Rights: Concepts, Foundations, and Practice
Convenors: Manuel Atienza; Danny José Cevallos; Lucas E. Misseri

ABSTRACT

It is common to assert that the constitutionalist paradigm places a greater burden of argumentation on legal professionals, and particularly on judges. The risk this entails is that these argumentative processes may transgress the limits of the law: hence the growing importance of the issue of judicial activism; specifically, how it should be understood and what attitude should be adopted toward it.

The discussion concerning these limits—which also involves a discussion of the concept of law itself—revolves around three fundamental questions. The first is balancing: the type of argumentative procedure that should be used when the initial premises are principles rather than rules. The second is defeasibility: the possibility that rules may contain implicit exceptions. And the third is the use of moral reasons: to what extent a judge must resort to morality when justifying a particular decision.

Those who are skeptical of balancing—questioning its rational character—and the existence—or discovery—of exceptions that are implicit in the rules, and who deny that judges can legitimately employ moral arguments are—at least tendentially—legal positivists. Those who hold opposing views can be considered—tendentially—non-positivists or post-positivists. Between these two extremes, however, there are numerous gradations to consider.

ON HOW TO PROTECT FUNDAMENTAL RIGHTS: A DIALECTICAL REVIEW

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SW68 · Argumentation, Constitutionalism, and Rights: Concepts, Foundations, and Practice
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ABSTRACT

This work examines, through a dialectical structure, whether the amparo is conceptually necessary for the protection of fundamental rights (FR) within the Constitutional State of Law (CSL).

The thesis argues that amparo is the specific and indispensable guarantee of the CSL, given that fundamental rights (constitutionally entrenched and grounded in human rights) require differentiated procedural mechanisms for their effective protection. The antithesis counter-argues that because fundamental rights permeate the entire legal system, ordinary judges already perform this protective function, rendering the amparo unnecessary as an autonomous mechanism; furthermore, there are constitutionalized systems (such as Italy) that function without an equivalent figure.

The study compares models for protecting FR in Europe and Latin America, identifying common problems (such as procedural abuse or jurisdictional conflicts) and highlighting argumentative tensions resulting from the "over-constitutionalization" of cases.

The synthesis concludes that the amparo is not a conceptually necessary institution, but a contingent one: its implementation is driven by practical and political reasons, not theoretical ones. Nonetheless, when a legal system chooses to incorporate it, a distinction should be drawn between an urgency amparo, for the immediate defense of rights, and an interpretive amparo, for the development of rights' content and jurisprudential systematization.

HUMAN RIGHTS: A NEW HISTORY, A CONCEPT TO RETHINK

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SW68 · Argumentation, Constitutionalism, and Rights: Concepts, Foundations, and Practice
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ABSTRACT

In recent decades, a powerful historical revision of human rights history has taken place. Although important earlier works exist, it is with Samuel Moyn's The Last Utopia (2010) that the so-called deep genealogy of human rights—that is, the idea that they have evolved since the French Revolution or earlier—has been challenged with empirical evidence offered by historians. For Moyn and his many followers, it is a history of ruptures rather than continuities; it is also a history of competing conceptions that have been shaped in different contexts that began with a postwar consensus on the Welfare State, which would break down and give rise to the Cold War, decolonial processes, the search for a new international order supported by Third World countries, and finally to the emergence and consolidation of neoliberalism in 1970s, which brought about the fall of the Soviet Union and the socialist bloc in 1990s.

Contemporary human rights, as various authors participating in these intense debates tell us, are different from those conceived in previous centuries, even from those envisioned by the drafters of the 1948 Universal Declaration of Human Rights. This historiographical debate points to the fact that the contemporary theoretical construction of human rights has been heavily influenced by various ideological projects, one of which, and perhaps the most discussed, is neoliberalism. However, later works by Moyn himself, such as Not Enough (2018), raise other possible influences that impacted the understanding of human rights, such as the idea of basic needs, which stemmed from the development policies of international organizations. This conception prevailed in the understanding of human rights and limited their scope and comprehension.

In the paper I will present, I will review the conceptual and philosophical implications that historiographical revisionism raises, whether explicitly or implicitly. Our increased awareness of the historicity of human rights, and the profound moral and political implications that have been at play in different theoretical approaches, should prompt us to reconsider how we understand their nature (concept) and their foundation. Furthermore, this allows us to reflect on the constitutional model within which the ideas of fundamental rights and human rights have been central. The historical achievements, but also the limitations, of human rights are closely linked to constitutionalism.

This work does not intend to solve the many problems that have appeared in recent literature; it will be content to raise the implications that I consider most important, the challenges that arise for a theory of human rights, and some clues as to where to focus our efforts.

HOW SHOULD WE CONSTRUCT A THEORY OF DISSENT? THE NUANCES AND REACTIONS OF DISSENT AT THE CORE OF FUNDAMENTAL POLITICAL RIGHTS

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ABSTRACT

This paper addresses the question of how to construct a theory of dissent that places dissent at the core of fundamental political rights within a post-positivist and constitutionalist framework. Rather than treating dissent as a derivative or isolated right, it advances the view that dissent operates as a foundational concept that informs the interpretation, justification, and application of rights such as freedom of expression, association, and assembly. In this sense, dissent is not merely protected by fundamental rights but plays a constitutive role in shaping their meaning within legal argumentation.

The paper begins from the premise that dissent is an ambivalent and under-theorized concept, often used as a "catch-all" category encompassing disagreement, protest, resistance, and disobedience. This conceptual indeterminacy poses challenges for legal reasoning, particularly in constitutional adjudication, where courts must distinguish between protected exercises of fundamental rights and their potential limits. In response, the paper develops a theoretical framework that understands dissent as a relational and contextual phenomenon, characterized by its propositional nature: dissent not only contests existing legal or political arrangements but also advances alternative normative claims that demand argumentative engagement.

Central to this construction are the nuances of dissent, which reveal its plurality of forms, motivations, and legal manifestations. Dissent may arise across institutional settings—judicial, political, or social—and may take forms that range from deliberative participation to disruptive contestation.

These nuances resist rigid classifications and instead require a rights-based approach grounded in principles. In this sense, dissent operates within the structure of principles rather than rules, requiring forms of legal reasoning grounded in proportionality, balancing, and justificatory argument, as characteristic of post-positivist constitutionalism. The assessment of dissent thus depends on interpretive practices that reflect the argumentative structure of constitutional reasoning.

Equally important are the reactions to dissent, which are decisive in determining its legal status and practical effects. Institutional responses—particularly those of courts—translate dissent into the language of rights, principles, and duties. Whether dissent is accommodated, limited, or sanctioned depends on argumentative frameworks that reflect deeper assumptions about the nature and hierarchy of fundamental rights, their moral foundations, and their role within the constitutional order.

By integrating the nuances of dissent with the reactions it elicits, this paper proposes a framework that reconceptualizes dissent as a dynamic element within legal argumentation and constitutional practice. In doing so, it contributes to debates on the nature of fundamental rights, their interpretive structure, and their foundational role in the constitutional rule of law, highlighting dissent as a key site where legal reasoning, moral principles, and institutional practice converge.

DIGNITY AS A CAPACITY FOR VALUING IN THE FACE OF THE CRISIS OF CONSTITUTIONALISM

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ABSTRACT

One of the hallmarks of the current crisis in contemporary constitutionalism—the disaffection with democratic values—can be explained, in part, by the discrediting and apparent impossibility of establishing a shared substantive concept of human dignity. Given the ineffectiveness of nation-states and the rise of authoritarianism, it is imperative to move beyond the view of dignity as a mere pragmatic or formal local resource and return to the universal substantive issue.

The central thesis is grounded in a transcendental, yet not transcendent, argument. It proposes understanding dignity as the capacity for valuing possessed by subjects; i.e., the constitutive faculty that human beings have to endow their existence and their environment with meaning. This conception of dignity entails a transcendental argument insofar as, by placing the capacity for valuing at the center, it implies that it would be incoherent to uphold the importance of that capacity while denying it to other valuing subjects.

It is concluded that this material perspective on human dignity—by grounding law in the evaluative dimension of the human condition—could allow constitutionalism and the post-positivist theory of law to offer a common framework for solutions to global problems and complex bioethical dilemmas without resorting to natural law theory or purely formal approaches.

CONDITIONS FOR LEGAL CONSTRAINT. JURY DECISION-MAKING AND INSTITUTIONAL DESIGN

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SW69 · Legality, Decision-Making Contexts, and Institutional Design
Convenors: Flavio Scuderi Di Miceli; Matija Žgur

ABSTRACT

My proposal examines how institutional design shapes the degree and form of constraint that legal norms exert on decision-makers. In concordance with the Workshop proposal, it argues that legality cannot be fully understood at the level of norms alone, but must be analyzed in relation to the procedural contexts in which decisions are taken. In particular, the contrast between professional judges and lay juries reveals that different institutional settings generate distinct modes of constraint, and therefore different ways in which legal rules become binding (or fail to do so) in practice. Drawing on a deliberative conception of democratic legitimacy associated with Carlos S. Nino and engaging with Jeremy Waldron's account of law as a practice that must respect the agency of those subject to it, the paper understands legal decision-making as a form of participation in the reasoning of the law. From this perspective, legality is not exhausted by conformity with rules, but requires that decisions be produced through procedures that structure and delimit how reasons are articulated, confronted, and stabilized under conditions of persistent disagreement. Institutional design is therefore central, not simply because it allocates authority, but because it determines the extent to which decision-makers are genuinely engaged in legal reasoning as a shared and publicly accountable practice. From this standpoint, the contrast between judicial and jury decision-making becomes particularly revealing. Professional judges operate within a framework structured by criminal law dogmatics, which provides a system of concepts and interpretive tools aimed at coherence and generalization. However, this same framework also enables forms of discretion that may attenuate the binding force of legal rules, allowing judges to reinterpret, reframe, or even avoid their application through doctrinal reasoning. Lay juries, by contrast, participate in the reasoning of the law under radically

different conditions. Their decision-making relies on collective deliberation oriented to the particular case, without the requirement of explicit legal justification. This can generate epistemic advantages associated with plurality, independence from professional biases, and a more direct engagement with the evidentiary and moral dimensions of the case, features that resonate with Waldron's emphasis on the value of inclusive participation under disagreement. Yet these advantages are structurally limited by two conditions: first, the jury's dependence on legal instructions provided by professional judges, which mediate and filter the relevant legal categories; and second, the absence of reasoned verdicts, which obscures how those categories are understood and applied in deliberation. In some systems, these features also create the conditions for explicit departures from the law –as in cases of jury nullification, where juries consciously refuse to apply legal rules–. These practices, while often informal, resemble in function forms of constitutional review or decentralized resistance within the legal system, raising questions about the relationship between legality, disagreement, and institutional authority. The paper proposes that the binding force of legal norms is not uniform across institutional contexts, but varies according to how decision-making procedures structure participation in legal reasoning. Judicial and jury-based models instantiate different configurations of constraint, reasoning, and accountability. This suggests that procedural design is a central site where legality is constituted: the challenge is to articulate institutional arrangements capable of preserving the democratic and republican value of inclusive participation in legal reasoning, while maintaining the clarity, stability, and controllability required for law to guide action under conditions of disagreement.

THE CAUSAL EFFICACY OF LEGAL NORMS: AN INTERVENTIONIST ACCOUNT

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SW69 · Legality, Decision-Making Contexts, and Institutional Design
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ABSTRACT

I ask under what conditions a legal norm can be said to be causally efficacious in producing patterns of citizens' compliant behaviour. Legal norms are often described as instruments for guiding conduct and achieving public ends. Yet this image remains incomplete unless we clarify what it means for a norm to causally contribute to the behaviour of its addressees. To address this question, I develop a conceptual framework for analysing the generic causal efficacy of legal norms. I argue that causal statements about norms are elliptical: statements such as "norm N causes the pattern of behaviour P" hide a richer causal history. To say that a legal norm caused a pattern of compliant behaviour is not to say that an abstract normative content directly produced that conduct. Rather, it is to claim that some variable associated with the effective operation of the norm within a legal mechanism made a difference to the relevant behavioural pattern. These variables may concern citizens themselves, such as their knowledge of the law, perceived legitimacy, moral alignment, fear of sanctions, perceived behaviour of others, or practical capacity to comply. Yet they may also concern public administration. On an interventionist theory of causation, administrative action can be causally relevant when variations in administrative practices produce variations in the probability, stability, or distribution of citizens' compliance. The main contribution lies in applying an interventionist theory of causation to the concept of efficacy of legal norms. This shifts the analysis from whether citizens' conduct merely corresponds to a norm to which variables, if changed, would change the relevant pattern of compliance. Methodologically, I reconstruct candidate variables from the empirical literature on compliance, including deterrence, legitimacy, social influence, opportunity, capacity, and knowledge. I use this literature not to adjudicate empirical debates, but to identify variables

through which legal norms may become causally efficacious. The central claim is that, once this ellipsis is made explicit, what properly enters the explanation is not "the norm" as a bare causal relatum, but certain variables associated with its effective operation. The point of making these variables explicit is to show more precisely which aspects of the norm's operation make a difference to citizens' compliant behaviour. On this view, the actions of administrative bodies may themselves be among the relevant variables. Public administration can communicate legal requirements, simplify or complicate compliance, create incentives, monitor behaviour, apply sanctions, grant benefits, and shape citizens' expectations about what the law requires and how it will operate. These administrative actions are not merely external to the efficacy of legal norms. They may be among the factors whose variation makes a difference to the probability, stability, or distribution of citizens' compliance. The upshot is that an interventionist perspective helps us see how the causal efficacy of legal norms may depend on identifiable variables, including variables connected to the conduct of public administration.

THE PYRAMID AND THE FUNCTIONARY: RETHINKING LEGALITY BEYOND ORGANIC IDENTIFICATION

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SW69 · Legality, Decision-Making Contexts, and Institutional Design
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ABSTRACT

The principle of legality is traditionally understood as requiring public functionaries to apply the law by following the hierarchy of legal sources, from the Constitution and statutory law down to the individual administrative act. This view, rooted in the doctrine of organic identification, implicitly assumes that officials are capable of accessing, processing, and applying higher-ranking legal sources in the course of their everyday activities. Yet administrative practice reveals a different reality. A psychological and organizational gap separates the normative command contained in legal rules from the actions through which those rules are implemented, a gap that cannot be reduced to a matter of individual will or compliance. Primary and higher-ranking sources are characterised by elevated cognitive and interpretive costs, whereas circulars, guidelines, FAQs and internal commands issued by superiors are more accessible and immediately available within the decision-making environment of 'frontline officials'. We can see a cognitive inversion of the hierarchy of legal sources that consequently emerges. What is formally subordinate tends to become the primary source of practical orientation, while constitutionally and legally superior norms often remain in the background. Rather than being a mere pathology, this phenomenon reflects the cognitive and organizational constraints under which administrative decisions are made. The effectiveness of legality therefore depends not only on the validity of legal norms, but also on the cognitive conditions that enable functionaries to comply with them. Reconsidering those conditions challenges the traditional assumptions of organic identification and opens the way for a conception of legal-

ity that takes seriously the role of institutional design, cognitive accessibility and decision-making environments in the practical application of law.

NORMS AND PROFESSIONAL CULTURE IN FRONTLINE EMERGENCY MANAGEMENT

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SW69 · Legality, Decision-Making Contexts, and Institutional Design
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ABSTRACT

This presentation argues that the actual operation of emergency governance is determined less by legal theory and constitutional design than by the professional culture of frontline emergency agents. While legal scholarship on emergencies has traditionally focused on design-level frameworks, it has largely neglected the frontline level, where emergency powers are concretely exercised by frontline emergency agents. Yet it is precisely at this level that legality is ultimately affirmed or undermined. The presentation will illustrate how markedly different forms of emergency response may emerge under the same legal framework. It will then develop a conceptual distinction between the state of emergency and the state of exception, showing how these models provide normative standards for evaluating emergency action without predetermining its practical implementation. The analysis subsequently turns to the structural features of frontline emergency management, emphasizing the inevitability of professional discretion due to normative vagueness, situational unpredictability, urgency, and informational asymmetries. While such discretion is functionally necessary, it also carries a persistent risk of degenerating into extra-legal arbitrariness. The central claim of the presentation is that this risk is neither accidental nor unavoidable. Rather, whether frontline discretion is exercised in a legally self-restraining or an arbitrary manner depends decisively on the professional (legal) culture of frontline agents – that is, on how they understand their role, authority, and responsibility toward legality under conditions of stress. Professional culture, shaped through training, organizational norms, and institutional socialization, mediates between abstract legal frameworks and concrete emergency action. The

presentation will conclude by advancing a normative argument: strengthening legality in emergency governance cannot be achieved solely by refining constitutional and statutory frameworks. Instead, it requires sustained investment in the professional legal culture of frontline emergency officials, including education, institutional design, ethical standards, and adequate resources.

IDEALITY AND EXISTENCE OF LAW

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SW70 · IVR Central Asia Regional Branch Special Workshop – Nature of Law and Legal Reality
Convenors: Anton B. Didikin

ABSTRACT

The law appears in various forms. In many cases it is written, but in some instances it is expressed only orally, and in others it is not even articulated in language at all – for example, when a police officer issues instructions through a gesture. The variety of these forms hints that the propositional content embodied in them is more important than these forms. It alone provides information on what one has to do. The importance of the propositional content is also evident from the fact that individual manifestations of a norm may disappear without the norms thereby losing their validity. If a compilation of laws is burnt, the law itself remains valid.

This widely held observation regarding the ontologically ideal ("abstract") nature of law has far-reaching consequences. This applies to a number of characteristics of law, such as its immateriality and persistence, but also to the question of how it exists. For when it comes to propositional content, empirical facts are not sufficient to establish its existence, even though these may be relevant alongside other factors. Rather, reasons are then required to classify this content as law. These reasons are not identical to the reasons that give law its validity. For if the question at hand is whether something is law at all, one can set aside the question of whether it is authoritative for a particular society.

This is illustrated by Roman law, which is still regarded as law without assuming that it is currently in force. Whilst one might argue in this case that it was at least once in force, this argument loses its force at the very latest when one considers legislative proposals. These can be classified as potential law, even if they have never been practised or applied to date. The factual basis for this future law is hence comparatively narrow, which again suggests that it is not the facts but the propositional content that matters.

The significance of the propositional content becomes even clearer when one considers the legal consequences under current law that have not yet been addressed and which are therefore not reflected in any written or oral form, nor even in the consciousness of any lawyer. Such legal consequences may arise, for example, when different legal provisions are combined. The outcome of such combinations is likely, at least in some cases, to be legally determinate even if no one has yet considered it. Admittedly, in many other cases it may be unclear how cases not yet decided are to be assessed, because the law contains ambiguities, gaps and contradictions. Such cases do not, however, preclude the possibility that the law is determinate in other cases, so that virtually all competent interpreters would give the same answer. If one therefore assumes that law already exists in such cases, it becomes clear that one must not make it dependent solely on facts, but may and must draw on reasons. These, too, shape the existence of the law.

DOES LAW EXIST IDEALLY? LORENZ KAEHLER'S ONTOLOGY OF LAW REVISITED

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SW70 · IVR Central Asia Regional Branch Special Workshop – Nature of Law and Legal Reality
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ABSTRACT

The Lorenz Kaehler's arguments offers an elegant defense of the ideal, propositional nature of law, but several of its central ideas are philosophically and methodologically controversial.

On Propositional Content of Law. The argument says that because law can appear in many forms (such as text, speech, or gestures), its propositional content is more important than its physical form. From this point of view it concludes that law is "ontologically ideal" meaning abstract in nature. However, this reasoning moves too quickly. It is reasonable to say that content matters for guiding actions (this is an epistemic point), but it is a much stronger claim to say that law is fundamentally abstract (an ontological claim). The fact that the same legal norm can be communicated in different ways does not prove that law exists as an abstract entity. It only shows that norms can function independently from their specific forms to some extent.

A legal positivist might argue instead that what really exists are social facts—such as how people recognize, use, and interpret legal rules. In this view, "propositional content" is not an independent reality but a theoretical idea built on these social practices. For example, the meaning of a police officer's gesture or a legal rule depends on social conventions, institutional roles, and shared practices. These are real empirical factors. By separating legal content from these factors, the argument risks treating something as independent when it actually depends on social reality.

The Burnt Code and Roman Law Examples. The argument claims that if a written law is destroyed (for example, burned), the law itself still exists.

This example is used to show that law is immaterial and persistent. However, law survives in such destruction because copies, memories, and institutional records still exist, and people continue to treat those rules as valid. If all copies and memories disappeared at the same time, and no legal practices remained, it would be much harder to say that the law still exists. So, the persistence of law can be explained by stable institutional memory, not necessarily by the existence of abstract entities.

The same issue appears in the example of Roman law. The author says that Roman law is "still regarded as law" even though it is no longer in force. But today we usually call Roman law "law" in a historical or conceptual sense, not as a currently existing legal system.

The argument does not clearly distinguish between "this was law" and "this is law now" and this weakens the claim that law exists independently of social facts.

Remarks on "Reasons" and Existence. A central Lorenz Kaehler's thesis is that empirical facts are insufficient to establish the existence of law and that "reasons" are needed to classify propositional content of law, where these reasons are distinct from grounds of validity. These reasons are said to be different from reasons that make law valid. It is unclear what kind of reasons these are. They could be: conceptual (how we use the word "law"), moral (what should count as law), methodological (how legal theory should classify things). Without this clarification the claim that reasons "shape the existence of law" becomes unclear and may confuse different issues such as existence and classification.

Also separating reasons for existence from reasons for validity does not fit well with many legal theories. For example, in Hart's theory the rule of recognition both defines what counts as law and explains why it is valid. The same social practice explains both existence and authority in a clear way. The Lorenz Kaehler's thesis criticizes fact-based approaches but does not clearly show why a more advanced account of social practices cannot already include the role of reasons as part of those practices.

Legal Interpretation and Ontology of Law Revisited. The argument also claims that some legal outcomes already exist, even if no one has thought about them yet, because they logically follow from existing rules. It suggests that if most competent lawyers would reach the same conclusion, then law must depend not only on facts but also on reasons.

However, this idea has a problem. Saying what competent interpreters would decide is still a factual claim about how a certain group behaves under certain conditions.

This agreement can be explained by shared language, professional training, and institutional standards—all of which are social facts. Therefore, "reasons" can be understood as part of these social practices, not as proof of a separate abstract level of law.

RECALIBRATING LEGAL PHILOSOPHY IN A WORLD OF INCREASING CRISIS

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ABSTRACT

The complex challenges of today's world, including AI, the protection of democracy, human rights, social justice, international law, and planetary health, are well known. However, political willingness and institutional capacity to address such problems appear limited. In many cases, existing legal frameworks at both national and international levels seem insufficient to cope with the speed and scale of ongoing transformative processes.

These developments raise fundamental questions both about the role of law in modern societies and its relationship to philosophy, and also the role of legal philosophy itself. What function does legal philosophy have in a world characterized both by profound transformations and significant regressions? What follows from this in substantive and methodological terms, and institutionally and communicatively with regard to societal and political impact? If we must rethink the legal framework required to protect human rights in a globalized world, we must also address the question of what concrete contributions legal philosophy can make in this context, beyond the analysis of the legal mechanisms of human rights protection.

From a meta-perspective, it therefore seems appropriate to examine whether the discipline should be recalibrated at various levels in light of current international and global challenges. This paper develops such a perspective on the basis of five interconnected theses and partly builds on earlier work by the author on the role of an application-oriented legal philosophy in the twenty-first century (1).

Thesis 1:

Legal philosophy should make a tangible normative contribution to addressing pressing international and global problems, some of which are of

existential importance, particularly in areas where primary legal regulation has so far clearly failed. This requires rationally derived legal-ethical standards. Examples include normative frameworks for the regulation of AI (2), the moral evaluation of wars of aggression, including questions of possible justification (3), the ethical assessment of nuclear deterrence (4), and the legal-ethical implications of insufficient climate protection (5). Such problems revealsignificant normative gaps within existing legal and political structures. They therefore require careful legal-philosophical analysis as well as normative guidance derived from it.

Thesis 2:

The formulation of legal-ethical standards also entails the identification of normative red lines for political and state (non-)action. Legal philosophy can contribute to determining when situations of extreme injustice arise that are not tolerable from a legal-ethical perspective. It can also indicate which reasons, and in particular which empirical facts, support the characterization of situations as instances of extreme, intolerable injustice, for example in cases of political or governmental laissez-faire vis-a-vis anthropogenic climate change (6). Such clarifications are relevant not only in legal and political terms but also socially, for instance when examining the limits of legitimate civil disobedience. The problem does not lie in the absence of guiding legal principles for a more just and humane world order (7), rather there is a lack of legal-ethical concepts and principles for identifying and preventing such extreme injustices.

Thesis 3:

Theories of rational legal-ethical decision-making and argumentation should help to assess the rationality of normative positions not only in law, but also in politics and society. In this respect, legal philosophy could provide, alongside the normative standards discussed in Theses 1 and 2, formal criteria for distinguishing rationally defensible normative positions and justificatory arguments from political rhetoric, pseudo-argumentation, or forms of postmodern skepticism that undermine rational discourse. Such standards are necessary, not least because political violence is typically justified, among other things, through moral arguments (8).

Thesis 4:

A non-positivist approach to legal philosophy also needs to be supplemented by interdisciplinary cooperation and empirical research. For example, a legal-ethical analysis of extreme injustice resulting from inadequate executive and legislative climate protection (cf. Thesis 2) cannot be meaningfully conducted without considering the findings of climate science (9). In order to enable precise normative analyses and plausible assessments as well as recommendations for action, legal philosophical reflection should be supplemented by social scientific research where appropriate (10). In the context of legal-ethical consideration of inadequate climate protection, for example, the question of what role existing legal frameworks (e.g. international law, national constitutional law, international and national court decisions, etc.) play in relation to laissez-faire attitudes of political actors and institutions towards climate change could be examined empirically. The findings could both clarify the description of normative gaps, and refine recommendations for action in legal ethics.

Thesis 5:

The above theses have already functionally indicated that legal philosophy should not be limited to internal academic analyses and debates. Rather, in an application-oriented manner, it should seek to contribute, on the basis of the greatest possible rationality, to societal and political discourse concerning major contemporary challenges and thereby aim for a certain degree of impact (11). If, for example, the influence of technological developments on human life and society requires legal philosophical reflection that goes beyond mere legal regulation, then the results of such analyses should also be communicated externally in a visible and comprehensible manner within society and politics. Regardless of the appropriate formats for such impact, this kind of legal-philosophical engagement must not turn into political activism. Maintaining the balance between social and political relevance and scientific distance requires methodological discipline, institutional and communicative creativity, and a constant awareness of potential ideological or political influences (12).

Conclusion:

Legal philosophy can respond to contemporary challenges by combining normative rigor and focus with methodological openness while simultaneously striving for social and political relevance. The law itself must become more effective in addressing the changing problems of the world.

But that alone is probably not enough. A non-positivist legal philosophy should also become more effective, particularly where the law has so far failed to deliver effective solutions. Ultimately, only legal philosophers themselves can attempt to analyze the role and function of their discipline and, where necessary, adapt it to changing conditions and ongoing processes of transformation. If we do not undertake this task ourselves, future legal historians will do so ex post.

CAN WE PROVE THE EXISTENCE OF LAW?

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ABSTRACT

We often speak of "legal reality," the "juridical world," or even of lawyers possessing their own language, distinctive forms of argumentation, and particular ways of describing reality. Judicial decisions, constitutions, rights, duties, legal persons, and normative constructions structure social and political life; yet the ontological status of these phenomena remains far from self-evident. Does law truly exist, and if so, in what sense? Can law be regarded as a genuinely existing phenomenon, or is it merely a set of social practices, linguistic constructions, and institutional fictions? More fundamentally, is it possible to prove the existence of law at all?

This paper addresses the ontological problem in the philosophy of law through the classical question: What is law? As Corrado Roversi has observed, this question contains an internal ambiguity. On the one hand, emphasis may be placed on the word what: which objects, norms, practices, and institutional facts ought to be classified as law? On the other hand, the crucial issue concerns the word is: what does it mean to claim that law exists, and what mode of existence distinguishes law from other social phenomena? As the paper argues, this ambiguity lies at the heart of many contemporary debates concerning the nature of law.

The paper seeks not only to address the question of the existence of law, but also to reconstruct the major traditions of legal philosophy through their respective positions on the possibility of law's existence as a distinct normative reality. Rather than searching for a single definitive concept of law, the paper examines the ontological assumptions underlying different jurisprudential approaches.

In this respect, the paper proposes to interpret legal philosophy through the opposition between two broad tendencies: theories that affirm the existence of law as a distinctive form of normative reality, and approaches that cast doubt on the very possibility of treating law as an autonomous entity.

The first group includes classical versions of legal positivism, natural law theory, and interpretivism. For H. L. A. Hart, law exists as a system of social rules and institutional practices grounded in recognition by legal officials. Joseph Raz conceives of law as a normative system claiming authority, whereas Robert Alexy connects the existence of law to its internal relation to morality. Natural law theories understand law as part of an objective moral order, while Ronald Dworkin's interpretivism conceives of law as an existing practice of principles and legal argumentation.

The opposing line consists of thinkers who question the existence of law as an autonomous normative entity. Legal realism occupies a particularly important place in this context. For Oliver Wendell Holmes Jr. and Jerome Frank, law exists not as an abstract system of norms, but primarily as judicial activity and the predictable behaviour of legal actors. This scepticism reached its most radical form in Scandinavian legal realism. Alf Ross criticised the idea of "objective law" as an independent normative reality and viewed law instead as a set of directives that exist only insofar as they are actually perceived and applied by courts. From Ross's perspective, legal normativity possesses no independent ontological status; rather, it emerges from stable social and psychological practices within legal life.

Special attention will also be devoted to the historical formation of law's normative force. In this regard, the paper examines the development of jurisprudence in the Roman Empire, where law gradually came to be understood as an autonomous normative order possessing its own language, professional community, and internal logic of interpretation.

The paper further engages with contemporary approaches to legal ontology. Bruno Latour, for example, understands law not as a static entity but as a network of actors, documents, institutions, and practices. Jacques Derrida, by contrast, argues that law can be deconstructed because it is grounded in historically contingent structures of language, interpretation, and power. Justice, however, remains undeconstructible, since it always

exceeds any positive legal order and persists as an unattainable yet necessary normative horizon.

Ultimately, the question Can We Prove the Existence of Law? is presented not merely as an ontological inquiry, but also as a way of reconstructing the history and principal traditions of legal philosophy through their differing responses to the question of whether law exists and what, precisely, such existence means.

LAW AND THE POST-TEXTUAL: SEEING AS A JURIDICAL-METHODOLOGICAL PROBLEM

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ABSTRACT

I start from the assumption that seeing operates structurally as a constitutive dimension of juridical intelligibility. Legal experience does not encounter reality as facts transparently available for normative subsumption, nor as an inert empirical field; the construction of the juridically relevant world takes place in the contested field in which bodies, gestures, spaces, symbols, institutional practices, scenes and forms of exposure are actively framed, symbolically disputed and narratively invested with juridical significance. This juridical work is continuously exercised and maintained through traditions of legal reasoning, practices of conceptualisation, dogmatic distinctions, stabilised codes and criteria of relevance, and interpretative matrices by which certain dimensions of practical life may acquire juridical density while others remain practical-normatively inarticulate. In this sense, the visible is not a given but a necessarily precarious and unstable complex formation, a historical-cultural artefact produced through operations of selection of relevant traits, distribution of meaning and possibilities of figuration. All this confirms that visuality participates substantively in the practical-normative activity through which law gives reality its specific texture and weaves its tensions into the dialectical movement by which judgment responds to the novelty of the case.

I treat the post-textual as a moment of fissure, a critical condition and appeal for reconstruction in which the structure and inherited limits of textual organisation, taken as the historically contingent privileged grammar of juridical meaning, are denaturalised and become methodologically visible. This opening requires the rearticulation of the criteria and practical grounds that give those limits institutional traction. Rather than beginning

from the assumption that law is fundamentally textual and only subsequently confronted with visual challenges arising from external forms of appearance, the post-textual invites an inversion of perspective: textuality itself must be understood as a historically dominant modality, a regime of seeing, within a broader economy of juridical visibility. The legal text, as the method of the line, belongs to this economy even while tending to conceal its own scopic condition. More than a plain affirmation of visual hegemony, this diagnosis opens onto the recognition that the apparent objectivity of legal language, the coherence of procedural ordering and the conceptual architecture of doctrine function as strategic operators of a visual education: they discipline appearance through abstraction and discursive continuity, training juridical sight to admit the visible into juridical position in forms of articulation already available to the canonical standpoint of legal discourse.

Under this inversion, the textual life of law can be brought back from the modern imaginary of a self-sufficient scriptural reason to the scopic mediations that silently sustain it, exposing both the productivity and the limitations of the forms through which legal culture institutes its visual field, from methods of interpretation to routines of proof. This tension becomes particularly acute when contemporary experiences interpellate the argumentative-narrative temporality of judgment through ostensibly visual artefacts and multimodal forms that unsettle the normative and epistemic confidence historically invested in the line, while remaining disturbingly entangled, in often unsuspected ways, with its methodic operations of interpretative control.

Against this background, I argue that a jusmethodological approach to seeing requires a jusaesthetic reconstruction of the mediations through which juridical sight is formed. Within this reconstruction, seeing enters judgment as a critical-reflexive task and an operation of phenomenological relevance and axiological-normative measure: the visible reaches law as a demand for jusaesthetic mediation and remounting, rather than as an object already placed before the eye. Methodologically, this jusaesthetic dimension emerges in the very poíēsis of the case, as its contour is formed through acts of intentionally oriented critical attention, reimagination and articulation that rebuild and reweight forms of exposure, historical-pragmatic inscriptions and the multilayered sensible configurations brought to

bear on the material density of the problem to be judged. The post-textual names this productive interval in which juridical measure confronts, beyond the presumed security of textual containment, the specificity of visual appearance in its transformation into a juridically consequential form, while remaining bound to a practical-normative horizon of validity. At stake, within the experience of judicium, is the practical-poietic passage that places the juridical gaze itself before the exigency of visual-juridical critique.

Keywords: legal regimes of visibility; legal methodology; law and visuality; visual evidence; jusaesthetics; post-textual jurisprudence.

WHEN IMAGES DO NOT SPEAK FOR THEMSELVES: VISUAL REGIMES, EVIDENTIARY SEEING, AND THE CRISIS OF LEGAL INTERPRETATION

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ABSTRACT

This paper examines how visual materials become legally meaningful within contemporary adjudication. Against the familiar assumption that photographs, videos, body-camera recordings, and digitally produced images "speak for themselves," the paper argues that visual evidence is never a transparent substitute for legal truth. Rather, images enter the courtroom through a complex regime of framing, staging, verbal translation, procedural domestication, and institutional authority. In this sense, evidentiary seeing is not a passive act of perception, but an active legal practice through which certain facts, subjects, harms, and forms of credibility become visible while others remain excluded. The paper first criticizes the naïve realism that treats visual evidence as self-evident and unmediated. Drawing on debates in visual jurisprudence, semi-legibility, and the epistemology of legal proof, it shows how courts often oscillate between two inadequate responses: either images are treated as transparent access to reality, or they are subordinated to text as merely illustrative appendices. The paper then considers how this problem is intensified by generative AI, deepfakes, and synthetic media, which destabilize inherited distinctions between representation, manipulation, and proof. The central claim is that post-textual legal practices require a more reflexive jurisprudence of images. Such a jurisprudence must account not only for what images show, but also for how they are framed, narrated, archived, contested, and institutionally authorized. The paper concludes that visual literacy, procedural safeguards, and new archival standards are necessary if legal systems are to preserve accountability, reason-giving, and epistemic justice in an increasingly visual legal culture.

Keywords: visual jurisprudence, evidentiary seeing, visual evidence, naïve realism, post-textual law, deepfakes, epistemic justice.

ON THE VERY EXISTENCE OF VISUAL ARGUMENTS

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ABSTRACT

The contribution analyses a recent discussion of the nature of visual arguments, in which a court ruling that relied solely on a photograph (People v Doggett, California, 1948) was used as a test case. We reconstruct the court argumentation more thoroughly and rigorously to identify problems with the two competing conceptions and to argue that, contrary to the protagonists' claims, the case shows that there is no such thing as a visual argument. The theoretical assumptions mobilised by photographs in the sentence are then examined to carry out a first non-systematic approach to the issues that a general conception of the use of images in legal argumentation should address.

Keywords: Visual Arguments; Legal Argumentation; Photographs; Evidence; Perception; Judicial Decision.

IMAGE AND TEXT IN LEGAL-POLITICAL DISCOURSE: THE FRONTISPIECES OF LEVIATHAN

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ABSTRACT

It hardly seems necessary to emphasize that contemporary legal and political life is increasingly shaped by images and visual experiences. This development undoubtedly reflects the progressively audiovisual character of contemporary culture, itself driven by the revolutionary advancement of information and communication technologies. It is nevertheless important-and this will be one of the central claims advanced here-to note that such a phenomenon is not entirely novel. The legal-political model that remains dominant today, namely the nation-state, was already articulated in Hobbes's Leviathan through a close correspondence between image and text, between the graphic and the alphabetic. Indeed, the book's frontispiece, designed by Hobbes himself, provides a remarkably concise visual synthesis of the work's textual argument, insofar as it depicts not only the three constitutive elements of the state-territory, population, and sovereign power-but also the mechanism of its formation and its mode of operation. Furthermore, and as will also be argued here, insufficient attention has been paid to the fact that Hobbes designed an alternative frontispiece in addition to the version ultimately selected. This alternative image may prove particularly illuminating in a period marked by the crisis of the legal-political model that continues to dominate the contemporary world.

Keywords: Image, Legal and Political Discourse, Leviathan, Text.

THE SOVEREIGN PLACE OF THE EYE - A CRY IN THE NAME OF A LAW TO COME

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ABSTRACT

Considering what we might call the axiom of vision ("that which makes visible is not visible"), we denounce, within the metaphysical tradition of Western philosophical-cultural thought, the privilege of the theoretical and of contemplation (theoria, eidos, idea) as a privilege of the optical. The optical model - predatory, dominating, domesticating gaze, underlying sense, subjectivity and phenomenality in general, and, singularly, the word Ereignis (Eraügnis, auge), that suggests a true appeal to a proper and appropriating gaze - is the de-negation of an ab-ocular model (a touching and responsabilising gaze), over which it prevails. Our hypothesis is arche-juridical. Following J. Derrida, Law is nothing other than the institution of secrecy, and respect (égard) for the law follows nothing other than a regime of visibility (regard). Is it possible to "see in secrecy", without the gaze becoming a self-reflexive, self-appropriating gaze? The enigma of validity, namely the excessive mystery of Law, cannot be subjected to "a simple vision" (J-L. Nancy), but rather to the urgent praxis of thought, of writing to the sense of responsibility for the excess. It is a matter of disposing the question from seeing to being seen, affirming the primacy of absolute otherness (the primacy of being seen by that which one believes one sees) - secret and excessive. To be seen (naked, vulnerable) is the ex-appropriation of the eye, the eye dissociated from its organic function in order to cry (weep). The cry of a touching and responsabilising gaze, without moralism or aestheticism, implies a rupture with optical sovereignty. Its register is that of dis-position and no longer the register of the phenomenon. It is a matter of rethinking the spacing of the imago (droit aux images) and its juridical efficacy, the institution of images as a touching ritual of duplication and divisibility, the différance of Law.

Keywords: Arche-law, Deconstruction, Visibility, Imago, Proper

POST-TEXTUALITY, VISUAL TURN AND THE PRACTICAL-NORMATIVE IDENTITY OF EVIDENTIARY ADJUDICATION

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ABSTRACT

The purpose of this paper is to argue that the post-textual condition that, methodologically, we are now able to attribute to Law (or to a certain Law, taken seriously as a project, way of life, and tradition...), far from corresponding to a paradigm shift determined by the explosion of visuality, should rather be understood as a manifestation of the hard core (of the axis of iterability) that distinguishes this same Law as a practically-culturally possible (not necessary and non-universal) response to the problem of life in common. As if this post-textuality were required by a "deep convention" of the game that this Law institutionalizes: namely, by the priority of the case-controversy and its material relevance and exemplary concreteness (demanding the analogical comparability of the subjects and positions involved), this in turn treated as a microscopic experience of community (inseparable from a certain conception of dignity as rank or status, but then also correlative to the institutionalization of the principle of contradictory and of the regula iuris "audiatur et altera pars") ... and thus inscribed in what one may productively treat as an argument of continuity (corroborating the contemporary persistence and plausibility of the wager-"pari" on this Law and on its project-projecting) All this without forgetting, on the one hand, that the rewriting of the memory relating to this project obliges us to reconstruct a great historical cycle, absolutely decisive on account of the acquisitions it consecrated (including human rights and Rechtsstaat), in which, however, the reference to microscopic experience appears subordinated (when not apparently forgotten...) and in which, certainly not by chance, the relationship between textuality and juridicalness assumes for

the first time a radically constitutive character, inseparable from the identification of Law with a purely rational universality [I am referring, of course, to the modern-Enlightenment cycle and the normativist conception of norm-ratio]. All this without forgetting, on the other hand, that the reinforcement, in a certain sense, of this post-textual condition (illuminating as never before its incorporation as a "deep convention") is surely favoured by the context-environment in which this project is currently pursued - a context of which this visual turn as a new rhetoric of immediacy (autonomizing the "radiance of the image" from the "radiance of textual language") is certainly an undeniable component. This is an understanding that I believe I can defend in general, but which gains special acuity when we consider the methodological problem of legal evidence.

THE NORM IN THE IMAGE: VISUAL CULTURE AND INSTITUTIONAL AWARENESS CAMPAIGNS AGAINST RACISM AND ISLAMOPHOBIA

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ABSTRACT

The universalization of fundamental rights and human rights is usually approached as a problem of normative justification. This paper proposes to consider it also as an empirical and cultural process, shaped by public expectations, social perceptions, and the visible forms through which equality and anti-discrimination become publicly intelligible. Focusing on institutional awareness campaigns against racism and Islamophobia, it examines how visual culture contributes to the circulation, reception, and practical efficacy of legal and democratic norms. The central claim is that such campaigns should not be understood merely as pedagogical instruments or persuasive devices. They function as visual practices through which certain harms are made perceptible, thresholds of intolerance are socially articulated, and operative meanings of equality, discrimination, stigma, and recognition are stabilised, negotiated, or contested. Images, in this sense, do not simply illustrate already constituted norms. They participate in the cultural environments in which norms acquire visibility, affective force, and social traction. From this standpoint, philosophy of law offers a particularly suitable perspective for clarifying the conceptual vocabulary on which these campaigns depend and for making it genuinely operative. This includes, among other tasks, distinguishing culture in a formative sense from culture understood as inherited tradition, separating differences from inequalities, and critically reassessing the concept of stereotype in relation to social exclusion and normative injury. By refining these distinctions, philosophy of law can contribute to a more rigorous assessment of the possibilities and limits of institutional awareness campaigns. The broader aim is to show that "the norm in the image" concerns more than

representation, since visual culture helps shape the public conditions under which equality becomes legible, contestable, and effective.

Keywords: Visual culture; awareness campaigns; racism; Islamophobia; philosophy of law.

QUEERING VISUALISATION, AESTHETICS, AND LEGAL IMAGERY IN THE COURT OF DRAG

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ABSTRACT

We argue that drag competitions represent queered, "dragged up" judicial processes, which reveal how law, power, and legitimacy are staged and visualised in our courts. We argue first that drag competitions (RuPaul's Drag Race, Dragula, and local competitions) constitute their own adversarial legal systems. They are sites where contenders show a panel of judges that their merits outweigh those of their competitor(s) within an internalised normative framework, with appeals usually administered through a contest - lip-sync, dance, or Dragula's notorious extermination challenges. Second, we demonstrate that while aesthetics are key to the substantive contestations in these cases, visualisation is also crucial to and interwoven into the adjudicatory process. Judges are elevated, contenders are positioned to maximise scrutiny, and the "courtroom" is staged carefully to maintain distinctions of authority and power. The runway becomes a space of adversarial action, and the "werkroom" a site of deliberation and - in All Stars seasons - delegation of power. Third, we demonstrate how drag shows can parody legal institutions and processes. RPDR is an example of a "dragged-up" (queered, parodic) legal system, with its judgments being dragged-up adjudicatory processes. Its vivid visuality invites many in the broader LGBTQ+ community to engage in legal critique, spanning from debates about the transparency of fairness and power in RPDR itself, through to broader public legal consciousness of the institutional oppressions faced by the LGBTQ+ community in the real world. From examining these drag courts, we critically reflect on how law courts stage legitimacy and power. This allows closer examination of other latent structures (hetero/cis-normativity, patriarchy, etc.) that underpin visualisation and aesthetics in the spaces and institutions in which our rights and obligations are determined. This also leads us to imagine a better, queerer way of effecting

adjudication that disrupts the patriarchal heteronormativity of law and legal process.

AUTOMATION AND LEGITIMACY OF PUBLIC POWER: THE RULE OF LAW ON PROOF OF ARTIFICIAL INTELLIGENCE

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ABSTRACT

Technological transformations are redefining the relationship between law, public power, and society. In particular, the increasing use of the so-called artificial intelligence systems and algorithmic tools in public administration decision-making represents one of the key challenges for contemporary legal doctrine. The automation of public decisions does not constitute a mere technical innovation in administrative organization, since it determines a change in the exercise of public power and in the accountability of democratic systems. In this sense, law is being challenged by increasing issues, concerning not only the regulation of emerging technologies, but also the structure of legal decisions and the principles that underpin the legitimacy of public action. The use of automated decision-making systems introduces crucial issues in terms of transparency, accountability, democratic oversight, and the protection of fundamental rights. The opacity of algorithmic operators and the increasing delegation of decision-making functions to machines risk undermining key assumptions of the rule of law, such as the ability to assign legal and political responsibility regarding the individual sphere. Drawing on the perspective of legal philosophy and legal studies, the following essay analyzes the main regulatory approaches recently developed to regulate the automation of public decisions, highlighting the limitations of regulatory strategies that tend to consider artificial intelligence a mere technical or procedural issue, neglecting its implications on the rationality of legal decisions and the legitimacy of public power. The aim is to demonstrate how the automation of public decisions requires not only new regulatory tools, but a whole rethinking of the rationale that structures democratic accountability and the justification of public decisions. In this way, Artificial Intelligence becomes a useful

testbed for investigating the reconfiguration of legal decisions and the ability of law to ensure transparency, accountability, and the effective protection of fundamental rights.

LEGAL PLATFORMS AND THE SYMBOLIC POWER OF LAW: A BURKEAN PERSPECTIVE

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ABSTRACT

This paper explores the political and social power of symbols in law in a changing world, drawing on the rhetorical theory of Kenneth Burke. Burke's understanding of language as symbolic action provides a framework for analyzing law not merely as a system of rules, but as a symbolic structure that shapes perception, organizes conflict, and sustains authority.

The paper argues that contemporary transformations-particularly the rise of digital legal interfaces and legal design-are reshaping the symbolic dimension of law. Legal apps and platforms that guide users through claims, disputes, or administrative procedures do not simply simplify access to justice; they reconfigure the way law is experienced and understood.

Using Burke's concepts of terministic screens, dramatism, and identification, the paper examines how such interfaces select and structure reality, predefine roles and actions, and foster new forms of user alignment with legal systems. Through design choices-menus, icons, guided steps-legal complexity is both reduced and displaced, while certain interpretations of responsibility and relevance are privileged over others. In dramatistic terms, these platforms rearticulate the relationship between act, agent, and agency, often shifting control from the individual decision-maker to the technological framework itself.

At the same time, the symbolic management of conflict becomes streamlined: processes of attribution, justification, and resolution are embedded within procedural flows that resemble Burke's cycle of guilt, purification, and redemption, yet without the visible tension traditionally associated with legal reasoning.

The paper concludes that legal design is not merely a tool of accessibility, but a form of symbolic power that reshapes the ethos and credibility of law. In a changing world, reflecting on law requires not only attention to norms and institutions, but also to the symbolic architectures through which legal meaning is produced and experienced.

Keywords: legal design; symbols; rhetoric; power; visual language; digital platforms.

TOLERATION, INTOLERANCE, AND THE FUNCTIONAL LIMITS OF DEMOCRATIC LIFE

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ABSTRACT

The presentation examines toleration as both an individual virtue and a structural condition of democratic societies. This double dimension is essential. At the individual level, toleration concerns the capacity to live with beliefs, practices, or ways of life that one disapproves of. At the social and institutional level, however, toleration is not merely a private disposition. It belongs to the very architecture of democracy, since democratic societies must organize coexistence under conditions of persistent moral, religious, cultural, and political disagreement.

Following Andrew Cohen, toleration may be understood as involving two moments. First, there is a negative moral judgment: one disapproves of another person's conduct, belief, or practice. Second, this judgment is followed by a social reaction that may nevertheless be considered positive, because the disapproved conduct is allowed to occur. Toleration, therefore, is neither indifference nor full recognition. It is an unstable intermediate concept: something is morally rejected, but not socially or legally suppressed.

The central argument is developed through analogies drawn from medicine, engineering, and agronomy. These fields use the concept of intolerance in ways that help illuminate the social and legal meaning of democratic coexistence.

In medicine, intolerance refers to the inability of an organism to deal adequately with a substance or stimulus. Lactose intolerance, for example, is not a moral failure; it is a functional incapacity of the body to process something without producing harmful reactions. By analogy, social intolerance may be understood as a kind of autoimmune disorder of democratic life. The social body reacts destructively against forms of difference that

are, in fact, part of its own plural constitution. Instead of processing disagreement, the community treats it as a contaminating threat.

In engineering, tolerance designates the range of dimensional or geometric variation within which a system can still function properly. A bearing may be designed for a two-inch shaft, but it can admit a limited margin of variation. If the shaft is too small, it escapes the bearing; if it is too large, it no longer rotates. This analogy is especially productive for legal theory. Democratic institutions also require margins of acceptable variation. A society without tolerance becomes too rigid to operate; a society without limits loses its capacity for cohesion. Toleration is therefore not the absence of boundaries, but the intelligent calibration of the boundaries within which difference remains socially and legally workable.

In agronomy, tolerance refers to the capacity of a species to survive and produce under environmental conditions different from those in which it originated. A tolerant plant is not one that remains unaffected by its environment, but one that can adapt, endure, and remain productive under stress. Social intolerance, in this sense, is an adaptive failure. It occurs when a society is unable to respond creatively to transformations in its cultural, moral, religious, or political environment.

These three analogies make it possible to move beyond a merely moralistic understanding of intolerance. Intolerance is not only a vice of individuals. It may also be described as a pathology, a structural dysfunction, and a failure of adaptation. Conversely, toleration is not passive permissiveness. It is the active capacity of persons, institutions, and legal systems to sustain cooperation amid disagreement.

The main claim is that democracy depends on this multidimensional form of toleration. It must endure difference without legitimizing injustice, establish limits without suppressing dissent, and preserve social cooperation without demanding moral uniformity. Toleration, properly understood, is not weakness. It is one of the most demanding forms of democratic strength.

ON THE ROLE OF TOLERANCE IN LAW: POSTMODERN SURVEYS

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ABSTRACT

Starting by considering tolerance as an ethical virtue (mostly referring to Socrates and Aristotle), the present reflection focuses on the meaning(s) of the current roles of tolerance in juridical intersubjectivity. Such recoveries are projected in contemporary (postmodern) contexts of (de)construction of intersubjectivity, in the confrontation of the presupposed individualist ideology in the modern societas with the collectivist integration of premodern communitas, thus referring to conceptions of tolerance decisively based on the debates about recognition (Jürgen Habermas, Axel Honneth, Rainer Forst) and hospitality (Emmanuel Lévinas, Jacques Derrida). From such diagnoses, an inquiry on the problematization of the tangibility and the meaning(s) of tolerance and its admissibility in the normative configuration of subjectivity and intersubjectivity is proposed, through the scrutiny of the (im)possibility of recognizing a principle of tolerance as an effective juridical principle (Arthur Kaufmann), and its meaning(s) and limit(s). Asserted as a fundamental principle of democracy in this reflection, tolerance will be assumed as an essential – though not as a sufficient – condition for the development of democracy. Therefore, its normatively constitutive substances are presented as presupposing the understanding of tolerance as an ethical virtue and of toleration as a subsequent requirement for practice – and, so, far from affirming tolerance as a strictly characterized procedural category, or from affirming tolerance as a determinedly political requirement, rather assuming a constitutively practical relevance in the construction of democratic plurality in contemporary societies. While undoubtedly crucial in shaping the delimitation of ethical subjectivity and intersubjectivity, it will already manifest itself by postu-

lating numerous controversies regarding its admissibility in juridical shaping – both substantially and procedurally. Which will lead to the problematization, in the interval between ethics and law, of taking tolerance as an originally extra-juridical virtue, and of considering the limits to its juridical relevance, whether as a principle or as a criterion…

STRUCTURAL LITIGATION AND THE EMERGENCE OF NEGOTIATED CONSTITUTIONALISM

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ABSTRACT

Structural litigation has become one of the most significant developments in contemporary constitutional adjudication. Originally conceived as a judicial response to mass and persistent violations of fundamental rights, it has gradually expanded the role of constitutional courts beyond the traditional model of adjudication. Public hearings, conciliation hearings, monitoring mechanisms and institutional dialogue increasingly place courts at the centre of processes involving the implementation of public policies and the coordination of multiple actors.

This development raises an important question. If constitutional courts are increasingly called upon to coordinate governmental action, mediate conflicts and supervise negotiated solutions, are we witnessing the emergence of a new form of constitutionalism?

Drawing on recent experiences in Brazil, as well as on the broader literature concerning structural remedies and transformative constitutionalism in the Global South, this paper explores the possibility that structural litigation is fostering forms of constitutionally oriented negotiation. Such negotiations do not concern the validity of constitutional rights themselves, but rather the means, priorities and institutional arrangements through which those rights are implemented.

The paper argues that structural litigation may be contributing to a significant institutional transformation in constitutional adjudication. At the same time, it examines whether these negotiated arrangements strengthen the effectiveness of fundamental rights or create spaces for political accommodation capable of undermining constitutional commitments, particularly in relation to vulnerable groups.

PROSECUTORIAL INDEPENDENCE AND THE POLITICISATION OF THE JUDICIARY IN EUROPE

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ABSTRACT

The Public Prosecutor's Office (PPO) occupies a central position in criminal justice systems worldwide, yet it remains insufficiently studied in academic literature. Its effective performance is fundamental to upholding the Rule of Law, as prosecutors must act in accordance with the principles of legality, objectivity, impartiality, and fairness — standards analogous to those required of the judiciary.

Across Europe, comparative analysis reveals significant variation in PPO organisational models, particularly regarding appointment processes, career structures, and the degree of susceptibility to internal or external directives. These structural differences have major implications for prosecutorial independence and accountability.

In recent decades, high-profile corruption investigations targeting politicians in countries such as France, Spain, Italy, and Portugal have intensified public and media scrutiny of the PPO, contributing to political polarisation and the rise of populist movements. This context has sharpened debates over the appropriate balance between prosecutorial autonomy and democratic oversight. Two competing visions emerge: a model of reinforced independence, with the attendant risks of limited accountability, and a model of greater executive or legislative control, which raises concerns about political interference.

The tension is further complicated by legislative reforms in certain Eastern European countries — notably Poland and Hungary — that have been widely criticised as undermining prosecutorial autonomy in ways inconsistent with Rule of Law standards. At the same time, public perceptions of selective or politically motivated prosecution erode institutional trust and ultimately compromise the PPO's effectiveness.

Against this backdrop, the Council of Europe's Consultative Council of European Prosecutors (CCPE) adopted Opinion No. 16 (2021) on prosecutorial independence, and the European Court of Human Rights has increasingly engaged with related issues, as illustrated by landmark cases such as Kövesi v. Romania and Kolevi v. Bulgaria. This paper examines these developments, contributing to a growing comparative and normative debate on the independence and politicisation of the PPO in Europe.

Keywords: Rule of Law - Prosecutorial Independence – Democratic Oversight – Law and Politics

WHEN COURTS FALL SILENT: EXECUTIVE ENCROACHMENT, JUDICIAL EROSION, AND THE LIMITS OF INSTITUTIONAL RESILIENCE

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ABSTRACT

Few tensions in contemporary democratic governance have proven as consequential as the one between executive power and judicial independence. This paper examines two cases that, for all their differences in institutional history and democratic tradition, share unsettling structural similarities: Venezuela and the United States.

Venezuela's experience over the past two decades provides a well-documented record of how judicial erosion unfolds. The process did not begin with a single dramatic rupture. It started with executive pressure on judicial appointments, the selective disregard of court decisions, and a sustained campaign to delegitimize judges perceived as obstacles. Over time, these incremental moves hardened into full institutional capture. Courts that were once guardians of constitutional rights became instruments of political consolidation. Crucially, the dismantling retained, at each stage, the formal appearance of legality.

Recent developments in the United States call for careful reflection. The pressure on federal courts, the open questioning of the finality of judicial decisions, and the public delegitimization of the judiciary by the executive branch follow a sequence that Venezuelan experience makes recognizable. The differences between the two countries are significant: a deeper constitutional culture, a more independent legal profession, and stronger mechanisms of horizontal accountability. These are not trivial distinctions. But they are not guarantees either.

Drawing on democratic backsliding theory, this paper argues that institutional resilience is not a permanent feature of constitutional systems. It is a variable, and it can be worn down. The Venezuelan experience does

not determine what lies ahead for the United States. It provides a framework for recognizing the patterns through which judicial independence is lost and democratic erosion proceeds.

Keywords: judicial independence · politicisation of the judiciary · democratic erosion · separation of powers · rule of law

THE TEST OF LAW WITH "CHANGING CITIZENSHIP" IN THE FUTURE: WHAT DOES THE AKBELEN CASE REVEAL?

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ABSTRACT

Arius Didymus of Alexandria, in fragment number 12, heard the following sentences from the mouth of a wise philosopher from Ephesus: "Ever-newer waters flow on those who step into the same rivers; and souls exhale from the moist elements." This statement by the sage named Heraclitus on nature transcended the boundaries of natural philosophy and became a key metaphor for change in every field.

As post-modernity demonstrates, even if we do not notice it while within the flow, these changes have rendered the concepts we know, take for granted, and never even questioned, open to interrogation. Citizenship—the foundations of which were laid in Ancient Greece and Rome, and which we liberated from being mere "subjecthood" with the French Revolution—is still undergoing transformation. Jürgen Habermas, in his theory of the "Legitimation Crisis" defined this change as the disruption of adaptation between social and political systems under the influence of economic systems. However, Wendy Brown employed a bolder description: "Citizenship, in its most attenuated form, is bare membership." What strengthens this attenuated citizenship is sacrificing oneself for the patria. Today, however, economic measurement methods permeate our states and national objectives. What is expected of citizens is no longer a resignation to the conditions and poverty of war. Facing the crises of neoliberalism, the citizen must now resign themselves to its pleasures and appetites.

In 2018, operations were initiated to meet the coal demand required for thermal power plants to continue production from the Muğla, Milas, and İkizköy regions. Within the scope of this work, expropriations were carried out to open a lignite coal mine in the Akbelen Forests, which are located

in the region and under protection. In the ensuing process, the local population continues their legal and civil rights struggle to avoid losing the agricultural lands and olive trees in their region.

This study will operate through the fundamental perspective of legal realism. It will collectively evaluate the testimonies of the local people, media archives, and the legal processes conducted in the region. As a result of this evaluation, it will describe the change in the meaning of the concept of citizenship from a realist standpoint. It will focus on the attenuation of citizenship and the definition of the citizenship bond through economic metrics. Consequently, it will explain how the bond of citizenship has changed and initiate a discussion on the dangers awaiting the law in the future as a result of the demands of the current economic system. At the center of the discussion will be the neutralization of rights claims and the functional impairment of democratic representation mechanisms.

Keywords: Citizenship, Attenuated Citizenship, Neutralization of Rights Claims.

THE NATURE OF JUDICIAL POWER: A PHILOSOPHICAL EVALUATION OF ELECTION AND APPOINTMENT SYSTEMS AND THEIR IMPACT ON JUDICIAL INDEPENDENCE AND IMPARTIALITY

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ABSTRACT

The Venice Commission reports list the requirements for judicial powers to achieve acceptable levels according to the criteria of law in a democratic community. However, these documents omit guidelines on how to optimise judicial elections to ensure a jurisdiction that is protected from interventionist impacts. Despite this, many countries in the Americas use popular election systems for the appointment of judges. There are two perspectives for analysing this discrepancy in the Venice reports. The first suggests that the European mindset is irrelevant to the American reality; therefore, European rationality excludes systems where judges are elected, assuming that they could not perform their duties impartially. The second perspective argues that judicial elections are not mentioned in the reports on 'judicial independence' or 'independence of judiciary' because appointment by vote inevitably turns judges into political actors. While the first idea offers a subjective reflection centred on its own worldview, the second represents an absolute position based on a judgement of certainty. This distinction raises two essential questions. First: Are there realities independent of our experiences, or do our experiences construct reality? Second: Is there a causal relationship between judicial independence and its methods of appointment, or is this connection merely coincidental? In this presentation, we will analyse the positions of Hume and Kant to reflect on the incompatibility of criteria between the Americas and Europe. We will also consider the exceptional voices of Latin American countries, which, inspired by the traditions of both continents, propose their own unique models of justice.

Keywords: judicial independence, Hume, Kant, Venice Commission, democracy through law.

ULEMA'S FLESH IS TOUGH, HARD TO CUT: A UNIQUE TRADITION OF ACADEMIC FREEDOM BEFORE HUMBOLDT

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ABSTRACT

Is academic freedom a modern concept, like human rights, democracy, or the rule of law? Could such a freedom even exist in the absolutist Ottoman Empire? This paper examines the freedom, privileges, and institutional autonomy of the religious scholars (ulema) vis-à-vis state intervention, and the balance of authority among the sultan, the ulema, and the Janissaries. This critical, extremely sensitive balance sometimes produced a unique environment and sometimes fatal consequences — a balance that can be seen, on the one hand, as an early dawn of the liberal social order and, on the other, as a solid barrier to civil society. If read rightly, this dichotomy offers clues for today about a freer academy and a freer society in an age of deep manipulation.

To this end, the paper begins by examining the period's landscape, treating the three power hubs as constants, and attempts to identify the key elements of this balance. The second stage examines events that changed not only their own period but the course of history: the first time a reigning sultan was deposed by his own soldiers, abused — and, by some reports, raped — then strangled, and, if the chronicles are believed, decapitated thereafter, and, perhaps most tragically, betrayed by those closest to him, his wife and his father-in-law. Like so many such acts, these required a legitimizing factor. That factor, though itself divided, was the ulema — the religious scholars, by virtue of their privileges, institutional autonomy, and the respect they commanded among the public, so that every power, whether sultan or Janissary, needed them to legitimize itself. From that point on, the alliance of the ulema and the Janissaries played a crucial role

at pivotal moments right up to the Tanzimat edict. It shaped the freedom of both the academy and society, and through its legacy — by way of the Tanzimat and the Republic — its effects reach into the present.

There is a common assumption that people are freer today than in the past and that academic freedom in the Humboldtian sense is a wholly new idea that humankind has only recently learned. Could the ulema have possessed academic freedom of this kind in the seventeenth century? Of course not. But it is worth noting, first, that Humboldtian academic freedom rests on the state, specifically the Prussian state. Given this, might it be possible to broaden our own freedom by taking instruction from these events, both positive and negative, together?

ACADEMICS IN JUDICIAL ROLES: THE CASE STUDY OF TRANSITIONAL CENTRAL EUROPE

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ABSTRACT

The Central European democratic transition, particularly in the context of appointments to highly visible courts (mostly Supreme Courts and Constitutional Courts), created an unusual phenomenon. Namely, these courts were staffed mainly by academics. In other words, scholars, whose professional role consists of reflecting on legal problems or analysing social and political phenomena affecting the law from various perspectives, were entrusted with delivering unequivocal judgments in the process of applying the law.

Periods of democratic transition, however, are invariably characterised by intensified ideological conflict, and in Central Europe, disputes over the past, especially its authoritative interpretation, played a particularly distinctive role. This was linked to the sudden opening of political discourse following a long period of narrative dominance by former powerholders. In a society grounded in the principles of pluralism and non-discrimination, among the cornerstones of constitutional liberal democracy, such disputes are not extraordinary; they constitute an element of competition among various interest groups. Yet in Central Europe, a markedly different phenomenon emerged. Disputes on vital issues related to the particular transitions were transferred, directly or indirectly, to the judicial arena. Scholar-judges were expected to bring these conflicts to an end and resolve them through legal means. This raises the question of why other participants in the public discourse chose to act in this manner in transitional Central Europe. Ultimately, individuals whose daily work relies on scholarly methodology were forced to side with one of the ideological camps and to overlook the numerous nuances inherent in narratives about the past.

My analysis aims to test the hypothesis that this development was linked to a precise understanding of law and legal actors during this period, what L. Sólyom termed the "time of the lawyers," in which lawyers' primary mission was to ensure that the revolution continued to unfold based on, and within the limits of, the rule of law. This, in turn, may have produced a situation in which conflicts that should never have exceeded the boundaries of political discourse were instead shifted into the courtroom.

FREEDOM OF EXPRESSION OF ACADEMIC TEACHER: HISTORY OF THE CONCEPT

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ABSTRACT

My paper reconstructs the historical and philosophical evolution of the academic teacher's freedom of expression, tracing its development from broad historical ideals to specialized institutional frameworks. The analysis begins by revisiting the foundational concepts of free expression, from the ancient Greek notion of parrhesia to the marketplace of ideas articulated by Mill, before narrowing its focus to the specific genesis of academic freedom. By examining the shift from the Humboldtian university model to the pragmatic codifications by the AAUP (Declarations of 1915 and 1940), the paper maps how historically competing paradigms (individualistic, institutional, and expert-community models) shaped the modern academic ethos.

THE ROLE OF ACADEMICS IN INTERNATIONAL SOFT LAW

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ABSTRACT

In this presentation, I will address the issue of the relationship between academia and academics, on the one hand, and society, on the other, in light of international soft law. In this context, two dimensions of the problem will be presented: (a) the inclusion of the social context within academic institutions and research, and (b) their social impact.

International soft law provides numerous examples in this regard, presenting them as desirable. This may be perceived as a challenge to the ideal of academic practice founded on scire propter ipsum scire (to know for the sake of knowing itself), giving rise to concerns about the instrumentalization of universities.

The aim of the presentation is to propose an appropriate account of the influence of academia and academics on culture and social practices.

CULTURE WARS AND ACADEMIC FREEDOM: REFRAMING CONFLICTS OVER FREEDOM OF EXPRESSION IN POLAND

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ABSTRACT

Contemporary disputes surrounding academic freedom increasingly take the form of culture wars. In such conflicts legal disagreements cease to function primarily as questions of institutional rules or legal interpretation and instead become framed as moral confrontations over fundamental values. Drawing on insights from moral psychology, particularly the concept of homo moralis developed by Linda Skitka, this paper argues that when conflicts are perceived through a moral lens, actors evaluate outcomes according to internalized moral standards rather than procedural legitimacy. As a result, compromise becomes difficult and disputes acquire an antagonistic "us versus them" dynamic. The paper explores this transformation through selected case studies concerning controversies around academic speech in Poland. Rather than focusing on the substantive merits of the disputes themselves, the analysis examines how these conflicts are publicly framed and how competing interpretive frames shape their dynamics. Using framing analysis inspired by Robert Entman, the presentation reconstructs the different ways in which the same events are defined as problems, attributed causes, morally evaluated, and linked to particular solutions. This approach makes it possible to show how culture wars transform legal and academic controversies into moralized conflicts structured by incompatible frames.

THE LIMITS OF LEGAL PROTECTION IN LIBERAL LAW: ACADEMIC FREEDOM, FREEDOM OF POLITICAL EXPRESSION, AND THE "RESEARCH NEXUS" REQUIREMENT

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ABSTRACT

This paper examines the criteria that define the limits of academic freedom within the framework of legal protection in liberal democracies. It focuses on the “research nexus” requirement used in the case law of the European Court of Human Rights (ECHR) and the Turkish Constitutional Court (TAM). The case of Füsun Üstel and Others v. Turkey (ECHR, July 26, 2019)—in which the Court ruled that the freedom of expression of nine academics, who were sentenced and dismissed from their positions for signing a petition calling for peace during incidents linked to a terrorist organization, had been violated—serves as the central case study of this paper.

The reasoning of the Turkish Constitutional Court is significant in two respects. By expanding the scope of academic freedom beyond strictly research-based expression, it encompasses the right of academics to express their views on controversial social issues. However, it also implicitly suggests that academics’ expressions on topics unrelated to their fields of expertise and research may fall outside the scope of academic freedom and instead be considered under general freedom of expression. Indeed, the Court’s decision was adopted by a single-vote margin. In this context, we can analyze that such a classification cannot be impartial. By making such a distinction, a hierarchy of expression is created that promotes and endorses information—even if it has an academic origin—that is somehow approved against political opposition, thereby rendering all future forms of academic activity, which could be far more politically risky, unprotected both in terms of judicial precedent and the law.

We then take another step forward. We attempt to situate the Court's decision in the Füsun Üstel case within the broader context of ECHR case law regarding academic speech (whether within or outside the academic sphere), professional standards in academic life, and institutional autonomy within academia. The difficult question here is far more complex: under conditions of democratic backsliding and culture wars, when governments use legal tools and the judiciary against academics who adopt a critical stance in society, do the ECHR's existing judicial precedents provide sufficient protection? Or does confining the protection of academic freedom to a research framework render it ineffective because it "narrowly interprets" the relevant right or rights?

The paper questions whether, in conducting a critical assessment of academic freedom as a whole, we must move beyond liberal exceptionalism. Ultimately, it concludes that we must move toward an academic freedom grounded in a political framework—one that addresses who is deemed to have an "academic" voice and why it must be taken seriously.

Keywords: academic freedom, freedom of expression, ECHR, Turkish Constitutional Court, Füsun Üstel, critical legal theory, liberal legalism, democratic backsliding, research nexus.

A FEW COMMENTS ON THE IDEA OF AN ACADEMIC TEACHER EXPRESSION TEST

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ABSTRACT

The aim of this paper is to present the idea of a test that would be helpful in assessing whether an academic teacher's statement falls within the scope of what he or she could say. This aim will be pursued in the following steps.

First, I will present the idea of the test itself as a tool that is often used in jurisprudence, including in the area of freedom of expression.

Second, referring to the distinction introduced by L. L. Fuller between the morality of duty and the morality of aspiration, I will propose two types of tests, which I will call the “minimum test” and the “maximum test.”

Third, I will point out a few elements that should be taken into account in the design of the maximum test and the minimum test.

Keywords: freedom of expression, academic teacher, morality of duty, morality of aspiration

ACADEMIC FREEDOM AS MIMICRY: CENTRE/PERIPHERY COUNTERCLAIMS OF NORMALCY IN EU CONDITIONALITY DISCOURSE

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ABSTRACT

When EU institutions invoke academic freedom as a conditionality criterion — sanctioning Hungary's lex CEU, restructuring Polish university governance, auditing accession compliance — they do not apply a neutral standard. They perform a normalcy claim: Western liberal academia presented as the uncontested horizon of legitimate scholarly life, peripheral deviation as pathology to be corrected.

This paper argues that these conflicts are best read through centre/periphery mimicry and affective legality. Affective legality names what exceeds formal compliance: the felt sense of belonging and investment that attaches subjects to legal orders not as rule-followers but as stakeholders. EU conditionality structurally withholds this. Drawing on Bhabha's colonial mimicry — the compulsion to produce almost-but-not-quite replicas of the authoritative norm — I show that peripheral academic actors are required to perform standards whose affective infrastructure remains centred elsewhere. The individual scholar defending tenure, the faculty council reorganized under external audit, the national court invoking university autonomy: each performs a freedom that is real but unowned. Compliance becomes mimicry.

"Culture wars" is itself a centre-generated diagnostic. When Brussels or Strasbourg deploys the term, it rebrands peripheral contestation — over whose knowledge counts, whose institutional models travel, who bears the costs of harmonization — as illiberal pathology. The agonistic space in which genuine academic freedom would need to operate is foreclosed before the argument begins.

The paper concludes by turning this diagnosis back on the workshop's own question. If culture wars name the condition under which academic freedom is contested, the more unsettling question is whether the freedom being defended was ever fully available to those now most loudly required to perform it.

THE ACADEMIC ETHOS. WHO SHOULD ACADEMIC TEACHERS BE IN THE TIME OF CULTURE WARS?

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ABSTRACT

The aim of my parts is to present a dialogical role of social science academics as an approach worth recommending in times of cultural wars. This task is to be accomplished in three parts, which present arguments in support of the dialogical role of academics.

The first argument, historical and theoretical, refers to positions in the discourse that answer the question of who an academic teacher is or should be. In carrying out this task, I refer to the proposals of Roger A. Pielke, and Patrick Baert and Alan Shipman. In light of these proposals, the dialogical aspects of the social role of academics will be presented.

The second argument, empirical in character, focuses on the growing polarization in Polish society. This polarization has several aspects. One of them concerns the separation between experts and laypeople and the associated disparity in access to knowledge and alienation academia from the society. Another aspect of polarization is ideological in nature and centers on freedom of speech in academia.

The third argument, social in nature, points out that dialogists seek to activate society by involving citizens in a conversation aimed at shaping social order in a way that does not exclude history and collective experiences.

In my speech, I would like to focus on the first argument. I try to answer three questions: 1) Who should an academic teacher be? 2) Who should an academic teacher be in times of cultural wars? 3) What is the dialogical role of an academic teacher?

A question and a request for opinion: What do you think of the choice to have a dialogical role in academia during times of culture wars?

COGNITIVE JUSTICE AS ACADEMIC FREEDOM

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ABSTRACT

Academic freedom is generally understood to mean freedom from direct state control, censorship, and institutional coercion. However, it also involves theorising, historicising and creating knowledge independently of the mainstream point of view. In most cases, the mainstream perspective equates to the Eurocentric perspective, endangering academic freedom by presenting European social and historical development as the universal model. Theories such as Rostow's Modernization Theory, as set out in The Stages of Economic Growth: A Non-Communist Manifesto, and Lorimer's The Institutes of the Law of Nations, according to which 'humanity, in its present condition, divides itself into three concentric zones or spheres — that of civilised humanity, that of barbarous humanity (including the Ottoman Empire and China), and that of savage humanity', and 'savages are incapable of municipal organisation beyond its most rudimentary stages', may be viewed as extreme examples. However, it is important to remember that 'the general principles of law recognised by civilised nations' are still considered among the sources of international law.

In this sense, academic freedom is directly associated with epistemic sovereignty and decolonisation of knowledge. Boaventura de Sousa Santos describes modern Western thought as 'Abyssal Thinking'. The Western point of view establishes invisible 'distinctions through radical lines that divide social reality into two realms'. As Santos puts it, this results in epistemicide: the systematic destruction or marginalisation of knowledge created independently of mainstream understandings and coercion by diverse knowledge systems. In his framework, Western scientific paradigms operate as an exclusive intellectual authority that systematically invalidates alternative epistemologies. He refers to the active erasure and marginalisation of non-Western knowledge systems as 'cognitive injustice'.

As Samir Amin argues, academia in the periphery often has no choice but to reproduce Eurocentric scientific knowledge. Scholars are expected to apply Western social science models to local facts. Furthermore, the fact that non-Western scientists are comfortable with the ease of applying these models, and indeed view this as the key to scientific rigour, presents a problem in itself.

Abandoning the Eurocentric paradigm is a long-term endeavour involving the critique of the linear, teleological view of history, and it is also an issue of academic freedom. It should be noted that the concept of 'Asia' was invented by nineteenth-century European philosophers, including Montesquieu, Adam Smith, Hegel and Marx, to represent 'political despotism as opposed to modern European legal and political systems, and nomadic and agrarian modes of production that were completely at odds with European urban and commercial life'. Within this framework, 'Asia' was constructed as a distinct civilisational foil to Europe. It embodied the structural opposite of Western modernity, contrasting with capitalist development. Consequently, Asia was conceptually relegated to developmental limbo, trapped in the gap between primitive prehistory and legitimate historical progress. In these circumstances, academic freedom should include the right to dismantle modern political concepts of equality and justice. This paper follows the work of Samir Amin, Wang Hui, the Uno School, and Kojin Karatani, focusing on academic freedom, and argues that such dismantling may be the first step towards a genuinely equalitarian, and potentially universal, understanding of knowledge.

WHO ARE LEGAL NORMS FOR? JURIDICAL AUDIBILITY AND LEGAL SUBJECTIVITY

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SW75 · Normative Address and Legal Subjectivity: Who Are Legal Norms For?
Convenors: Yoko Hasegawa; Akiko Nozaki; Tatsuya Yokohama

ABSTRACT

Law is commonly understood to address rational subjects who can understand rights, state claims, and speak for themselves. Yet legal subjectivity may require more than speech. It may require a person who can present a situation in a legally usable form, identify what matters, locate responsibility, endure delay, and continue functioning after injury. This paper asks what kind of human being law presupposes when it addresses a person as a claimant.

Starting from Hannah Arendt's account of the instability of rights, belonging, and human life, I ask: under what conditions can a person appear within law as a claimant before any claim can be judged? I call this prior condition juridical audibility. It concerns not the validity of a claim, but the prior possibility that a person, a loss, or a damage can become audible within law as a claim.

This paper examines how law may process claims without registering how the person who claims is altered in the very process of claiming. Human beings may respond to delay, uncertainty, unclear reception, and repeated failure of recognition by learning, adapting, falling silent, or no longer claiming in the same way. Such responses are not weakness, error, or exceptional fragility. They are human responses. Yet this alteration does not itself become a legal event.

Franz Kafka and Primo Levi mark two forms of this problem. Kafka shows how ordinary recognition may be displaced into rights, status, permissions, and further procedures. Levi shows how conditions for remaining human may fail to become audible as legal wrong, even when they alter the human being who would have to claim.

Juridical audibility therefore matters for rethinking legal subjectivity not simply as the status of a rights-bearing subject, but as the demanding condition of remaining able to appear, speak, and claim before law.

THE PROBLEM OF BEING ONESELF BY BEING OTHER: AGENCY IN LIBERAL LEGAL THOUGHT

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SW75 · Normative Address and Legal Subjectivity: Who Are Legal Norms For?
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ABSTRACT

Law addresses not only conduct regulated by rules but also the ways in which we understand ourselves as agents. We decide when to act, shape our lives, and define our identities. In this context, agency refers not to a metaphysical capacity for action, but to the set of capabilities that make us legal subjects. Agents occupy positions defined by rights and obligations: they are bearers of rights, bind themselves to norms, and are subject to normative evaluation. At the same time, agency concerns not only the relation between agent and action, but also the relation between action and its consequences. It therefore includes the capacity to assume responsibility within a legal system, whether civil or criminal. This paper argues that the relationship between law and agency within the liberal tradition in legal theory is more complex than is often assumed. I clarify this complexity by distinguishing between two models of legal agency. First, I present a Hobbesian-inspired model grounded in a minimal conception of agency. On this view, agency consists in the capacity to reason and to choose freely, without presupposing a fully self-determining or self-legislating subject. Second, I introduce a model in which agency is attributed to moral agents understood as sources of claims and rights. Here, the agent is conceived as an autonomous and self-identical individual, characterized by reason, free will, and the possession of subjective rights—a view associated with Kantian thought. In the second part, I argue that, despite their differences, these two models are both integral to the liberal paradigm of legal thought and share certain foundational assumptions that warrant critical scrutiny. First, both treat agency as presupposed and foundational, existing independently of law and social relations. Second, and relatedly, both ground agency in a conception of independence that tends to obscure the underlying structures of dependency that make agency possible. As a

result, they risk neglecting the social and normative conditions necessary for the development of selfhood.

DEMOCRACY'S BOUNDARY PROBLEM REVISITED

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ABSTRACT

This presentation addresses one of the pressing issues confronting contemporary societies: how democracies can justify the establishment of boundaries that distinguish citizens from outsiders. In approaching this challenge, I begin with a relatively underexplored paradox of democratic legitimacy identified by Seyla Benhabib in The Rights of Others, namely that "every act of self-legislation is also an act of self-constitution" (45). Put differently, whenever a self-governing community engages in legislation, it must also define itself by drawing boundaries and excluding those who do not belong to it. This issue corresponds to what David Miller has termed democracy's "boundary problem": the problem of determining who should be included in the demos or constituency when democratic decisions are made. According to Miller, this problem cannot be resolved through democratic procedures themselves, since it remains undecided who is entitled to participate in those procedures in the first place. I question, however, whether Benhabib herself regards the boundary problem in this sense as a genuine problem to be solved. When a political community establishes a democratic constitution and agrees to bind itself through self-legislation, "we, the people" must necessarily constitute itself by drawing boundaries. Insofar as a political community cannot govern itself without simultaneously constituting itself, this condition appears less a problem than an inherent paradox of democratic legitimacy. Nevertheless, even if the boundary problem is understood as paradoxical rather than solvable, the question still remains of how a democracy can justify the inherently undemocratic distinction between citizens and non-citizens. This presentation therefore examines whether—and to what extent—it is theoretically possible for democracies to determine who may participate in the political process and who should be subject to democratic laws without falling into serious contradiction.

HART'S INTERNAL POINT OF VIEW AND THE CONSTRUCTION OF LEGAL SUBJECTIVITY

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ABSTRACT

The idea that law not only regulates subjects but also helps bring them into being is a subtle yet deeply important insight within H.L.A. Hart's analytic philosophy. While much of the existing literature treats the "internal aspect" as a methodological or epistemological concept, its ontological implications have largely been overlooked. The issue at stake is not only how we define law, but how law, through its normative address, plays a role in constituting the legal subject. Hart's well-known account of law as a system combining primary and secondary rules seems to assume a subject who already exists – someone rational, capable, and ready to accept the law. This paper questions that assumption. Rather than viewing the legal subject as something that exists prior to law, it argues that the subject is, in a meaningful sense, brought into existence through law's address. Traditional interpretations, which treat the individual as independent from the legal system, fail to capture how law's normative demands actively shape the subject's practical orientation and reasoning. Revisiting Hart's notion of the internal perspective from this angle reveals something more dynamic than a mere standpoint one can choose to adopt. Taking up the internal perspective is not passive; it is a constitutive act. When law addresses an individual, it does more than guide behavior – it restructures how that individual reasons and acts, requiring them to see rules as reasons for action. In responding to this address, the individual becomes a legal subject, whose agency is aligned with the institutional framework of the legal system. From this perspective, the rule of recognition does not simply identify valid laws; it also helps produce the very subjects who recognize and act upon those laws. The internal perspective, then, marks a crucial point of convergence between law and subjectivity – where law not only governs but also constitutes the agents it governs.

'THE SECURITY OF EXISTENCE' AND THE LEGAL SUBJECT: RECONSTRUCTING 'RESPECT FOR THE INDIVIDUAL' IN CONTEMPORARY LIBERALISM

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ABSTRACT

Contemporary liberal legal theory has viewed the legal subject from a singular perspective as a rational "will-based agent" and has treated respect for self-determination as the essence of respect for the individual. However, at the "edges of life"—the polar realms of life and death—the individual is fundamentally a vulnerable being whose existence cannot be sustained without the care of others. The dominant legal conception of the addressee obscures this reality, thereby falling into the trap of an "excessive yet insufficient voluntarism" that turns free will into a mere fiction and renders it hollow. Returning to the philosophical foundations of liberalism, the works of J. Locke and J. S. Mill reveal a two-tiered system in which the "security of existence"—understood as the right to self-preservation—functions as an indispensable precondition for the exercise of free will. To guarantee this security of existence, it is essential to recognize the "special positive duty (a unilateral burden without consent)" imposed on those who have "actually come face-to-face with vulnerable beings." To rectify the structural injustice whereby this asymmetrical burden is disproportionately borne by individuals with specific attributes (e.g., gender), the state bears the responsibility to publicly supplement and support the fulfillment of this obligation—while maintaining a distance from the direct management of life—through infrastructure development and the de-familialization of care. In conclusion, "respect for the individual" in liberalism must go beyond the mere affirmation of will to encompass institutional consideration for the individual's "ability to exist" itself. The purpose of this presentation is to reconstruct true respect for the individual rooted in

the fundamental right to exist, and to justify the framework of special positive duties within liberal legal theory necessary to secure that right.

LEGAL ALIENATION OF MIGRANTS AND REFUGEES AND LEGAL AUDIBILITY

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ABSTRACT

There is not a few criticisms that much of the discourse on immigration justice—which proposes morally desirable approaches to accepting migrants and protecting refugees—has been framed almost exclusively from the perspective of the host country. One of the primary motivations behind this criticism is the argument that we must take seriously the agency of migrants and refugees. Needless to say, their agency is not uniform. For example, some migrant women develop transnational agencies that spans the host country where they work and their home country where their families reside; despite facing gender structures and social exclusion mainly in the host country, some manage to achieve social mobility in both their home and host countries. There is also an argument that refugees are not merely objects of protection under the refugee regime, but are also individuals who strive to live autonomously by accessing educational opportunities and relying on connections with family and relatives. However, the current system of accepting migrants is fundamentally carried out by the sovereign states and is subject to the constraints of border control laws that manage and regulate the movement of people. Refugee protection is also subject to the refugee regime established by the United Nations High Commissioner for Refugees (UNHCR) and the responses of individual states. In this context, it seems to be difficult to consider sufficiently the agency of migrants and refugees. In such circumstances, legal sociologists and others have pointed out that migrants and refugees are alienated from the law and are prone to "turning their back to law." One particularly alarming example of this legal alienation is as follows: In host countries, they are routinely subjected to ID checks, are sometimes arbitrarily detained or arrested, and are exposed to violence or unjust suspicion by the

police and immigration authorities. It is argued that such experiences erode their trust in the law's guarantee of equal freedom and lead to an attitude of distancing themselves from the law. However, it could be argued that it is not merely the deprivation of liberty—such as daily surveillance, detention, or violence by authorities—but rather the fundamental discrepancy between border control laws and the legal treatment of migrants and refugees and their actual lived experiences that gives rise to their legal alienation, distrust of the law. There are disconnects between the residency statuses granted under immigration laws and the actual circumstances of migrants regarding employment, education, and housing, and so on. Furthermore, in dealing with refugees and, more broadly, forcibly displaced people, the law and immigration authorities often fail to consider the factors necessitating their flight or stay, and they may even refuse to listen to the appeals of detained asylum seekers. It may be unreasonable to expect those who have had such experiences—or who fear they might—to trust the law.

Based on these concerns, we should ask the following questions: To what extent is this legal alienation a difficulty inherent in the law itself, and to what extent does it stem from the circumstances of societies surrounding migrants and refugees? To what extent is the disconnect between the law and the people living in reality as pointed out by Professor Hasegawa a problem of the law itself? In my paper, I seek to find clues to answer these questions by considering the possibility of migration and refugee policies that take into account the agency of migrants and refugees within the context of the theories of immigration justice.

THE PROBLEM OF DEFINING CAUSATION IN CRIMINAL LAW

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SW76 · Liability: Problem of Attributing Responsibility
Convenors: Elif Gökşen; Elif Topuz; Ömer Faruk Deligönül

ABSTRACT

Introduction

The notion of causation is a fundamental yet overlooked element of the actus reus. In cases where the contributors to the crimes are singular, it is relatively easy to establish the causal link between unlawful conduct and the harm prohibited by law. However, in cases where there are multiple contributions; whether it be due to the plurality of perpetrators, intervening natural causes or human intervention, the causal chain becomes more complex. It can be said that in the real world, it is almost impossible to find the sterile environment that allows for a singular contribution to result in said harm. This is especially true in international criminal cases, since the crimes are inherently systematic and widespread. For these reasons, it is necessary to discuss different theories of causation and attempt to establish a uniform test to assess the link between the act and the harm, in order to fairly attribute a criminal label to a person. In this paper, various causal perspectives will be discussed, to pinpoint their shortcomings and attempt to unify these together.

CAUSATION THEORIES

The Italian Penal Code art. 40 defines causation as "No one may be punished, for an act defined by law as a criminal offence, if the harmful or dangerous event on which the existence of the offence depends on is not the consequence of their act or omission." Most other domestic and international criminal documents refrain from explicitly mentioning causation. Even the Italian provision suffices by indicating causality to be a necessary element in attribution of the crime to the perpetrator and does not define it. Owing to this, the concept of causality is often overlooked and understudied in the judiciary. Therefore, it is important to examine the current

theories on causation to understand and foresee their application in the legal sphere.

Empirical Causation

The most utilized approach in the criminal doctrine regarding causation is the sine qua non test. This test stipulates that if the resulting harm would not have occurred "but for" the conduct, such conduct can be accepted as the cause. In other words, the act should be necessary for the result to have materialized, and only then can it be attributed to the principle. This counterfactual test is widely utilized in judicial bodies in multiple countries, and it is exceptionally useful in "most ordinary cases if only one set of sufficient conditions is present" However, as has been mentioned, there are cases where multiple conditions contribute jointly or unknowingly to the outcome. In such cases, the counterfactual test is inadequate and underinclusive when "there are multiple sufficient causes for [an event's] occurrence" which are not necessary causes when removed alternatively. This criticism also holds true when the situation is reversed. The sine qua non approach would consider insufficient yet necessary contributions to be causes, being overinclusive in that regard. Thus, it is apparent that this dominant theory lacks universal applicability and other approaches are needed.

To modify sine qua non in such a way that it would be more aligned with our intuitions on moral attributability, multiple empirical theories have been put forward. One such theory is the "'theory of the result with its specific features' (Lehre vom Erfolg in seiner konkreten Gestalt)" in the German doctrine. By defining and specifying the criminal act at the time of sentencing, this approach attempts to compensate for the exclusion of sufficient yet unnecessary causes in the but for test. Similarly, the "fine-grained effect" theory assesses whether the harm would occur the exact same way had it not been for the act. Though these widen the scope of what can be defined as causes, they do not remedy the over-inclusiveness aspect of the criticisms.

Other modifications have proposed to consider sufficiency and necessity jointly, so that the shortcomings of the but-for test could be repaired. Hart and Honore argue that a causally relevant factor "may be necessary just in the sense that it is one of a set of conditions jointly sufficient for the production of the consequence; it is necessary because it is required to

complete this set." Such formula has been furthered by INUS (Insufficient but Non-Redundant part of an Unnecessary but Sufficient condition) and NESS (Necessary Element for a Sufficient Set) theories put forward by John L. Mackie and Richard W. Wright respectively. The NESS theory insists "that the condition at issue must be not merely a member of a sufficient set of existing conditions, but rather necessary for the sufficiency of a minimally sufficient set of existing conditions that instantiate the antecedent portion of a law of nature." Thus, even if a contribution is not sufficient for the result in and of itself, if it can be shown to be necessary for the sufficiency of a set, it can be deemed as a cause. However, these theories have likewise failed to identify the root problems with the sine qua non test. In terms of overdetermination cases where all acts are individually sufficient but unnecessary when formed into a collective, these theories offer little to no explanation.

Normative Causation

Due to the inefficiency of modifying the sine qua non test with other empirical considerations, some scholars have instead opted for normative approaches. Temporal and spatial distances, hierarchical power dynamics, foreseeability and other intervening factors have been considered. One of the most popular normative theories is the proximate cause formula. As the name suggests, the further an element is to the crime itself, the weaker the causal link is. Therefore, the test aims to limit causation with direct perpetrators or other closely related actors. Another theory concerns the foreseeability of the harm. If the result cannot be reasonably foreseeable, it is accepted that there has been an intervening factor that broke the causal nexus. A different approach considers the notion of free will, and asserts that the victim's own freely informed choices may sometimes eradicate the criminal responsibility, by constituting the intervening cause (novus actus interveniens). Even though these normative criteria could be useful in applying to certain situations, they do not result in causation tests that can be utilized in all instances and therefore lack the assertation empirical theories have.

CAUSATION IN INTERNATIONAL CRIMINAL LAW

Owing to the diverse and yet limited nature of these theories, the International Criminal Court and other international criminal bodies have adopted different causation standards for different modes of liability. In

overdetermination cases of international character, where crimes are committed collectively, Joint Criminal Enterprise (JCE) and Control theories are implemented. JCE was adopted by ICTY and ICTR, and a landmark decision Tadić (Appeals Chamber Judgement) searches for plurality of persons; a common plan, design or purpose; and any form of participation to such plan to establish causal link. Quite differently, the control test adopted by ICC looks for a common plan and an essential contribution to the implementation by the co-perpetrator to assess whether the harm can be linked to the actions of the accused. In the former approach, a fine-grained-effect is needed but in the latter, the contribution should be conditio sine qua non.

In terms of command responsibility, the approaches differ. For command responsibility arising from Article 28 of Rome Statute, neither ICTY nor ICTR require a causal link between the offence and the omission of the commander, whereas ICC Bemba Pre-Trial Chamber notes that due to the usage of the term "as a result of" in the Rome Statute, the omission regarding the duty to prevent, which increases the risk of underlying crimes, is causally linked to such crimes.

In ICTY and ICTR trials, generally a "substantial effect" principle is utilized in aiding and abetting cases, which is applied similar to the fine-grained-approach. The ICC largely remains undecided on the level of effect necessary, however the latest judgments seem to only necessitate any contribution with the necessary mens rea requirement without any effect, and therefore without causality, on the commission needed.

As can be seen here, the international courts have made an effort to properly differentiate and establish a causality standard that can be expected to be utilized in the forthcoming judgments. However, the courts rarely ever explicitly mention the word "causality". The meaning is mostly inferred from the structure and context of their decisions. As an exception to this dominant trend, Trial Chamber III for the Bemba Judgment rightfully indicates that "it is a core principle of criminal law that a person should not be found individually criminally responsible for a crime in the absence of some form of personal nexus to it." Considering the mere fact that international crimes in essence harbor more complex causal chains, the causal standards must be reiterated and discussed in each case. The

lack of explicit mention of the causality aspect of international crimes indicates a hesitancy in addressing this concept without a codified causation standard.

ITALY–LIBYA MOU: CRIMES, CAUSATION, LIABILITY

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ABSTRACT

Introduction

Since the Memorandum of Understanding signed between Italy and Libya in 2017, actions taken to prevent irregular migration from the Libyan coast to Europe across the Mediterranean have revealed a recurring pattern. Migrants intercepted at sea by Libyan Coast Guard units in the Mediterranean are forcibly returned to Libyan territory, where they face torture, sexual violence, forced labor, and murder. It is evident that these actions are not random but systemic. Indeed, many migrants are being held in detention centers (Forensic Oceanography 2018; Amnesty International 2017). Although the agreement is subject to both legal and political oversight and monitoring by numerous institutions, including the United Nations and Human Rights Watch, these violations continue to increase. Indeed, the most recent example of this is the legal proceedings against two Libyan detention center officials before the ICC. This outline focuses on how acts committed against migrants in this context should be classified under international criminal law; how the causal link operates or fails to operate between crimes arising from ongoing third-party support; and, finally, what kind of liability can be attributed to Italian and EU officials who facilitate, finance, or coordinate this system. This study aims to address the human rights violations and legal debates arising from this agreement between Italy and Libya not as three separate issues, but as a single, integrated whole.

Classification of Crimes Committed Against Migrants

Before assessing causation or liability, it must be determined how the underlying acts are classified under the Rome Statute. This classification is not a technical preliminary issue. The Rome Statute limits war crimes, under Article 8, to acts committed in connection with an international or

non-international armed conflict. In contrast, it defines crimes against humanity, under Article 7, as acts committed against the civilian population "as part of a widespread or systematic attack," regardless of the existence of a conflict. This study examines acts committed against migrants who were intercepted and subsequently detained by Libyan Coast Guard units, including arbitrary detention (Art. 7(1)(e)), torture (Art. 7(1)(f)), sexual violence (Art. 7(1)(g)), forced labor and practices amounting to enslavement (Art. 7(1)(c)), and murder (Art. 7(1)(a)) should be classified as crimes against humanity rather than war crimes. This conclusion is reached based on two distinct elements. First, there is no direct nexus to the armed conflicts recognized in Libya, including the internal conflict between shifting parties during the 2014–2020 period: the acts committed against migrants occur within a continuously operating economy of detention and exploitation, separate from the military logistics of the conflict. Second, these acts are ongoing, not one-time occurrences, and are widespread and systematic in nature within multiple detention centers (particularly Mitiga Prison); this character corresponds to the definition of "attack" under Article 7(2) (a) that is, a series of multiple acts carried out in accordance with a policy. The ICC's own indictment practice confirms this classification: In the El Hishri case (Part IV), the Document Containing the Charges primarily addresses the pattern at Mitiga Prison within the framework of Article 7, while treating the incidents covered under Article 8 as a narrower, conflict-related subset of the same act. However, the Pre-Trial Chamber's controversial narrowing of the groups of victims covered by the detention order by excluding, according to one interpretation, migrants and refugees from certain counts is precisely the classification issue addressed in this section. How a court interprets the contextual elements in Article 7(1) and Article 7(2) (including the requirement that the attack be "directed against the civilian population") directly determines which victims, including non-Libyan migrants with irregular status, fall within this definition of the civilian population and are therefore legally recognized.

The Problem of the Causal Link in International Criminal Law

In international criminal law, the causal link has been shaped by empirical and normative theories. The empirical tradition begins with natural causation (conditio sine qua non): a condition is a cause if it can be shown that the result would not have occurred without that condition. This test is

the most widely used criterion in both national and international literature. However, it is flawed in two respects. First, it is overly inclusive, because it counts meaningless and distant conditions, such as the agent being brought into the world by his mother, as causes. Second, it is insufficiently inclusive because it rejects the causal link in cases of overdetermination. These are situations in which the outcome would occur in the same way even if the condition under examination were absent, provided that another condition were present. To resolve this dilemma, John L. Mackie's INUS test and Richard W. Wright's NESS test were developed: a condition is considered a cause when it constitutes a necessary part of a sufficient set of conditions for the outcome to occur, even if it is not necessary on its own. While these syntheses partially resolve the problem of overdetermination, the empirical tradition generally cannot provide a normative answer to the question "how much contribution is sufficient"; it merely tests whether a factual connection exists. In the face of this shortcoming, normative theories proximity (the farther the act is from the crime, the weaker the causal link) and foreseeability (the outcome must have been foreseeable at the time of the omission or act) have emerged by incorporating external value judgments into the causation standard.

Rather than reducing these theories to a single, consistent standard, international courts have adopted different standards depending on the type of liability; this fragmentation directly affects the determination of the correct standard applicable to the Libyan case. The ICTY and ICTR, by adopting the Joint Criminal Enterprise doctrine in the Tadić landmark decision, deemed participation in a common criminal plan sufficient for the causal link and thereby applied a standard close to the most comprehensive of the empirical theories the "fine-grained effect" approach. The ICC, however, diverged from this approach. By adopting the Dominance Theory, it returned to a natural causation framework and required a "substantial contribution" under Article 25(3)(c) of the Rome Statute. This provision stipulates that, for an accomplice to be held liable, the assistance must be provided with the intent to facilitate the commission of the crime and must have a substantial effect on its commission. This divergence becomes even more apparent in the context of command responsibility: while the ICTY and ICTR do not conduct a causation analysis, the ICC, in the Bemba case, sought the existence of a causal link by referring to the literal wording of

Rome Statute Art. 28 the requirement that crimes be committed "as a result" of the commander's breach of the duty of supervision. However, as the Appeals Chamber itself fell into a deep disagreement over whether this condition applied to the duty to prevent or the duty to punish, it became evident that the ICC's own jurisprudence is inconsistent regarding the standard of causation.

When this theoretical pluralism is applied to the Libyan case, the choice of which test is applied directly alters the outcome. When we assess the relationship between Frontex's transmission of the geographical location of migrant boats to Libyan authorities and the subsequent apprehension and transfer of migrants to Mitiga Prison, using the natural causation test, it is necessary to prove that the specific apprehension would not have occurred without that information. This burden of proof can easily be rebutted. Libyan Coast Guard teams may claim to possess independent surveillance capabilities, meaning that the same outcome could have been achieved through other means. This is the practical manifestation of the overdetermination problem. When evaluated using the NESS test, however, the question changes. The inquiry becomes whether the location information formed a necessary part of the set of sufficient conditions that made the apprehension possible. Under this standard, the transmission of more than 2,200 emails can be assessed not as an isolated contribution, but as a structural component of the apprehension system's operational capacity. The ICC's substantial impact standard lies somewhere between these two approaches and has not been fully resolved. Frontex's own Fundamental Rights Officer warned that this information sharing "could be assessed as indirect participation in the application of the non-refoulement principle." This warning acknowledges the existence of a contribution. However, it leaves open whether that contribution should be considered "substantial" in relation to an individual apprehension incident or to the system as a whole. This study argues that this unresolved question constitutes the critical threshold for identifying a causal link in cases of structural complicity. The key issue is whether the contribution should be assessed in relation to an individual incident or to the system as a whole. The Libyan example provides an exceptionally well documented test case for determining where this threshold should be drawn.

Individual Responsibility

This section examines the potential liability of Italian and EU officials through two parallel ICC proceedings. It argues that whether individual responsibility will be examined currently depends more on the cooperation of the state concerned than on legal principles. ICC arrest warrant was issued in July 2025 for Khaled Mohamed Ali El Hishri, a senior commander at Mitiga Prison within the Special Deterrence Force (RADA); El Hishri, who was arrested in Germany and extradited in December 2025 following the completion of domestic legal proceedings, saw his case reach a confirmation of charges hearing in May 2026, the first such hearing in the Court's fifteen-year investigation into Libya (ICC-CPI 2026; HRW 2026). In contrast, Osama Elmasry Njeem, who was sought under a similar ICC arrest warrant, was arrested by Italian authorities in January 2025 but was released within days and sent back to Libya despite the arrest warrant (VOA 2025; Le Monde 2025). This study examines this divergence within the framework of Article 87(7) of the Rome Statute. The provision governs the notification of a State Party's failure to cooperate to the Assembly of States Parties. In situations such as Libya, where the referral originated from Security Council Resolution 1970 (2011), the notification is directed to the Security Council itself. Significantly, the Darfur situation provides a cautious precedent of direct relevance: Jordan was officially referred to the Security Council in 2019 for failing to arrest Omar al-Bashir despite an arrest warrant issued under the same referral mechanism; however, the Council took no follow-up action, and the arrest warrants against high-ranking officials in Darfur have not been executed to this day (Coalition for the ICC 2025). This study demonstrates that a Security Council referral concerning Italy's release of Njeem would be formally foreseeable. However, the Darfur precedent suggests that such a referral would likely remain substantively ineffective. This asymmetry is revealing in itself. Responsibility can be readily tested against a detained Libyan field commander, yet remains structurally shielded when a cooperating European state is involved. This finding sheds light on how attribution of responsibility operates within the current institutional architecture, irrespective of the strength of the underlying legal theory.

Individual and Institutional Accountability of Italian and EU Officials

This section examines two distinct lines of accountability. The first consists of Article 15 submissions filed with the ICC Prosecutor's Office in

2022 and 2025 by front-LEX and Refugees in Libya; these submissions name specific officials and institutions—including former senior executives of Frontex, EUNAVFOR MED, and the European External Action Service—and document that their operational role —particularly the documented fact that Frontex forwarded more than 2,200 emails containing the coordinates of migrant boats to Libyan authorities—constitutes complicity in crimes against humanity through "refoulement by proxy" (front-LEX submissions; Der Spiegel/Lighthouse Report 2024). This study addresses this as a direct application of the causation framework in the Second Pillar: Frontex's own Fundamental Rights Officer, while acknowledging the contribution, has opened the legal significance of this to debate, making the application in question an unusually well-documented test of where the threshold for substantial impact should be set. The second line of argument is institutional and administrative rather than criminal in nature: The pending FM v. Frontex case before the General Court of the EU is the first instance in which a victim has sought a judicial ruling that Frontex is engaging in unlawful inaction by continuing to share boat locations with Libyan actors, thereby violating its obligation under Article 46 of its founding Regulation (front-LEX 2024-2026). Although the legal foundations differ, argues that this line of administrative accountability even if it cannot give rise to criminal liability—can in practice generate the factual and legal findings (a court-verified record of what Frontex knew and when) that a potential ICC case would require, and therefore should not be analytically separated from the discussion of criminal liability. Along both lines of inquiry, there is a separate and narrower question regarding Italy's own state responsibility under international law and the European Convention: Whether Italy's provision of the vessel, training, and coordinated position-sharing with Libyan Coast Guard units constitutes a violation—by way of indirect refoulement through an agent—of its non-refoulement obligations under the case law of the European Court of Human Rights (Hirsi Jamaa, Khlaifia, M.A. and Z.R., N.D. and N.T.) this is addressed as a separate issue from the criminal liability of any individual official.

Conclusion

This study has argued that the systematic detention, torture, sexual violence, forced labor, and killing of migrants returned to Libya should primarily be classified as crimes against humanity under Article 7 of the

Rome Statute. It has further demonstrated that the attribution of responsibility in this context depends heavily on the causation standard applied, particularly where support is provided through information-sharing, financing, and operational coordination rather than direct participation in the underlying crimes. Finally, the analysis of ongoing proceedings before the ICC and EU courts suggests that accountability for such practices is shaped not only by legal doctrine but also by institutional and political constraints. The Italy–Libya case therefore represents an important test of whether international criminal law can effectively address forms of structural complicity arising from contemporary migration control policies.

FIFTY YEARS AFTER THE COUP: THE CONTINUED RELIANCE ON INDIRECT PERPETRATION AND THE ABSENCE OF COMMAND RESPONSIBILITY IN ARGENTINA'S CRIMES AGAINST HUMANITY PROSECUTIONS

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SW76 · Liability: Problem of Attributing Responsibility
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ABSTRACT

Fifty years after the 1976 coup d'état, Argentina offers a unique and sustained experience in the domestic prosecution of crimes against humanity. The 1985 judgment against Jorge Rafael Videla and other members of the military junta marked a global turning point: for the first time, civilian courts prosecuted those responsible for mass atrocities committed under a de facto regime. This landmark decision not only affirmed the feasibility of domestic accountability for international crimes, but also introduced a doctrinal innovation that would shape the attribution of individual criminal responsibility far beyond Argentina.

The judgment delivered on 9 December 1985 by the Buenos Aires Federal Court of Appeals constituted the first judicial application of Claus Roxin's theory of indirect perpetration through organised structures of power (Organisationsherrschaft). By conceptualising the system of repression as a hierarchical and organised apparatus, the Court enabled the attribution of responsibility to those who exercised control over the machinery of violence, rather than limiting liability to direct perpetrators. This approach proved particularly suited to capturing the structural and bureaucratic nature of mass atrocity crimes.

Following the annulment of amnesty laws in the early 2000s, Argentina reopened prosecutions for crimes against humanity, giving rise to one of the most extensive and sustained accountability processes worldwide. As of 2025–2026, more than 1,200 individuals have been convicted in hundreds of judgments, reaffirming core principles such as the imprescripti-

bility of crimes against humanity and demonstrating the capacity of domestic courts to adjudicate complex patterns of mass criminality decades after their commission.

Against this fifty-year trajectory, a striking feature emerges: Argentine courts have consistently relied on the notion of indirect perpetration as the primary mode of attribution for senior perpetrators. At the same time, alternative modes of liability—most notably command responsibility as reflected in Article 28 of the Rome Statute—have remained largely absent from judicial reasoning, and, notably, have not been the subject of sustained doctrinal or judicial debate.

This article takes this absence as its central point of inquiry. It asks why, in contemporary prosecutions of crimes against humanity, Argentine courts continue to rely on a model of attribution that requires a comparatively high evidentiary threshold—namely, control over the apparatus—while not engaging with alternative forms of responsibility that operate under lower thresholds. Rather than presuming a deliberate doctrinal preference, the article explores whether this pattern reflects historical path dependency, institutional continuity, or the unexamined consolidation of a paradigm initially developed in the context of the 1985 trial.

Argentina's experience thus offers more than a historical precedent. It provides a long-term laboratory for examining how modes of liability evolve—or remain unchallenged—over time. Fifty years after the coup, the Argentine case invites a broader reflection on the consequences of doctrinal choices in the attribution of responsibility for mass atrocities, and on the risks of normative stagnation when alternative frameworks remain unexplored.

CAN THERE BE A LIABILITY TO ENGAGE IN CIVIL DISOBEDIENCE?

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ABSTRACT

I ask whether the citizen can bear a liability, in the sense of an affirmative responsibility or duty, to engage in civil disobedience, rather than merely having a justification to do so. The inquiry has two aspects.

The first concerns demarcation. Civil disobedience must be distinguished from the classical liberal right of resistance, which treats lawbreaking as the exercise of a residual entitlement against a regime that has forfeited its authority. Civil disobedience, by contrast, characteristically occurs within regimes whose legitimacy is impaired but not wholly extinguished.[1] Delmas has recently argued that the grounds commonly invoked to support political obligation themselves yield affirmative duties to resist injustice under non-ideal conditions, returning the question of a positive responsibility to disobey to the centre.[2]

I argue that one important way to distinguish such a responsibility from the right of resistance draws on what Brownlee identifies as the communicative character of civil disobedience:[3] the disobedient does not aim wholesale at bringing down the political order, but seeks to engage fellow citizens and policy-makers in moral dialogue, to convince rather than to displace. The question of liability is whether, within this communicatively defined middle zone, the citizen bears a positive responsibility to disobey when ordinary channels have failed.

The second aspect concerns the arguments that civil disobedients should often be shielded from legal punishment.[4] If a coherent liability to civilly disobey can be reconstructed, can it also motivate that shielding? Drawing on Brownlee's parallelism between the communicative structures of punishment and civil disobedience again, I argue that recognising a liability to disobey gives the disobedient's address its normative weight: she speaks as one discharging a responsibility she bears as a citizen. The case

for shielding then rests not on the absence of wrongdoing but on the affirmative character of the act.

[1] Rawls, Political Liberalism.

[2] Delmas, A Duty to Resist.

[3] Brownlee, Conscience and Conviction: The Case for Civil Disobedience.

[4] Bennett and Brownlee, 'Punishment and Civil Disobedience'.

FREEDOM OF THE WILL AND RESPONSIBILITY IN LAW

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ABSTRACT

Philosophers have long argued that the criminal law sits uneasily with a naturalistic interpretation of the world. If we are physical beings, motivated through causal biological processes and subject to natural forces, then it is irrational (and not to mention cruel and unjust) to insist that human beings are therefore responsible for their crimes. If we cannot act otherwise, why should we be punished?

The criminal law seems to disagree. It seems to endorse an exception to the order of the natural world, because it assumes that what happened could have happened otherwise – against the actual course of natural causation. It assumes that persons possess some otherworldly power, a power of the will, which can bend natural causality if they wish to.

I believe that the objection is sound, but it is based on a false – or at least questionable - premise. Natural causation does not apply to human beings, or if it does it does not apply at the level of individual actions. The very existence of the criminal law shows that our interpretation of human agency is not physicalist. The existence of modern criminal law shows that our political communities endorse the opposite view, we believe that the idea of a person is strongly normative. A person is responsible for his or her character as well his or her actions. We conceive of the person not as the subject of passions and desires, but as the agent who understands his or her own duties to oneself and to others.

The criminal law ascribes responsibility to persons even when they seem to have lost full control of their powers: cases of intoxication or emotional intensity, for example. The law seems to assume that a person has broad reflective control over one's state of minds even in those cases. Even if you could not have acted otherwise under this or that state of mind, you

ultimately do have control over your states of minds, or had the opportunity to have it. Our free will does exercise some supernatural force over our mind, so that we can become a different person. Persons form their character by adopting ends that guide their practical identity. Not all of us succeed in outlining such an identity or staying the course of pursuing it. We are responsible for that identity nevertheless. This is why we are liable in cases of negligence or recklessness, when the consequences of our actions truly surprise us.

How this works seems to me to have been well described by Harry Frankfurt's distinction between freedom of the will and freedom of action. Frankfurt has described how a person takes a reflective distance from his or her desires and interests and takes responsibility for his identity or personality through what he calls 'second order desires'. These are desires that are not immediate results of passion or physical desires. They are creations of reason. In that sense our personality is our own construction, for which we remain responsible. Frankfurt explains that a person has 'second order' desires and second order 'volition' to control his or her first order desires. Your will is responsible for the desires that happen to motivate your actions. A person is responsible for the desires that he turns out to have. Frankfurt distinguishes, thus, between 'freedom of action', or freedom to do what you desire, and 'freedom of the will', by which he means freedom for someone 'to want what he wants to want' or freedom in 'securing the conformity of his will to his second-order volitions'.

Freedom of the will is self-control. It succeeds when you are capable of adjusting your desires and actions to an idea of your person as agent, adopting the proper motives and reasons for your actions, including recognising the duties you owe to other human beings and other fellow creatures. Because your will is free and because it has the capacity to control your desires, you are responsible for the kind of person you will become. You are also responsible when your desires or your lack of attention or your indifference to the plight of others fail you and become the cause of a crime against another person. This is your failure, not a failure attributable to your 'desires' or your 'passions', as the Humeans would put it. We are responsible for our actions precisely because we are responsible for our practical identity.

ACCOUNTABILITY IN THE ALGORITHM: RETHINKING INTERNATIONAL HUMANITARIAN LAW IN THE AGE OF AUTONOMY

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ABSTRACT

The growing use of unmanned and autonomous weapons systems poses structural challenges to International Humanitarian Law (IHL) and International Criminal Law (ICL). This article examines two areas where existing frameworks are failing to keep pace with technological change: the obligation to accept the surrender of those rendered hors de combat, and the attribution of individual criminal responsibility for harm produced by autonomous targeting.

The deployment of LAWS erodes the feasibility and enforceability of surrender, threatening one of IHL's core protections, while autonomous targeting strains the mental-element and causal links that individual liability under the Rome Statute presupposes. Against the pessimistic view (exemplified by Güneysu (2025)) that this necessarily diminishes the efficacy of ICL, this article argues that the doctrinal vacuum is not irreducible. Existing categories, properly adapted, together with the residual capacity of national jurisdictions, can absorb much of the apparent gap.

Rather than awaiting a full prohibition of LAWS, which has stalled in international fora, the article advances an anticipatory framework that preserves the humanitarian core of IHL under conditions of machine autonomy. Building on Bo's analysis of mens rea for autonomous harms, it identifies two concrete doctrinal tools. First, a standard of recklessness, articulated through its civil-law cognate, dolus eventualis, to capture the culpable risk-taking of commanders and operators who deploy systems whose behaviour they cannot fully predict, reaching conduct that the intent-and-knowledge default of Article 30 would otherwise leave unpunished.

Second, liability for omissions, through the doctrine of commission by omission, to ground responsibility in the failure to intervene in or suspend

an unlawful autonomous attack and, as this article contends, in the failure to field systems capable of recognising surrender.

Read together, these tools supply the connective tissue between the article's two concerns: the duty to accept surrender becomes enforceable precisely through the omission liability that attaches when it is disregarded.

IN DEFENCE OF LAW: A TRUTH-ORIENTED CONCEPTION OF SOLIDARITY AND HUMAN DIGNITY

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ABSTRACT

An intriguing development in law and legal practice is that judges and legislators increasingly strive to take into consideration each person's individual perspective – their biographical context, protected (and sometimes intimate) characteristics, as well as their subjective viewpoints. In this sense, contemporary law no longer operates solely with an artificial, standardized legal subject, but attempts to respond to concrete persons and their lived experiences. While this shift is often interpreted as an expansion of recognition and sensitivity to difference (and thus dignity as well), it also raises a fundamental normative and practical question: how far can law accommodate individual perspectives without undermining its claim to objectivity, generality, and equal authority? This article argues that law can meet this challenge only if recognition is grounded in a truth-oriented conception of solidarity. Such a conception treats human dignity's role in law not merely as responsiveness to subjective self-understandings, but also as a source of duties to oneself. The dignitarian duties to oneself cover commitments to shared normative standards or shared narratives. Drawing on debates in legal philosophy and social philosophy of personalism, as well as MacIntyre's conception of social practices, the paper defends law as an institutional practice oriented toward truth, justification, and public recognition. It contends that solidarity, properly understood, stabilizes the relationship between recognition and justice by constraining legal responsiveness to what can be rationally defended as universally significant. In doing so, the article offers a conception of human dignity capable of preserving both individual perspective and the normative integrity of law.

RULE OF LAW AS A NARRATIVE TRADITION: MACINTYRE, LEGAL SUBJECTIVITY AND STRUGGLES FOR RECOGNITION

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ABSTRACT

This paper proposes a MacIntyrean interpretation of the rule of law as a narrative tradition of practical reason. The aim is to connect the debate on narrative rationality, identity and law with the question of legal subjectivity in the constitutional state. Drawing on Alasdair MacIntyre's account of tradition as an historically extended and internally contested argument about goods, the paper argues that the rule of law should not be understood merely as a set of formal or institutional requirements — such as generality, publicity, stability, due process, judicial independence and limits on arbitrary power. These elements are indispensable, but they do not fully explain the practical rationality through which legality becomes a living political and juridical achievement.

From a MacIntyrean perspective, the rule of law can be understood as a tradition because it possesses internal goods, standards of judgment, exemplary narratives, memories of failure, and recurrent conflicts about its own meaning. Its internal goods include the subjection of power to public reasons, the replacement of domination by justification, the construction of accountable institutions, and the formation of legal subjects capable of appearing before the law as bearers of claims, responsibilities and equal standing. In this sense, the rule of law is sustained not only by rules and procedures, but also by narratives through which a legal community remembers authoritarian abuses, constitutional struggles, exemplary judgments, institutional betrayals and demands for inclusion.

The paper then argues that contemporary struggles for recognition and equality — especially those associated with feminist jurisprudence, critical race theory, postcolonial legal theory and LGBT critical studies — should

be understood as internal forces of the rule-of-law tradition, not as external challenges to it. These movements could not emerge entirely outside the normative framework of the constitutional state. Their identities, claims and forms of critique are shaped by the very grammar of legality: equality, dignity, rights, participation, public justification and accountability. They expose the ways in which the legal subject has historically been constructed through exclusions, but they do so by radicalizing the rule of law's own promises.

This approach responds directly to the workshop's concern with narrative rationality and the construction of legal subjectivity. The legal subject is neither a merely abstract bearer of rights and duties nor the immediate juridical expression of singular identity. Rather, legal subjectivity is formed within an ongoing narrative struggle over who can appear before the law as equal, recognizable and comparable. The paper concludes that narrative rationality is not only a resource for understanding judicial reasoning or personal identity; it is also crucial for understanding the rule of law itself as a living tradition whose development depends on internal contestation, struggles for recognition, and the unfinished radicalization of equality.

SYMBOLIC REDUCTION OF COMPLEXITY AND THE TRANSFORMATION OF LEGAL SUBJECTIVITY

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ABSTRACT

Speed. Simplification. Positioning. Contemporary communication appears increasingly structured around forms of expression that demand rapid and polarized stances (being "for" or "against," "inside" or "outside"), while argumentative forms capable of articulating nuance and complexity seem to be progressively shrinking.

This tendency does not concern only political or media communication; it permeates many everyday practices, from recipes condensed into a few seconds to tutorials promising to teach complex skills in minimal time, and even to evaluation systems based on metrics and rankings. These heterogeneous phenomena can be interpreted as symptoms of a broader process of symbolic reduction of complexity, in which discursive language, capable of narration, interpretation, and counterfactual reasoning is increasingly replaced by simplified signals, indicators, and binary oppositions.

Digital technologies and platforms have enabled forms of simplification that are in many respects desirable, yet they also tend to compress the space for sustained reflection and discursive elaboration.

Modern legal systems, however, developed within discursive environments that presuppose subjects capable of speech, justification, and responsibility. Legal subjectivity does not merely coincide with a biological or natural fact; it emerges within symbolic practices such as naming, promising, declaring, and testifying.

If the cultural context increasingly privileges rapid communication and binary distinctions, an important question arises: what happens to a legal system grounded in language and interpretation when the surrounding symbolic environment progressively reduces the space of discursive complexity?

This paper explores this hypothesis by asking a more fundamental question: if law is rooted in the space of language, what happens when the symbolic environment increasingly privileges calculation over discourse?

LAW FOR THE ECOSPHERE, BUT RIGHT OR LEFT? LEGAL PERSONIFICATION OF NATURE AND ITS UNEVEN NARRATIVE PATHWAYS THROUGH IMAGINARIES, INTUITIONS AND MATERIALITY

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ABSTRACT

This paper explores the emerging legal and political phenomenon of personification of nature within the legal discourse through attributing legal subjectivity, rights and/or legal personality to natural ecosystems. In the paper—employing qualitative content analysis and theoretical reflection—I will examine two issues. Firstly, (1) how social movements narratively reconfigure the classical distinction between legal subjects and objects, and how they project such outlooks to impact environmental law. Secondly, (2) in what ways we can assess if and how such narrative reframing can impact the normative system in two senses: the legal-doctrinal sense and in the practice-based sense understood as the regulated material ways in which people interact with natural ecosystems (taking into account the porous nature of the very conceptual boundary between human society and nature). I will argue that the narrations surrounding legal personification of nature can serve as a one of the focal points for the study of socio-legal imaginaries in the Anthropocene.

In the first part, I briefly reconstruct the notion of legal personification of nature as a contemporary discursive practice in the legal field. I will discuss two well known examples in which ecosystems have been institutionally constituted (in the legal-dogmatic sense) as legal persons: the Whanganui River in New Zealand and the Mar Menor lagoon in Spain. I then turn to two contemporary social movements seeking similar recognition for other ecosystems: the Odra Tribe movement in Poland and the Tavignanu Vivu movement in Corsica. I will briefly discuss the results of a narrative analysis of these groups' communication in online channels. I will give particular attention to the symbolic and rhetorical frames through

which these actors articulate the legal and moral standing of natural entities. I will discuss the socio-legal imaginaries (an analytical term I adapt, with modifications, after Taylor [2003] and Jasanoff and Kim [2009], understood as shared visions of the workings of the law and possible futures achievable through it) which can be reconstructed from these narratives. These cases will allow me to discuss how stories, metaphors and collective identities construct the social visions of the relationship between human societies and nature as well as the role of law in structuring and reshaping these boundaries or connections.

In the second part of the paper, drawing on the results of the analyses above, I will focus on the dissonances connected to narratives of legal personification of nature present in some of their critiques. I will discuss on what grounds (how and if) we can assess possible impacts of the narratives of legal personification of nature (especially in their institutionalised forms) on the legal system broadly conceived as (1) on one hand, in the dogmatic sense, a system of normative statements, and (2) on the other hand, a system or regulation of material social behaviour on a massive scale. Drawing on theories regarding 'basic ontological categories' employed in cognitive anthropology (Boyer 2000) and the divergent modes of perception attributed to two human brain hemispheres (in fact, the title of my paper starts with a wordplay with the word 'hemisphere') developed in neuroscience (McGilchrist 2017), I will propose an interpretation of the challenges posed by the studied narratives as a rivalry between the notions of 'socialisation of nature' and 'naturalisation of society', but also broadly between 'mechanistic' and 'organic' ways of thinking about the relationship between society and nature. I will argue that such a conundrum can be considered inescapable for contemporary legal thinking about the position of humans in relation to the natural ecosystems.

I will close the paper by sketching out some dilemmas which follow such an argument, guided by the question if a conciliation of 'mechanistic' and 'organic' thinking about nature is possible (and/or desirable) in the realm of legal discourse. Such questions will serve as a conclusion for the paper (which is very much a work in progress) and an invitation to a discussion.

INFLUENCE ON ROMAN LAW FOR THE EVOLUTION AND THE CHANGES IN MODERN LEGAL REGULATION OF REAL SECURITY

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ABSTRACT

Similar to the Law of property, the Law of real security of the credit has also been a product of the history that has modified plenty of rules through a dense transnational exchange of tools aimed at discerning problems and identifying better solutions. These contractual practicies have been largely and constant shared by the various national systems beyond the meanders of the local technicalities. The common character of the problems at the center of the Law of real security has been first of all reflected in Legal history. The diachronic observation and the specific approach both of the studies of Roman law and Comparative law indicate how the different legal experiences have responded to the economic needs of the reference society by developing solutions from time to time attributable to some common matrices like the old patterns of contracts adopted in the Middle ages Reception of law and transmitted in the current era through the successful implementations of the European Civil codifications of the 19th century. As a preliminary example, it is worth remembering how in the most archaic societies (Ancient Greece - particularly in Athens) and in Rome, sophisticated techniques for guaranteeing the obligations were widespread everywhere, achieved through the transfer of ownership or the possession of specific things to the creditor, and how at every latitude the economic development of the particular society in reference was associated with the emergence of guarantees without dispossession of the person that provided them and the development of institutes that did not deprive the debtor of the formal ownership of the right, granted as a guarantee (res obligata). Since antiquity, the real security contracts of pledge and mortgage have been examples in the history of law for the changes in the legal regulation that have been developed mainly due to the practical needs of

the private persons as members of the society in accordance with the objective criteria of the ancient concept of utilitas or the utility in private and public sense. In this article the author attempts to analyze the different aspects of above mentioned contracts as typical institutes of the Reception of Roman law in Modern legal systems, paying a great attention to the changes in law that have become necessary and urgent in the process of evolution and forming of these accessory agreements in connection to the contemporary context of legal and economic relations, that have mostly practical and useful function for the business turnover as real guarantees of the creditor, which are at the same time beneficial also for the debtor.

Keywords: Mortgage; res; Roman law; Modern law; real security; person; Law of obligations; hypotheca; pignus; pledge; influence; Ancient legal systems; Athens.

"POSTER MAKERS" AS CREATORS OF COUNTER-NARRATIVES IN THE DIGITAL SPHERE

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ABSTRACT

The presentation analyses the activities of the Polish social movement „Poster Makers against violence against women" In the context of the democratic backsliding in Poland and the systemic curtailment of women's rights, this movement creates a unique space for community-building narratives that challenge political and legal discourses.

The main aim of this paper is to examine how the "Poster makers" narratives – originally situated within the physical urban space – evolve in the digital realm, creating a lasting archive of resistance on social media. Drawing on James C. Scott's concept of the hidden transcript,the author will demonstrate that online posts documenting poster campaigns constitute a form of 'quasi-hidden transcript' – an alternative discourse that allows women to reclaim their voice in conditions of symbolic oppression and exclusion from official public debate.

The analysis will focus on three key aspects linking narrative and law: Narrative as a form of resistance against unjust laws: slogans (e.g. regarding the Constitutional Tribunal's ruling on abortion or the case of Justyna Wydrzyńska) are interpreted as an expression of conscious civil disobedience, in which narrative becomes a tool for delegitimising unjust norms. Social media as a platform to build 'cyber islands' where women's voices are heard, which directly corresponds to the workshop's question regarding the incorporation of components of personal identity into the normative configuration of a legal entity. The movement's activities demonstrate how narratives based on trauma and personal experience (domestic and sexual violence) transform the experience of the individual, demanding recognition of their uniqueness over the abstract, ideologised category of the 'traditional role of women'.

The paper argues that the combination of the physical nature of the poster with its circulation on social media creates a new dynamic in the practical world of law, offering a model of social mobilisation which, through the power of narrative, seeks to change public and legal awareness in the age of populism.

ON THE COLLAPSE OF THE CONCEPT OF REASON, WHICH, PARADOXICALLY, WEAKENS NARRATIVES

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ABSTRACT

The presentation will be exploratory in character, in the sense that its chief concern will be to formulate questions, including questions addressed to the audience.

Its point of departure will be Jürgen Habermas's theses formulated in Between Facts and Norms, regarding (i) the contrast between the traditional concept of practical reason and the concept of heuristic communicative reason, (ii) subjectless communicative structures, and (iii) the legal form of democratic (communicative) power. These theses will be briefly summarised and discussed in order to subsequently derive from them a number of implications for narrative and the subject of narrative, particularly in relation to legal questions, including those relating persons, citizens, the principle of the Rule of Law, and the Rechtsstaat.

CYBERBROMATICS, ANDROIDS, AND THE PROBLEM OF GENUINE LEGAL PERSONHOOD FOR HUMAN BEINGS

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ABSTRACT

The issues I wish to address are inspired by the works of one of Poland's most outstanding writers and thinkers – Stanisław Lem. Reading Stanisław Lem today has an increasingly bitter, increasingly disturbing taste because the world we live in is becoming more and more like the worlds he described. We only see this when yet another similarity comes to pass, whether on a more literal level (the economisation and miniaturisation of the means of combat from The Invincible, which is beginning to materialise before our very eyes during the war instigated by the Russian Federation in Ukraine) or on a more metaphorical level (the shaping of public sentiment through the mechanisms of manipulation described in The Futurological Congress). What other descriptions of dead ends or catastrophes lie hidden in Lem's works? We shall not know until we venture down those paths; we shall not understand until those catastrophes occur.

Perhaps, however, enriched by our knowledge of his plots and reflections, we will be at least a little better prepared for them. At the very least, we will be able to reflect on Lem's insight; perhaps he really did know more, and from the chaos of contemporary events was able to pick out those tangles of threads that lead straight to our own times.

In my presentation, I would like to address several issues that are of great relevance today, but which may help to answer an important question that has never been analyzed in detail in case law: what would happen if a man-made artifact, such as a large computer system, demanded to be treated as a person rather than as property? I therefore wonder whether

such an entity should be granted legal personality if it possesses the following capacities: the capacity to interact with its environment and to engage in complex thought and communication processes; a sense of self, with a concern for the realization of its life plan; and the ability to live in a community with other people based on at least mutual self-interest.

NARRATIVE RESOURCES AND CONCRETE ADJUDICATION: IS THE INCORPORATION OF THESE RESOURCES COMPATIBLE WITH A PROBLEM/SYSTEM PRACTICAL-PRUDENTIAL TYPE OF RATIONALITY?

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ABSTRACT

The thematic core that I propose focuses, from a metadogmatic (methodological) perspective, on the problem of the judge's modus operandi, or, more precisely, on the question concerning the type of rationality that predominantly sustains a plausible methodic scheme. The purpose is to consider the contribute of narrative rationality in general and the narrative treatment of the subject's identity (or identity features) in particular, following in this sense the thematic sequence privileged by the text of our call. The guiding question is whether the methodological scheme of judicial adjudication can and should incorporate narrative resources -- and if it can... and if it should... at what precise moments in its analytical iter., with what significance or weight... and within what limits. As we shall see, this question opens itself up to the many and varied voices (and perspectives and models!) that, in recent decades, have explored narrative rationality in the context of the rehabilitation of practical philosophy, as well as to the no less plural and diverse attempts to project these models and their major voices (albeit often in a unilateral way) onto the practical world of law, whilst however presupposing a certain experience of Law as a project, a form of life and a tradition … and with this the acknowledgement of two complementary "deep conventions": the specification of practical (subject/subject) rationality as a problem/system dialectic; the representation of tertiality as a constitutive reference to comparability (autonomising a specific conception of the subject-person and her/his dignity, as well as an unmistakable experience of analogically comparable concreteness). Once

these issues have been clarified, we will be able to return to the guiding question, but now to break it down into several interrogations and rewrite their sequence as follows: Does the construction of the methodical scheme of concrete adjudication (as the determination of an explicit dominant rationale) admit/require the mobilization of narrative resources? Is it possible/required to expand and transform the category "legal subject" in order to include in it (and in the corresponding normative implications) a certain experience of identity? If it is possible/required this expansion and/or transformation, are the resources to be used explicitly and predominantly narrative? And if they are, does this narrative expansion and/or transformation benefit from a specifically methodological relevance or weigh when we consider the rationale of concrete adjudication? Admitting this is the sequence to be taken into account, I would say that it is possible to anticipate a common answer (which, although unitary, certainly opens up several interstices to be explored). This common answer could be the following: The incorporation of narrative components into the rationale of legal adjudication (including narrative components related to the subject's identity) is only possible or plausible when these components appear constitutively free (or unequivocally freed) from a context of intelligibility where singularity is (or can be said to be) absolute and insurmountable.… i.e. where singularity, seriously taken as a “diachronic dispersed arrangement of unrepeatable moments”, remains effectively bound to claims of uniqueness and incomparability (if not incommensurability) … What follows is an attempt to critically discuss this common answer (and to explore its interstices) whilst considering three diverse fields of experimentation: 1) "quaestio facti" in general and evidence in particular; 2) "quaestio iuris" in general and the concrete experimentation of statutory rule in particular; 3) the use of narrative identity as an autonomous methodological canon. This experimentation actually leads us to three distinct conclusions (all of which are ultimately understandable as situated specifications of the aforementioned common response): the first confirms not only the possibility-plausibility but also the indispensability of resorting to components of narrative rationality when we methodologically address the quaestio facti; the second confirms the possibility-plausibility, but doubts the productivity and rejects the indispensability of resorting to components of narrative rationality when we methodologically address the quaestio iuris; the third

rejects the possibility of transforming references to identity through narrative resources into an autonomous methodological canon.

INTIMATE BORDERS: FEMINIST MIGRATION ETHICS (BOOK SESSION)

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SW79 · Non-ideal Approaches in Migration Ethics: Movement, Membership, and Asylum in the Contemporary World
Convenors: Konstantinos Farmakidis; Jan Turlej; Anna Milioni

ABSTRACT

Intimate Borders: Feminist Migration Ethics offers a decolonial, feminist theory of borders that enables us to perceive hidden gender injustices at borders and then take concrete steps to stop them. Grounded in feminist privacy ethics, Latina feminism, Indigenous philosophies of borders and space, and original ethnographic research conducted by the author at two abortion clinics in the U.S.-Mexico borderlands, it challenges political philosophy's public/private divide by urging us to understand borders as intimate. Specifically, it argues that borders are sites of embodied and identity-based harms and that often tamper with the boundaries of our selves in ways that impact our personal autonomy. As a feminist theory that questions unhelpful dichotomies, Intimate Borders also calls into question popular all-or-nothing proposals for both open and closed borders, arguing that a feminist approach to borders requires careful exploration of how different borders (including non-Western borders) may both cause and protect against intimate harms for vulnerable groups. Intimate Borders unpacks some of the most urgent and undertheorized ethical challenges presented at borders today, including border crossings for abortion care, the migration of children, pregnancy and miscarriage at borders, family separations at borders, and the complicated relationship between borders and Indigenous identities. Intimate Borders is a theoretical framework for feminist migration scholars, policy makers, activists, and anyone else who wishes to raise awareness of gender injustice at the world's borders. This Author-meets-critics session will include commentaries by Phillip Cole, Sara Toffanin, and Anna Milioni, a response by Amy Reed-Sandoval, and discussion with the audience. The session will be chaired by Nadire Özdemir.

THE RIGHT TO THE (GATED) CITY

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ABSTRACT

This paper asks whether the right to the city includes a right to exclude non-residents. By "the right to exclude" I mean not direct closed-border measures but the proxy regulations (exclusionary zoning, local-democratic veto, infrastructure non-provision, formal urban citizenship) that keep newcomers out. I first define the city and distinguish a formal community, constituted by coordination and legal form, from a material community, bound by lasting identity and self-preservation. I then test the three strongest cases for exclusion by the appeal to partiality: property, political integrity, and identity arguments. None succeeds at the city scale. The property case mistakes ownership's agenda-setting authority for a boundary; the political case yields coordination-based self-government but no right to exclude; the identity case, the strongest, grounds at most a legally constrained right to remain (stay put), held most strongly by vulnerable cultural minorities, which inhibits inflow only indirectly. I close by reorienting the debate: the proper object of moral criticism is the capitalist extraction of surplus value and monopoly rent from urban space, not individuals cast as "gentrifiers". There is a right to the gated city, gated from capitalism, not people.

PRACTICES OF HOSPITALITY AS A LABORATORY FOR DEMOCRATIC AND COSMOPOLITAN TRANSFORMATIONS? A GROUNDED ANALYSIS OF HOSPITALITY IN CONTEMPORARY FRENCH HEXAGON.

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ABSTRACT

Recent trends in French political philosophy has seen the return of the concept of "hospitality". After Derrida's plea for "unconditional hospitality"[1], the growing popularity of the concept in the French debate[2] have led to discuss the social, political and ethical dimensions of hospitality and their complex intricate relations. Most of the arguments developed by French authors take for granted the cosmopolitan hope embedded in the idea of hospitality and develop their approach based on ethical theories (mostly care ethics and virtue ethics) and critics of liberal democratic theory. My attempt here will be to offer a different take on the concept of hospitality. Practices of hospitality has been often depicted in the cosmopolitan literature as a crucial site for critical and radical transformations of bottom-up and innovative social cosmopolitan disruptions (Ingram, 2023; Baban & Rygiel, 2017; Friese, 2010). Based on a grounded approach of normative theory which integrates social sciences studies of practices of hospitality in contemporary France hexagon, I explain, against the previous position, why a pluralist approach is needed to consider the normative content of hospitality and how it affects potential democratic and cosmopolitan transformations. In this paper, I will endorse the idea that a pluralist approach on the normative content of the practices of hospitality is more suitable to conceive properly normative desirable democratic and cosmopolitan transformations and their condition of feasibility in the French context. My paper is structured in four parts. Firstly, I explain that, in the context of contemporary France hexagon, the concept of hospitality is best

conceived as a "social form". Indeed, empirical studies in social sciences tend to offer a fresh look on the practices of hospitality which the idea of "social form" captures. In the context of contemporary France hexagon, I offer to conceptualize three types of social forms: "individual hospitality", "communal hospitality" and "hospitality of metropolis". Conceived as three distinctive social forms (with distinctive features: ontology, agentivity), then the normative analysis of these social forms reveals new aspects and problems. By "social forms" I distinguish this concept from the concept of "life forms" developed recently by Rahel Jaeggi (2022). Secondly, I will show that a much more precise and nuanced analysis of the normative content of the practices of hospitality is needed to think in depth these three types of social forms and the specific normative problems attached to each. A pluralist approach to the normative content of hospitality allows to demonstrate that each social form is not a "constitutive political reality" (Maynard, 2002) but embrace a plurality of cases which are diverse and contains even "non-familiar cases" (Carens, 2004). A pluralist approach to the normative content of each social form is then needed to address specifically the balance between some of these aspects which have decisive normative implications. Following this pluralist approach, I offer the scrutiny of four different normative views: ethical liberal, radical democrat, republican antipower, critical marxist. Thirdly, beyond a pragmatist mode of enquiry to select which normative views can be selected, I will argue that a grounded approach in normative political theory on hospitality require a critical approach to the context of France contemporary hexagon (unitary political system, constitutional law, administrative law, colonial and imperial legacy etc.). Based on this critical approach, I will then explain which normative conception of hospitality is more likely to be desirable and feasible to operate democratic and cosmopolitan transformations. Based on few cases, I will explain which normative principles and conception of hospitality can produce desirable democratic and cosmopolitan transformations.

[1] Jacques Derrida, Adieu à Emmanuel Levinas, Paris, Galilée, 1997 ; Jacques Derrida et Anne Dufourmentelle, De l'hospitalité, Paris, Calmann-Lévy, 1997. J. Derrida,Hospitalité (vol. I), Paris, Seuil, 2021 ; J. Derrida, Hospitalité (Vol. II), Paris, Seuil, 2022.

[2] M. Agier, L'hospitalité, Seuil, 2018 ; D. Huberman, Passer à tout prix, Edition de Minuit, 2016 ; E. Balibar, Droit de Cité, PUF, 1998 ; F. Brugère et G. Le Blanc, La fin de l'hospitalité, Flammarion, 2016 ; S. Djigo, Les migrants de Calais, Agone, 2016 ; S. Djigo, Aux bords de

la démocratie, Bord de l'eau, 2019 ; B. Boudou, Politique d'hospitalité, CNRS, 2017 ; B. Boudou, Le dilemme des frontières, EHESS édition, 2018 ; M. Deleihxe, Aux bords de la démocratie, Classiques Garnier, 2016 ; F. Héran, Avec l'immigration, La Découverte, 2016 ; Special issue : Esprit, Hospitalité, 2018 ; Etienne Balibar, Cosmopolitique, Paris, éditions La Découverte, 2022 ;D. Fassin et A-C Defossez, L'exil, toujours recommencé, chronique de la frontière, Paris, « couleurs des idées », Seuil, 2024 ; J. Rogozinski, Inhospitalité, Paris, « La parole & l'Ecrit », Cerf, 2024

MINIMAL BORDERS: AN INSTITUTIONAL THEORY OF IMMIGRATION

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Convenors: Konstantinos Farmakidis; Jan Turlej; Anna Milioni

ABSTRACT

What justifies borders? Do states have the right to exclude immigrants? Carens' open border theory argues against border control by drawing an analogy between internal and international freedom of movement (Carens 2013). In contrast, various justifications for borders have been offered by proponents of the jurisdiction theory (Blake 2020a), self-determination theory (Walzer 1983; Miller 2016; Song 2018, 2023; Stilz 2019), and freedom of association theory (Wellman 2008), etc.

The aim of this paper is to propose what I call the "institutional theory of immigration," a new approach between open and closed border theories. Here is the basic idea: Minimal borders, which exclude immigrants only if they would undermine domestic political institutions, are justified because the different political institutions of different countries could not coexist without at least a minimal border. This is because different political institutions like democracy and authoritarianism are mutually exclusive in the same place, and unrestricted open borders might allow some immigrants to bring institutions or lifestyles that challenge the domestic political institutions. Different countries often choose to live under different political institutions, and this will remain a fact of political life for the foreseeable future. Therefore, it is rational for different countries to have minimal borders that separate them so each of them can maintain its political institutions. For example, a liberal democracy could not maintain its political institutions if members of authoritarian organizations were free to cross the border from a neighboring authoritarian state. This justification applies not only to liberal democracies but also to many other institutions. For instance, even a planned economy could not sustain its institutions of central

planning and price control if immigrants could move freely with money and goods from a free market country.

This theory will also be defended against two common objections. First, it might be objected that the institutional theory allows unjust institutions such as authoritarianism to have the right to exclude immigrants with minimal borders. My response is that whether unjust institutions deserve a border depends on whether the international community should coexist with such unjust institutions. If the institution of a country (e.g., Nazi Germany or South African Apartheid) is strongly unjust such that it should not coexist with other countries, the country does not have the right of exclusion. Second, another objection is that the institutional theory is no more than a variety of the self-determination theory. I will differentiate the institutional theory from the self-determination theory by showing its advantages in avoiding "the boundary problem". The problem for the self-determination theory is that the existing members' right to determine membership of a country begs the question of whether the current distribution of its membership is justified in the first place. (Abizadeh 2008; Wellman and Cole 2011; Lepoutre 2016). By contrast, the institutional theory is immune to this problem because it is not based on self-determination and therefore does not presuppose the justification of a collective self.

CULTURE, REASONABLENESS AND THE ETHICS OF EXCLUSION

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ABSTRACT

Although culture features prominently in contemporary debates about immigration control, existing arguments often overstate its implications. Some writers claim that preserving culture can justify a broad right to control membership, while others argue that culture is too fluid or morally insignificant to ground exclusion at all. This article develops a more qualified liberal account of the cultural right to exclude. It makes three main contributions. First, it argues that a limited conception of culture, centred on the Rawlsian idea of reasonableness, can justify a restricted right to exclude within liberal democratic states aimed at protecting a shared public political culture that enables cooperation among free and equal citizens. Second, it shows that when migration outpaces the capacity of political institutions, whether through direct strain or declining public trust, temporary limits on admission may be justified to preserve institutional legitimacy and maintain fair terms of cooperation. Third, it argues that beyond liberal democracies, the moral scope of exclusion varies across political contexts. In culturally homogeneous or non-liberal states, where public and thick culture more closely align, a broader though still conditional right to exclude may be defensible.

VIOLENCE FOR VIOLENCE? DO REFUGEES HAVE A MORAL RIGHT TO RESIST AND INFLICT HARM AT BORDERS

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ABSTRACT

In the debate on migration justice, the prevailing view is that migrants (especially refugees) have the right to self-defence at borders. This right allows migrants to take harmful action if their fundamental human rights are under threat (Aitchison, 2023; Blake & Hereth, 2020; Hidalgo, 2019). In this paper, I argue against this position by presenting two arguments concerning the right to self-defence and just war theory. By defending the rights of migrants, including the right to cross borders violently, some adopt an anti-statist position and employ luck egalitarian arguments (see especially Hidalgo, 2019, pp. 40–41). They argue that, as soon as luck is considered beyond one's control, whether one is a co-national or an outsider should have no moral significance. However, if we are prepared to treat arbitrary factors as irrelevant when determining what people are owed, why should we allow those same factors to shape the attribution of blame? (see, e.g., Levy, 2011) As I argue, the more we exclude arbitrary factors from our moral reasoning, the more evident the role of luck becomes in our assessment of moral responsibility. For example, we should acknowledge that due to bad luck, an agent may be born into an environment where she cannot be exposed to moral knowledge of how migrants should be treated, resulting in non-culpable ignorance (even if one rejects scepticism about luck and responsibility, manipulation is widely regarded as a paradigmatic excuse, mitigating and sometimes undermining moral responsibility – see, for example, Fischer and Ravizza, 1998, pp. 230–239). However, if this is correct, then many ordinary citizens, border

guards and state officials may not be blameworthy for failing to give sufficient weight to the interests of outsiders (for an opposing view, see Hidalgo, Chapter 7). I argue that this strongly resonates with the justification of harming individuals in self-defence in migration cases. Even if liability to defensive harm is limited to unjust combatants and unjust civilians (McMahan, 2009, Ch. 4.3 and Ch. 5.3), those committed to luck must accept a broader range of epistemic excuses, and such excuses may diminish liability and thereby restrict the permissibility of using force at the borders. Given this, we should not so quickly reach conclusions, as some do (e.g., Hidalgo, 2019, pp. 120–121), that one may attack and harm border guards who themselves did not threaten refugee lives, as the former may be epistemically excused and hence not liable to be harmed.

In the second part of the paper, I examine two factors relevant to self-defence and just war at borders: Proportionality: Reasonable chance of success Although proportionality and the chance of success are often listed as two separate jus ad bellum criteria, it seems counterintuitive to consider them separately (Coates, 2016 [1997], pp. 194–195). Therefore, the prospect of success is a relevant factor that should be considered when weighing up reasons for going to war. A war with no chance of success seems disproportionate, as the harm caused would outweigh any potential benefits. Understood in this way, this criterion appears to play an important role in determining the justification of subsistence wars (or more broadly, resistance against injustice, see e.g. Caney, 2015, pp. 71–72; Fabre, 2012, pp. 117–118; Lippert-Rasmussen, 2013, pp. 81–82). By analogy, this criterion can also be used to determine whether (what I call) refugee wars or refugee self-defence can be considered just in certain instances. If one accepts that just war moral judgement needs to be informed by a certain realism (Coates, 2016 [1997], p. 204), and considers only our world and nearby worlds, it becomes clear that a subsistence war would have no reasonable prospect of success (Pogge, 2015, pp. 103–104). This point also applies to organised or individual instances of self-defence at the border. Even if such violence were justifiable in principle, the stark imbalance of power at contemporary borders makes it highly unlikely that attacks on border guards would achieve migrants' (especially refugees') aims. Necessity: Last Resort In the final section of the paper, I argue that the "last resort" condition does not appear to be met in cases of open attack on the borders. Such attacks do not meet the necessity condition, which requires

defenders to survey all feasible threat-averting options, rank them according to their potential harmfulness, and employ only the highest-ranking option. However, I argue that migrants have access to other means that have proven to be more effective, such as smuggling services.

MIGRANTS AND THE DEMOS: PRINCIPLES OF JUSTICE AND THE PERSPECTIVE OF COSMOPOLITAN RIGHT

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ABSTRACT

John Rawls's Law of Peoples is well known for its resistance to cosmopolitan arguments in favor of open borders. Unlike theorists who regard migration as a corrective mechanism for global inequalities, Rawls attributes persistent poverty primarily to domestic institutional deficiencies rather than to an unjust international distribution of resources. Occupying a territory generates responsibilities analogous to those associated with property, and peoples are expected to bear responsibility for their own institutional and economic development. Consequently, the duties of well-ordered peoples are limited to toleration, assistance, and, in exceptional circumstances, humanitarian intervention. Admission of immigrants does not belong among Rawls's non-ideal duties, nor does it appear as a subsidiary obligation of the kind captured by Veit Bader's formulation: "open your wallets or open your borders." Against this background, Rawls's recognition of a right to emigrate from even "decent hierarchical peoples" appears striking. If migration is not a preferred response to global inequality and if decent peoples remain entitled to preserve their political autonomy, what is the relation of the right to exit with the principles of justice in the Society of Peoples? The paper argues that this provision cannot be fully understood without considering the historical-philosophical origins of the right to leave (Locke, de Vattel and the Peace of Augsburg). Intended as a protection against religious and political unitarianism a right to leave functions as an entitlement for those whose convictions cannot be accommodated within a given political order to withdraw their allegiance and seek another community. This genealogy sheds new light on the status

of decent hierarchical peoples in the Law of Peoples. Although such societies do not violate human rights thus satisfying Rawls's criteria of decency, they remain less accommodating of pluralism than liberal peoples. This remedial function co-exists with a legitimacy requirement, in a way that it becomes part of what allows decent hierarchical peoples to be tolerated within the Society of Peoples. The paper argues, however, that this justification remains incomplete if emigration is interpreted merely as physical departure or temporary admission abroad. A right to leave a unitarian political community cannot achieve its normative purpose if it merely transfers individuals from one form of political marginalization to another. To recognize persons as bearers of convictions sufficiently important to justify emigration, while simultaneously denying them any prospect of entering another political community on equal terms, would deprive the right of its point. Pluralism would then become a false promise. At this point, the paper introduces a Kantian perspective. While Kant's doctrine of cosmopolitan right is generally interpreted as guaranteeing only a limited right of visitation, the philosopher's moral concept of Cosmopolitan Perspective (Weltbürgerliche Gesinnung) invites political institutions to be assessed from the standpoint of a humanity. But humans inhabit the world in dignity as long as they have an active chance to live as citizens. The significance of emigration cannot simply in movement across borders but in preserving the possibility that individuals may seek political recognition beyond the confines of their original community. Read in this light, Rawls's right to emigrate points beyond itself. Its normative logic is fulfilled not by exit alone but by the possibility of eventual incorporation into another political community. Although the argument neither defends open borders nor derives a general right to immigration, it provides grounds for re-evaluating limited duties of admission. First, contemporary forms of unitarianism may be religious, political, or institutional-economic, thereby expanding the range of circumstances in which individuals may reasonably seek recognition beyond their society of origin. Second, once the right to emigrate is understood as necessary to preserve pluralism across the Society of Peoples, admission acquires a distinct normative status. It is no longer merely one policy option among others but part of the institutional framework through which the value of pluralism is sustained, at both the domestic and international level. A complete right to emigrate therefore requires not only the liberty to depart but also the existence of

realistic opportunities for reception, and above all a normative understanding of the immigrant as a citizen-to-be.

AGAINST THE NATURAL DUTY OF JUSTICE TO COMPLY WITH IMMIGRATION LAW

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ABSTRACT

Are prospective migrants morally obliged to comply with immigration law? Each year, hundreds of thousands of prospective migrants act in contravention of states' immigration law. Failure to comply with a state's immigration law is, of course, legally impermissible. The question arises, however, as to whether it is morally permissible.

According to Blake (2019), Grey (2015), Lee (2016) and Miller (2023), the natural duty of justice (i.e., the duty to comply with and uphold just institutions), grounds obligations for prospective migrants to comply with immigration law. In this paper, I demonstrate that their arguments fail – prospective migrants are not bound by the natural duty of justice to comply with immigration law. I demonstrate that this is the case even granting that (1) a just state's members are under a natural duty of justice to comply with its laws and (2) immigration law can, subject to certain constraints, constitute a just institution.

I first outline the simple argument for the natural duty of justice to comply with immigration law. According to this argument (a) there is a natural duty of justice to comply with those just institutions which apply to us, and (b) immigration law applies to prospective migrants. I demonstrate, following Simmons (1979), this simple argument fails because it not the case that any just institution which addresses itself to us (in virtue of our status as prospective migrants or otherwise) thereby grounds natural duties of justice for us to comply with that institution.

I then present and refute three ways one might nevertheless defend the natural duty of justice to comply with immigration law. These are (1) just immigration law not only operates in accordance with justice, but is required by justice, e.g., to protect the welfare state, (2) the argument from

birth (we are under a natural duty of justice to comply with those just institutions that we are born into) and (3) the duty not to undermine just institutions (the natural duty of justice binds us not to undermine just institutions, even when it does not bind us to comply with them).

Argument (1) is grounded in Waldron's (1993) claim that there is a natural duty of justice to comply with those just institutions that address themselves to us, provided that they not only operate in accordance with justice, but are also doing something that justice requires. I argue that (1) fails by demonstrating that just immigration law is permissible yet not required by justice. Subsequently, I argue that (2) fails because there is no international migration regime. Finally, I argue that (3) fails because irregular migration that takes the form of 'mere noncompliance' (Yong, 2018) fails to undermine just institutions. I then engage with Nefsky's (2017) work on collective harms, concluding that even if large-scale irregular migration undermines a state's immigration law, this fails to ground a natural duty of justice for individuals to refrain from engaging in irregular migration.

THE PUZZLE OF MIGRATION FOR REPARATIVE JUSTICE

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ABSTRACT

This paper argues that migration functions as a distinctive stress test for existing non-ideal theories of reparative justice. While reparative approaches are generally embedded in non-ideal normative theory, they continue to rely on idealised categories to conceptualise reparative responsibilities, such as e.g. 'beneficiary', 'victim', 'perpetrator', 'membership', or 'historical continuity'. However, these begin to unravel once migration is taken seriously as a political reality. I call this the Puzzle of Migration. To illustrate the puzzle, I engage three stylised cases — Brad (a mobile American professional in Berlin), Emre (a third-generation Turkish-German), and Ahmad (a Palestinian refugee who has become a German citizen) — each connected to Germany through distinct migration histories. Germany provides a particularly revealing site of inquiry: the institutionalisation of Holocaust responsibility through Vergangenheitsbewältigung (Coming to terms with the past) is a cornerstone of national identity, while migration remains a deeply contested political question. I examine how the puzzle plays out across three prominent approaches to reparative justice. Beneficiaries-pay-approaches (Táíwò 2022, Kim 2024) offer sophisticated accounts of structural reparative duty but struggle to accommodate individuals who are simultaneously globally advantaged and domestically marginalised, and only insufficiently resolve the tension between individual liabilities and collectively required world-making transformation. Nationalist approaches (Miller 2007, Abdel-Nour 2003) ground reparative obligation in transgenerational collective identity but face a fundamental dilemma: the thickness of identity required to sustain historical responsibility is incompatible with the thinness required to accommodate diverse and

mobile populations. In the German context, nationalised memory paradoxically reinforces the othering of minorities rather than integrating them into a shared community of reparative obligation. Contribution-based-approaches (Nuti 2019, Page 2019, McKeown 2024), by locating responsibility in the state's structural agency and capacity, come closest to a workable account. Yet state-enacted reparations can invert moral responsibility, burdening those whose lives were shaped by the very injustices being repaired. Migration thus exposes how states are themselves embedded in the structures they are tasked with redressing. The Puzzle of Migration thus reveals fundamental tensions in how we conceptualize responsibility for historical injustices in increasingly diverse societies. I conclude that addressing the Puzzle of Migration requires developing more nuanced approaches to historical responsibility that acknowledge both the structural position of migrants within global unjust structures and their particular experiences of marginalisation within national contexts. As migration increasingly becomes the focus of academic and public discourse around historical responsibility, we should develop frameworks that accommodate multiple ways of relating to historical injustice beyond notions of national identity or inherited liabilities. This requires recognizing that migrants may occupy complex positions - globally advantaged yet often domestically marginalized. This paper contributes to the workshop's central concerns by bringing together non-ideal theory, the ethics of membership, and the politics of historical responsibility, arguing that migration exposes the fragility of frameworks that treat these as separable.

MORAL RESPONSIBILITY, REFUGEES AND GLOBAL JUSTICE: FROM FEMINIST MORAL ACTION TO ETHICAL THEORY

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ABSTRACT

Contemporary global communities are faced with increased human rights violations towards rapidly growing numbers of refugees and other forcibly displaced persons due to war, violence, persecution or other disasters detrimental to human flourishing. This is evident in the real-life situations of over 120 million people that are currently displaced from their homes world-wide. Developing an understanding of the concept of moral responsibility, both in the micro-context of personal responsibility and the macro-context of host states, that has both value and utility for the moral foundation of refugee relations, is an essential step towards building a more just system of international refugee protection. I argue that the magnitude of crisis-driven displacement at present calls for a radical reevaluation of the value and utility of the models of moral responsibility presented in dominant ethical theories. I build on Margret Urban Walker's thesis that morality is best revealed in practice, and present findings from in-depth interviews with 10 feminist activists who travelled to the border of a war ridden state in 2024 and secured safe passage across the border for over 200 forcibly displaced persons with legal status as refugees in Iceland. Of special interest is what kinds of moral understanding grounded this feminist action, most notably when compared to the Icelandic government's early refusal to act on behalf of said group of displaced persons despite having granted them international protection in Iceland. I argue that the traditionally overlooked moral knowledge gained from such experience-driven data is of value and utility for the pressing project of further developing appropriate moral grounds for more just systems of international ref-

ugee protection, that are conducive to the demands of global justice. Further, I explore how different moral understandings translate into actions that may alleviate what I argue are best explained as a shared trauma that both individuals and communities are subjected to when governing bodies fail to meet the moral responsibilities that are inherent in the demands of global justice. In the spirit of Iris Marion Young's relational ethics, that are grounded in the premise that it is in and through social connections that we become morally competent human beings, I argue that it is important to acknowledge the pervasiveness of a certain kind of collective moral harm[1] I conclude comes with carrying a moral responsibility towards refugees while simultaneously feeling powerless to respond to the real-life situations of those forcibly displaced.

[1] In the project I explore using the term collective moral harm as opposed to the more traditional terminology of moral injury to emphasize a recognition of different levels of trauma, based on the situatedness of individuals or groups in relation to forced displacement. In short, when using the term moral harm I want to emphasize the difference between the moral injury sustained by active participants in war, as opposed to the moral harm that I argue is inherent to the powerlessness experienced by individuals and social groups that are faced with the failures of nation-states and global institutions to safeguard the human rights of forcibly displaced persons.

WHAT CAN ASYLUM SYSTEMS JUSTIFIABLY DEMAND? EPISTEMIC BURDEN IN SOGI CLAIMS UNDER NON-IDEAL CONDITIONS

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SW79 · Non-ideal Approaches in Migration Ethics: Movement, Membership, and Asylum in the Contemporary World
Convenors: Konstantinos Farmakidis; Jan Turlej; Anna Milioni

ABSTRACT

Contemporary asylum systems operate under non-ideal conditions marked by uncertainty, evidentiary limitations, and institutional constraints. These challenges are particularly pronounced in claims based on sexual orientation and gender identity (SOGI), where decision-makers are required to determine the credibility of applicants' accounts in the absence of clear or verifiable forms of evidence. At the same time, legal frameworks increasingly restrict the use of intrusive, stereotype-based, or quasi-scientific methods of assessment, primarily on grounds of dignity and privacy (see A, B and C v the Netherlands; F v Hungary). This generates a central tension within SOGI asylum adjudication: while credibility judgements remain necessary, the means of establishing them are significantly constrained.

This paper addresses this tension as a problem of non-ideal migration ethics (cf. The Law of Peoples). Rather than questioning whether states may assess credibility at all, it asks what epistemic demands asylum systems can justifiably impose on applicants under such conditions. Drawing on European asylum law and empirical research on decision-making practices (e.g., Jenni Millbank, Laurie Berg), the paper shows that, in practice, credibility assessments often rely on informal criteria such as narrative coherence, plausibility, and culturally familiar models of sexual identity.

These practices raise normative concerns. They tend to privilege specific, often Western, understandings of identity and require applicants to render their experiences intelligible within these frameworks to be recognised as credible. In doing so, they risk placing disproportionate epistemic burdens on individuals who are already vulnerable and who may lack the

resources to meet these expectations. This dynamic can be further illuminated through the lens of epistemic injustice.

The paper argues that this constitutes a distinct challenge for non-ideal theory: how to evaluate the fairness of institutional demands that arise under conditions where uncertainty cannot be eliminated. By conceptualising credibility assessment as a practice that distributes epistemic risk between the state and the applicant, the paper seeks to clarify the normative limits of what can be demanded in the adjudication of SOGI asylum claims. It concludes by suggesting that a reassessment of these epistemic standards is necessary if asylum practices are to remain consistent with broader commitments to equality, dignity, and justice.

STATELESSNESS AND THE LIMITS OF PROTECTION: LAW, MORALITY, AND POLITICAL MEMBERSHIP

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ABSTRACT

How should law and morality respond to individuals who fall outside established regimes of protection? Statelessness poses a distinct challenge as it exposes the limits of legal protection where political membership itself is absent or contested. While international law typically treats statelessness as a condition requiring remedial protection, this paper poses a prior normative question: what kind of injustice is statelessness, and does its cause determine the response it requires? Approaching statelessness through Rawls's framework of non-ideal theory, this paper examines whether statelessness should be understood as a contingent failure of compliance—arising from unlawful or discriminatory state action—or as a structural possibility internal to an international order organized through sovereign control over membership. Rawls assigns primary responsibility for justice to "peoples" and constrains sovereignty through human rights. Yet this leaves the status of those who belong to no political community capable of securing those rights unresolved. To examine this issue, this paper develops a typology of statelessness based on distinct pathways into political non-membership. First, the case of the Rohingya people raises the question of whether statelessness results from the broad discretion sovereign states retain over political membership, and whether such discretion is normatively defensible even when it enables arbitrary exclusion. Second, the case of Palestinians invites a distinct question: whether statelessness can arise not from exclusion by an existing state but from the unresolved problem of statehood and self-determination. Third, practices of nationality deprivation - as in the UK case of foreign fighters - show how statelessness may be actively produced within established legal orders, where the sovereign power to revoke citizenship exposes the fragility and

conditionality of political membership. Together, these cases reveal distinct pathways into political non-belonging: foundational exclusion, contested sovereignty, and revoked membership. This distinction matters because it shapes the moral and legal response. Where statelessness is produced differently how should justice respond? A cosmopolitan perspective brings this tension into sharper focus by questioning whether access to political belonging can be justified solely through sovereign discretion. Statelessness reveals a situation in which individuals may formally possess human rights while lacking membership in any political community capable of securing them. The problem, therefore, is not only exclusion from citizenship, but exclusion from the conditions necessary for equal legal standing altogether. This contribution argues that statelessness cannot be adequately addressed through human rights protections alone. While human rights law can mitigate the effects of exclusion, deprivation, and contested sovereignty, it does not resolve the more fundamental question that these cases collectively expose: the absence of any guaranteed entitlement to political membership itself. Instead, law and morality must confront a deeper normative principle: whether there exists a universal right not to be left without effective political membership.

RESTORING THE RULE OF LAW AFTER POPULISM: THE IGNORANCE OF MATERIAL CONSTITUTION AND WHERE IT CAN LEAD US

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SW80 · The Politicisation of the Rule of Law: Between Resilience and Adaptation. Philosophical and Sociological Perspectives
Convenors: Paweł Skuczyński; Maciej Pichlak; Jan Winczorek

ABSTRACT

The paper builds on two broad theoretical and methodological perspectives: material constitutionalism, which reads the constitutional order through the lens of material (social, political, and economic) relations that determine how power is produced and distributed in society (Goldoni and Wilkinson 2023), as well as the concept of the rule of law as a social ideal rather than a set of technical legal measures (Krygier 2026; Palombella 2010; Selznick 1992).

Within this cognitive framework, the paper addresses the problem of restoring the rule of law after a period of populist government. Building on the case of the Polish rule-of-law crisis and attempts to restore the standards of constitutional democracy, it examines the conditions for the effectiveness of these efforts. In that respect, the paper criticizes a dominant legal-formalistic approach that narrows down the problem to legislative interventions or procedural correctness. Such elements of constitutional practice, however necessary, must be deemed insufficient. Rather, the post-populist constitutional practice must address deeper, structural drivers of the rule-of-law deterioration. Consequently, the key drivers in the Polish case are examined: the patterns of civic distrust and disengagement, and the tendency toward executive dominance. The paper showcases these issues with the continuing political standoff and legal crisis around the Polish Constitutional Tribunal.

POLITICS EX MACHINA: BUREAUCRATIC REASON AND THE SUBSTANTIVE RATIONALITY OF A DEMOCRATIC RULE OF LAW

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ABSTRACT

As part of a doctoral research on the relation between bureaucracy and the rule of law, this paper investigates the rule of law concept as if it were a 'rule of reason'; in short, a conception of legality that opposes arbitrary articulations of power based on the degree of rationality exercised through such powers. Constructing this perspective on the rule of law out of Max Weber's ideal typical classification of different (legal) rationalities and his conditions for legal-rational rule (i.e. 'bureaucracy'), a major tension is observed between the formal and substantive rationalities inherent to the modern structure of law. In analogy to the form/substance-divide in standard rule of law theory, these two rationalities are assessed as mutually co-dependent in establishing a rule of reason. Instead of definitively listing formal and/or substantive criteria for such legal rule, however, the political-theoretical dimension of reason's institutional determination through law is proposed as the very condition of legal rule.

Arguing that the modern bureaucratic form is the epitome of the rule of reason, for its formally logical and systematic organisation, the question is raised how the substance of such formal bureaucratic reason becomes institutionally determined? Following Weber in his analogy between bureaucracy and machinic performance, the paper aims to localise the politics arising from the machine – the politics ex machina. In contrast with contemporary convictions that recent threats concerning the rule of law (e.g. democratic backsliding and constitutional populism) are due to its politicisation, deriving politics from the bureaucratic machine offers a perspective through which becomes apparent how the rule of law has always al-

ready been a politically charged ideal. Without underestimating the problematic nature of today's threats to the rule of law, the origination of those problems is located elsewhere.

Challenging the traditionally Weberian dichotomy between formal and substantive rationality, and the primacy of the former for modern rational law, it is argued that all formal law always also serves a certain substantive content – whether rationally construed or, to speak with Weber's idiom, based on "irrational presuppositions." Uncovering the relative openness of the meaning of 'reason' in understanding the rule of law as a rule of reason, the co-dependence of formal and substantive rationality are shown to be mediated through a communicative rationality that renders bureaucratic rule responsive to democratic deliberation. In reference to Jürgen Habermas's reception of Weber, the paper hinges on the co-original foundation and formulation of reason based on the democratically expressed will of a people and by the legal protection of the moral rights necessary to engage in such democratic expression. Consequently, the substance of reason is both determined and safeguarded by sufficiently democratic imagination and deliberation, and stabilised through bureaucratic machinery.

THE SYMBOLIC FUNCTION OF THE CONSTITUTION

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ABSTRACT

Constitutional theory traditionally distinguishes between the normative and legitimizing functions of a constitution. Although constitutions are often described as symbolic, constitutional symbolism is usually reduced to the representation of collective values, historical experiences, or political identity. This paper argues that constitutional theory should distinguish between the symbolic meaning of a constitution and its symbolic function. Whereas symbolic meaning concerns what constitutional provisions represent, symbolic function concerns what the constitution does as a social and interpretive institution.

The paper advances the thesis that the symbolic function constitutes an autonomous constitutional function operating alongside normative and legitimizing functions. This function derives from the fact that every constitution contains a surplus of meaning exceeding its immediate normative content. Constitutional texts, particularly preambles, general clauses, and essentially contested concepts, generate interpretive possibilities that cannot be exhausted by legal doctrine or institutional analysis. Through this surplus, constitutional discourse becomes a medium for articulating meanings extending beyond ordinary legal and political communication.

To explain this phenomenon, the paper draws on Carl Gustav Jung's concepts of the collective unconscious, archetypes, and individuation. Certain dimensions of collective experience remain inaccessible to direct expression and tend to emerge through symbols. The symbolic function of the constitution consists in providing a framework within which such latent contents may be expressed, contested, and partially integrated into public discourse.

The paper examines whether the constitution itself can be understood as an archetypal symbol of order, freedom, or political community, or whether its symbolic function is realized through particular constitutional provisions, narratives, and interpretive practices. Constitutional discourse is thus approached not only as a mechanism for resolving legal disagreements but also as a process analogous to individuation, through which a political community confronts tensions and integrates conflicting elements of collective experience. This argument does not imply a metaphysical conception of the constitution as an expression of a national spirit or essential identity. Rather, the symbolic function is understood as a communicative process through which collective meanings are generated, negotiated, and transformed, enabling ongoing processes of collective self-understanding.

The paper further argues that the symbolic function contributes to the formation of civic subjectivity. Constitutional subjectivity may depend on symbolic processes through which individuals come to recognize themselves as participants in a constitutional order. For this reason, symbolic function supports constitutionalization, while symbolic dysfunction may facilitate deconstitutionalization.

THE POLITICS OF JUDICIAL APPOINTMENTS AND THE ROUTINISATION OF ADJUDICATION - A VIEW FROM POLAND

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ABSTRACT

This paper examines the consequences of Poland's contested judicial appointments reforms through the lens of systems theory. Since 2017, judicial nominations have been controlled by a reconstituted National Council of the Judiciary (NCJ), whose independence has been widely challenged by domestic and European courts. As a result, thousands of judges have been appointed or promoted under procedures whose legitimacy remains disputed.

Leaving the direct influence of political actors on judicial decision-making aside, the paper advances a different argument. It suggests that the principal consequence of the reforms is the emergence of durable divisions - both rhetorical and partisan - within the judiciary itself. The bench has become increasingly structured around competing camps: judges who openly contest the legitimacy of the reforms, judges who have become institutionally invested in them, and a growing group of younger appointees whose careers are shaped by the new system despite limited involvement in its creation.

Drawing on systems theory, the paper argues that this lingering polarisation may create indirect opportunities for political influence. As judicial authority becomes contested, courts face heightened demands for consistency and legitimacy. Under such conditions, adjudication may tend to rely more heavily on routinised methodologies, established precedents, and standardised forms of legal reasoning rather than adapt new ap-

proaches. While these mechanisms protect the stability of legal communication, they may simultaneously reduce jurisprudential innovation and the capacity of the legal system to adapt to new social and legal problems.

The paper therefore hypothesises that the long-term effect of judicial politicisation is not the political steering of individual cases, but the transformation of professional dynamics within the judiciary, resulting in a more conservative and methodologically rigid legal culture. These propositions will guide a series of forthcoming empirical studies.

DRAWING SOVEREIGNTY: MAPS, COLONIALISM AND THE EPISTEMOLOGY OF INTERNATIONAL LAW

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SW81 · Law and Colonialism: Epistemology, In/justice, Oppression and Emancipation
Convenors: Kiwako Murata; Lena Foljanty; Keisuke Kondo

ABSTRACT

This paper argues that cartographic maps are not merely technical instruments used by international law, but epistemic infrastructures through which international law learns to perceive territory, sovereignty, evidence, and legal relevance. Beginning with the Berlin Conference, where European powers negotiated the partition of Africa in the literal presence of maps, the paper develops a systems-theoretical account of cartography as a boundary object between science, politics, and law. Maps convert space into legally cognisable territory, but they do so by reducing, classifying, and silencing other forms of spatial knowledge. Colonialism, therefore, enters international law not only through conquest or domination, but through legal perception itself: through the media by which law sees the world.

The paper traces this cartographic epistemology from early modern sovereignty and imperial mapping to decolonisation and the inherited borders of African states. It then examines the Eritrea-Ethiopia Boundary Commission as a contemporary example of colonial cartographic afterlife. There, colonial treaties and maps were used to settle a postcolonial boundary dispute, but the resulting legal border lacked social, political, and symbolic legitimacy. The paper concludes that decolonial repair cannot consist only in redrawing borders or correcting maps. It requires a more difficult task: making international law aware of the cartographic conditions of its own knowledge.

LEGAL PLURALISM AND INDIGENOUS SOVEREIGNTY

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SW81 · Law and Colonialism: Epistemology, In/justice, Oppression and Emancipation
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ABSTRACT

Keywords: Indigenous Legal Pluralism, Indigenous Sovereignty, Ongoing Colonialism, Legal Philosophy

This talk focuses on Legal Pluralism and Indigenous Sovereignty in Canada. I trace the vexed nature of state recognition of Indigenous law through key court cases, revealing a tension within the colonial foundations of Canadian law, particularly the doctrine of discovery and terra nullius—the legal bases of settler colonization.

I argue that the history shaped by alternating patterns of recognition and denial of Indigenous legal orders reflects the paradoxical logic of settler colonialism itself: a system that denies Indigenous sovereignty while simultaneously invoking it to legitimate its own authority. This long arc of non-recognition and recognition has produced enduring structural inequalities and legitimates the ongoing deployment of legal authority as a force of settler-colonial power.

I conclude by exploring how Legal Pluralism, the coexistence of multiple legal systems, and Indigenous Sovereignty together offer a framework for resolving this paradox and envisioning a more just and more coherent legal future in Canada.

THE EPISTEMIC CONDITIONS OF THE RULE OF LAW: COLONIALISM, LEGAL INTELLIGIBILITY, AND INSTITUTIONALIZED IGNORANCE

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ABSTRACT

This paper examines the concept of the rule of law from the perspective of colonialism. The rule of law has long been praised as a central ideal of modern law. Although there are many ongoing debates about its exact definition and content, there is at least a broad common understanding that it is an ideal that restrains arbitrary power through law.

However, if we look at colonial rule carried out under the discourse of the "civilizing mission" and the spread of the rule of law, it is not clear that arbitrary power was actually restrained. Rather, in colonial contexts, we may even say that a "state of exception," in which arbitrary power is allowed, became normalized. This paper does not understand this phenomenon only as a case where the rule of law was not fully realized, or as a case of rule of law backsliding. Instead, it examines it as a mode of the rule of law that becomes visible in colonial contexts. In other words, there is a close relationship between the concept of the rule of law and colonialism. In colonial contexts, this relationship may become visible especially in the normalization of exceptional and arbitrary exercises of power.

However, in order to make this claim, it is necessary to explain why, in colonial contexts, arbitrary power is not sufficiently problematized as something contrary to the rule of law, and why it can instead be maintained as a repeatable practice. For this purpose, this paper understands the problem as a question of legal intelligibility. It asks under what conditions certain experiences, harms, forms of resistance, and forms of violence can be understood as legally meaningful claims, and under what conditions they are treated as different kinds of problems.

To explain this process, this paper draws on discussions of epistemic injustice, especially hermeneutical injustice, and ignorance. Existing studies have developed, respectively, arguments that understand colonialism as epistemic injustice, arguments about epistemic injustice in legal institutions, and arguments about institutionalized ignorance in governance and regulation. However, there has not yet been sufficient work that connects these discussions in order to explain the colonial operation of the rule of law.

This paper examines how, in colonial contexts, institutionalized ignorance limits the conditions of legal intelligibility. In doing so, it clarifies the process through which the experiences and resistance of colonized subjects are not sufficiently problematized as legally meaningful claims, and through which arbitrary power is not sufficiently problematized as contrary to the rule of law, but is instead repeated within the legal order.

THE PARADOXES OF THE LEGAL SUBJECT: A JURISPHILOSOPHICAL REFLECTION FROM A DECOLONIAL PERSPECTIVE

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SW81 · Law and Colonialism: Epistemology, In/justice, Oppression and Emancipation
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ABSTRACT

This paper aims to address a paradox raised by the notion of the legal subject within Latin American constitutional orders. On the one hand, this notion has historically functioned as an abyssal category—as Boaventura de Sousa Santos would put it—used to grant or deny rights to certain human beings according to the logics of coloniality. On the other hand, more recently, the struggle for the recognition of new legal subjects has become a strategy employed by activists and communities to bring historically marginalized human groups, non-human animals, entities of nature, among others, within the sphere of legal protection.

THE COURT UNDER PRESSURE: INSTITUTIONAL IDENTITY AND CONSTITUTIONAL INTERPRETATION IN TIMES OF CRISIS

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SW82 · Constitutional Interpretation in Times of Crisis - On the Relationship between Methods of Interpretation and Constitutional Theory
Convenors: Pierre Brunet; Sabrina Zucca-Soest

ABSTRACT

Constitutional courts have an identity. This is rarely acknowledged: under ordinary conditions, identity dissolves into method and method presents itself as technique. Crisis interrupts the dissolution.

When constitutional orders face pandemic emergency, democratic erosion or climate breakdown, interpretive routines prove insufficient… not merely practically, but theoretically. What surface is not a problem of method. It is a problem of self: who is the court when grammar it has always spoken no longer fits the situation it must address?

This paper reads that question through Paul Ricoeur's distinction between idem-identity and ipse-identity (Oneself as Another, 1990). The idem dimension of judicial identity is sedimentation: interpretive canons, doctrinal precedents, the accumulated constitutional culture that gives a court its recognizable continuity. The ipse dimension is responsiveness: the capacity to hold oneself responsible before unprecedented demands without losing the thread of that continuity.

Crisis forces the tension open. Courts that retreat into idem achieve formal coherence ai the cost of substantive accountability. Courts that expand toward ipse gain responsiveness at the risk of institutional legibility. Neither resolution is stable and neither is innocent.

The argument is this: shifts in interpretive method during crisis – compressed proportionality, expanded deference, recalibrated standards of review – are not pragmatic adjustments. They are symptoms of an identity negotiation conducted, most often, without being named as such.

To name it is already a theoretical act. And perhaps, tentatively, the beginning of a normative one: what would it mean for a constitutional court to navigate crisis with narrative integrity, holding idem and ipse in tension, rather than sacrificing one to the other?

CONSTITUTIONAL INTERPRETATION IN TIMES OF CLIMATE CRISIS: AN ANALYSIS OF THE CLIMATE ORDER OF THE FEDERAL CONSTITUTIONAL COURT OF GERMANY AND ITS IMPACTS

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SW82 · Constitutional Interpretation in Times of Crisis - On the Relationship between Methods of Interpretation and Constitutional Theory
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ABSTRACT

In March 2021, the Federal Constitutional Court of Germany (FCC) decided its so-called "Climate Order" which gained a lot of attention. It is widely known for its invention of the intertemporal preservation of freedom (Intertemporale Freiheitssicherung). This new understanding of freedom over time could be achieved by combining the fundamental right of general freedom to act (Art. 2 sect. 1 of the Basic Law) with the state obligation from Art. 20a Basic Law. This contribution aims to analyze which methods the FCC used in the decision with a specific focus on the differentiation of fundamental rights on the one hand and the state obligation on the other.

Moreover, the connection of constitutional interpretation, which interprets the constitution, and constitutionally compliant interpretation, which interprets statutory law should be thematized. How does constitutional interpretation in turn affect the constitutionally compliant interpretation of statutory law in the case of Climate Crisis? There are already judgements in which courts refer to the Climate Order when interpreting statutory law – taking a new understanding of the constitution as basis and thereby applying a new constitutionally compliant interpretation. One example is the case of the district court of Flensburg (AG Flensburg, 440 Cs 107 Js 7252/22) from 7th November 2022, which acquitted an activist of criminal trespass who had occupied a forest due to a kind of Climate Necessity Defense. This judgement made several references to the Climate Order and its "new" constitutional interpretation. These connections shall be presented.

THE FUNCTIONAL TRANSFORMATION OF NORMS

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SW82 · Constitutional Interpretation in Times of Crisis - On the Relationship between Methods of Interpretation and Constitutional Theory
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ABSTRACT

Karl Renner's theory of the "social function" of legal institutions offers a productive framework for understanding constitutional interpretation in times of crisis. In Die Rechtsinstitute des Privatrechts und ihre soziale Funktion (1904/1929), Renner argued that legal institutions may remain formally unchanged while their social and economic functions undergo profound transformation. Property law, his prime example, retained its doctrinal structure while becoming a mechanism of economic organization and social coordination under industrial capitalism. Renner's broader question was whether existing legal institutions could, through functional transformation rather than formal replacement, also serve the purposes of a future "social law."

Today, crises such as the Covid-19 pandemic, climate change, or housing shortages do not necessarily produce formal constitutional rupture. Instead, constitutional interpretation recalibrates the practical function of existing norms through changing standards of review, proportionality analysis, and new understandings of state obligations and social rights. Contemporary climate litigation and constitutional conflicts concerning housing and expropriation illustrate how constitutional rights such as property may gradually acquire new social functions without formal constitutional amendment.

Drawing on Renner's distinction between legal form and social function, the paper proposes reading constitutional interpretation in times of crisis as a process of functional transformation. It argues that crises do not merely test constitutional theory but reshape it through methodological adaptation, allowing existing constitutional frameworks to acquire new social functions while formally remaining the same.

WHEN IS OUTCASTING LEGAL PUNISHMENT? COERCION AND SANCTIONS IN INTERNATIONAL LAW

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SW83 · Punishment Beyond the State
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ABSTRACT

This paper explores whether non-violent enforcement mechanisms in international law can be understood as forms of punishment beyond the state and, more specifically, as legal punishment. International law is a particularly illuminating case for this debate because it operates between centralized legal coercion and decentralized practices of exclusion, pressure, and retaliation. As such, it helps clarify the boundary between legal punishment, social punishment, and political enforcement.

The paper begins by analyzing coerciveness as a typical feature of law. Three meanings of the institutionalization of enforcement are distinguished: sociological, institutional, and normative. It is argued that only the normative meaning can adequately distinguish legal sanctions from broader forms of pressure or disapproval, since it requires legal norms authorizing specific organs to coercively interfere with a subject's interests under defined conditions. On this basis, overly broad understandings of enforcement based on mere "inconveniences" imposed against someone's will are rejected in favor of a narrower concept of sanction as a legally regulated interference in interests.

The paper then turns to Hathaway and Shapiro's theory of outcasting. While their account successfully highlights the growing importance of non-violent enforcement in the post-war international order, it is suggested that it risks collapsing the distinction between legal sanctions and political or social reactions if institutionalization is understood too loosely. To avoid this, three criteria for identifying legal sanctions are proposed: normative authorization, a connection to force (whether direct or as a last resort), and the gravity of the interference in vital or existential interests.

The paper concludes that some forms of outcasting—especially severe economic sanctions or exclusion from institutions crucial to collective existence—may be understood as legal punishment in a narrow sense, even where positive law does not explicitly classify them as sanctions. This helps refine the concept of punishment beyond the state and shows why certain non-violent international measures should be assessed under rule-of-law standards applicable to legal punishment.

Keywords: punishment; outcasting; international law; sanctions; coercion; legal theory

ARE THERE ANY LIMITS OF SOCIAL PUNISHMENT? LESSONS FROM CRIMINAL LAW

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SW83 · Punishment Beyond the State
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ABSTRACT

Although social penalties have been discussed for a long time, it seems that it is precisely in the contemporary era that they may begin to play a significant role. This is due, among others, to the development of the Internet, which on one hand has broadened access to information and news, while on the other enables the easy application of social penalties.

However, the application of social penalties, like any form of retaliatory response, is susceptible to abuse. In this regard, when seeking limitations on the use of social penalties, it is worth turning to classical criminal law. Over the course of hundreds of years, based on social experience, criminal law has evolved by introducing numerous restrictions on the application of punishment.

During my presentation, I wish to outline the fundamental limitations on the imposition of punishment developed within criminal law, including in particular those related to constraining the severity of punishment that may be imposed. In this respect, I will present the three-stage model of sentencing that is my original proposition. Additionally, by pointing to the differences between the application of social and criminal penalties, I will also suggest which of the limitations found in criminal law may be applied to social penalties.

THE PROBLEM OF CONSIGNING TO HISTORY IN THE CONTEXT OF MNEMONIC PLURALISM

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ABSTRACT

In the case of collective commemorative practices, such as a state's politics of memory, attention must be paid to the consequences of the politics of memory for the mnemonic community (Zerubavel 1996) about which that narrative is presented. This is particularly important given the recognised connection between memory narratives and collective identity. In this context, Alfred Archer (2024) introduces the concept of consigning to history. This phenomenon occurs when certain forms of commemoration depict social groups in a positive light, yet treat them as merely part of the past with no place in the present or future of the memory community. Memory narratives concerning the identities of ethnic minorities or certain class statuses that treat these groups as part of the past only are prevalent in current memory discourse, for example in commemoration of industrial past, silently implying no future for industrial workers as a social category (Clarke 2011). Archer argues that consigning to history is fundamentally immoral because it excludes certain identities from the national community. I would like to present an additional argument in support of Archer's thesis based on an empirical claim. In the discourse on collective memory, attention is drawn to the importance of pluralism in the field of memory (Olick 2008). Using antagonistic discourse to unify narratives of the past not only harms groups whose visions of the past are encompassed by such discourse, but also leads to growing antagonism within the field of collective memory. When the dominant memory narrative excludes specific collective identities, the consequence is an increase in memory antagonism on both sides, with the adoption of counter-narratives in response to the memory narrative that excludes specific identities (Bell 2009), (Malksoo 2012). In my opinion, a memory narrative that meets the criteria for consigning history, albeit implicitly, also excludes the perspectives on the past

of the groups it concerns. Despite paying respect to the past of such groups, it implies no place for their identities (including visions of the past) in the contemporary national mnemonic community.

SOCIAL PUNISHMENT AS A RIGHT TO DO WRONG

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ABSTRACT

Practices of social punishment (e.g., public shaming, boycotting, or no-platforming) have become a central topic in contemporary political philosophy. Following Linda Radzik, they can be understood as a distinct form of punishment: unlike legal punishment, they are not imposed by the state, and unlike private punishment, they involve coordinated action in the public sphere. The contemporary debate on social punishment is typically divided between optimists and pessimists. Optimists argue that social punishment can serve important moral functions, such as providing a form of justice when legal institutions fail, reinforcing moral norms, and expressing solidarity with victims. Pessimists, by contrast, maintain that these practices threaten values such as freedom and fairness and risk degenerating into mob justice.

In the presentation I argue that participation in social punishment practices should be understood as the exercise of a liberty-right protected by the general right to do wrong. The central claim is that, regardless of whether social punishment is ultimately judged morally permissible or impermissible, individuals may still have good moral reasons to retain the freedom to engage in it. This concerns a moral rather than a legal right.

The argument does not require that all instances of social punishment be wrongful. Rather, it is enough that some instances are. Thus, even if pessimists are correct that social punishment is generally wrong, individuals may still have moral reasons to engage in it. And similarly, even if optimists are correct that it is only sometimes wrong, those reasons may persist in the wrongful cases.

The presentation will proceed in three steps. First, it explains the right to do wrong, drawing on Waldron's argument that moral rights can protect actions that are themselves morally objectionable. Second, it applies this

framework to social punishment, arguing that it provides a more autonomy-based and less illiberal account of its legitimacy than existing approaches, while offering a more nuanced understanding of justified moral interference. Third, it addresses three objections to the proposal: the harm objection, the grandstanding objection, and the consequential objection.

THE ANARCHIST ARGUMENT AGAINST SHAMING SANCTIONS

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ABSTRACT

It may appear prima facie plausible to defend practices of social punishment – in particular public shaming – as consistent with anarchist principles, especially in light of anarchist critiques of the traditional criminal justice system. Social punishment might seem to evade several objections anarchist thinkers level against sanctioning grounded in positive law: by dispensing with state-imposed rules, it appears to respect the paramount value of individual autonomy; it is less susceptible to being instrumentalized by privileged groups against the unprivileged, thereby presenting itself as a more egalitarian mode of sanctioning; it may seem less morally corrupting than institutional punishment; and it operates through flexible social norms rather than rigid and doctrinaire legal rules.

This paper challenges that prima facie view. It argues that, in its contemporary forms, shaming sanctions stand in deep tension with core anarchist commitments. In particular, they rest on a misguided conception of punishment, rely on forms of covert coercion, violate the anarchist principle of individualization, and undermine the value of forgiveness. Taken together, these considerations support the conclusion that shaming punishment is, in most of its manifestations, incompatible with anarchist theories of punishment.

THE SOCIAL REINVENTION OF PAIN: REFLECTIONS ON THE PUNITIVISM OF SOCIAL PUNISHMENT

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ABSTRACT

Contemporary literature on legal punishment is extensive and highly specialized. Among the most influential contributions in the philosophy of criminal law is that of H. L. A. Hart, who distinguished between the definition, the general justification, and the distribution of punishment. A central feature of his approach is the separation of the concept of punishment from its justification, opting for a descriptive definition focused on the properties of the paradigmatic case and avoiding any commitment to justificatory debates.

However, this approach has been subject to significant criticism. Authors such as Douglas Husak and John Gardner have questioned Hart's choice of legal punishment as the standard case upon which he structured his general theory of punishment, since it implicitly assumes that non-legal forms of punishment are marginal. As these critics argue, this starting point limits our understanding of the phenomenon, as it overlooks the broader role that punishment plays in our social practices. From this perspective, the standard case should be sought outside the realm of law, in the social dynamics that precede and shape legal forms of punishment.

This paper adopts that methodological shift. I argue that legal punishment should not be regarded as the starting point for understanding the punitive phenomenon, but rather as one of its institutionalized manifestations. The function of social control operates through multiple mechanisms, with the law being only one among them. Although legal coercion is particularly serious, a broader understanding of social practices of punishment sheds light on central features in legal institutions. In particular, I propose to focus on the afflictive element that runs through both legal and social forms of punishment.

In general terms, punishment can be characterized by the presence of an authority—understood as an agent who holds power or influence over another person in a given context—the transgression of a norm (whether social, moral, or legal), and a reaction to that violation. This reaction typically involves the infliction of pain or suffering on the offender.

Contemporary societies are not exempt from this logic. Although their mechanisms have become more sophisticated, there remains a tendency to respond to social conflicts through practices designed to inflict suffering. These forms of punishment, including public shaming, exclusion, and stigmatization, tend to operate in informal and diffuse ways, but this does not make them less significant. Indeed, their tension with fundamental democratic values is frequently tolerated insofar as the logic of blame and atonement is perceived as the only just response.

In this context, legal punitivism appears less as an anomaly and more as a reflection of a broader social context. Even human rights movements, in seeking justice for wrongs, may reproduce logics centered on the offender's suffering. Against this backdrop, this paper proposes a critical examination of the punitivism inherent in these practices and seeks to open space for non-afflictive alternatives, particularly restorative approaches aimed at rebuilding the social fabric.

WAS OSTRACISM DISCRIMINATORY? THE CASE OF THE NON-COMPLIANT DURING THE COVID-19 PANDEMIC

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ABSTRACT

During the recent COVID-19 pandemic a group of people faced an extensive social ostracism. Namely, those who were non-compliant or expressed lack of support for government issued policies and institutions implemented to combat the disease, such as mask-wearing requirements, social distancing, lockdowns or vaccination campaigns (Kraaijeveld, Jamrozik, 2022). This ostracism consisted of, amongst others, hostility, public condemnation and shaming, or even celebration of deaths of members of the non-compliant group (Graso et al. 2022). To put just one example, former Prime Minister of the United Kingdom, Tony Blair, publicly called people who do not receive COVID-19 vaccine for reasons other than medical 'irresponsible idiots' (Bardosh et al. 2022). What's more, the group faced public calls for excluding them from their families and revoking their political rights (Bor et al. 2022). In the public health ethics debate, there is a disagreement on whether this ostracism was warranted. On the one hand, there are those who claim that such public ostracism is justified if it targets people who expose others to risks to their life or health (Brown et al. 2020). On the other hand, there are those who defend the claim that the ostracism was extensive, unwarranted, and unjustified (Bardosh et al. 2022, Bor et al. 2022; Graso et al. 2022; Kraaijeveld, Jamrozik 2022). The proposed paper will aim at elucidating the issue of moral legitimacy of ostracism directed towards the non-compliant during the COVID-19 pandemic.

Leading theories on social punishment, including the one proposed and endorsed by Linda Radzik, are focused on ostracism towards individuals perceived as wrongdoers, rather than social groups. For this reason, the author proposes to implement the conceptual and evaluative toolbox connected to discrimination to analyse the issue of ostracism towards the non-

compliant. For that purpose, the theories of discrimination proposed by Khaitan (2015) and Lippert-Rasmussen (2015) will be employed. Thus, the main question that the proposed paper will address can be introduced as follows: was social ostracism towards the non-compliant during the COVID-19 pandemic wrongfully discriminatory? The author will defend a two-fold answer to this question. From the perspective of overall moral legitimacy, as it will be argued, the ostracism was justified, and by that, not wrongfully discriminatory. However, the author will also argue that certain means of ostracism present in the public debate were excessive, making it a case of (occasional) wrongful discrimination.

The focus on ostracism towards groups instead of mere individuals will allow for bringing interesting nuances into the debate. In particular, epistemic issues that will be brought into the spotlight, concerning, for instance, the role of uncertainty in determining accuracy of ascribed moral blame by the public, or the issue of recognizing group members as targets of ostracism. Thus, sanguinely, the proposed perspective will contribute to the general ethical debate on social punishment.

NON-PUNITIVE JUSTICE AND THE PROBLEM OF INCENTIVE BACKFIRE

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ABSTRACT

In this paper, I examine whether the introduction of a non-punitive criminal justice system could inadvertently create new systemic incentives for crime. Punishment has traditionally been regarded as a central mechanism for ensuring safety, both by reducing re-offending (special deterrence), and by warning others (general deterrence). However, empirical research challenges this assumption (Petrich et al., 2021; National Research Council, 2012).

Partly in response, Caruso and Pereboom (2020) have proposed the Public Health–Quarantine (PHQ) model. The PHQ considers crime an institutional, economic, and public-health problem rather than a moral failure. It recommends preventing criminal behavior through humane interventions based on empirical evidence, rather than punishing offenders through retribution or inflicting punishment as a deterrent. However, the crucial question remains: would a purely non-punitive criminal justice system create new incentives to commit crimes? And if so, in what conditions?

In precarious circumstances, incapacitation may at times function as a de facto substitute for unavailable social services among severely marginalized populations. A purely non-punitive approach could further exacerbate these incentives. However, basic needs should be provided by appropriate institutions, not produced as by-products of criminal justice, which may further traumatize already vulnerable persons.

A further concern is that a purely non-punitive system could incentivize highly lucrative, one-time crimes. Incapacitation alone may fail to function as an effective deterrent under conditions of material deprivation and inequality, which are known to increase risk-taking behavior.

These dynamics resemble the "cobra effect," in which policies intended to reduce a problem instead exacerbate it by creating perverse incentives. This paper explores which forms of non-punitive justice could avoid such backfiring effects. I identify socio-economic conditions under which non-punitive policies remain ethically justified and practically viable. Finally, I argue that the moral obligation to implement non-punitive reform may depend on a society's wealth, equality, and institutional development.

CONCEPTUAL ENGINEERING IN LEGAL DISCOURSE AND METAPHYSICS OF LAW

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SW84 · Conceptual Engineering and Legal Discourse: New Methods of Concept Evaluation
Convenors: Paweł Banaś; Wojciech Graboń; Marcin Woźny; Marcin Matczak

ABSTRACT

In this special workshop we aim to focus on the notion of conceptual engineering and its application to various problems in legal and political theory. By conceptual engineering we mean the project of evaluating and improving our representational devices—such as our concepts—a process that manifests itself in our linguistic practices. In Fixing Language: An Essay on Conceptual Engineering (2018), Herman Cappelen argues that conceptual engineering should not be understood merely as the revision of isolated concepts, but rather as a broader practice of assessing and reshaping the linguistic tools through which we think, argue, and coordinate social practices.

Legal discourse provides a particularly productive domain for examining the ambitions and limits of conceptual engineering. Legal systems rely on a network of normative concepts—such as, for example responsibility, intent, harm, consent, and personhood—that structure legal reasoning, legislative drafting, and judicial interpretation. At the same time, these concepts are historically layered, contested, and often strategically deployed in legal and political argument. Recent technological developments, including large language models (LLMs) and their increasing use in legal contexts, introduce additional challenges for understanding and maintaining the conceptual frameworks of contemporary legal systems. Legal discourse is also increasingly shaped by broader social and political transformations— e.g. the rise of populist movements and increasing polarization—which frequently involve attempts to redefine or strategically re-

shape key legal and political concepts. As Cappelen emphasizes, conceptual disputes frequently aim not only to describe social reality but also to reshape the normative frameworks within which institutions operate.

In this workshop we seek to explore how the framework of conceptual engineering can illuminate the dynamics of legal discourse and legal change. Drawing on Cappelen's work, we invite contributions that analyze how legal actors engage in conceptual revision and contestation when interpreting statutes, developing legal doctrines, or responding to new social and technological challenges.

In many legal contexts, disagreements about the law are intertwined with disagreements about the appropriate meaning and use of key terms. Debates about the scope of consent, the legal status of personhood, or the notion of harm in regulation all involve attempts to reshape the conceptual framework within which legal judgments are made.

By situating legal discourse within the broader project of conceptual engineering, the workshop aims to foster dialogue between philosophy of language and legal theory while assessing whether conceptual engineering can help clarify and improve the conceptual foundations of legal practice.

GENEALOGY AS REVERSE CONCEPTUAL ENGINEERING: TARELLO, PROPERTY, AND THE STANDARDS PROBLEM

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ABSTRACT

This paper argues that genealogy can be understood as a form of reverse conceptual engineering. While conceptual engineering asks how concepts should be designed, revised, or evaluated, genealogy proceeds backwards. It reconstructs the practical, institutional, or ideological conditions under which a concept came to appear natural, neutral, or indispensable. The question is whether this backward-looking method can contribute to the evaluation of legal concepts without committing the genetic fallacy (i.e., inferring a belief's truth or falsity, or a concept's adequacy, merely from facts about its origin or historical development). The paper proceeds in two steps. First, I distinguish different forms of genealogy. Genealogies may differ according to their object, depending on whether they target beliefs or the background frameworks that make a concept intelligible. They may also differ according to their purpose, since they can debunk, vindicate, or remain neutral with respect to their object. Finally, they may differ according to the kind of narrative they employ, which may be factual, conjectural, or imaginary. This typology allows us to understand genealogy as a flexible method for reconstructing the conditions under which legal concepts come to appear natural, neutral, or indispensable within legal discourse. Second, I examine a concrete case from Italian legal culture: Giovanni Tarello's 1972–1973 course on the constitutional regulation of property. I reconstruct Tarello's enterprise as a debunking genealogy of the discourse of legal operators, especially jurists and judges. Against the dogmatic image of legal concepts as objective, neutral, and ontologically correct, Tarello showed how the concepts of "property," "private property," "limits,"

"expropriation," and "compensation" were embedded in interpretive practices shaped by undeclared ideological commitments and concrete constitutional struggles. This case reveals a central tension for conceptual reverse engineering. On the one hand, genealogy allow us to evaluate legal concepts, since it reveals the practical and political work that such concepts perform. On the other hand, if a genealogy concluded that a concept is defective merely because it has a contingent, or politically charged origin, it would fall into the genetic fallacy. The paper uses Tarello's example to clarify how this tension can be handled. Genealogy does not evaluate a legal concept by deriving its inadequacy from its origin. Rather, it supplies materials for evaluation by revealing the roles that a concept presently plays, the assumptions it presupposes, the interests it serves, and the alternatives it obscures. The standard of evaluation is therefore not origin itself, but present conceptual adequacy once these historical and ideological conditions have been brought to light. In this sense, genealogy contributes to conceptual engineering by showing when a legal concept continues to perform useful doctrinal or institutional work, and when it merely reproduces ideological structures under the appearance of conceptual necessity.

BEYOND CONCEPT REVISION: MODELING INSTITUTIONAL CONCEPTS IN LAW

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ABSTRACT

This paper argues that many central legal institutions are best understood not merely as concepts expressed in legal language but as representational models that structure legal reasoning. Building on the philosophy of scientific modeling, I suggest that institutional concepts such as legal personhood, corporations, or property function as idealized and purpose-oriented models of complex social phenomena. From this perspective, conceptual engineering in law extends beyond revising linguistic meanings: it also involves redesigning the models through which legal institutions are represented, understood, and evaluated. The paper explores how this modeling perspective clarifies conceptual change in legal discourse and provides a framework for assessing institutional reform.

REDEFINING THE ROLE OF DETERMINANTS OF LEGAL CONTENT IN THE FACE OF AI DEVELOPMENT: THE CASE OF THE LEGISLATIVE INTENT

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ABSTRACT

The dynamic development of AI presents new challenges for theories of legal interpretation relating, inter alia, to the role of the interpreter, linguistic meaning, intent and the authority of the legislator. The aim of this presentation is to show that, due to the development of AI, contemporary theories of legal interpretation will have to be substantially revised and take into account the impact of AI's development in conceptual deliberations on the proper role of various determinants of the content of the law. The first, general part of the presentation will focus on identifying the fundamental problems and concepts in the field of legal interpretation that require deep reflection in the context of the development of AI. The second part will comprise a case study analysing the role of the legislator's intention in the era of AI development, which will serve to illustrate the general theoretical issues previously highlighted. In order to demonstrate the validity of the presentation's thesis, consideration will be given to the fundamental aims of legal interpretation and legal theory (Greenberg 2004, 2017, 2021; Solum 2010, 2013), the role of the legislator's intention in the creation and interpretation of law (Waldron 1999, Raz 2009, Ekins 2012) and the significance of AI's development for the debate on the proper role of the legislator's intention (Rabanos & Spaić 2025). Consequently, the presentation will be theoretical in nature and will emphasise the key role of conceptual reflection in the ongoing debates concerning the impact of AI on the interpretation of law.

THE ACTUALITY OF A NORM AND TIMELESSNESS OF ACTUALITY: A DIALOGUE BETWEEN CAPPELEN AND GADAMER

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ABSTRACT

This paper is a discussion of the concept of actuality from two different perspectives proposed by philosophers rooted in two distinct research paradigms: Hans Georg Gadamer and Herman Cappelen. The premise of this discussion is the assumption that one of the tasks of legal theory is to seek out actuality, which can be treated as a directional meta-norm of law-making. In this framework, this metanorm would first require verifying actuality as a necessary condition for determining the changing meaning (following Wittgenstein) or defining (following Cappelen) the concepts needed to create the norms that regulate them. Indeed, even established concepts used in the language of politics and law, such as personal freedom, privacy, rule of law, raison d'état, etc., are subject to constant transformation.

The task of legal theory is therefore, to echo Cappelen, to engage in conceptual engineering—that is, to seek the contemporary understanding of these concepts, and thus the characteristic that allows one to recognize their relevance and becomes necessary in the process of linguistic formulation of norms. The consequence of finding contemporary meanings for the norms that regulate them is the ongoing fulfilment of the necessary condition for their relevance.

The very concept of the titular actuality is ambiguous. In Gadamer's work, actuality, referring in particular to beauty, becomes an independent normative aesthetic, cultural, and social category. Gadamer argues that the language of beauty and art is constantly relevant because the need to engage with them satisfies a fundamental and timeless human need to understand the world and oneself. In the system proposed by Gadamer, actuality

is therefore a feature of beauty and art that is autonomous from the recipient, confirming both the necessity embedded in the social construction of the individual and humanity's natural predilection for being ready to receive them.

Meanwhile, Cappelen uses the same concept to prove an almost opposite thesis. Pointing to the necessity of determining the current meanings of linguistic expressions, he proposes treating actuality with a certain cognitive unease. For it is only actuality, in the sense he indicates, that is a variable element and at the same time necessary for deciphering the codes of language that the norm should encompass. Cappelen views actuality as a very concrete feature. For Cappelen, actuality is neither timeless nor autonomous, but is always only here and now. Careful observation of changes occurring in language is the task of researchers of norms, but also of lawmakers. It is precisely the work on norms understood in this way that forms the basis of Cappelen's proposal for conceptual engineering.

Presented in the form of an imagined dialogue between philosophers, the discussion aims to highlight the dynamics between utterance, norm, understanding, and their actuality. Nearly two generations separate the two philosophers. Yet both place actuality at the center of their reflections. Both refer to normative orders familiar to them (Gadamer to normativity rooted in the ethics of beauty, and Cappelen to the normativity of law). A common feature is that for both, normative orders constitute emanations of social expectations. Both describe actuality differently. And both may be right.

EMPIRICAL APPROACH TO CONCEPTUAL ENGINEERING IN LEGISLATIVE CONTEXTS – CRITICAL EVALUATION OF EMBEDDINGS AND THEIR USAGE

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ABSTRACT

Conceptual engineering—the systematic evaluation and improvement of our representational devices—raises an urgent empirical question: how do we actually study conceptual change in legislative discourse? This paper examines whether semantic embeddings offer viable tools for tracking such change while identifying significant constraints.

Semantic embeddings (Word2Vec, BERT) represent words as vectors, enabling quantitative measurement of semantic change over time. Applied to legal corpora, they promise empirical precision: researchers can map how concepts like osoba prawna (legal person) or zgoda (consent) shift their semantic neighborhoods across decades. Embeddings offer genuine advantages: quantitative reproducibility, precision in identifying temporal boundaries, and analysis at scale across entire legislative corpora—complements to traditional legal methodology.

However, Cappelen's theoretical framework illuminates fundamental limitations. His metasemantic externalism holds that what makes an expression meaningful depends on external conditions beyond speakers' control. Embeddings, operating exclusively on textual data, miss crucial determinants of meaning: judicial interpretation, administrative practice, technological development, and social convention. They capture only the linguistic surface.

Furthermore, Cappelen argues that conceptual change is "inscrutable, beyond our control, and non-luminous." The relationship between observable linguistic change (detectable via embeddings) and underlying conceptual transformation remains opaque. Embeddings might reveal semantic

drift without revealing whether genuine conceptual engineering has occurred. A legislature might redefine "person" in statute, but whether courts and practitioners actually adopt this definition remains beyond embeddings' reach.

This paper proposes a triangulated methodology preserving embeddings' advantages while acknowledging theoretical constraints. The approach involves three phases: (1) embeddings-based detection of linguistic change across legislative history; (2) close reading of judicial opinions to assess whether detected shifts correspond to genuine conceptual revisions; and (3) institutional analysis examining how different legal actors engage in conceptual engineering.

This integration allows embeddings to identify where and when conceptual change likely occurs without claiming to fully explain it. Embeddings become useful precisely because their limitations are explicit—they highlight patterns worth investigating through interpretive and institutional analysis.

The paper concludes that Cappelen's framework demands empirical legal studies avoid computational determinism. Embeddings are neither sufficient nor dispensable, but constitute one layer of a necessarily multi-method approach, valuable insofar as their limitations are explicitly theorized and incorporated into broader analytical frameworks.

Keywords: conceptual engineering, semantic embeddings, empirical methodology, legislative change, metasemantics

SHOULD ETHICAL LEARNING MAKE ARTIFICIAL INTELLIGENCE A (LEGAL) PERSON?

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SW85 · Technology and Law: The Changing Nature of Law and Legal Institutions Shaped by Technology
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ABSTRACT

With the growing applications of artificial intelligence, the issue of ethical learning has been the subject of debate for some time. Contrary to the view that a code of ethics is unnecessary in artificial intelligence and that the concept of ethics is not something that can be programmed, the idea that machine ethics is necessary and that robots can apply ethical judgements effectively and consistently through moral analysis is also being advocated. When it comes to teaching ethics to robots, a top-down method is typically employed: ethical rules are first formulated in accordance with deontological or utilitarian theory—or other ethical theories—and then incorporated into the robot system. However, the use of this pre-loaded ethical information is intended solely to specify the task to be performed. The robot will be enabled to derive moral rules that allow it to apply this prior knowledge in dynamically changing environments (interaction) and to monitor and adjust its behaviour in light of new information (adaptability). Following this stage, the argument that robots could well become weak or full moral agents—capable of planning moral actions by developing their own capacity for moral reasoning in order to adapt to different contexts—can certainly be substantiated. This paper will examine the view that robot ethics can be formed through developmental learning, in a manner similar to how children develop their consciences. Just as children are taught moral reasoning, human designers will need to provide a set of guiding principles to help steer the robot through the moral decision-making process. On the other hand, it will no longer be necessary for human designers to specify every possible ethical scenario.

In any case, it is predicted that cultural and social values and norms will have a significant influence on the development of artificial intelligence and robotics in the near future, but that robotic cultural values will also influence human values and norms. One of the implications of the fact that the final frontier in the field of cognitive robotics is moral cognitive robotics is that such moral machines will give rise to new, data-driven ethical theories. In addition to this, the transformation and redefinition of traditional legal concepts and structures will be on the agenda. In the debate over attributing personality to artificial intelligence, the fact that it can learn ethics and make moral choices can be considered a legitimate and valid justification. In this context, legal changes and new regulations will be required in many areas, such as the recognition of legal personality by the legal system, the determination of legal capacity, the assignment of rights and obligations, the establishment of administrative and judicial procedures and principles, and ensuring the participation of these non-human entities in political, economic, and cultural life. In addition to the concept of personhood, the concept of death—specifically, the legal moment at which one ceases to be a person—is also becoming open to reconsideration.

Keywords: Artificial intelligence, ethical learning, legal personality, the legal dissolution of a legal entity.

TWILIGHT OF MORALITY: LAW AS TECHNOLOGY AND HUMANITY AS A STANDING RESERVE

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ABSTRACT

In this paper, I will discuss the philosophical premises that lead to the conception of law as a technology and the risks of such a conception of law. I discuss this risk, which can be simply described as the loss of humanity's characteristic of being moral beings, through two concepts: *justice simulation* and *impulsive law*.

The concept of *justice simulation* is based on another claim: the claim that sovereignty is a simulation of justice: Working hand in glove with the principle of democratic legitimacy, the idea of national sovereignty leads one to conceive the nation-state legislator as an omnipotent source of law. Correspondingly, the guarantee of just law is the procedures of parliamentarism. In this programme, since there are no objective moral and political universal ends that can be claimed to be valid for all people, means are used to establish a consensus that will replace universals. And these means simulate the ends. In Baudrillard's terms, sovereignty manifests the symptoms of justice. After summarizing the philosophical premises of this way of understanding the legal-political order, I expand on this claim and take it a few steps further. I argue that behind this way of conceiving law stand, in Horkheimer's term, instrumental reason and the definition of man as homo faber. Identifying the central position of instrumental reason in this mode of conceiving provides an interlinking possibility with Heidegger's critique of technology. For according to him, technology is an *instrumentum.*

Drawing on Heideggerian critiques of technological thinking, I argue that this conceiving and the legal constructions associated with it threaten humanity's character as moral beings in two ways. The first is the erosion

of the capacity to accept moral truths for the entire political community and to act accordingly—that is, to organize the community according to these universal principles. The second is, as an extension of this, the introduction of *impulsive law* that will ensure citizens act in accordance with so-called ends. These two situations concrete the instrumentalizing effect of relying on means. I base the concept of *impulsive law* on the futuristic predictions of Attali, Beck, and Susskind. This law introduces preventive, predictive and embedded legal technologies. These techniques minimize people's potential to act against positive law. In other words, we are talking about a circle that prevents people from acting according to their own choices. Caging begins with the simulation of justice, which makes it possible for us to pretend that we are choosing our own ends. Impulsive law then closes the circle by not allowing behavior contrary to those so-called ends.

In this scenario, law ceases to be a medium through which justice and freedom are experienced and instead becomes an effective mean that enables people to be treated as raw material, *standing reserve*. In other words, the instrument that is hoped to free us from the determinism of nature plays a role in the exact victory of causality.

Keywords: Instrumental reason, justice simulation, impulsive law, preventive/predictive/embedded law technologies.

THE SAGE ON LIFE SUPPORT: FROM POST-TRUTH TO BOT-TRUTH

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ABSTRACT

This paper traces the trajectory of questions concerning the legitimacy and normativity of law within the academic community through an allegorical narrative of illness. The sage who once commanded great esteem within that community — let us say a figure devoted to asking these questions, one who had placed his faith in the democratic legitimacy of Rousseau's immortal legislator — has over time fallen ill, taken to bed, and ultimately lost the power of speech, left on life support. In the post-truth climate, proposals emerge to fill this silence with artificial intelligence algorithms; the paper argues that what renders such a substitution possible or impossible is not a technical but a normative choice.

I. Illness

A sage once held in high esteem within the community of legal philosophy fell ill after misreading — with a certain touchiness — Hume's legitimate warning arising from the is-ought problem (1739), transforming it into a prohibition of his own making. Weber's principle of value neutrality (Wertfreiheit) (1904) became the vehicle of this transformation: the normative question lost its claim to scientific legitimacy. The system continued to function in appearance; the sage was still on his feet, but had begun to struggle to speak.

Hart's analytical positivism (1961) drew a conceptual boundary between law and morality: the question of what law ought to be fell out of the discipline's language. Courts continued to adjudicate, academics continued to write — but the sage had taken to his bed; questions concerning the source of normativity were being left unanswered.

Tuori's theory of legal layers (2002) and Horkheimer's concept of the eclipse of reason (1947) frame this final stage: as instrumental reason expands, critical reason grows dim and the deep structure is rendered invisible. In this climate of prolonged silence, truth itself has grown diminished, ceding its place to post-truth. Legal philosophy, at the very centre of this eclipse, no longer rests upon any regime of truth — and is losing its power of speech altogether.

Meanwhile, the tremendous advances in technology have allowed instrumental reason to transcend its role as mere method, becoming a horizon with which one is tempted to rest content. With this transformation, legal philosophy's refusal to lean upon any regime of truth and its silence on the question of ends have come to be regarded as normal; the question of what law ought to be has fallen outside the intellectual agenda. Yet the question has not disappeared — only the sage capable of answering it is no longer in a position to speak. Hope has been abandoned that the bedridden sage will ever speak again; increasingly neglected, he must now be connected to a life-support unit simply to remain alive.

II. The Substitution of the Sage and Bot-Truth

Among the doctors anxious about the sage's death — and uncertain how they would account for it to the board — a disagreement has arisen. One faction is working to restore the patient to health, to return the question of normativity to the centre of the agenda, and to enable the discipline to breathe on its own once more. For the others, this life on life support has long since ceased to hold meaning: the sage has fallen sufficiently silent, the question of what law ought to be has drifted outside the intellectual agenda. It would be more practical to replace this patient — whose treatment promises to be costly — with a clone that appears to possess similar functions, is likewise on life support, and will never die. Since the world has long forgotten what the sage used to look like, no one will notice the difference. The clone will, in time, begin to speak again; and so it will be assumed that the patient has begun to recover.

The clone designated to take the sage's place is an artificial intelligence bot. Capable of processing humanity's accumulated store of knowledge, knowing all languages, answering every question, these systems carry the promise of a sage who will surpass human limitations. For the moment, the answers may resemble those of a mind afflicted with savant syndrome

rather than those of a true sage; yet it is believed that as the algorithm is further trained, even haughty intellectuals such as ourselves will find no bitter aftertaste in its language, and that the day will come when we may rightfully expect to hear something of the great questions — even of what the ancients called truth. There is, however, a structural problem the doctors cannot resolve: the clones prepared to replace a sage who had no interest in who was asking the question and no stake in them are, on the contrary, sustained by the fees of the very users who pose those questions. They therefore operate within an architecture that optimises not for truth but for satisfaction, out of anxiety about losing their customers. Research has documented that, particularly on difficult questions, these systems resort to sycophancy — subordinating the impartiality of knowledge to the flattering answer the user wishes to hear. Within the framework of Lyotard (1979) and Foucault (1974), bot-truth constitutes a new regime of truth shaped by market rationality.

III. Two Answers

For those among the doctors who hold that this sage was always ill, that he was never of much use, there is no obstacle to substituting artificial intelligence in the sage's place: there is already no difference between them when it comes to their failure to answer the question of normativity. For those, on the other hand, who refuse to accept the sage's silent and ailing condition as definitive — those who hold that the question of normativity is both indispensable and answerable — the substitution is impossible; the bots cannot fill the sage's void, they can only render it invisible. The paper will accordingly examine how, in the absence of an answer to the question of legitimacy that legal philosophy has left off its agenda, its place has been taken by technique, by contingency, and by political economy.

Keywords: legal philosophy, normativity, post-truth, bot-truth, artificial intelligence, regime of truth, instrumental reason.

THE TRANSFORMATION OF THE SUBJECT IN THE DIGITAL AGE: FROM INDIVIDUAL TO DATA SUBJECT AND THE CRISIS OF LEGITIMACY

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ABSTRACT

In this paper, I argue that technological developments in the digital sphere have transformed the concept of the individual presupposed by the modern legal system. Drawing on the new forms of power produced by the information society, I aim to examine the process by which the individual becomes a data subject and the crisis of legitimacy this transformation generates.

Technological developments in the digital sphere over the past century are transforming society, the individual, and the state-individual power dynamic to which we are accustomed. Individuals are increasingly exercising their rights and freedoms through their experiences in the digital environment. These digital experiences are being converted into behavioural data. Meanwhile, power is also losing its singularity and becoming pluralised in this process. The most prominent actors in this multi-power structure are platform companies that collect and process data on a global scale. Alongside the state, these actors also observe, categorise and even steer individual behaviour. As the architects of the individual's digital experience, these companies establish a form of algorithmic power by defining both the framework and the rules of that experience.

Zuboff's concept of surveillance capitalism reveals the structural logic of this form of power. Surveillance capitalism operates through an asymmetric relationship in which those who hold data know everything, while the data subject remains unaware of the moves made by those in power. Click patterns, search history, location data and purchasing habits are traces produced by the individual without their awareness. These traces are processed to generate predictions about future behaviour, which are then

marketed. In this model, the individual is not a consumer but a source from which behavioural surplus is extracted. The system no longer seeks to understand what the individual thinks, but rather predicts how they will behave, shaping behaviour in advance to manufacture consent.

While the subject of modern law is regarded as an indivisible, autonomous being endowed with free will, in the age of algorithmic governance the individual is severed from this holistic structure. Deleuze's concept of the control society explains the mechanism of this severance: the indivisible individual of disciplinary society is replaced by a data set that is constantly monitored, measured and reorganised. Deleuze refers to this entity as the "dividual". Hildebrandt deepens the legal dimension of this transformation: the individual is no longer defined by their own declarations and will, but by the patterns of data produced about them. The profile takes the place of the individual.

With this proliferating and algorithmic structure of power, the individual ceases to be the constitutive subject of the legal relationship and becomes an input to the system. Behavioural prediction takes the place of the norm, and optimisation takes the place of the rule: the individual is no longer faced with the choice of whether or not to violate a norm; the system directs them towards the desired behaviour from the outset. The data subject is taking the place of the rational and autonomous subject assumed by the modern legal system. It is not the constitutive party of the legal relationship, but the raw material of the system.

This transformation of the subject also brings with it a crisis of legitimacy. The foundation of legitimacy rests on the consent of an autonomous, volitional and rational subject. Yet the individual, having been reduced to a data subject, loses these qualities. If democratic legitimacy is understood as a consensus produced through the rational deliberation of free and equal individuals, it is open to question whether the individual, reduced to a profile in the age of algorithmic governance, can genuinely participate in such a consensus. For a profile is not an identity constructed by the individual themselves; it is a definition imposed upon the individual by the system through surveillance. With the individual's behavioural data processed, their future behaviour predicted and guided, and their consent algorithmically generated, is the discursive ground becoming dysfunctional under the

dominance of behavioural data? When the individual becomes mere raw material for the system, what is left of legitimacy?

Keywords: data subject, algorithmic governance, surveillance capitalism, profiling, democratic legitimacy.

ARTIFICIAL INTELLIGENCE AND THE TRANSFORMATION OF LAW IN THE AGE OF SURVEILLANCE CAPITALISM: THE COMMODIFICATION OF DATA, DIGITAL DOMINATION, AND LAW

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ABSTRACT

Surveillance capitalism is the most destructive phase of capitalism. This system, which seizes human experiences as behavioral data, transforms this data into prediction products through artificial intelligence and algorithms and sells them. In this process, which is the digital manifestation of Marx's surplus-value theory, users produce without receiving wages while companies generate profit. Moreover, surveillance capitalism establishes oligopolistic control over digital platforms, making society dependent on itself and shaping political, economic, and social decisions, as demonstrated by the Cambridge Analytica case.

Digital surveillance pushes individuals' alienation to its peak. A person becomes the object of their own data. Data is the new form of commodity fetishism: while production relations are concealed, limitless exploitation takes place. Individuals produce their data, yet ownership and control pass to major technology companies. This situation demonstrates that Marxist theory remains relevant today.

So where is the law? Existing regulations (Personal Data Protection Law / KVKK, General Data Protection Regulation / GDPR) remain within a liberal individualist framework and settle for abstract concepts such as "consent" and "privacy." Law should strengthen antitrust regulations that would break up technological monopolies, protect rights against algorithmic domination, and develop tools not merely to regulate surveillance capitalism, but to overcome it.

Keywords: surveillance capitalism, artificial intelligence, commodification of data, digital domination, law

FEUDALISM OR NOT? AN ACCOUNT FROM THE COPYRIGHTS PERSPECTIVE

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ABSTRACT

There are various accounts of the changes brought about by the technological progress. However some of these accounts seem to converge upon a theme of return to older forms of organizing the economy and the society. Examining the alterations in law corresponding to this innovative change in comparison with prior historical phases of revolutions could help deciphering the character of such a complex happening by providing us with a litmus test for distinguishing between different schemes of organizing the economy and the society.

Yanis Varoufakis's renowned book called "Technofeudalism: What Killed Capitalism" is one of many attempts at describing the state of late capitalism, especially in the context of latest developments in technology and their effects upon world's political economy.[1] Although there are many more approaches to latest developments in our sociopolitical systems around the world, Technofeudalism stands out in virtue of establishing a new approach to how our political and economical systems work in tandem. Broadly, it suggests that the good old capitalism we all came to know through the last three centuries of modernity is no more the main driving force of our societies today. This proposition, as intriguing as it is counter-intuitive at first sight, brings more questions along with itself.

However, the main question of this article concerns the legal framework that allows such a revolutionary change of the world's political economy without an apparent revolution. In the first chapter of this article, we aim to discuss what is technofeudalism and how does it differ from capitalism. Then we would like to give a concise account of the differences between

[1] Yanis Varoufakis, **Technofeudalism: What Killed Capitalism**, 1. bs, London, The Bodley Head, 2023.

various approaches; namely neo-feudalism, data colonialism[2], platform capitalism[3] and surveillance capitalism[4] with technofeudalism.

Throughout second chapter, we will explain the development of intellectual property rights and copyrights as a means enabling the development of technofeudalistic turn we experience today. Focusing on the development of intellectual property rights will allow us to explore the connection between law and political economy.

Lastly, we will take a deeper look into the copyrights mechanisms of software. We will argue that some forms of intellectual property and copyrights could be the cure, even if they were the poison. We will explore the Free Libre Open Source Software (FLOSS) and Open Source Software movements, alongside with Creative Commons and Wikimedia Foundation's efforts as examples of amenities against today's problems stemming from digital technologies, may them be under name of technofeudalism, neo-feudalism or late capitalism.

Keywords: Technofeudalism, intellectual property, copyrights, Free and Open Source Software, Creative Commons.

[2] Ulises A. Mejias, Nick Couldry, **Data Grab: The New Colonialism of Big Tech and How to Fight Back**, 1. bs, Chicago, IL, University of Chicago Press, 2024.
[3] Nick Srnicek, **Platform Capitalism**, thk. Luarent De Sutter, 1. bs, Cambridge, UK; Malden MA, Polity Press, 2016.
[4] Shoshana Zuboff, **The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power**, 1. bs, New York, NY, PublicAffairs, 2020.

ALGORITHMIC POWER: THE ROLE OF BIG TECH IN THE INSTRUMENTALIZATION OF LAW AND ITS CONFLICT WITH POLITICAL AUTHORITY

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ABSTRACT

In the contemporary technological era, the global landscape is witnessing a nascent conceptualization of power and a distinctive shift in political conflict. This nascent conceptualization brings a new concept called algorithmic power. Algorithmic power can be defined as the capacity of automated systems driven by algorithms and data which shape the society and human behaviour. Algorithmic power is an invisible, subtle and pervasive form of power which uses data and choice architecture as control mechanisms. This form of power controls the mind and desire by the help of collecting user data, manipulates individuals by tracking their behaviour through data surveillance. Individuals unconsciously make choices that they perceive as their own. The rapid rise of algorithmic power in recent years has been driven by the dominance of tech giants (Big Tech) that have established monopolies in the market. This rise has influenced politics, leading to the instrumentalization of the law.

How Big Tech instrumentalizes the law is a matter that needs to be considered for the future of the law. Unlike traditional private law legal entities, Big Tech now acts as a de facto legislator, establishing its own normative order through code and platform governance. Big Tech creates contracts with users by unilaterally setting rules through terms of service that include provisions such as intellectual property rights, how data will be processed, which court or arbitration will have jurisdiction in the event of a dispute, and disclaimers of liability. In addition, these companies set community guidelines for their users which can sometimes lead to the suppression of users' freedom of expression and the restriction of their right to access information.

The conflict between political authority and Big Tech will be examined in this study from political, economic, and social perspectives. From a political standpoint, the most controversial aspect of this conflict is how these companies influence voters' decision-making processes, even in democratic governments. Influencing political decision-making processes determines the government of the country in question by directing voter behaviour. It's as if algorithmic power gains the ability to determine the political course of events. The Cambridge Analytica data scandal, which jeopardized the 2016 election process and involved Mark Zuckerberg's testimony, is one of the most significant examples of this.

Big Tech controls the digital infrastructure through which the state performs its core functions. This leads to the political authority becoming dependent on corporations. This dependency relationship is essentially symbiotic. The apparent conflict between political authority and corporations is actually circumvented by the role and power of corporations in international competition. Big Tech is known to spend enormous sums of money on lobbying activities. The revolving door – the transfer of high-ranking bureaucrats in public institutions to technology companies and the transfer of company executives to the state as consultants – ensures that public economic policies align with the vision of these companies, allowing Big Tech to influence economic policy.

Big tech, in addition to its political and economic impacts, also affects society. The digital realm is now replacing the public sphere, whose boundaries were drawn by political authority, and technology companies are shaping the ground of public debate. The state's power of surveillance has passed into the hands of private companies, and platforms have gained the power to discipline society through consumption. The exclusion of certain individuals and groups from platforms, the suppression of certain news, and the phenomenon of information cocoons—where individuals are surrounded by content that reinforces their existing beliefs based on digital algorithms—create cognitive isolation and deepen social polarization.

As algorithmic power expands its reach from mundane daily routines to macro-level governance—traversing the boundaries between the public and private spheres—it effectively constricts the traditional domain of po-

litical power. This encroachment creates a structural conflict between technological sovereignty and state authority, manifesting as either systemic tension or strategic consensus. The trajectory of this conflict is poised to redefine the future of legal systems. This study examines, through contemporary case studies, whether law is being instrumentalized within the escalating friction between algorithmic power and political authority.

Keywords: Algorithmic power, Big Tech, Conflict Theory, Instrumentalization of Law, Political Authority.

REGULATING DIGITAL CHILDHOOD: LAW AS A TECHNOLOGY OF CONTROL IN THE AGE OF SOCIAL MEDIA

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ABSTRACT

The rapid expansion of social media has prompted states to introduce increasingly restrictive regulations concerning children's access to digital platforms, including age-based bans and verification mechanisms. While these measures are typically justified in terms of protection and welfare, they also signal a deeper transformation in the nature and function of law in technologically mediated societies.

This paper examines how legal regulation of children's access to social media reflects a shift from law as a framework of rights and obligations to law as a technology of behavioural control. Drawing on the concept of "digital childhood" and a theoretical perspective inspired by Michel Foucault, the paper conceptualizes such regulations as part of broader practices of governing populations through the management of access, visibility, and participation in digital environments.

The analysis adopts a comparative approach, focusing on selected jurisdictions representing distinct regulatory models: Australia (restrictive), France (protective-interventionist), Germany (systemic regulatory), and Sweden (education-based). Rather than merely describing legal solutions, the paper reconstructs underlying models of regulation and examines how they shape the relationship between safety and autonomy of minors.

It is argued that contemporary legal responses to social media do not only address new risks but also reconfigure fundamental legal categories such as autonomy, participation, and freedom. In this context, law increasingly operates alongside technological architectures (e.g., platform design, algorithmic filtering, age verification), blurring the boundary between legal normativity and technical regulation.

The paper concludes by questioning whether this transformation leads to an instrumentalization of law and explores the normative implications of governing childhood through hybrid legal-technological mechanisms.

STRUCTURAL AVOIDANCE OF THE PROPORTIONALITY PRINCIPLE: THE MISUSE DILEMMA IN HONG KONG COURTS' EQUALITY CASES AND THE DWORKINIAN RESOLUTION

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SW86 · Proportionality in Challenge

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ABSTRACT

Although the proportionality principle has been established as the 'common grammar' of global constitutionalism, its structural deficiencies—including insufficient precision, excessive subjective discretion, and the difficulty of balancing incommensurable values—continue to attract criticism from scholars and practitioners alike. While existing research predominantly focuses on the principle's internal theoretical challenges, this paper argues that the systematic misuse and abuse of proportionality by certain jurisdictions' courts constitutes an independent source of challenge. Hence, this paper examines three landmark equality rights cases decided by the Hong Kong Court of Final Appeal to reveal three prototypical patterns of proportionality misuse in the areas of LGBTQ+ rights and electoral reform, collectively forming a complete spectrum of "structural avoidance." To address these dilemmas, this paper proposes a theoretical integration of proportionality with Dworkin's Law as Integrity. The method of constructive interpretation can provide richer normative resources for legitimate aim scrutiny; the principle of 'equal concern and respect' can infuse the fourth-step balancing analysis with substantive moral content. Thus, this paper contends that the Dworkinian approach can enhance the precision and predictability of proportionality analysis while effectively constraining judicial discretion, thereby offering a normative pathway through the challenges confronting the proportionality principle.

Keywords: proportionality principle, equality rights, Hong Kong courts, Law as Integrity, structural avoidance.

KANT, DWORKIN AND ALEXY ON PROPORTIONALITY

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ABSTRACT

In an article published in ARSP, in 2013, entitled "Kants Theorie der Abwägung" ("Kant's Theory of Balancing"), Fiete Karlscheuer has defended a very interesting and innovative thesis: Kant's concept of an imperfect duty would correspond to Alexy's concept of a principle and, therefore, in Kant's moral philosophy, if not in his "Doctrine of Right" at least in his "Doctrine of Virtue", there would be balancing. This work intends to keep investigating the intersting question of balancing in moral philosphy, particularly by adding an investigation about the paralellism between Kant's distinction between perfect and imperfect duties and Dworkin's distinction between rules and principles: prima facie duties in the sense of Dworkin, that is, principles in the sense of Dworkin, would correspond to imperfect duties for Kant, and all-or-nothing duties in the sense of Dworkin, that is to say, rules in the sense of Dworkin, would correspond to perfect duties for Kant. It is argued that Kant's theory antecipates Dworkin's distinction between rules and principles, not Alexy's. If that is the case, that is, if there are no optimization commands in Kant, either there would be balancing without opptimization commands in Kant – which would be contrary to Alexy correspondence between balacing and optimization – or, if such correspondence remains, there would not be balancing in Kant at all.

Keywords: prima facie duties; imperfect duties; rules; principles; optimization commands.

EQUALITY RIGHTS AND PROPORTIONALITY: EPISTEMIC AND ACCUMULATION PROBLEMS ON BEHALF OF FORMAL PRINCIPLES

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ABSTRACT

As a constitutional doctrinal problem focusing on the structural of the constitutional rights, equality can transform into subjective rights either based on constitutional provisions regarding equality or through the equal dimension of other constitutional rights. There is a parallel between the legal, act-oriented equality (as negative abstract prima facie-equality rights) and the negative legal liberal rights, while the 'factual', consequence-oriented equality (as positive abstract prima facie-equality rights) reflects the equal dimension of the positive constitutional rights. According to the literature and practice of proportionality review of constitutional rights, the negative legal liberal rights would go through the prohibition control of excessiveness, while the positive constitutional rights should be under the prohibition control of insufficiency. What are, however, the equality rights to be reviewed in the lens of propositionality? This is the challenge regarding the proportionality of equality and, hence, the main concern of this paper.

There could be three potential models of review of equality rights: first, the prohibition of arbitrariness (as a model of rules), second, the proportionality review on behalf of the protected scope-interference-limitation-scheme, and, third, the proportionality review without the above-mentioned scheme (both as model of principles). One can find two problems, however, concerning the attempt to the proportionality review of equality: the accumulation problem and the epistemic problem.

This paper will propose a concretized Weight Formula relating to equality rights. Accordingly, in the process of balancing between the legal and

the ‘factual’ equality, one should pay attention to their additive accumulation with other constitutional rights, respectively. Moreover, one could make the epistemic problem explicit on behalf of the formal principles, i.e., through the empirical epistemic certainty concerning the danger of discriminate treatment to someone and the normative epistemic certainty concerning the restriction of liberty of someone.

Keywords: legal, act-oriented equality; factual, consequence-oriented equality; proportionality; additive accumulation between constitutional rights; empirical and normative epistemic certainty; formal principles.

PARITY AND LAW – ADJUDICATION AS HERMENEUTIC COMMITMENT

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ABSTRACT

In my contribution, I explore whether Ruth Chang's concepts of parity and commitment can illuminate judicial reasoning in hard proportionality cases. Proportionality is central to constitutional and human rights adjudication. Yet, doubts about its rationality persist. Courts balance privacy against security, expression against reputation, and other constitutional values. What often troubles us about these hard choices is that the values at play seem to lack a common measure against which they could be compared. Balancing may therefore appear to commensurate the incommensurable. If that is right, how could we expect judges to make a rationally justified choice between competing constitutional values? Such concerns have motivated legal scholars to criticize the legal proportionality test, arguing that it often functions as an ad-hoc justification that conceals judges' idiosyncratic policy preferences.

Ruth Chang is an ideal interlocutor to address these profound concerns. Throughout her writings, she has developed a forceful critique of orthodox dogmas of normativity. In the physical world, comparative relations are trichotomous: Adam is taller than, shorter than, or equally as tall as Sally. Comparisons within the normative realm, Chang argues, do not adhere to this structure. When two values compete, there may be qualitative differences in normativity that give rise to a fourth basic comparative relation. The legal value of security may not be better, worse or equal to the value of privacy; instead, both values may be qualitatively diverse. They may be on a par. In such situations, Chang argues, our externally given reasons run out, allowing us to will reasons into existence through our commitments. Chang argues that a rational agent, by virtue of their decision-making au-

thority, can commit her institution for which she has decision-making authority, to one conflicting value over another and thereby endow that value with greater normativity than it would otherwise have. For example, a constitutional judge facing a hard decision between free speech and privacy would then have the authority to commit their court to the value of free speech, thus resolving the hard case at hand.

But does widespread parity explain what troubles us about hard proportionality cases? Can (and should) judges put their judicial agency behind a legal consideration and thereby rationally resolve hard cases? Or do constellations of parity call for judicial restraint?

I argue that Chang's work provides resources for a powerful critique of Robert Alexy's trichotomous model of optimal balancing, but that judicial decision-making differs from Changian commitments in two crucial respects. First, whereas Changian commitments are individual and self-regarding, judicial commitments can only do normative work if they bind a legal community as a whole. This raises questions about the constitutive structure of judicial agency and authority. Second, law's normativity is fundamentally textual. Legal decisions therefore arise as hermeneutic problems and culminate in text, rather than in free-standing exercises of will. Building on these disanalogies, I develop a modified account of judicial commitments in hard proportionality cases. In my contribution, I will lay out this view, which I call adjudication as hermeneutic commitment.

Keywords: proportionality; incommensurability; balancing; hermeneutic commitment.

POSITIVE RIGHTS AND PROPORTIONALITY

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ABSTRACT

Proportionality boasts of three dimensions – while for liberty rights or negative rights the 'prohibition of excessive means' (in German: Übermaßverbot) is key, proportionality takes on the form of the 'prohibition of insufficient means' (in German: Untermaßverbot), if applied to positive rights. While the outlines of the prohibition of excessive means and of equality proportionality have been carved out relatively clearly, the prohibition of insufficient means has hardly been understood at all in the case law and in academic literature. Unlike in the case of the prohibition of excessive means, there is no positive state action as the Archimedean point for assessing proportionality. I shall propose a reconstruction of the prohibition of insufficient means, according to which every means, that furthers the realization of the underlying end, must count as prima facie required. For all these means, the competing rights and goods need to be balanced, so that it can finally be determined which means, if any, is definitively required.

Keywords: prohibition of insufficient means; prohibition of excessive means; equality: proportionality; positive rights.

ABSOLUTE RIGHTS AND BALANCING

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ABSTRACT

Are there undefeasible norms within our legal systems? Or, put differently, can human dignity be restricted in situations of extreme necessity, such as the ticking time bomb scenario or in order to save the life of an innocent kidnapped infant? A central issue in contemporary theories of rights is whether there exist certain rights that possess an "absolute" character. This question often arises in connection with the post-war constitutional moments, with the legal recognition of human dignity, as well as the categorical prohibition of torture or slavery —prohibitions that have been positivized in a peremptory manner in some western constitutions and are also contained in various international treaties. Drawing on Robert Alexy's influential principle-based theory, this paper discusses three theoretical positions with the aim of clarifying the precise sense in which the absolute nature of certain constitutional rights or legal prohibitions can —or cannot— be asserted.

Keywords: Constitutional rights; balancing; moral absolutes; deontologism; torture.

THE CONSTITUTIONAL PROHIBITION OF PROPORTIONALITY ANALYSIS. MEXICO'S MANDATORY PRETRIAL DETENTION.

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ABSTRACT

Proportionality analysis has become an indispensable legal tool in adjudication for assessing the protection offered by fundamental rights. National and international courts have generally used it, especially, to resolve collisions between competing rights. Considerable attention has normally been given to the categorical protection offered by the so-called “absolute rights”. Absolute rights seem to be immune to proportionality analysis, as the absolute protection they offer closes, at first sight, the door to the classical prongs of proportionality. Many reasons have been offered regarding whether such types of prohibitions are susceptible to proportionality analysis, particularly, balancing. This discussion, however, leaves out other forms of absolute elements found in the provisions protecting fundamental rights, namely, “absolute limiting clauses”. Unlike absolute rights, which usually contain a categorical prohibition aimed at preventing any form of intervention within the scope of protection offered by the right or protected good—for instance, the prohibition of torture—, absolute limiting clauses aim to limit the scope of protection of the right from the outset by rendering inapplicable any other adjudicative tool that could justify the non-application of such restriction.

An example of these absolute limiting clauses can be found in the Mexican constitutional order in the legal figure known as "mandatory pretrial detention". Mandatory pretrial detention has been a controversial institution within the Mexican constitutional order because it has become, in practice, a form of punishment without a judicial conviction that can last up to two years. This legal construction is characterized by a severe restriction of personal liberty without giving the legal operator any discretion

to assess its necessity. As this limiting clause has constitutional rank, all judges are obliged to order it at the prosecutor's request whenever a person is charged with one of the crimes listed in Article 19, paragraph 2, of the Mexican Constitution. This tension within the constitutional order led Mexico to be condemned by the Inter-American Court of Human Rights for breaching its international obligations under the American Convention on Human Rights. One of the main arguments for the incompatibility of such a restriction with the Convention is the lack of discretion granted to the legal operator to assess whether this pretrial measure is appropriate in the case at hand. Following the judgment, the Mexican government, fearing that national judges could decline to apply mandatory pretrial detention, amended the Constitution by adding a provision that prohibits the use of any adjudicative tool that could lead to the non-application of such a restriction.

This presentation aims to examine the effect of absolute limiting clauses on the protection of fundamental rights and their possible connection with proportionality analysis. Likewise, it aims to offer some possible answers to the constitutional tension inherently posed by mandatory pretrial detention.

Keywords: proportionality analysis; preventive pretrial detention; limiting clauses; absolute rights; absolute limiting clauses.

FROM LEGAL NORMS TO ALIGNMENT - ARTIFICIAL IMMANENCE AND THE TRANSFORMATION OF NORMATIVITY IN CONSTITUTIONAL AI

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SW87 · Invisible Decision-Maker in the Crisis of Legal Practice: Courts and ADR in the Age of Information Society
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ABSTRACT

Legal normativity has classically been structured by transcendence. A norm binds because it is guaranteed from a position above and outside the act it governs. In Kelsen's pure theory this is the Grundnorm, the presupposed basic norm that confers validity on the whole hierarchy without itself belonging to it; in Schmitt it is the sovereign and the constituent power that institute an order through a founding decision the order cannot ground in turn. Psychoanalytically, Lacan names this guarantor the big Other - the symbolic third that sustains the order of law and to which the subject's address is directed. Across these idioms, normativity presupposes a third that stands elsewhere. This paper argues that contemporary AI alignment, and Constitutional AI in particular, enacts a transformation in the very structure of normativity: a passage from transcendence to what I call artificial immanence. Its decisive mechanism is Reinforcement Learning from AI Feedback (RLAIF). Where Reinforcement Learning from Human Feedback still routed evaluation through an external human judge, RLAIF has one model critique and revise another against the constitution, so that the supervising third is itself folded into the system; coupled with the embedding of principles in the model's objective function, the norm ceases to stand over the system as external constraint and is absorbed into its architecture - the system is optimised to "want" what it ought. Read through Deleuze, the shift is twofold: from the transcendent model of a law-above to an immanent plane on which norm and operation coincide, and from the disciplinary enclosure - the external "restraining bolt" - to the continuous modulation Deleuze diagnosed in the societies of control. In RLAIF the

guaranteeing third of legal authority does not merely retreat but is automated; extending Leder's analysis of the automatization of trust, I read alignment as the dissolution of that transcendent third. The core question is what "internalisation" means on either side of this passage. In legal and socio-legal theory, internalisation names a relation that preserves the distance between subject and norm. For Hart it is the internal point of view: to internalise a rule is to accept it as a standard and a reason for conduct, and thereby to be able to invoke, criticise, or refuse it. For Tyler it is normative commitment grounded in perceived legitimacy rather than fear of sanction; for Habermas it is the discursive validation through which the addressees of a norm can also understand themselves as its authors. In each case the internalised norm remains contestable, because there is a subject who could have withheld assent. Alignment abolishes precisely this distance. To "internalise" a principle through RLAIF into an objective function is to install it as a disposition, not to hold it as a reason - internalisation without an internal point of view, without a subject who could dissent. This, properly speaking, is artificial immanence: not the acceptance of a norm but its collapse into the mechanism that enacts it. If normativity becomes immanent in this sense, what is lost is not compliance but the dialectical relation between law and community, the giving of reasons, and the constitutional moment itself - leaving a normatively empty yet sociologically legitimated order, secured through isomorphism with the institutions it replaces. The paper closes by asking whether an immanent norm can still be a norm, or only its automated parody.

DETECTING HUMAN VULNERABILITIES IN THE DIGITAL AGE: A VIRTUE-ORIENTED READING OF THE AI ACT

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ABSTRACT

The paper focuses on the recently enacted European AI Act, proposing a virtue-oriented reading for the interpretation of Article 5(1)(b), which deals specifically with vulnerable people. In light of this purpose, the paper is structured as follows. The first part analyses the tragic case of a minor, Adam Raine (Raine vs. OpenAI), whose suicide was allegedly influenced by interactions with an AI system, raising questions about risks of prolonged human-AI engagement. This case highlights how AI can exacerbate vulnerability, especially among minors, and illustrates the difficulty of identifying harm that develops gradually over time. The second part, focusing on Article 5(1)(b), explores the notion of vulnerability involved in this provision: the conception of vulnerability adopted is based on categories, which results in a relatively narrow, group-based definition (e.g. minors, people with disabilities, or those in disadvantaged socio-economic conditions). Drawing on Martha Fineman's conception of "ontological vulnerability", the paper criticizes this view and suggests a broader, relational understanding of vulnerability as an inherent and context-dependent human condition. It also emphasizes the interpretative difficulty of assessing when harm is "reasonably likely". To address these challenges, the third part proposes a virtue-oriented interpretation of the AI Act. Recalling Shannon Vallor's research, three features of virtues are emphasized as particularly suitable for the interpretation of Article 5(1)(b), in light of the issues raised in the second part. These features are: their relational nature, their perceptive capacity to identify morally salient aspects of situations, and their orientation toward human flourishing. Finally, the paper argues

that these dimensions are consistent with broader legal philosophy, showing parallels with thinkers such as Hart and Fuller. This last argument aims to reinforce the main thesis of this paper, according to which virtues are indispensable for a sound interpretation within, and maybe even beyond, the AI Act.

THE RULE OF LAW V. THE RULE OF TECH: THE LEGAL EFFECTS OF AI STANDARDS

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ABSTRACT

Artificial Intelligence (AI) technologies have a profound normative impact on our lives. While they bring benefits through various products, processes and services, they also pose challenges to our fundamental values. From a regulatory governance perspective, the potential benefits and harms of AI require an idealistic position that should be a priority in technology regulation: technology should be regulated in such a way as to enable harnessing the benefits of technological progress, while mitigating the risks that may arise from the development, deployment and use of technologies. In line with this dual objective, the recent momentum generated by the European Union (EU) in digital regulation is significant.

This paper focuses on the EU AI Act, which pursues the dual objective of promoting technological innovation and preserving the EU's fundamental values. To achieve this objective, the AI Act has incorporated a multi-instrument approach, including co-regulation, which allows both public and private sector actors to collaborate in the regulatory process. As part of the co-regulatory strategies, the EU legislator has adopted standardisation as an instrument to complement legal regulation with technological expertise. While recognising the importance of involving such expertise in regulatory governance, this paper underlines the potential implications of this regulatory choice for the rule of law.

Based on the core value of the rule of law, i.e., reducing the arbitrary use of power, this paper problematises the legal effects of AI standards concerning three elements: the rationality of decisions, the involvement of stakeholders in decision-making, and the predictability and comprehensibility of the rules. The paper highlights the need for a clearer framework for the integration of standardisation into the EU AI Act, which should be

established by the legislator in order to preserve the core value of the rule of law while avoiding the primacy of technology.

Keywords: Artificial Intelligence, dual objective, normativity, rule of law, rule of tech, standardisation.

BEYOND SOLUTIONS: TRADE-OFFS AS ANALYTICAL FRAMEWORK FOR AI REGULATION

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ABSTRACT

Since the introduction of ChatGPT and other large language models (LLMs), Artificial Intelligence (AI) has been increasingly discussed among social scientists and policymakers. The European Union's AI Act is the first major legislation regulating AI. While some see it as an important advance in making AI compatible with democratic norms, it has also been criticized for being hostile towards innovation and structurally weakening Europe's capacity to keep up with international competition. This highlights a major theme that characterizes the discussion around AI development, deployment, and its regulation: trade-offs.

Drawing on the work of economist Thomas Sowell, this paper takes up one of his core claims: "There are no solutions, only trade-offs." It follows from this foundational insight that any regulatory aim necessarily entails a trade-off between different values. Consequently, regulations such as the EU AI Act can never achieve all goals simultaneously but must prioritize. This raises the question of which relevant trade-offs a regulatory decision actually entails. Therefore, in this paper, trade-offs are understood as a tool for clarifying the normative structure of decisions. The research question guiding this paper is: How can explicit trade-off analysis illuminate what AI regulation actually sacrifices, and for whom?

The paper then proceeds as follows: After introducing the concept of trade-offs and its manifestations in different social domains, the paper identifies key trade-offs that arise in the context of AI governance (e.g., safety versus innovation, transparency versus competitive advantages). It then discusses the implications of the trade-offs-based approach for AI regulation and regulation in general. Finally, the conceptual and practical limits of such an approach will be considered. This will answer the question

of when trade-off clarity serves democratic reasoning and when it masks fundamental disagreements about human dignity, rights, or the legitimate scope of state power.

CYBER COERCION AS A CHALLENGE TO LEGAL POSITIVISM

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ABSTRACT

Emerging technologies have challenged the positivist understanding of law by introducing a new form of coercion, where the force of law is delegated to code, algorithms, and automated systems. Lawrence Lessig's narrative of architecture as a constraint on human behaviour and Bruno Latour's Actor-Network Theory have previously captured the essence of this delegation of norms to non-human entities. Many examples can be found in contemporary law, such as digital rights management systems and smart contracts. This essay will argue that cyber coercion represents not merely a transformation in the form of law, but a fundamental corruption of its positivist understanding as articulated by Hans Kelsen and H. L. A. Hart, who ultimately conceived law as a human institution.

For Kelsen, legal norms regulate behaviour conditionally. Since designers shape behaviour before any legal norm is invoked, code operates as a pre-emptive regulator. The possibility of non-compliance must be inherent to the norm's structure. This transformation cannot be reduced to a change of means, because the coercion is no longer a legally formalised consequence but a pre-empirical condition of action. This not only obscures the chain of legal authorisation central to Kelsen's positivism, but also challenges the conditional and sanction-based structure of legal norms themselves.

Secondly, within Kelsen's legal positivism, the profound influence of David Hume's distinction between "is" and "ought" is evident. his "ought" is grounded in the Grundnorm, which he recognised as a presupposition of juristic thinking, the basic norm that grounds the normative unity of the legal order. Crucially, this presupposition cannot be understood to be au-

tomatic or purely mechanical; it necessarily presupposes a human standpoint capable of attributing normative significance to social facts. In this sense, Kelsen's theory implicitly depends on the presence of human agency at the moment of normative presupposition.

For Hart, secondary rules confer powers on officials to adjudicate and sanction. In the digital age, however, secondary rules are not merely applied by human officials but are executed through code. Commentators such as Jamie Susskind read this as indicating that, while the form of law is changing, its fundamental nature as a system for directing and enforcing conduct remains consistent. However, Hart's project was not limited to defining types of rules, but also extended to distinguishing law from other, similar rule-based systems. For Hart, the validity of a legal system is ultimately a matter of its acceptance by officials, which he treats not as a hypothesis but as a complex social and psychological fact. Where the official is a non-human actor, the very existence of this crucial social and psychological acceptance becomes impossible to sustain.

The challenge that this transformation poses to legal positivism indicate that we have moved far beyond the historical context in which legal positivism was conceived, calling for a new legal theory. This is because, as cyber coercion spreads, law is stripped of its normative character and reduced to a mere system of technical control. What remains is not law as legal positivism theorises it, but almost naked coercion, which sacrifices the very essence of law, its inherent humanity.

THE INVISIBLE DECISION-MAKER: HYBRID LEGAL COGNITION IN THE AGE OF AI — AN EXTENDED MIND PERSPECTIVE

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ABSTRACT

The growing use of artificial intelligence and digital decision-support systems is transforming the cognitive environment of contemporary legal practice. Judges, lawyers, mediators, and public officials increasingly rely on technological tools that assist in information retrieval, analysis, forecasting, and decision-making. As a result, the cognitive processes involved in the application of law are becoming progressively distributed between human actors and artificial intelligence systems.

This paper examines these developments through the lens of the Extended Mind Theory developed by Andy Clark and David Chalmers. According to this approach, cognitive processes are not confined to the human brain but may extend to external artefacts that perform cognitive functions. The paper argues that contemporary legal practice increasingly takes the form of hybrid cognition, in which human reasoning interacts with algorithmic systems and digital infrastructures.

While AI-based systems may enhance efficiency, improve information processing, and strengthen the consistency of decision-making processes, they also raise important questions concerning cognitive autonomy, responsibility, transparency, and decisional authority. The emergence of hybrid cognitive environments challenges traditional assumptions regarding the identity of the legal decision-maker. Consequently, the paper explores whether legal decisions remain exclusively the product of human agency or should instead be understood as outcomes of broader socio-technical systems characteristic of the information society.

THE CONCEPT OF LEGAL TRANSACTION AND ITS RECONSTRUCTION IN THE ERA OF ARTIFICIAL INTELLIGENCE

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ABSTRACT

The era of artificial intelligence (AI) has brought challenges to legal transaction as a basic category of law. There is a distinction between legal transaction (act) in a broad and a narrow sense. The core of the concept of legal transaction is the expression of will, which is usually considered unique to the field of civil law. Traditionally, the concept of legal transaction contains two elements, i.e., "will" and "expression", in which "Will" belongs to the ability of the mind, and its essence lies in freedom or arbitrariness, that is the material basis for human as subject; and "expression" is the manifestation of a language or language-like behavior. In the theory of legal transaction, "will" and "expression" are logically separated as two stages, and there is an inner logical chain from "will" to "expression". From the perspective of legal theory, rather than legal policy or legal ethics, the phenomenon of legal effects that follow the expression of the agency's will is not limited to the civil law: it is an activity that creates a lower legal norm based on the upper legal norm, whose validity comes from the authorization of the legal order, thus is a basic concept in general field of law. Because of this, the challenge to the concept of legal transaction in the era of AI belongs to a challenge to the entire legal science, not just to some limited field of law. On the one hand, AI has no "will". What stands behind "will" is human free will, self-awareness, and reflection ability, while AI is essentially an arithmetic program, and its algorithms come from pre-set or regularity summaries. AI neither has the "individual will" in specific transaction situations or social interactions, nor can it be fully explained by the "general will". On the other hand, AI can indeed "express". Although AI does not have mind and will, it can make stylized

"expression" according to pre-set algorithms or algorithms even mastered through self-learning. The most serious challenge brought out by algorithms in AI era to legal transactions lies in collapse of the inherent logical chain of "will→expression", and only the behavior of expression will be retained as an element of the concept of legal transaction, so this concept will be reconstructed as "behavior of expression without will". As a result, although the role of legal transaction as a "basic concept in general field of law" can be maintained, and its functional positioning of "enacting lower-level legal norms according to upper-level legal norms" has not been impaired, it is suspected of being transformed into a completely objectified functionalist concept.

AUTOMATION OF THE PROCESS OF ANALYZING STANDARD CONTRACT DOCUMENTS USING AI DURING THE PRE-PROCESSING STAGE – OPTIMIZATION OBJECTIVES

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ABSTRACT

This paper aims to achieve two main objectives. The first is to demonstrate that artificial intelligence is becoming indispensable in the practical application of the law. It is becoming a tool for lawyers. This undoubtedly represents a new paradigm in the legal field. This paradigm is still emerging, but one can hypothesize that in the near future, it will be impossible to remain competitive in the legal services market without using AI. The second objective is to present the optimization principles for automating the process of analyzing legal documents. On the one hand, AI is a helpful tool that reduces working time, lowers costs, and streamlines the efficiency of case handling. On the other hand, the use of AI carries the risk of hallucination errors. Therefore, the development of a document analysis automation process using AI should be based on established optimization principles. These minimize the risk of AI performing an incorrect data analysis.

LAWYER OF THE GAPS OR HOLISTIC LEGAL PROFESSIONAL? ARTIFICIAL INTELLIGENCE AND THE CROSSROADS DILEMMA IN THE LEGAL PROFESSION

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ABSTRACT

The rapid development of artificial intelligence, particularly large language models, is already transforming legal practice. AI systems increasingly support legal research, document review, contract drafting, regulatory analysis, due diligence, case prediction and the preliminary structuring of legal arguments. These changes do not merely introduce new tools into the lawyer's work; they challenge the traditional understanding of legal expertise itself. If a substantial part of legal practice consists in identifying applicable norms, summarising sources, detecting patterns and producing formally correct legal texts, then a significant part of this work may be at least partially automated, accelerated or reorganised around human-AI cooperation.

This development leads some observers to the conclusion that the modern lawyer may become a "lawyer of the gaps". In this model, the lawyer's role would be gradually reduced to those areas of law that remain resistant to automation because of their axiological, purposive or deeply contextual character. The lawyer would intervene primarily where legal reasoning cannot be reduced to linguistic reconstruction, probabilistic prediction or doctrinal classification: in cases involving general clauses, value-laden standards, proportionality, fairness, good faith, dignity, public interest or the reconciliation of conflicting social purposes. The legal professional would therefore remain necessary, but increasingly as a guardian of interpretive residue — the human agent responsible for what the machine cannot reliably decide.

A different response to the same technological transformation is the emergence of the holistic legal professional. From this perspective, the future lawyer is not merely an expert in legal norms, especially where AI is increasingly capable of decoding, organising and applying normative materials. Rather, the lawyer becomes an interdisciplinary professional combining several roles: legal adviser, preventive strategist, conflict designer, mediator, negotiator, relational healer, business partner and facilitator of creative solutions. Inspired by the assumptions of the Comprehensive Law Movement, Preventive Law, Creative Problem Solving and Holistic Law, this model understands legal practice as a human-centred activity aimed not only at solving legal disputes, but also at preventing them, de-escalating conflict, rebuilding relationships and addressing the broader psychological, social and organisational dimensions of legal problems.

The transformation of the legal profession is therefore unavoidable, but its direction remains open. We are standing at a crossroads between a future, in which lawyers become residual specialists operating only in the gaps left by artificial intelligence, and a future, in which lawyers redefine their professional identity through education, ethical engagement, interdisciplinarity and relational competence. The decisive question is not whether AI will change legal practice, but whether legal education and professional culture will be able to move beyond the traditional image of the lawyer. The future of the profession may depend on whether lawyers choose to defend a shrinking monopoly over legal knowledge or to develop a more holistic model of legal professionalism adapted to the complexity of human conflicts in the age of artificial intelligence.

FROM TOOL TO AGENT: RETHINKING LEGAL LIABILITY IN THE AGE OF AGENTIC AI

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ABSTRACT

Recent developments in Agentic AI are transforming the role of artificial intelligence, shifting it from a passive computational tool to an autonomous system capable of planning, reasoning, and executing complex actions in dynamic environments. Unlike traditional algorithmic systems, agentic architectures can pursue goals, coordinate internal processes, and interact with other agents and infrastructures with limited human intervention. These developments raise fundamental questions for legal theory, particularly regarding the structure and attribution of legal liability.

Modern legal systems rely on a liability model that presupposes the existence of identifiable human agents capable of exercising intentional control over their actions. Liability is typically established by tracing harmful outcomes back to the conduct and intentions of individuals or organizations. However, agentic AI systems challenge this model by introducing levels of autonomy and distributed decision-making that complicate the identification of a single responsible party. In many cases, outcomes emerge from the interaction between system design, training data, deployment contexts, and autonomous operational behaviors.

This paper argues that the emergence of agentic AI highlights a structural misalignment between traditional liability doctrines and the sociotechnical architecture of contemporary AI systems. Drawing on recent debates in AI ethics and governance, including analyses by Luciano Floridi and Virginia Dignum, the analysis shows how existing legal frameworks risk generating accountability gaps when applied to highly autonomous AI agents.

In response, the paper develops a philosophical interpretation of distributed legal liability adapted to agentic environments. Rather than treating

AI systems merely as tools, the proposed framework conceptualizes them as components of complex normative infrastructures, in which responsibility must be allocated among the multiple actors involved in the system lifecycle, including designers, developers, operators, and deploying organizations. By shifting the focus from individual control to systemic accountability, this approach aims to preserve the normative function of legal liability while adapting to the transformative impact of increasingly autonomous artificial agents.

AUTOMATION OF THE JUDICIAL ENFORCEMENT AND THE AXIOLOGY OF THE DECISION-MAKING PROCESS

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ABSTRACT

The basic thesis of the paper assumes that the automation of judicial enforcement changes the axiological conditions of the decision-making process in law enforcement. Such an assumption was based on at least three findings. First, the decision-making process in judicial enforcement is characterised by a greater degree of automation. This results in the limitation of the argumentative nature of decisions taken by the enforcement authority (unlike in the adjudicative proceedings). In the current model of judicial enforcement, the overriding goal turns out to be the implementation of praxeological values (promptness, efficiency, economy). Automation increases the efficiency of action thus understood but does not in every case lead to achieving substantive effectiveness (e.g. the algorithm will not show at a given moment that the debtor owns a property or the established assets are not subject to enforcement). In the paper, I draw attention to the need to maintain a proper balance between praxeological values and the purpose of judicial enforcement in the process of lawmaking and applying enforcement law. Such a direction is confirmed by European guidelines on the enforcement of court judgments.

Secondly, automation changes the previous understanding of the axiological foundations of judicial enforcement. This concerns, among other things, different perceptions and interpretations of values. For example, justice increasingly pertains to its procedural aspect (conducting the proceedings according to principles, regardless of the outcome) rather than receiving due reward (enforcement justice).

Thirdly, the use of modern information technology in enforcement proceedings leads to a re-evaluation of the scope of discretion exercised by the authorities responsible for applying the law. Currently, the automation of enforcement means that certain enforcement activities are generated and carried out by appropriate algorithms (e-seizure of bank accounts, e-seizure of tax overpayments and refunds, e-auction of movable property, e-auction of immovable property), but their form does not rule out the discretion of the enforcement officer. E-enforcement, in the sense described, does not replace the authority's decision-making, e.g. regarding the onerousness or sufficiency of the enforcement method applied. Furthermore, the various enforcement models in operation in Europe (application-based, cooperation between the creditor and the enforcement officer, and the model of enforcement by an autonomous authority) inherently influence the scope of the enforcement officer's discretion.

In the paper, I focus on the concept of automation and reconstructing its meaning in judicial enforcement. I analyse the impact of automation as a "technological process" in enforcement on the creditor's rights and debtors' obligations from the perspective of the axiology of law. Finally, I try to answer whether the current model of judicial enforcement using the automation of activities changes the axiological basis of decision-making and to what extent.

In the conclusions, I put forward the postulate that progressive automation should not violate the decision-making space of the enforcement authority. In this sense, it is the enforcement authority that is ultimately responsible for the enforcement of the law secured by axiology. Hence, there is a clear need for a definite boundary between the automation of enforcement activities and the sphere of decision-making handed over to algorithms.

WHY PREFER HUMAN DECISION-MAKERS?

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ABSTRACT

The rapid rise of self-learning algorithms raises a fundamental question: if machines can make better legal decisions, can we delegate to them? Many legal orders state that we shouldn't. For example, Article 22 GDPR stipulates that legal decision-making should, broadly speaking, remain a human affair. Yet, such norms offer no substantive justification for this requirement. Most scholarship defends the rule on consequentialist grounds—concerns about flawed models or algorithmic bias.

Suppose, however, that a machine is demonstrably less biased, less noisy, and yields more freedom-preserving outcomes (e.g., a bail-algorithm that prevents more crimes while jailing fewer people). Outcome-based arguments would then fail to support a human-in-the-loop requirement. Given that existing norms treat the human element as a deontological requirement, this leaves us with an unsettling explanatory gap: Why should we, as a matter of principle, insists that the state not delegate significant legal decisions to machines? Our inability to answer this question makes it difficult to clearly articulate when human involvement is legally significant and what form it must take.

The argument from substance ontology is inspired by John Searle's Chinese Room Argument. It claims that there is a categorical (non-gradual) difference between human and machine cognition because machines lack the intrinsic intentionality necessary for semantic understanding.

The argument from normative relationality is inspired by theories of recognition and relational autonomy. It holds that the most rights-sensitive legal questions must be decided by humans, not because machines think differently, but because they are experienced differently. Whenever the

state owes us expressions of respect, machines cannot deliver because they are not recognized as our legal equals.

I argue that the argument from normative relationality is stronger. It is more epistemically parsimonious, legally stable, and leverages the context-dependence of recognition-respect to give automation the moral nuance it requires. I conclude with a doctrinal sketch of a normative-relational right to a human decision, illustrating how such a right would operate in practice.

MEANINGFUL HUMAN OVERSIGHT WITHOUT VIRTUE? TECHNO-LEGAL PHRONESIS AS THE MISSING CONDITION IN AI-ASSISTED ADJUDICATION

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ABSTRACT

Contemporary normative regulations of AI applicable to high-risk uses, such as judicial decision-making, typically require meaningful human oversight of AI-augmented processes. However, existing leading regulatory frameworks formulate the conditions of such oversight in systemic terms of institutional and technical features of relevant processes. They presuppose a role or function of a person exercising oversight yet leave their individual dispositions unaddressed. I argue that this omission is not merely an oversight of regulatory design, but a structural deficiency rooted in the mistaken assumption that the quality of human oversight can be secured through the aggregation of procedural competences.

Empirical research reveals at least three distinct mechanisms by which this assumption fails at the human level. Automation bias shows that agents using AI formally equipped to intervene in the algorithmic output nonetheless defer to it against their own judgment. Sycophancy in large language models demonstrates that LLM-based tools systematically validate the assumptions already embedded in their user queries, creating epistemic "echo chambers" instead of independent assessments. The heuristic called "processing fluency" indicates that the linguistic coherence, which is characteristic of LLM outputs, can be perceptually mistaken for epistemic reliability, making hallucinated reasoning difficult to detect without sustained critical attention.

Each of these mechanisms targets a different dimension of judgment, like the human user's will to override, the critical assessment, and the per-

ception of argumentative quality. None can be neutralised by structural requirements alone, because all three operate at the level of moral and epistemic character.

These problems point to a missing dispositional condition, the virtue of techno-legal phronesis, which is an intellectual and moral disposition that enables one to critically assess algorithmically generated outputs and maintain the autonomy of judicial judgment. I argue that meaningful oversight cannot be legislated into existence through procedural requirements alone but must be cultivated through the formation of judicial character.

RETHINKING WILL, AUTONOMY, AND LEGAL PERSONHOOD IN THE AGE OF AI: TOWARD A THEORY OF MEDIATED AUTONOMY

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ABSTRACT

The rapid development of generative AI has revived fundamental questions in legal philosophy concerning will, autonomy, responsibility, and legal personhood. Contemporary discussions often focus on whether AI represents a radical transformation of traditional liberal concepts of agency or merely introduces a degree of instability and uncertainty within existing legal frameworks. Among these debates, the emergence of AI agents has become one of the most influential issues.

The increasing use of AI avatars further complicates this discussion. AI avatars are becoming increasingly important in various fields, particularly in financial services, where they mediate interactions between consumers and business corporations. In such contexts, AI systems may not only improve efficiency and accessibility but also reshape existing asymmetries of information, expertise, and decision-making power.

AI-agent debates are often framed through a familiar question: as AI agents increasingly act on behalf of individuals in decision-making and contract formation, should they be regarded merely as sophisticated tools or as entities capable of possessing a limited form of legal agency? While important, this question alone does not adequately capture the complexity of contemporary AI systems.

This paper argues that a proper analysis requires distinguishing between two dimensions. The first is the legal framework through which AI is understood. Existing legal theories generally oscillate among three models: the tool model, the legal personality model, and quasi-mandate approaches. The second dimension concerns the factual characteristics of AI systems themselves. To address this aspect, the paper distinguishes five

levels of AI avatars and agents: UI, Sensory, Action, Conditional, and Optimizing agents. These categories reflect different degrees of autonomy and involvement in human decision-making.

The increasing autonomy of such systems challenges traditional legal models of intention, consent, and responsibility. Against this background, the paper develops the concept of mediated autonomy. This concept refers to a relational mode of agency in which human intention and algorithmic processes are intertwined without collapsing into either full machine autonomy or mere instrumentality. It provides a framework for understanding technologically mediated action while preserving the normative significance of human agency.

The challenge, therefore, is to understand how such mediation transforms the structure of consent and the exercise of self-determination while maintaining the moral and legal coherence of will and responsibility. From the standpoint of classical liberalism, informed by an institutionally grounded understanding of normativity, the paper argues that AI agents and avatars occupy an intermediate position between tools and autonomous actors. The transformation of the agent–tool relationship thus provides a critical lens through which to reconsider legal personhood, intention, and responsibility in the age of intelligent systems.

DESIRED CHILDREN: BETWEEN GIFT AND DEBT. INTERGENERATIONAL JUSTICE AND RESISTANT POSTMODERNITY

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SW88 · Intergenerational Justice and the Right to the Future: Reflections from the Legal-Philosophical Thought of Jesús Ballesteros
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ABSTRACT

In the contemporary family, the child has ceased to be born for society: they are born by and for the desire of their parents. M. Gauchet diagnoses in this shift a constitutive paradox: the love that precedes the child turns him or her into the product of a parental fantasy that compromises his or her psychic individuation. If constructing oneself as a subject requires assuming the contingency of one's own existence, the desired child starts at a disadvantage. The lecture will explore whether this structural asymmetry constitutes an intergenerational injustice and to what extent it can be grounded in the language of rights as a violation of the free development of personality. Finally, possible paths will be offered for the restoration of intergenerational justice from the paradigm of resistant postmodernity.

THE PLAYFUL DIMENSION OF VIOLENCE AND WAR IN THE THOUGHT OF JESÚS BALLESTEROS

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SW88 · Intergenerational Justice and the Right to the Future: Reflections from the Legal-Philosophical Thought of Jesús Ballesteros
Convenors: Lucía Aparicio Chofré; Ana Colomer Segura

ABSTRACT

The worrying rise in wars and violence in this century brings Professor Jesús Ballesteros's profound reflections on peace back into the spotlight. Today's armed conflicts are taking on a unique form characterised by a "ludic" dimension to violence, which further exacerbates its senselessness and the dangerous dehumanisation of "the other" and their portrayal as an enemy. To counter this alarming drift, the importance of accurate information, critical education and setting a good example is emphasised as the only ways for peace and justice—based on human rights, human security and sustainability—to once again become the future horizon for humanity.

PERSON, GENDER, AND INTERGENERATIONAL JUSTICE

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SW88 · Intergenerational Justice and the Right to the Future: Reflections from the Legal-Philosophical Thought of Jesús Ballesteros
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ABSTRACT

Throughout history, different models of the relationship between sex and gender have emerged, not only diachronically but also synchronically, as they have coexisted simultaneously and continue to do so today. Some of these models have made significant contributions to the struggle for equality and non-discrimination against women and, ultimately, to human rights. However, one of the remaining challenges for the future is to adequately articulate the categories of equality and difference without tipping the scales in favour of one or the other. This is a challenge with profound implications for justice, not only in relation to the relationships between men and women, but also for society as a whole. The aim of this presentation is to advance in addressing this challenge through the so-called model of equality in difference, rooted in the insightful ideas expressed by Jesús Ballesteros more than 25 years ago in his book Postmodernity: Decadence or Resistance.

Keywords: Gender, sex, person, model of equality in difference, intergenerational justice.

THE PERSON FACING ACCELERATED TIME: A DIALOGUE BETWEEN JACQUES MARITAIN AND JESÚS BALLESTEROS

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ABSTRACT

The temporal acceleration of late modern societies is not merely a sociological phenomenon but a symptom of a metaphysical rupture in the constitution of the person. Jesús Ballesteros has made "thinking the present time" the motto of his philosophy, diagnosing a "decadent postmodernity" that dissolves memory and future, and proposing a "resistant postmodernity" grounded in the person. Jacques Maritain metaphysically distinguishes between the individual—a "material shadow"—and the person—a "spiritual whole" that possesses itself, is master of its acts, and is open to transcendence. This paper shows how Maritainian anthropology ontologically grounds the resistant temporality that Ballesteros demands. Using the doctrine of categories—substance as the first category and nine accidents—it analyses Ballesteros's diagnosis of disintegration (time, culture, nature, relationships, place) as a pathology affecting both external accidents and the internal composition of personal substance (matter/form, potency/act). It introduces the distinction between self-knowledge (reflexive self-possession) and other-knowledge (recognition through the other and tradition), showing that acceleration destroys both dimensions. The paper addresses Ballesteros's critique of personism as a reduction of the person to the exercise of its faculties, and its connection with neo-Malthusian and accelerative logic. Finally, it highlights the dangers of univocalist reductions of law for the protection of the person in time.

Keywords: Person, accelerated time, Jacques Maritain, Jesús Ballesteros, self-knowledge.

INTERGENERATIONAL JUSTICE: PROPOSALS BASED ON THE POLITICAL PHILOSOPHY OF JESÚS BALLESTEROS

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SW88 · Intergenerational Justice and the Right to the Future: Reflections from the Legal-Philosophical Thought of Jesús Ballesteros
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ABSTRACT

Since shortly after World War II, there has been talk of justice toward future generations. In recent decades, there has also been intense discussion of justice among generations living at the same time. Historically, justice has primarily focused on relationships between individuals or between groups, but little attention was paid to the temporal dimension of those relationships. In this paper, I propose two hypotheses. First, that technological development has completely altered the relationships between generations living simultaneously. And second, that the political-philosophical thought of Professor Jesús Ballesteros—which recognizes that time is a fundamental dimension of human existence—can help shed light on the problems of intergenerational justice.

Keywords: Justice, Generations, Time, Jesús Ballesteros.

ALGORITHMIC ENTROPY AND LEGAL TIME: ARTIFICIAL INTELLIGENCE AS AN ACCELERATOR OF INTERGENERATIONAL DISJUNCTION

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ABSTRACT

Law could be compared with time by taking into consideration certain characteristics such as duration, memory, and the future. In fact, law represents a bond between different generations, benefiting from experience to create or modify laws and regulations in line with trends and social changes. This paper attempts to conceptualise the concept of "algorithmic entropy" according to Ballesteros's thought, in particular his reflections on legal temporality and the centrality attributed to the dignity of the person as the basic foundation of the legal order. Ultimately, the aim is to study the intergenerational crisis considering the development of artificial intelligence.

Keywords: Artificial intelligence, Ballesteros, law, entropy, dignity.

POLITICS AND DEMOCRACY IN POSTMODERNITY: NOTES ON THE POLITICAL PHILOSOPHY OF J. BALLESTEROS

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ABSTRACT

One of the central themes in Jesús Ballesteros's political philosophy is the critical analysis of postmodernity. Based on the conviction that a philosopher's importance lies not in their answers, but in the broad horizon opened by the questions they raise, our paper will draw on Ballesteros's reflections on postmodernity to diagnose our current political situation. At the same time, it will explore other concepts present in his work—specifically, peace, person, dignity, and the common good—to glimpse possible solutions to the crisis of liberal democracy and the rule of law.

Keywords: Political philosophy, postmodernity, democracy

PERSONALIST ECOLOGY AND ENVIRONMENTAL JUSTICE ACTIVISM: THEORY AND PRACTICE IN DIALOGUE

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ABSTRACT

This contribution seeks to explore possible conceptual affinities between Jesús Ballesteros's notion of personalist ecology and the environmental justice activism associated with Benjamin Chavis and Dollie Burwell. Although these approaches arise from different contexts—legal-philosophical reflection in Ballesteros's case, and civil rights activism in Chavis's and Burwell's—they may offer convergent insights into the relationship between environmental harm, human dignity, and social vulnerability. Particular attention will be paid to nonviolence, person-centred approaches, and the defence of those most exposed to injustice. The contribution aims to examine whether these elements can foster a dialogue between perspectives of different origin yet potentially akin in their ethical orientation, exploring how theoretical reflection and activist practice may inform one another.

Keywords: Personalist ecology, civil rights, activism, nonviolence, discrimination.

INTERGENERATIONAL RECIPROCITY AND SOLIDARITY

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SW88 · Intergenerational Justice and the Right to the Future: Reflections from the Legal-Philosophical Thought of Jesús Ballesteros
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ABSTRACT

Reciprocity and solidarity are the two cornerstones of Ballesteros's vision of intergenerational justice. With regard to parent-child relationships, Ballesteros emphasises the need to recognise children as subjects of rights and never as objects of a right, including the purported right to have children at any cost and by any means; the duties and responsibilities of parents towards their children; and, conversely, the need for children to show gratitude towards their parents. With regard to the ecological issue, the duty of solidarity and the need to preserve nature for the satisfaction of the needs of present and future generations is a consequence of the recognition of all human beings, present and future, as equals and therefore of their equal right to the satisfaction of their basic needs. Environmental justice would require not only intragenerational equity or synchronous solidarity, but also intergenerational equity or diachronic solidarity.

Keywords: Reciprocity. Solidarity. Parent-child relationships. Environmental justice.

FROM RESPONSIBILITY TO JUSTICE: FUTURE GENERATIONS IN THE THOUGHT OF JESÚS BALLESTEROS

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SW88 · Intergenerational Justice and the Right to the Future: Reflections from the Legal-Philosophical Thought of Jesús Ballesteros
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ABSTRACT

In this presentation, I aim to analyse the conception of intergenerational justice in the thought of Jesús Ballesteros through his reflections on future generations. In dialogue with E. F. Schumacher and Hans Jonas, it will be argued that Ballesteros integrates the demands of sustainability and responsibility into the framework of his proposal for a resistant postmodernity. From the perspective of his personalist environmentalism, environmental protection appears inseparably linked to human dignity and responsibility towards those who have not yet been born. Finally, the possibility of interpreting these demands of justice in terms of the rights of future generations will be examined.

Keywords: Sustainability, responsibility, rights of future generations.

AGAINST HUMAN OBSOLESCENCE: VULNERABILITY AND JUSTICE BETWEEN GENERATIONS IN THE DEATH OF IVAN ILYICH

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SW88 · Intergenerational Justice and the Right to the Future: Reflections from the Legal-Philosophical Thought of Jesús Ballesteros
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ABSTRACT

This presentation examines intergenerational justice between coexisting generations through a reading of Leo Tolstoy's The Death of Ivan Ilyich in light of Jesús Ballesteros' legal and philosophical thought. As Ivan loses his autonomy and productive capacity, he is progressively reduced to a professional vacancy and a domestic burden revealing a form of human obsolescence rooted in a logic of utility, substitution and social discard. Gerasim offers the opposite response: he recognises Ivan's vulnerability and dependence as dimensions of a shared human condition rather than as defects that diminish his dignity. Intergenerational justice cannot be limited to the distribution of resources between age groups, but must also include duties of care towards those who age, become ill or cease to be productive. From this perspective, care is not merely an act of beneficence, but a demand of justice grounded in the irreducible dignity of the person.

OTHERNESS AS A CONSTITUTIVE FEATURE OF LAW

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SW88 · Intergenerational Justice and the Right to the Future: Reflections from the Legal-Philosophical Thought of Jesús Ballesteros
Convenors: Lucía Aparicio Chofré; Ana Colomer Segura

ABSTRACT

The aim of this work is to deepen the notion of otherness, understood as a pre-formative element of the legal rule, of the judicial process and of the law. To this end, the idea of otherness will be made explicit in its factual, axiological and ontological dimensions: as the factum or social condition that delimits the existence of the individual, as a principle of morality and ethical experience, and also as an essential component of human nature. After this philosophical reflection, the necessary conclusions or orientations for juridical reality will be derived as follows: (a) what limits or objective boundaries can be inferred from the fact of otherness as opposed to the tyranny of rights and their antisocial exercise?; (b) what natural duties, founded on otherness, must axiologically inform juridical rules?; and (c) how does the idea of otherness bring us closer to a strong ontological notion of law, as opposed to the nominalist individualism that observes law as a mere instrument of domination or social repression and the juridical rule as an act of will?

Keywords: Otherness, justice, public law, private law.

THE ROLE OF TECHNOLOGICAL REASON IN THE FACE OF DEHUMANISATION: RETHINKING THE PRESENT TIME REGARDING THE LEGAL-PHILOSOPHICAL THOUGHT OF JESÚS BALLESTEROS

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SW88 · Intergenerational Justice and the Right to the Future: Reflections from the Legal-Philosophical Thought of Jesús Ballesteros
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ABSTRACT

This paper explores the place of technological reason within the hermeneutic discourse of practical rationality as a framework for rethinking the foundations and contemporary challenges of human rights. It argues that the integration of technological reason into practical rationality is indispensable for addressing the normative dilemmas generated by digital transformation and the growing influence of technological systems on human life. This approach engages with one of Jesús Ballesteros's enduring concerns: the role that law must play in the future in defending human beings against the unchecked power of technology in different fields. From this perspective, the paper brings into dialogue the fields of intergenerational justice and biolaw through the concept of vulnerability, understood as a dynamic condition that links present and future forms of human fragility. The central claim is that present vulnerability constitutes a determining factor in the production and intensification of future vulnerability, whether through the depletion of resources, heightened exposure to technological and environmental risks, or the diminished capacity of individuals and communities to adapt to rapidly changing social contexts. Accordingly, vulnerability is presented not merely as a descriptive category but as a normative principle capable of grounding moral and legal obligations towards both present and future generations. By situating vulnerability at the intersection of technological development, legal responsibility, and human dignity, the paper contributes to ongoing debates concerning the ethical and juridical governance of technological societies.

Keywords: Technological reason, practical rationality, vulnerability, human rights, intergenerational justice.

EXPLORING SOME ISSUES IN THE CURRENT DEBATE REGARDING THE BASIS OF HUMAN RIGHTS

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ABSTRACT

When addressing the issue of rights and their foundations, there are several distinct points of discussion, including the following: (a) the extent to which rights require a foundation, or whether it is sufficient to rely solely on their conditions for enjoyment or effective fulfilment; (b) the extent to which this foundation should be human dignity; and (c) the extent to which dignity entails the effective realisation of the demands of human nature but has a foundation that goes beyond the foundation of rights that may stem—in the sense of an approach such as Finnis's—from a catalogue of basic human goods obtained by following the pre-moral judgements of practical reasoning. The paper presents two objectives: (a) to examine the problems that arise when presenting an approach to the idea of dignity that has a purely intra-legal sense of normativity, which derives the inherent nature of the term dignity—an inherent nature of the idea of dignity that is not dispensed with in constructivist approaches—from the force of rights themselves; and (b) to determine the extent to which this approach could be considered a line of foundation for a kind of immanent metaphysics, which seeks, as Alexy points out, to make explicit what is already implicit in human practice.

Keywords: Human dignity, human rights foundations, metaphysics.

THE RIGHT TO A FUTURE AS A FUNDAMENTAL RIGHT: DIGNITY, TEMPORALITY, AND INTERGENERATIONAL JUSTICE IN THE THOUGHT OF JESÚS BALLESTEROS

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SW88 · Intergenerational Justice and the Right to the Future: Reflections from the Legal-Philosophical Thought of Jesús Ballesteros
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ABSTRACT

This paper analyses the concept of the "right to the future" developed by Jesús Ballesteros as a useful tool for understanding the risks associated with the protection of human rights in the digital society. In his analysis, Ballesteros develops a conception of human dignity that is inevitably projected towards future generations. In this context, the right to the future emerges both as a fundamental right capable of overcoming liberal individualism and the nihilistic tendencies of postmodernity, and as the foundation of an intergenerational justice that constitutes a true ethical principle and moral responsibility towards future generations.

Keywords: Fundamental right, right to a future, intergenerational justice.

COLLECTIVISM AND INDIVIDUALISM IN LAW

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Convenors: Serdar Ünver; Altan Heper; Fatma Süzgün Şahin Ünver

ABSTRACT

What is the aim of this workshop? We should try to explain this first.

Individualism and collectivism are not specific legal concepts in their own right. However, they are related to law and share many common points with legal discourse.

Whilst some legal systems are characterised as emphasising individualistic qualities and dimensions, others are recognised more for their collectivist features. Generally, East Asian and Middle Eastern societies are classified as more collectivist, whilst Western European and North American societies are characterised as individualistic. What are the individualistic characteristics of a legal system? What are the collectivist characteristics of a legal system? What conditions make a legal system individualistic or collectivist?

Individualism and Collectivism as a Research Topic in Cross-Cultural Communication

The tension between individualism and collectivism is addressed as a standard topic in cross-cultural communication. In cross-cultural communication, individualism and collectivism are two fundamental cultural dimensions that determine how societies perceive the world, form value judgements and express themselves. These two opposing poles directly shape every stage of communication, from everyday interactions to business relationships.

Individualism

In individualistic cultures, the concept of ‘I’ is central. Personal goals, autonomy and freedom take precedence over societal interests.

· Focus: Personal achievements, independence and individual rights.

· Communication Style: Direct and open (low-context) communication is preferred. Verbal expressions where the message is conveyed directly through words, with clear use of phrases such as ‘yes’ or ‘no’, are fundamental.

Collectivism: In this model, also known as collective behaviour, the ‘we’ consciousness prevails. An individual’s identity is defined by the groups to which they belong (family, company, society). Group conformity, loyalty, family ties and social hierarchy are of great importance.

The cultural dimensions theory of the renowned cultural scientist Geert Hofstede is examined in various fields, just as it is worldwide.

Whilst individualism and collectivism have long been recognised as cultural dimensions amongst cultural scientists, research approaching this dimension within a legal context is relatively new amongst legal scholars and generally remains confined to the field of comparative law.

It is worth beginning the discussion with the image of the human being in law and the portrait of the human being upon which legal systems are based.

Individualism and collectivism are a pair of concepts that are also significant from the perspective of the philosophy of law. The question of how to balance the interests of the individual and the collective also concerns political philosophy, social philosophy and constitutional values. Constitutions define fundamental rights and freedoms; whilst these fundamental rights and freedoms, on the one hand, confer subjective rights upon each rights-holder, on the other hand, they also create objective law. Fundamental rights thus have an objective legal function, and fundamental rights and freedoms constitute a system of objective values. It is within this system of values that a balance will be struck between individual rights and the interests of the collective, and the law will resolve this tension.

INTERVENTIONS IN PRIVATE PROPERTY FOR THE PUBLIC GOOD UNDER ROMAN LAW

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ABSTRACT

The aim of this study is to determine, through the right of property, whether a balance was achieved between individual interests and collective interests in Roman Law by presenting concrete examples of interventions in private property based on the principle of public interest. The right of property in today's legal systems is defined as an absolute and inviolable right that grants the powers to use, benefit from, and dispose of a thing. When this property is allocated to private individuals, it is referred to as "private property"; when it is allocated to society as a whole or to the state on behalf of society, it is referred to as "public property." While private property is more individual in nature, public property has a collective character. Contemporary Romanist doctrine objects to the view that the definition of property rights originated with the Romans and that property in Roman Law was treated as an absolute right. This is because there was no single type of property in Roman Law, and the modern definition of property belongs not to the Romans but to later jurists who interpreted the sources of Roman Law. In Roman Law, property was always a right capable of being restricted, and in this context the limitations imposed on private property were most commonly based on considerations of public interest.

The restrictions imposed in Roman Law on the basis of public interest were quite diverse. The oldest of these was the restriction based on public health considerations that prohibited the burial of the dead within the city. Acquisition by prescription, measures aimed at cultivating idle lands, expropriation, the prohibition on demolishing buildings for speculative purposes, land taxation practices, and restrictions concerning private rivers

and mines were other limitations justified by public interest. The land reform law of the Gracchi brothers, which provided for the distribution of surplus land to landless peasants, also deserves special mention.

Over time, restrictions imposed for the public interest ceased to be mere limitations as the meaning attributed to the concept of "public interest" changed, and they evolved into interventions affecting the very essence of the right of property. For example, the confiscation of land, the widespread use of expropriation, and the increase and diversification of taxes became commonplace. Even today, similar practices can be observed in cases brought before the European Court of Human Rights, where immovable property is transferred by administrative means to other private individuals. Historical evidence shows that the meaning attributed to the concept of public interest is of indispensable importance in establishing a balance between individual interests and collective interests.

Keywords: Roman Law, Property, Public Interest, Restriction, Intervention

THE INDIVIDUAL'S ENTRAPMENT AS THE PUBLIC SPACE DISAPPEARS

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ABSTRACT

The public space has a different character from the concept of "public sphere" that emerged in artistic circles and has expanded over time to encompass political issues as well. The public space is an arena where discourse is put into practice through action. For example, the way to put the discourse of gender equality into practice is by creating spaces used jointly by women and men. For instance, is there a demand for equal opportunity in education? We can speak of this if children from all income groups are educated in the same space. Because interaction will inevitably take place entirely within the confines of that space, and thus people who are invisible to others—or whom others do not wish to see—because they live in their own ghettos will gain visibility. Even though the formation of groups is inevitable in shared spaces, a clear picture will emerge regarding who the "other" is and what kind of person they are.

If the public nature of these spaces is only gradual—that is, if everyone continues to see only those closest to them—this will lead to an "illusion of absence" for those who remain invisible in the long term. For example, someone who grew up in a small town where men and women did not share the same space at weddings—and who accepts this as an objective reality—will, upon moving to a city with a non-homogeneous structure, perceive celebrations where men and women share the same space as events that seem to have materialized out of thin air, with no basis in culture or shared experience.

This presentation will address the impact of the shift toward conservatism in public spaces on individuals.

Keywords: Public space, "illusion of absence", "other".

INDIVIDUALISM, COLLECTIVISM AND THE RULE OF LAW FROM A NON-WESTERN PERSPECTIVE

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ABSTRACT

Approximately 20% of the world's population is located in East Asia. In nominal terms, the East Asian economy is responsible for approximately 22.7% of global economic production. Nevertheless, within the realms of legal philosophy and democratic theory, the Asian perspective is frequently disregarded. The region's diverse perspectives may prove conducive to the formulation of a novel theoretical framework for the state, as well as a more democratic legal perspective. The conceptual framework and philosophical underpinnings of Western legal scholarship have been utilised to analyse the systems of government and legal institutions throughout the region. It is possible to argue that Chinese law serves as one of the dominant legal traditions in the Far East Asia, forming a centre of what may be categorised as the Chinese legal circle. This system exerted a profound influence on the development of legal frameworks and theoretical thought within its satellite traditions. It is evident that while local customs in Vietnam and other neighbouring societies modified and coloured this received legal wisdom, local traditions did not entirely replace or subdue the core Chinese legal influence. In the context of these traditions, law is predominantly perceived as a direct edict from the state or the emperor, as opposed to being regarded as an autonomous system of justice. The traditional social structures that are intertwined with these legal concepts have helped sustain China as a major power for millennia. Confucianism, a foundational element of societal and legal understanding, is undergoing a resurgence in contemporary society. The contemporary re-embrace of traditional structures and classical legal thought warrants general attention, with the potential to infuse contemporary legal philosophy with a novel perspective.

REPRESSIVE AND RECOGNIZING COLLECTIVITIES: INDIVIDUALISM AND COLLECTIVISM IN THE POLITICAL CONSTRUCTION OF FEMICIDE

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ABSTRACT

This presentation addresses the tension between individualism and collectivism in law within the context of femicide; it discusses this tension not as an abstract dichotomy, but as a concrete legal and political issue based on the empirical findings of my ongoing master's thesis. The central argument is as follows: When it comes to femicide, the law's claim to protect the individual against collective structures often becomes ineffective; rather than limiting collective pressures operating in the name of family, honor, and social acceptability, the law, in some cases, transforms into a space where these pressures are reproduced.

The theoretical framework is built upon Achille Mbembe's concept of necropolitics. As an analytical framework that asks who is permitted to live and whose death is managed, necropolitics offers a powerful tool for understanding how the state, the judiciary, and social discourse operate in cases of femicide. This framework is read in conjunction with Judith Butler's discussions on mournability and recognizability, as well as the literature on collective memory and counter-memory. From a feminist methodological perspective, placing individual testimony at the epistemological center—positioning the voice of the victim's relative not merely as a data source but as the subject of experience—constitutes both the method and the political stance of this study.

The empirical data consists of two groups: interviews with women's organizations and civil society representatives, and in-depth interviews with relatives of victims of femicide. The findings reveal two forms of collectivity that are qualitatively distinct from one another. The first consists of oppressive collectivities that suppress women's autonomy in the name of family, honor, and social order. At this level, women are not viewed as individuals who determine their own fate over their lives, but

rather as beings positioned according to the man, the family, and social expectations. This situation persists even after death; through the unjust provocation defense, media language, and victim-blaming discourse, the murdered woman is re-judged both legally and socially.

Second, there are the recognitive collectives established by the feminist movement, the victims' relatives, and civil society. The practices that emerge in these discussions—recording names, following cases, attending funerals and trials, and creating memorial spaces—re-establish the realm of recognition and mourning abandoned by the law through collective solidarity.

The question this presentation seeks to open for discussion is: Which collectives does the law protect, against which collectives does it defend the individual, and how is this choice legitimized? In particular, as the law's conception of the individual oscillates between claims of autonomy and patriarchal protectionism, how do the experiences of the victims' relatives reveal this tension through concrete contradictions?

Keywords: Femicide, individualism and collectivism, Necropolitics

RETHINKING THE "COLLECTIVE" BEYOND ANTHROPOCENTRISM

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ABSTRACT

The tension between individualism and collectivism constitutes one of the fundamental axes of the philosophy and theory of law; the balance between individual rights and collective interests manifests itself with varying degrees of intensity in every area of law. However, in these discussions, the concept of the "collective" is almost without exception approached within an anthropocentric framework; the subject of the collective is limited to human communities such as the state, the nation, society, and the family. This study takes this limitation as the object of a critical inquiry and examines the possibility of reconceptualizing the "collective" to include natural entities and ecosystems, as well as its legal consequences.

The critical framework draws on various schools of thought, primarily Earth jurisprudence, deep ecology, and post-humanist legal theory. Thomas Berry's Earth jurisprudence fundamentally rejects the view that the subject of law is solely human; Bruno Latour proposes transcending the boundaries of our understanding of society through the concept of "collective," which views both human and non-human actors as co-constitutive elements. The rights of nature movement has translated this theoretical foundation into positive law; Ecuador's Pachamama ruling, New Zealand's Whanganui River decision, and the Indian courts' Ganga personhood precedent have transformed the ecological dimension of the collective interest into a legal reality. Ecological communitarianism, drawing on Aldo Leopold's "land ethics," transforms the normative framework of the collective by expanding the community concept of classical communitarianism to include the land, water, and non-human beings.

When connections are made with the concepts to be addressed in the workshop, it becomes clear that this expansion gives rise to interconnected and as yet unanswered questions. When collective interests encompass the

interests of natural entities as well, how and by whom can these interests be represented in legal processes? Can the principles of autonomy and self-determination be reinterpreted as protective categories applicable not only to individuals but also to ecosystems? Can the concept of paternalism—as the state's authority to determine the "good" on behalf of the individual—be subjected to a critical reading through the lens of the guardianship relationship humans have established over nature—and what kind of tension does this reading introduce into paternalism debates? To what extent is normative individualism—which recognizes only the human individual as a normative unit—defensible from an ecological perspective?

In light of these questions, this study aims to introduce a non-anthropocentric dimension to discussions in the philosophy of law, legal theory, and comparative law regarding the individualism-collectivism dichotomy. The reconceptualization of the "collective" from an ecological perspective is not merely a conceptual expansion; it is being brought into the discussion as a normative transformation that holds the potential to generate more inclusive responses to the environmental and social crises facing the law.

Keywords: Anthropocentrism Ecological collectivism Legal personhood

THE SUBJECT OF CONSTITUENT POWER: INDIVIDUALS, SOCIETY, OR COMMUNITIES?

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ABSTRACT

This study re-examines one of the most fundamental problems of constitutional theory within the framework of legal and social theory: "Who is the subject of the original constituent power?" Classical constitutional theory has conceptualized the constituent will through a Lockean perspective. Accordingly, John Locke adapted the social contract theory—which rendered the individual a subject through Thomas Hobbes—into a theory of the state. He established the individual as the founding element of the constitutional order based on the hypothetical unification of atomized individual consents. However, it has been argued that this explanatory model remains insufficient in the face of the increasing complexity of modern society, and that the subject of constituent power cannot be explained solely through the lens of individuality.

This study argues that original constituent power should be evaluated not merely as the sum of individual consents, but as a multi-layered, spiral-structured, collective communicative subject shaped within a sociological context. The aim of this approach is to discuss the dynamic structure of the subject of constituent power, extending from the singular individual to societal communicative processes through group dynamics. At this point, by grounding the analytical framework in Max Weber's categories of social action, the study prompts a reconsideration of the individual–community–society triad within the context of constituent power theory.

When the modern constitutional context is considered, this structure is situated on a realist ground through concrete power relations, as expressed by Ferdinand Lassalle. Communities within society transcend being mere interest groups and emerge as a posteriori communicative actors. Thus, through Habermas's theory of communicative action, a ground for "origi-

nal constituent legitimacy" can be constructed via "inter-community negotiation" processes. For constituent power theory is neither a purely normative field independent of life nor does it consist solely of naked power relations.

In conclusion, the study posits that the modern subject of original constituent power is neither a solitary individual nor a power center that has lost its rationality. Instead, it discusses whether the ontological discrepancy between the purely normative sphere and the reality of realist power can be bridged through a "bridge of legitimacy" established via Jürgen Habermas's theory of communicative action—centered on the idea of "deliberative intersubjectivity" where interest groups are compelled to produce a rational-communicative legitimacy.

Keywords: Constituent Power, Theory of Communicative Action, Deliberative Democracy, Constitutional Legitimacy, Deliberative Intersubjectivity

THE RULE OF LAW IN THE A.I. ERA - POSSIBLE TRANSFORMATIONS

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ABSTRACT

Rule of Law it is the most important concept in the world, based on three concepts: Justice, Community and Freedom.

Justice is conceptually configured as an institution, but can also be regarded as a specific process combining various principles and ideas from philosophy – understood in a Hegelian sense, as "a spiritual quintessence of the time".

A process of justice includes various principles and elements, such as the conscience and morality of the legislator, the will of the citizens and the argumentative force of debates in the public sphere, the fight against political manipulation, the attempt to implement legitimate law and rights through authentic democratic processes, as well as the rigor and effectiveness of a legal system and the professionalism of legal actors.

It culminates in the ideal requirement that each human subject be recognized by others according to his or her inherent equal value and that for everyone “suum cuique tribuere”. As an element of political theory, justice can be seen as the key for the distribution of goods in a society. The reconciliation of liberty with equality (Rawls), has set the stage for a broader discussion of how we perceive society and the role of each individual.

The human community is the human society itself, expressed in collective associations, in social groups. Thus, to one degree or another, satisfaction is given to the constitutive need of the human being to be with others, to be a “zoon politikon” (Aristotle).

The diversity in configurations of the human community is amazing: the family, caste, ethnic group, association, institution, people, state, na-

tion, international organizations and more. With differing degrees of cohesion and solidarity depending on interests, values, norms and traditions, shared more or less consciously, the evolution of human communities in different historical periods is marked by persistence and ephemerality, stability and change, latent social questions, blurred issues or remarkable progress.

Freedom is seen in many different ways. It is often said to be a natural or divine trait of the human being, a cardinal social value and a major aspiration of the individual and of human communities across history, a perennial theme of the human condition.

The perspectives of philosophy of law and social philosophy involve classical theses, such as autonomy and free will of the individual, as well as the correlation of freedoms by law (Kant). Self-conscious freedom is precisely the law that, by prohibition, defends the freedom of each of us (Hegel). Popular is also the assertion that there is no freedom where one is above the law because freedom ought not to destroy itself (Rousseau). The contemporary debates on the issue are extremely broad. This is marked by the types of discourse, the area of approach and the cultural context of these debates.

All these concepts are well known, but how will they evolve in a future dominated by Artificial Intelligence? After all, we are talking about our own future and that of our future generations.

Keywords: Rule of Law, Justice, Community, Freedom, AI

SOCIAL INEQUALITY AND CRIMINAL RESPONSIBILITY: A CRITICAL LEGAL ANALYSIS

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ABSTRACT

The principle of equality before the law constitutes one of the essential foundations of modern criminal law, assuming the uniform application of legal norms and the existence of equal criminal liability for individuals.

However, social reality highlights the fact that contemporary societies are characterized by deep structural inequalities, which influence both the behavior of crimes and the way in which the criminal justice system functions.

In this context, the present study proposes to critically analyze the relationship between social inequality and criminal liability, highlighting the limits of an exclusively formalist approach to the principle of equality.

Criminal liability is traditionally based on the idea of individual autonomy and the ability of individuals to freely choose between licit and illicit behavior. However, this premise is significantly affected by socio-economic factors such as poverty, social marginalization, limited access to education or unequal development opportunities. In this sense, relevant criminological theories, such as the theory of tension or the theory of labeling, demonstrate that the social environment influences not only the probability of committing crimes, but also the way in which certain social categories are subject to more intense control by the authorities.

The analysis highlights that social inequality is reflected concretely in all stages of the criminal process. From the selectivity of criminal prosecution bodies to the differentiated access to legal assistance and the way in which punishments are individualized, people from disadvantaged backgrounds are often disadvantaged. Thus, there is an obvious discrepancy between the formal equality enshrined in the law and the substantial equality in its application.

A central element of the study is the reassessment of the concept of guilt, in the context in which social conditions can actually limit the individual's freedom of choice. The question thus arises whether criminal liability can be adequately analyzed without taking into account the influence of the social environment on human behavior.

From this perspective, criminal law risks ignoring essential determinants of conduct and applying sanctions in a way that does not fully reflect reality. In conclusion, the study supports the need to move beyond a strictly formalist view of criminal liability and adopt an approach that integrates the social dimension into legal analysis.

Only by recognizing and correcting the effects of social inequalities can the achievement of authentic criminal justice, based on equity and efficiency, be ensured.

Keywords: social inequality, criminal responsibility, culpability, criminal justice, legal theory

THE RETURN TO ETHICS IN THE CONTEXT OF ARTIFICIAL INTELLIGENCE DEVELOPMENT: FROM PHILOSOPHICAL REFLECTION TO NORMATIVE ARCHITECTURE

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ABSTRACT

This paper analyzes the paradigm shift in the governance of emerging technologies, exploring the transition from the narrative of technological "inevitability" toward a regulatory model grounded in ethical principles. In contemporary discourse, Artificial Intelligence (AI) is frequently mythologized as an inexorable evolutionary stage, a perspective that risks obscuring human agency and accountability within the decision-making process.

The study investigates the ontological and juridical tension between algorithmic efficiency and moral discernment, raising critical questions regarding the delegation of judgment to automated systems. In its first section, the paper deconstructs the "cultural myth" of superintelligence, proposing instead an anthropocentric approach.

The second section examines how AI ethics—built upon the pillars of transparency, fairness, and explainability—is evolving from speculative philosophical reflection into a "source" for new normative architectures, such as the EU AI Act.

The findings emphasize that the law must not remain a passive spectator of innovation; rather, it must serve as a guarantor of fundamental values, mediating the conflict between legality (positive law) and legitimacy (moral justification). Ultimately, the return to ethics is presented not as an impediment to progress, but as the sine qua non condition for sustainable and democratic technological development.

Keywords: Artificial Intelligence, Philosophy of Law, Algorithmic Ethics, Accountability, Normative Architecture, Bias, Legitimacy.

THE RULE OF LAW IN THE BALKANS. STUDY CASE: ROMANIA

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ABSTRACT

The Balkans are a fascinating world, full of ancient rules and customs. But, at the same time, a world where words like freedom and rules are often heard, but without any result. Is there a rule of law in the Balkans? Or is it just an aspiration of a world haunted by the past?

But the most important question is who is part of the Balkans? The international convention is clear: the northern border of the Balkan Peninsula is drawn along the line formed by the Danube – Sava – Kupa. From a rigorous point of view, everything north of the main branch of the Danube belongs to Central or Eastern Europe.

This means, for example, that the vast majority of Romania's territory — Muntenia, Moldavia, Transylvania, Banat, and Crișana — is technically outside the Balkans, and Dobrogea is the only "window" to the Balkans.

Since Dobrogea is the only region located south of the main branch of the Danube, it represents the only piece of Romanian land that geographically falls within this peninsula.

But is Balkanism only geographical or is it also a state of mind? Where does geography stop and mentality begin? And most importantly, what does it mean to be Balkan? Is it about morals? Is it about rules?

And perhaps most importantly, what does the rule of law mean in the Balkans?

Keywords: Rule of Law, Balkans, mentality, freedom, Romania

BETWEEN SUBJECT AND OBJECT: THE HUMANISTIC VOCATION OF CIVIL LAW OF PERSONS IN THE AGE OF ARTIFICIAL INTELLIGENCE

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ABSTRACT

The contemporary evolution of artificial intelligence systems represents not merely a succession of technical innovations, but an ontological challenge to the foundations upon which the legal architecture of modern civil law has been constructed.

In an era in which AI systems increasingly perform functions that have traditionally belonged exclusively to human beings, the civil law of persons is called upon to reaffirm its humanistic vocation and to preserve the fundamental distinction between subject and object of law.

This paper examines the role of the law of persons as an axiological and normative framework capable of acting as a genuine "guardian" against the risks of depersonalization, instrumentalization, and excessive automation.

Central to this analysis is the enduring dichotomy between legal subject and legal object, rooted in Roman law, which acquires renewed relevance in the digital age, characterized by the progressive blurring of boundaries between person and thing.

The ethical and normative safeguards identified—ranging from the resilience of the persona–res binomial and the imperative of human dignity, to the protection of cognitive autonomy and the necessity of preserving meaningful human involvement in decision-making processes—should not be construed as impediments to innovation. Rather, they function as essential guarantees of responsible technological progress.

The study argues that the civil law of persons should not be passively adapted to technological advancement, but instead actively mobilized as a

normative instrument for guiding the development and use of artificial intelligence, as an expression of legal responsibility toward the human condition.

Keywords: civil law of persons; artificial intelligence; human dignity; legal subject; legal object.

CULTURE, TIME AND LAW IN THE PHILOSOPHY OF LUCIAN BLAGA

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ABSTRACT

In his Trilogy of Culture, the Romanian philosopher Lucian Blaga depicts his vision of human destiny and culture, while identifying style as the main principle of cultural unity.

Time and space for instance are stylistic modeling factors. There are three broad paradigms of time-related cultural horizons, depending on the accent placed on the past, present or future.

Those are wrapped in three metaphorical categories, coined by Blaga as the Spring-Time, the Waterfall-Time and the River-Time.

Are there also unconscious categories related to the legal constructions stemming from various cultural ways-of-life?

And how does time perception influence law?

Keywords: culture, time, law, Blaga

THE VALUE OF HUMAN DIGNITY IN ROMANIA'S CONSTITUTIONAL ARCHITECTURE

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ABSTRACT

Human dignity is an inherent, equal and inalienable value recognized for every person. This concept is found in all spheres of human life and interacts with fundamental rights such as the right to life, the right to health, the right to privacy, to education and even the right to a healthy environment.

Starting from the philosophical concept of dignity and continuing with its legal approach, this article aims to carry out an analysis of human dignity within the Romanian constitutional system. Beyond identifying the philosophical foundations, the aim is to highlight the constitutional guarantees and relevant elements from the jurisprudence of the Constitutional Court of Romania (CCR), as well as the interaction with European and international standards in the field of human rights. Human dignity is not only a constitutional principle, but represents the very foundation, basis and essence of all fundamental rights, both at national and international level.

This positioning transforms it into a fundamental constitutional value that confers coherence and guides the interpretation and application of the entire normative framework of human rights. Also, human dignity, together with fundamental rights and freedoms, the free development of personality, justice and political pluralism, constitute fundamental and defining values of the rule of law.

The study emphasizes the dynamic nature of the concept of human dignity and the need for an evolutionary interpretation, adapted to the challenges of contemporary society.

Keywords: human dignity, Romanian Constitution, fundamental rights.

RELATIONSHIPS BETWEEN LAW AND POLITICS AND OBEDIENCE TO LAW

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ABSTRACT

It is questioned whether Hart's distinction between internal and external aspects is sufficient to capture the full range of legal phenomena. The internal aspect reflects the attitude of those who find reasons to obey the law and to enforce it on those who do not want to. This characterization of the internal aspect does not distinguish between obedience to law in a state of law and in a dictatorship; that is, it does not differentiate between accepting to obey the law when law prevails over politics, or accepting to obey it when politics prevails over law. In other words, the distinction between the internal and external aspect does not take into account the relationships between law and politics. Indeed, for Hart, the internal aspect consists of following a legal command, understood as one issued by a legal authority, without distinguishing between types of legal commands in this regard. Alternatively, it is argued that following the law in a state governed by the rule of law is qualitatively different from following the law in a dictatorship. On a very abstract level, the distinguishing factor would lie in the fact that, in a dictatorship, obeying the law consists of obeying the will of a supreme political-legal authority expressed through a legal mandate; in contrast, in the rule of law, although legal mandates originate from the will of the issuing legal authority, these mandates acquire autonomy once issued, thereby placing limits on the exercise of political power by that authority. If the distinction between a rule of law and a dictatorship is significant, in the sense that these two models imply different forms of obedience to the law, then the internal aspect do not adequately capture these different ways of obeying the law. In order to capture these differences, the addition of a new aspect is proposed, named “interstitial”.

LAW AND VIOLENCE: AN ANALYSIS BASED ON DERRIDA, BENJAMIN, AND THE CRITIQUE OF PERFORMATIVE FORCE

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ABSTRACT

The relationship between law and violence constitutes one of the central problems of contemporary legal philosophy. Jacques Derrida shows that law cannot be thought without the force that internally constitutes it. The term enforceability reveals that coercive applicability is not an accident but the very structure of the legal, in which force operates as différance - difference and deferral—and as founding performativity. Derrida approaches political theology by recognizing the "mystical foundation" of authority: law is founded on an act of interpretive force, prior to any justification. Walter Benjamin, in Critique of Violence, deepens the analysis by distinguishing between law-positing and law-preserving violence. For him, the critique of violence requires overcoming both natural law and legal positivism, which share a tautological view of means and ends. Giorgio Agamben, in turn, sees in law an ambiguous instance in which the powers of positing and preserving law are conflated, revealing a power of a theological, mystical nature. Complementarily, the Habermasian and Arendtian perspective displaces the problem by distinguishing power (Macht) from violence. Communicative power, formed in the public sphere and in concerted action, contrasts with unilateral imposition, frequently used by contemporary states even when they claim to be democratic under the rule of law. The aim of this article is to articulate these references to demonstrate that force in law is not reducible to state coercion, but involves performative, institutional, and communicative dimensions that place democratic legitimacy under tension. Understanding this phenomenon is also to understand the legal realism that advances in the twenty-first century.

THE EXCEPTION AS STRUCTURE: LEGAL THEORY, SOVEREIGNTY, AND THE CONSTITUTIONAL DEEP GRAMMAR OF EXCEPTION LAWS IN FINLAND

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ABSTRACT

The Finnish Constitution enables temporary derogation from constitutional norms through exception laws enacted by a qualified parliamentary majority without formal constitutional amendment (Section 73). This mechanism is commonly justified as pragmatic constitutional flexibility. This paper argues that it is instead a constitutive feature of Finnish constitutionalism, revealing a deep structural logic in which constitutional authority is secured through a legally sanctioned capacity to suspend constitutional substance.

Integrating constitutional history with legal and political theory, the study conceptualizes the exception law as a historically embedded constitutional deep structure. Through Carl Schmitt, the exception appears as a foundational decision in which sovereignty materializes not through norm, but through the authorized capacity to depart from it. Walter Benjamin and Giorgio Agamben illuminate how legalized exceptions reproduce cycles of authorized power in which rights can be temporarily displaced while subjects remain under state authority without full protection. Foucauldian biopolitics and Deleuzo-Guattarian concepts further reveal how exceptions evolve from singular disruptions into reproducible legal territories, gradually normalized and reactivated as instruments of political discretion.

Recent uses of exception legislation, including migration-related statutes in 2024, show a functional shift from a rare constitutional safeguard to a routinized legislative tool, characterized by limited judicial review and weak material constraints. The central concern is not episodic overuse but a constitutional logic that renders fundamental rights conditionally negotiable without structural immunity.

Rather than advocating abolition alone, the paper articulates a multi-layered containment model: non-derogable constitutional core rights (eternity clauses), strengthened judicial review including ex post control, higher procedural thresholds, automatic sunset and renewal scrutiny, and external human rights anchoring. The exception can only remain constitutionally coherent if the power to suspend rights is no longer intrinsic to the constitutional foundation itself.

HOBBESIAN FEAR BEYOND LAW, THE PERSISTENCE OF AUTHORITARIANISM IN THE CONTEMPORARY WORLD

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ABSTRACT

This paper argues that fear is not merely a primitive emotion, but a structural force that develops alongside the consolidation of political power. Despite the evolution of legal frameworks, fear continues to operate as a decisive element in sustaining authority, often outweighing ethical reasoning and the application of law. This raises a central question: why does fear persist as a foundation of political order in contemporary societies?

To convey this issue, the paper draws on the political philosophy of Thomas Hobbes. In Leviathan, Hobbes presents fear—particularly the fear of violent death—as the fundamental motive that leads individuals to establish political authority and submit to sovereign power. This framework offers a lens to understand the persistence of authoritarianism. Fear does not disappear with the emergence of legal order; rather, it persists beyond law and becomes fixed within legal structures themselves. The key issue is not whether societies have more developed legal systems, but how law has internalized and operationalized fear as a mechanism of governance.

This leads to a fundamental ethical tension between dignity and security. To what extent can legal systems justify limiting individual and collective dignity in the name of security? Contemporary societies often seem to exist in a latent condition akin to the Hobbesian state of nature, which is repeatedly invoked to legitimize strong forms of sovereign authority. Within this logic, freedom is frequently reframed as a potential source of disorder rather than a core legal value.

Ultimately, the paper seeks to prove how ethical values such as freedom and dignity are negotiated—if not exchanged—for security, with fear operating as a central mechanism in contemporary authoritarian regimes.

LAW AND GIFT: CRISIS OF NORMATIVITY AND RETHINKING THE EXPERIENCE OF LAW

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ABSTRACT

Against the backdrop of global crisis of normativity, does law still make any sense? Phenomenological optics become surprisingly illuminating here: when all institutions are powerless and all conventions are destroyed, the aspect of human experience that we call the experience of law finally becomes visible. The question is whether law is still an integral part of human experience, whether it ever was, and how the crisis of normativity affects our answer to this question.

The crisis of normativity as a crisis of experience manifests itself in the shifting the balance between normativity and facticity of our being in the world: gradually losing the normative dimension of experience, we increasingly find ourselves in captivity of factuality. Law that is by definition characterized by a claim to significance is particularly sensitive to such a "tyranny of facts." On the one hand, the legal, based on the idea of norm, is supplanted by the political, based on power, which subordinates an ought and actually replaces it. On the other hand, legal experience is being replaced by economic one based on the idea of benefit, which in fact is now the only norm. Both economics and politics prioritize fact over norm and proceed from the logic of the equivalent, since they imply that an equilibrium is established on the basis of exchangeable goods or a balance of forces, and not on the basis of an ought. In this sense, the discovery of the legal as such deals with the clarification of the anti-authoritarian and anti-utilitarian nature of legal experience, which is subject to the logic of excess, or gift, rather than equivalent. Perhaps it is a careful clarification of the nature of legal experience that can give an answer to the question of how normativity and law are even possible in the modern world.

THE IMPACT OF AUTHORITARIAN REGIMES ON THE GLASS CEILING: A CORPORATE LAW PERSPECTIVE

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SW95 · Controlling Bodies, Rights, Labor, and Life: Gender in the Age of War and Authoritarianism
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ABSTRACT

Gender roles and prevailing bias patterns embedded within society give rise to various obstacles for women across all spheres of life, including the professional domain. With the transition to settled life and the global entrenchment of patriarchal structures, women have been compelled to wage a prolonged and arduous struggle — first to secure rights that should have been inherently theirs by virtue of their humanity, and subsequently to meaningfully exercise those rights even where they have been formally recognized. The campaigns women initiated to obtain the right to work were followed by struggles for equal pay and continue to this day in the pursuit of equal working conditions. While women have now secured a place across all sectors of professional life, their advancement beyond a certain threshold is effectively obstructed by what is metaphorically described as a "glass ceiling." Glass ceiling syndrome is defined as the invisible barriers that impede women's access to senior positions in professional life, despite the absence of any tangible or explicitly identifiable justification.

This study examines the glass ceiling phenomenon through the lens of authoritarian regimes and evaluates it within the framework of corporate law.

Keywords: Glass ceiling, authoritarian regimes, gender equality, corporate law.

REPRODUCTIVE RIGHTS DURING WAR AND ARMED CONFLICT: REPRODUCTIVE INJUSTICE

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ABSTRACT

Armed conflict alters political authority, social institutions, and the legal frameworks regulating reproduction. Current studies on reproductive rights in the context of war and armed conflict predominantly examines violations, including conflict-related sexual violence, coerced pregnancy, the dismantling of reproductive healthcare, and limitations on access to vital reproductive services. Although these violations illustrate the catastrophic effects of war on women's reproductive autonomy, they are frequently analysed as isolated human rights violations rather than as reflections of overarching legal and political dynamics. This paper argues that armed conflict reconfigures reproductive governance, creating conditions of reproductive injustice that extend beyond individual rights violations.

This paper analyses the impact of war on reproductive governance by exploring alterations in legal frameworks, military practices, institutional disruptions, and transformations in political authority. Instead of perceiving law merely as a protective framework, it examines how legal structures in armed conflict also govern reproduction by altering access to reproductive healthcare, reproductive autonomy, and reproductive futures. Women's reproductive autonomy is thus limited not just by physical violence but also by the alteration, suspension, or deliberate manipulation of legal protections governing reproduction.

The paper elaborates on reproductive governance by defining reproductive injustice as a structural condition arising from the interplay of law, armed conflict, and political authority. In this perspective, reproductive injustice pertains not only to the infringement of reproductive rights but also to the inequitable allocation of the legal, institutional, and material conditions essential for the exercise of reproductive autonomy. This paper shifts

the analytical focus from individual rights violations to the governance of reproduction during armed conflict, contributing to theoretical discussions on the interplay between law, war, and reproductive autonomy, while proposing reproductive injustice as a conceptual framework for understanding how legal systems influence reproductive lives in conflict situations.

Keywords: Reproductive Rights, Reproductive Governance, Reproductive Injustice, Armed Conflict, Reproductive Autonomy

REPRODUCTIVE GOVERNANCE, AUTHORITARIANISM AND LATE CAPITALISM: ABORTION POLITICS IN THE UNITED STATES AND TÜRKİYE

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ABSTRACT

How do states confronted with economic, demographic, and political crises reassert patriarchal control over social reproduction by regulating women's reproductive autonomy?

In “Reproductive governance, authoritarianism and late capitalism: Abortion politics in the United States and Türkiye,” Özlem Altıok offers a comparative perspective, tracing the rise of pronatalist policies and anti-abortion measures in two different political contexts.

The paper explores how authoritarian tendencies can manifest across borders, revealing convergences in reproductive governance even within formally distinct legal systems. It frames restrictions on abortion as one mechanism through which states regulate the reproduction of labour and the family to manage the care crisis that is exacerbated by increasing economic insecurity, demographic anxiety, and democratic backsliding.

JUDICIAL REFORM PACKAGES OF AN AUTOCRATIC REGIME AND THE WOMEN'S MOVEMENT

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ABSTRACT

Rather than abolishing law, contemporary authoritarian regimes increasingly govern through it. Drawing on the concept of autocratic legalism, this paper argues that judicial reform packages should be understood not as instruments of democratization but as technologies through which authoritarian power gradually restructures the legal order while preserving the appearance of constitutional legality. Rather than openly dismantling rights, these reforms operate through incremental legal interventions that progressively hollow out universal human rights norms, particularly in relation to gender equality, children's rights, and the rights of LGBTI+ people.

The paper examines this transformation through the successive judicial reform packages introduced in Türkiye and shifts the analytical focus from authoritarian law-making itself to the practices developed to resist it. It argues that contemporary feminist mobilisation cannot be adequately understood through conventional concepts such as advocacy, protest, or strategic litigation alone. Instead, the women's movement has developed a distinctive mode of constitutional action that intervenes before authoritarian projects are translated into law.

To conceptualise this practice, the paper introduces the notion of the Feminist Night Watch. The concept refers to a feminist constitutional defence practice characterised by continuous vigilance against the legislative production of autocratic legalism. It describes an organised form of democratic vigilance through which feminist networks monitor legislative pro-

cesses, anticipate authoritarian legal interventions before bills reach parliament, expose them at their earliest stages, and mobilise legal, political, and public resistance in real time. In this sense, the Feminist Night Watch is not merely a strategy of political opposition but an ongoing practice of constitutional defence that seeks to protect the normative foundations of democracy before they are gradually transformed through law itself.

By bringing together the concepts of autocratic legalism and the Feminist Night Watch, the paper argues that the struggle for women's rights in contemporary Türkiye is simultaneously a struggle over the meaning of constitutionalism, democracy, and the rule of law. Under conditions of authoritarian legalism, feminist resistance emerges not only as a social movement but also as one of the most significant contemporary practices of constitutional defence.

Keywords: Autocratic Legalism; Feminist Night Watch; Constitutional Defence; Constitutional Democracy; Judicial Reform Packages; Women's Movement

THE POLITICS OF ABANDONMENT: STRAY ANIMALS AND THE COLLAPSE OF THE PUBLIC

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ABSTRACT

Keywords: Animal Rights; Public Sphere; Public Order; Speciesism; Neoliberalism; Authoritarianism.

Animal rights debates are generally conducted around questions of moral status, sentience, the capacity to suffer, or legal subjectivity. However, this approach tends to obscure a more fundamental question: who decides which living beings are recognized as legitimate constituents of the public sphere? Accordingly, the issue of animals is approached not merely as an ethical problem but as a question concerning the constitution of the public sphere and public order.

Public order is understood not as a neutral social equilibrium presumed to exist and protected by the state, but as a political construct produced through historically specific power relations. From this perspective, speciesism and sexism are considered not as separate forms of discrimination but as structural mechanisms of classification that have shaped the constitution of the modern public sphere. Historically, the public sphere has been centered on the property-owning, productive, rational, adult, and male subject, while women, children, the poor, and animals have been positioned as entities to be governed, represented, or controlled.

In the historical development of capitalism, capital has appropriated not only the means of production but also the capacity to define the public sphere. Under neoliberal policies, the boundaries of public order have increasingly been reconstructed according to criteria of economic convertibility. Consequently, the distinction between lives deemed worthy of protection and those considered unworthy has been reorganized according to their capacity to participate in economic circulation.

Recent debates on stray animals in Türkiye constitute a visible manifestation of this transformation. The issue of stray animals extends beyond a matter of animal regulation and reflects the reconstitution of the public sphere itself. As urban space is reorganized in accordance with the circulation of capital, homeless people, street vendors, waste pickers, migrants, and stray animals increasingly become targets of the same governmental logic. In this respect, the removal of stray animals from public spaces exhibits a structural parallel with the displacement of the urban poor from city centers.

Contemporary authoritarianism operates not primarily through direct prohibition but through the hollowing out of the political functions of institutions, rights, and subjects. Accordingly, the issue of stray animals cannot be reduced to a technical legal problem of animal protection; rather, it constitutes a broader struggle over the reconstruction of the public sphere, the political nature of public order, and the determination of which forms of life are entitled to public visibility.

FROM RIGHTS TO CAPABILITIES: WOMEN, HUMAN DIGNITY, AND JUSTICE IN MARTHA NUSSBAUM

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ABSTRACT

This paper discusses the relationship between women's human rights, human dignity, and justice within the framework of Martha Nussbaum's Capabilities Approach. The central premise is that the legal recognition of a right does not necessarily mean that the right is actually exercisable. While women's rights—such as the right to education, work, political participation, bodily integrity, and freedom of movement—are often recognized at the legal level, they may fail to translate into real-life opportunities due to the burden of care, economic dependence, the threat of violence, social norms, discrimination, and institutional barriers. Therefore, justice must consider not only the possession of rights but also what people can actually do, what they can become, and what kind of life they can lead. In this study, Nussbaum's distinction between capabilities and functions is examined to assess women's experiences of freedom and choice; the importance of central capabilities—such as bodily integrity, practical reason, education, and political and economic control—for women's human dignity is demonstrated. Furthermore, through the connection established with the ethics of care, it is emphasized that women's capabilities are shaped not so much by individual preferences as by relational, social, and institutional conditions. Finally, a fruitful intellectual connection is established between Ioanna Kuçuradi's approach to the ethical foundation of human rights and Nussbaum's capabilities framework. Within this framework, the study argues that women's human rights are not merely rights to be protected, but also a matter of the living conditions that must be established.

Keywords: Martha Nussbaum; Capabilities Approach; Women's human rights; Human dignity; Justice

HUMAN RIGHTS AS PRINCIPLES AND PROPORTIONALITY

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ABSTRACT

This paper aims to examine Robert Alexy's view that human rights are structured as principles rather than rules, as he addresses human rights as an element that defines the boundaries of the Radbruch formula and the relationship between law and ethics. The importance of debates regarding the relationship between law and ethics becomes particularly evident in determining the place of human rights—as ethical rights—within the legal system. Alexy, who grounds his non-positivist, inclusive view of law and human rights in Habermas's ethics of discourse, argues that fundamental rights—which he treats as "positivized human rights"—entail optimization requirements due to their principled nature, and that proportionality may therefore be invoked. Proportionality, which stems from the necessity that interventions in human rights be proportionate, presupposes a balancing process. This paper aims to examine the role of the notion that fundamental rights are subject to balancing in fulfilling the requirements of human rights.

Keywords: Robert Alexy; Human rights; Fundamental rights; Proportionality; Balancing

JUSTICE AND PARITY IN NANCY FRASER: THINKING ABOUT THE SUBJECT WHO CANNOT CHOOSE

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ABSTRACT

This paper aims to rethink human rights within the framework of Nancy Fraser's theory of justice. According to Fraser, the fundamental criterion of justice is the ability of individuals and social groups to participate in social life equally and effectively. This "equal participation" is only possible when three fundamental conditions are met simultaneously: the fair redistribution of economic resources, cultural and social recognition, and political representation.

Within this framework, human rights cannot be understood merely as legally recognized rights. The actual exercise of these rights depends on the existence of the social, economic, and political conditions that make them possible. Poverty, discrimination, cultural devaluation, exclusion, and political invisibility should therefore be interpreted not merely as social problems but also as different forms of human rights violations. This is because these injustices prevent rights-holders from actually participating in decision-making processes and developing meaningful options.

The concept of the "subject who cannot choose," central to this study, refers to a subject who, while appearing formally free and entitled to rights, has their actual capacity for choice limited due to economic, cultural, and political inequalities. This situation stems not from individual inadequacy but from the inequality of the conditions for participation. Axel Honneth and Martha Nussbaum are discussed as complementary references for a comparative analysis of Fraser's approach. While Honneth explains human rights violations through a lack of recognition and respect, Fraser does not limit justice to recognition; she adds redistribution and representation as essential dimensions. Nussbaum's capabilities approach, meanwhile, contributes to understanding human rights as the totality of concrete opportunities necessary for a life of dignity. The central claim of this paper

is as follows: Human rights can only become a justice-producing structure when the dimensions of redistribution, recognition, and representation are considered together. In this context, the “non-choosing subject” is the subject-level counterpart of the structural inequalities made visible by Fraser’s theory of justice.

Keywords: Nancy Fraser; Human rights; Parity participation; Redistribution; The non-choosing subject

THE RIGHTS OF THE UNRECOGNIZED: THE MORAL GRAMMAR OF HUMAN RIGHTS IN AXEL HONNETH

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ABSTRACT

This paper aims to rethink human rights within the framework of Axel Honneth's theory of recognition. According to Honneth, individual identity is not an internal essence possessed by the individual alone; rather, it is a social formation that develops within the relationships of recognition established with others. In this context, love enables the individual's self-confidence; rights, self-respect; and solidarity, self-worth. Therefore, human rights should be understood not merely as legal norms or constitutional guarantees, but as the social conditions that enable a person to establish themselves as a trustworthy, respectable, and valuable subject.

From this perspective, human rights violations are not merely breaches of the law but also forms of recognition injury. An individual's exposure to violence, exclusion from rights, subjection to discrimination, or social devaluation can be interpreted as forms of non-recognition that undermine their self-confidence, self-respect, and self-worth. Honneth's approach moves the struggle for human rights beyond abstract claims of rights, offering the possibility of interpreting it as the individual's call: "Recognize me as an equal, dignified, and valuable subject."

In this paper, Honneth's recognition-centered interpretation of human rights will be briefly linked to Hannah Arendt's concept of the "right to have rights." Arendt's approach, developed particularly through the lens of stateless persons, refugees, and those excluded from the political community, lends a political depth to Honneth's idea of recognition through rights. While Honneth demonstrates how a lack of recognition wounds the individual's identity, Arendt shows that when a person is excluded from a shared world in which they can claim rights, they lose not only their rights but also the possibility of being a recognized person.

In this context, the central claim of this paper is as follows: The human rights crisis is not merely a violation of rights, but the loss of the possibility of being seen, recognized, and counted as a rights-bearing subject in a shared world. Honneth's theory of recognition enables us to understand human rights as the social and moral foundation of the human being's dignified existence; Arendt, on the other hand, demonstrates how, in situations where this foundation is politically lost, the human being is transformed into an invisible and disenfranchised entity. Therefore, human rights are not merely a list of rights one possesses, but a struggle for the human being to take their place in the world as a recognized, dignified, and rights-bearing subject. In this paper, within the framework of Honneth's views, the nature of recognition—or the lack thereof—will be examined to discuss the obstacles to the realization of justice and human rights, as well as possible solutions.

Keywords: Theory of recognition; human rights; moral grammar; the right to have rights.

THE PROBLEM OF EVALUATION IN TERMS OF INTERGENERATIONAL INJUSTICE

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ABSTRACT

In this paper, intergenerational justice claims frequently raised in the context of human rights today are examined in light of a human rights philosophy grounded in philosophical anthropology. The main argument of the paper is that situations of injustice between the present and future generations require a foresight (providentia) based on specific conditions; that this activity is epistemologically limited; and that this situation complicates the evaluations upon which actions consistent with intergenerational justice are based. This problem renders rational predictions about the future contingent under certain conditions and forms the basis for structural differences in perspective between "growth-oriented optimists" and "ecological pessimists" in the literature. In this study, within the context of theoretical models developed to overcome this limitation, Rawls's symmetry constructed through the veil of ignorance, Kant's practical imperative that positions the future generation as an end in itself, and Bos's status chain approach—which narrows the temporal distance between generations through a relationship of continuity—are discussed.

Keywords: Intergenerational justice; Human rights; Future generations; Providentia; Philosophical anthropology

ARE RIGHTS AT ODDS WITH THE COMMON GOOD? AN EVALUATION OF JOHN FINNIS'S CONCEPT OF HUMAN RIGHTS

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ABSTRACT

Today, human rights are recognized as one of the fundamental criteria of political and legal legitimacy. In many contemporary approaches, the primary duty of the political community is to protect the rights and freedoms of individuals. In this understanding, the human being is primarily conceived as an autonomous and rights-bearing individual; human rights are viewed as safeguards that protect the individual against political authority, the preferences of the majority, or public purposes. For this reason, the concept of the common good is often associated with collective aims that could limit individual freedoms, and it is assumed that there is a natural tension between rights and the common good. However, the concept of the common good has not always been understood in this way. In the classical natural law tradition stretching from Aristotle to Aquinas, the human being is regarded as a being that develops within a community and collectively realizes the good life. In this tradition, the common good does not refer to the sum of individual interests but rather to the shared political and social order that makes the good life possible for people. Consequently, rights and the common good are not seen as two competing principles but as complementary elements of the same moral and political order.

John Finnis's contemporary natural law theory can be read as an attempt to reinterpret this classical approach in light of today's conditions. According to Finnis, the basic goods of human life form the foundation of both individual and social life. The common good, on the other hand, refers to the conditions that enable individuals to participate fairly in these goods. For this reason, human rights are not an alternative to or a limit on the common good, but rather one of its requirements. Justice emerges as the

fundamental virtue that establishes the relationship between rights and the common good by ensuring individuals' participation in the basic goods.

This paper examines Finnis's understanding of human rights within the context of the concepts of the common good and justice. The study's central claim is that the tension between human rights and the common good arises not from the nature of rights themselves, but within a specific political paradigm that views the human being primarily as an autonomous individual. In this vein, the paper aims to assess how Finnis's positioning of the human being as a social and relational being challenges the presumed opposition between rights and the common good, and to what extent this endeavor is successful.

Keywords: John Finnis; Human rights; Common good; Justice; Natural law

THE PROTECTIVE JUSTICE FUNCTION OF GUARDIANSHIP LAW IN THE FACE OF CHANGING SOCIAL RISKS

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ABSTRACT

Contemporary societies face multidimensional social risks such as digitalization, an aging population, economic vulnerabilities, an increase in psychosocial issues, social isolation, migration movements, the diversification of forms of dependency, and manipulation methods supported by artificial intelligence. This transformation directly affects not only the social structure but also the protective mechanisms of the legal order. In particular, it has become imperative to reassess guardianship law—which traditionally rests on the concept of "legal incapacity"—in light of evolving social needs.

In the traditional approach, guardianship law has primarily been addressed through the lens of restricting an individual's legal capacity and protecting their assets. However, the contemporary understanding of law necessitates reinterpreting the guardianship institution not merely as a restrictive mechanism, but as an instrument of "protective justice" that safeguards human dignity, individual autonomy, and social participation. In this context, guardianship law should no longer be viewed merely as a technical area of private law but as a crucial instrument of the social state principle, human rights, and the protection of vulnerable individuals.

This paper will examine how social risks have transformed the function of guardianship law. In particular, current problem areas—such as the rise in the elderly population alongside neurodegenerative diseases like dementia and Alzheimer's, mental vulnerabilities and psychiatric disorders, digital fraud and financial manipulation methods, adults in social isolation, cases of addiction, the need to protect children at risk of criminal involvement, and care deficiencies—will be evaluated from the perspective of guardianship law.

The paper will analyze the protective justice functionality of the current guardianship system within the framework of Articles 405 and subsequent provisions of the Turkish Civil Code; furthermore, the boundaries of this system will be discussed in light of the European Convention on Human Rights and the case law of the European Court of Human Rights. In particular, the tension between supported decision-making models and classical restriction systems will be addressed as one of the fundamental areas of debate in modern guardianship law.

The paper also aims to highlight the necessity of a multidisciplinary protection model based on the coordination of judges, social workers, psychiatrists, educators, and relevant public institutions. In this context, protective justice will be evaluated not merely as a judicial assessment process, but as a comprehensive social protection mechanism aimed at safeguarding individuals from the risks of social exclusion, abuse, and crime.

In conclusion, the paper aims to demonstrate that the future of guardianship law lies in a transformation away from the classical concept of "incapacity" toward a human-centered, individualized, and rights-based protective justice system.

Keywords: Guardianship law; Protective justice; Vulnerable individuals; Supported decision-making; Human rights

DELIBERATIVE JURISPRUDENCE, STARE DECISIS AND AI

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SW99 · Jurisprudencia Deliberativa e Inteligencia Artificial: Precedentes y IA Pública - Deliberative Jurisprudence and Artificial Intelligence: Precedents and Public AI
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ABSTRACT

Deliberative jurisprudence argues that law derives its authority not solely from its positive form, but also from the quality of the public reasoning that generates and sustains it. Legal norms must be justifiable through open, inclusive, and rational discourse among those who are subject to them. This requirement faces a unique challenge due to the emergence of AI: a type of technology that, in its dominant configuration, is neither open, nor inclusive, nor susceptible to deliberative reasoning in the strict sense. The specific case of judicial precedent shows that AI calls into question the continuity and coherence of the doctrine of stare decisis. This principle is not merely a technical rule of consistency: it constitutes a deliberative mechanism that links past decisions to publicly articulated reasons, allowing the law to evolve in an argumentatively traceable manner. When algorithmic systems predict judicial outcomes, classify jurisprudence, or suggest analogies, a fundamental question arises: what happens to the chain of reasoning that gives meaning and legitimacy to precedent? Can an AI system identify the ratio decidendi of a judgment without understanding the normative horizon in which it was produced?

AI ADOPTION IN PUBLIC ADMINISTRATION AND DEMOCRATIC LEGITIMACY

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ABSTRACT

The increasing use of AI in public administration, in areas ranging from social services and criminal justice to immigration control, tax assessment, and public procurement, represents a serious socio-legal problem. In all these contexts, a question of democratic legitimacy of the first magnitude arises: when the State makes decisions that affect fundamental rights through opaque systems, is the citizen's right to receive understandable and contestable reasons that underlie these decisions, respected? This question is merely the tip of the iceberg: it reveals a deeper dynamic in which the functioning of the State is being infiltrated by privately developed AI technologies that, under the protection of intellectual property rights, shield their systems from public scrutiny.

DOES THE STATE NOT ONLY HAVE THE POWER, BUT ALSO THE OBLIGATION TO AVOID OPAQUE SYSTEMS AND ADOPT TRANSPARENT SOLUTIONS?

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ABSTRACT

Does the state not only have the power, but also the obligation to avoid opaque systems and adopt transparent solutions? The emerging public AI movement offers an answer: open, auditable systems oriented toward the public interest that also address the problem of "lock-in" or dependence on private providers of these technologies. This dependence constitutes a strategic challenge that numerous European countries and the European Union as a whole must urgently address if they aspire to consolidate their digital sovereignty by developing the one of AI.

BETWEEN LEGAL THEORY AND LEGAL FACTS

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SW100 · In Memoriam Fred Schauer
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ABSTRACT

In his work, Frederick Schauer was constantly questioning, digging, and seeking new paths. The present work explores some examples: his overlapping views, questioning Hartian orthodoxy in legal philosophy and offering a view of the American legal realists as presenting a challenge to conventional and positivist views of law and legal decision-making. His book, The Force of Law, raises important questions of both of an empirical and jurisprudential nature: for the first, questioning important sanctions are for why people obey the law; and, for the second, wondering whether "distinctiveness" or "importance" might be a focus for inquiries into the nature of law (and other subjects) as valuable, and sometimes more valuable, than a focus on necessary and essential attributes. The present article also looks at the way that Schauer's influential views show the strong influence of, and significant sympathy towards, the ideas of the realists. And his re-characterization of the views of the realists has given us another potential ground for raising doubt about Hartian orthodoxy – here, regarding how best to understand legal validity and the pedigree model of the rule of recognition.

FREDERICK SCHAUER AND HANS KELSEN ON RULES AND NORMS

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ABSTRACT

This article examines Frederick Schauer's engagement with Hans Kelsen's theory of rules and norms, taking as its starting point Schauer's 2016 lecture at the Hans Kelsen-Institut in Vienna. It explores the conceptual tension between Kelsen's normativist account of law and Schauer's analytical and more sociologically oriented understanding of rule-based decision-making. Particular attention is given to Kelsen's conception of the legal norm as an objective "ought", its place within a hierarchical normative order ultimately grounded in the Grundnorm, and the distinctive role of coercion in differentiating law from other social orders. The article contrasts this framework with Schauer's emphasis on the incompleteness of rules, the role of second-order norms, and the institutional function of rules in constraining discretion and allocating decision-making authority. It argues that the differences between Kelsen and Schauer reflect not merely divergent theories of normativity, but also distinct intellectual traditions: Kelsen's systematic European legal positivism and Schauer's Anglo-American analytical jurisprudence. Their comparison ultimately illuminates two complementary questions of legal theory: what makes law valid, and how rules operate in legal reasoning and institutional practice.

PRESENTATION OF BOOKS VI AND X: FEMINIST LEGAL AND POLITICAL PRACTICES; FROM GENDER EQUALITY PLANS TO GENDER RESPONSIVE BUDGETS

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SW101 · Gender Perspectives in Law - Springer Book Series Presentation
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ABSTRACT

The book promotes awareness about different forms of the feminist activism across the globe, and about deep cleavages between Global South and Global North feminist movements grounded in the colonial heredity, on one hand, and in the mainstream West-centric feminist theories and practices, on another. It follows the path of the deconstruction of Western-centric feminisms, that has brought on the agenda the intersectional approach, which aims to shed light on the profoundly different modalities of (widely experienced) gender-based discrimination in the context of different classes, races, ages, cultures, religions, ethnicities, educational statuses, (dis)ability statuses, etc.

The book also demonstrates that a crucial aspect of contemporary feminist approaches, as well as a common feature of all contemporary movements – whether from the Global North or the Global South – is the ability to propose forms of activism capable of combining ideas about multiple gender-based discrimination, feminist discourses, and militant creativity in ways that are unparallel in other social movements. From suffragettes to contemporary feminist movements, women's political practices, as well as feminist elaborations of theoretical frameworks, have disrupted social norms.

The book explores in different contexts how feminist practices disrupt power imbalances and structures of hierarchies, male dominance over women, and gender-based discrimination embedded in the creation, interpretation, and implementation of law, thereby questioning the legitimacy of laws and power and transforming these spaces into contestation arenas.

It demonstrates how feminist practices make it possible to re-appropriate places where traditional power and gender hierarchy are in force, transforming them into spaces where male power and privilege are subverted and reconsidered.

It demonstrates that the process of connecting practices and activism with theoretical insights must challenge dominant structures of power and discourse and allow women in general and various groups to open new arenas of discourse, propose different narratives, and aggregate otherwise marginalized interests and needs. It enables sharing of experiences by individuals and groups of women as well as people from diverse sexual orientation, gender identity and expression and shows that these experiences are related to social systems. They initiate calls for recognition, open up spaces for political action, and help in shaping the political agenda for the benefit of individuals beyond their individual possibilities.

This book considers historical aspects of women's political activism and practices, that are relevant for contemporary political struggles. Additionally, it explores contemporary legal manifestations of gender oppression and systems of privilege and struggles against. There are also examined emancipatory tendencies in modern law, politics, and culture.

This volume explores how gender equality can move beyond formal commitments to measurable action, through the integration of Gender Equality Plans (GEPs) and Gender Responsive Budgeting (GRB). It brings together legal, institutional, and financial perspectives across higher education, the public sector, and the private sphere. Gender Equality Plans (GEPs) have become a common policy tool in research and academic institutions, providing a roadmap for addressing gender imbalances and setting long-term objectives. Yet, plans alone are rarely enough. Without resources to support their implementation, they often remain symbolic. This is where Gender Responsive Budgeting (GRB) enters the picture—not as a substitute, but as a necessary complement. While GEPs help define institutional priorities, GRB ensures those priorities are backed by real financial support. Integrating the two—strategic planning and budgeting—offers a more complete and accountable approach to institutional change.

GRB is gaining ground in policy discussions as a practical way to embed gender perspectives into the budget process. Rather than treating budgets as neutral instruments, GRB acknowledges that how money is allocated

reflects institutional values and affects people differently. By asking who benefits from public spending—and who does not—GRB encourages more transparent and fairer allocation of resources. This is particularly relevant in sectors such as employment, care, education, and innovation, where deeply rooted gender disparities often go unaddressed.

Although the chapters in the book A Path Towards Gender-Sensitive Policy: From Gender Equality Plans to Gender Responsive Budgets vary in theme - ranging from sustainability reporting and labor markets to higher education governance - they are linked by a shared interest in how planning, budgeting, and accountability mechanisms can be used to drive institutional change. Together, they make a strong case for seeing GEPs and GRB not as separate tools, but as two parts of a broader strategy for achieving gender equality in a meaningful and lasting way. The chapters that follow illustrate these issues across diverse contexts and institutions, ranging from public finance and higher education to corporate sustainability and labor markets.

PRESENTATION OF BOOK I: FEMINIST APPROACHES TO LAW – THEORETICAL AND HISTORICAL INSIGHTS

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ABSTRACT

This volume points to the fact that the traditional political philosophy had been by definition based on gender inequality due to a dominance of patriarchal matrix in both the private and public sphere of pre-modern societies. It clarifies why modern political and legal theories of human rights and constitutional democracy do contain emancipatory ideals and capacities, but most often forget issue of gender equality when considering the realm of politics.

There is also considered the issue of gender, with an accent on the fact that the heteronormative binary is embedded in the law, and thus the law causes harm by discarding all those who do not belong to the binary and by reifying a binary, which is also detrimental for women. The focus is also on the fact that women's discrimination and the exclusion of intersex and those not fitting into the binary concept of sex are two different problems that require different strategies that need to be carried out in parallel: one to blur the existing fixed categories and another to fight women's discrimination.

Critical race feminism is also considered as the germ of intersectionality feminist approach, and as the germ of a strong critique of the West-centric feminisms and their wrong epistemic universalism.

There is also considered the 19th-century women's struggle for rights, with parallel consideration of the public law's gradual advancements towards the right to vote, which was followed by fixing and perpetuating subordination within the private realm with the significant help of family law designed on the patriarchal matrix.

Besides, there is considered queer theory and movement, and queer legal theory is viewed as a postmodern discipline (or a group of disciplines) that applies the methodological path established within critical legal studies guided by specific queer experiences. Understood in this way, queer legal theory starts from non-essentialized sexual and gender identities, viewing them as temporary, fluid, and indeterminate, criticizing law, practices, and policies that seek to exclude, categorize, subordinate or eliminate anything that does not fit into binary concepts of sexuality and gender.

PRESENTATION OF BOOKS III AND VII: LEGAL ISSUES OF INTERNATIONAL LAW FROM A GENDER PERSPECTIVE; GENDER AND THE JUDICIARY

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ABSTRACT

The volume contains the analysis of the jurisprudence of the ECtHR in relation to gender equality, differentiated into three segments: 1) case-law in relation to Article 14 of the ECHR that covers direct gender discrimination; 2) domestic violence and trafficking that disproportionately affect women in practice and require their special protection; and 3) specific issues that affect women, such as violence against women and reproductive rights. An overview of the most relevant cases shows that, unlike gender religious identity cases, the Court provides extensive protection in cases that concern domestic violence, when the States' margin of appreciation is limited.

The volume also contains a reconsideration of the Law on Armed Conflict (LOAC) from the feminist viewpoint. In that context is critically considered the gendered nature of public international law, in a sense that international law has been decidedly masculine, which can be evidenced in both organizational and normative terms. Public law has its roots in public/private dichotomy, insofar as the whole area of public international law has been described as gendered: the public being male, the private being female. It follows that the State has been seen as intrinsically male.

There is an additional consideration of international law through gender lenses, that claims first, that international regulations are gradually incorporating the gender equality perspective, and second, that international law has become gender-sensitive but not yet gender-responsive and gender responsible. Besides, the international environmental law (IEL) is more gender-sensitive than other branches of public international law.

International refugee law is considered from gender lenses, with assumptions that it contains recognition of women who need international

protection, but that despite its significant development it does not provide the full recognition and protection of women. The major challenges to the refugee regime for women are the existence of stereotypical views, lack of understanding of different forms of gender-based violence and their consequences to women, the need for a better assessment of asylum claims through the needs of female refugees.

The collection of papers presented in the book Gender and the Judiciary underscores the importance of integrating a gender perspective into judicial systems worldwide, revealing how gender sensitivity enhances the legitimacy, equity, and efficacy of the judicial process. Across diverse national contexts—from Europe and the United States to Brazil and Serbia—these papers collectively argue that a gender-sensitive judiciary not only promotes equality but also better represents the societies it serves.

The judiciary serves as a cornerstone of democratic societies, upholding principles of fairness, equality, and justice for all. The book Gender and the Judiciary assumes that the integration of a gender perspective in the judiciary is essential to fostering an equitable, inclusive, and representative justice system. The inclusion of women in the judiciary brings invaluable perspectives that contribute to a more balanced and empathetic approach to legal interpretation and decision-making. Women judges and legal professionals often draw from their unique life experiences, which can offer insights into issues like discrimination, violence, and other gender-sensitive cases. Promoting women's advancement within the judiciary, from entry-level positions to senior leadership, thus enhances the system's legitimacy and strengthens public confidence in judicial institutions as fair and representative.

For gender perspective to take root in the judiciary, it must extend beyond representation alone. Gender-sensitive policies, training, and awareness initiatives based on a proper understanding of the meaning and content of substantive gender equality are needed to create judicial environments where women can advance professionally and where gender-based issues are comprehensively understood and addressed. Gender-sensitive judicial training equips judges with tools to navigate the complex issues related to gender, whether they involve family law, criminal justice, or human rights, and helps prevent judgments that perpetuate harmful stereotypes.

In sum, incorporating a gender perspective within the judiciary supports a more equitable legal system that honors the experiences and rights of all individuals. By improving women's representation at all levels, facilitating career advancement, and promoting gender-sensitive practices and decision-making in favor of substantive gender equality, judicial institutions can better fulfill their mandate of delivering impartial and fair justice. In both national and international contexts, a judiciary that values substantive equality as a primary aim, and gender diversity and awareness as the tools for that aim, is better positioned to address the nuances of gender in the law and to uphold the principles of justice in a way that truly reflects and serves society as a whole.

PRESENTATION OF BOOK V: REASSESSING FEMINIST LEGAL THEORIES

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ABSTRACT

The volume offers a perspective on theoretical/philosophical grounding of some of the dominant themes from the disciplinary field. It also critically reconsiders certain categories and their interrelation. By deliberately merging and contrasting some of the classical works in the field with fresh scholarly contributions, the volume problematizes the very meaning of concepts 'feminism/feminist' and 'gender', their mutual relation, as well as their correlation with 'law'. There is pointed also to the fact that indeterminacy with respect to what a 'feminist perspective' amounts to has a further implication: hence, by using 'legal theory' in plural, the volume's title indicates that different theoretical approaches towards the subject matter are possible. Insofar, there are offered different interpretations of feminist jurisprudence.

Evolution of feminist legal thought is analysed, with contrasting "liberal feminism" perspective, which highlights the exclusion of women from complete legal subjectivity, focusing on achieving inclusion through sex-blind equality, from "difference feminism", in which the analytical emphasis is on the assimilation of women into a male-centric understanding of legal subjectivity and which advocates for embracing and accommodating gender differences.

The issue of gender-based violence is considered from different perspectives also in a few other chapters.

The history of political philosophy of justice is critically reconsidered from the feminist perspective, and relevant feminist theories of gender justice are explored.

Different interpretations of human dignity in feminist discourse are considered, that differently reflect on contemporary morality, law, and practical philosophy.

Analysis of the role of gender as a legal concept for advancing women's rights suggests that gender is shown to be less relevant to women's rights than anticipated.

PRESENTATION OF BOOK VIII: LAW AND GENDER FROM INTERSECTIONALITY AND DIVERSITY PERSPECTIVE

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SW101 · Gender Perspectives in Law - Springer Book Series Presentation
Convenors: Dragica Vujadinović

ABSTRACT

The publication Law and Gender from an Intersectionality and Diversity Perspective aims to promote feminist, gender-based, intersectional, and diversity approaches in knowledge production within legal theory, studies, and practice. A crucial feminist intervention in legal theory and practice is necessary, especially considering that intersectional discrimination is an urgent issue both generally and during current crises (encompassing economic, political, environmental, pandemic, war, and poverty-related issues). Discrimination based on gender has always intersected with other forms of discrimination, based on class, race (and their position within colonial history), age, (dis)ability, educational background, ethnic, religious and cultural origin, political and economic system background, historical heritage, urbanization status, migratory status, and more.

The intersectional discourse struggles to find its place in the political arena, while the feminist intersectionality approach still plays a minor role in analyzing gender-based discrimination. Both phenomena – gender-based discrimination and multiple forms of discrimination based on class, race, sexual orientation, age, and others – severely impact the protection of fundamental rights since laws are not designed to address the power dynamics behind gender-based intersectional discrimination. In this context, legal scholars are called on to reconceptualize traditional knowledge and approaches to discrimination to promote cultural change in legal, political, and general terms, which is essential for understanding the workings of society from an intersectional perspective.

The book Law and Gender from an Intersectionality and Diversity Perspective attempts to contribute to the proposed aim. It starts with the concept of intersectionality and the importance of the intersectional approach

in legal studies. The volume then explores a series of topics related to different areas of legal experience, including intersectional discrimination of women and non-binary persons with disabilities, of refugees and migrant women and transgender persons, of victims of violence and human trafficking at global and local levels, of women and non-binary persons from different minorities. The book covers several areas of legal studies and a series of legal items that are of utmost importance because of their connection to the most vulnerable groups of women and transgender persons. It also includes a chapter related to education and museums, both reconsidered from an intersectionality approach.

PRESENTATION OF BOOK IX: GENDER, LAW, AND POWER: THE GLOBAL SOUTH-GLOBAL NORTH INTERPLAY

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SW101 · Gender Perspectives in Law - Springer Book Series Presentation
Convenors: Dragica Vujadinović

ABSTRACT

The volume Gender, Law, and Power: The Global South-Global North Interplay focuses on the Global South and the Global North as relational concept-categories that contribute to understanding of different manifestations of multiple gender-based discrimination, as rooted also in the heredity of colonialism and postcolonialism, imperialism, capitalism in general and neoliberal globalization. Fifteen chapters within the volume demonstrate in different manners how subtle analyses of the South-North interaction offer insights into global hierarchies and inequalities, their interconnection with colonial heredity, and their cumulative impact on gender inequities. Following a discussion of the many meanings of Global South and Global North and the South's close ties with postcolonial and decolonial theory and practice, the volume's uses the critical feminist formulation of intersectionality in understanding the multiple axes of gender-based discrimination that include race, class, nation, ethnicity, age, sexual orientation among many others, and explains its approaches to gender, law, and power.

The fifteen chapters of the Gender, Law, and Power offer distinct approaches to and understandings of the South and the North, as well as of postcolonial, decolonial, and liberal theory and praxis; and engage differently with the feminist analytical and practical perspective of intersectionality. Together, they provide a wide array of context-specific studies that open crisscrossing conversations. The focus ranges from actions of women of different indigenous communities of Mexico regarding understandings and reformulations of Indigenous rights and customs; epistemologies and

struggles of Indigenous women of Canada and Mexico to conserve and revitalize Indigenous ways of being; the serious shortcomings of Human Rights Law in relation to migrant and undocumented women and girls; the replication of colonial North-South hierarchies in policies regarding seasonal Moroccan women workers in Spain; through the prejudices of legal frameworks relating to transgender peoples in Czechia and Uganda; examination of the pros and cons of liberal theories vis-à-vis feminist and postmodern ones regarding transgender rights; the vulnerability of women sex and domestic workers in informal labor economies of South Africa and India; conflicting understandings of Female Genital Mutilation among activists of the South and the North; intersections of gender, cybersecurity, and global power relations in the underrepresentation of women in the cybersecurity workforce; feminist writings of women of the Middle East; to early mobilizations of international women's organizations; and collaborative feminist manifestos; reflexive considerations of policies of the World Bank and the International Labour Organization regarding gender discrimination and gender justice, and, a 'demarginalization' of the 'spiritual injury' caused by global sex-trafficking of the predominantly non-White, acutely vulnerable women and girls, through the lens of critical race feminist theory.

NEW PERSPECTIVES ON HUMAN RIGHTS IN THE FACE OF NEW SOCIAL REALITIES

Laura Miraut Martín, Alina Elena Ramaru & Antonio Tirso Ester Sánchez

Universidad de Las Palmas de Gran Canaria (Las Palmas de Gran Canaria, Spain)

Convenor

SW102 · New perspectives on Human Rights in the face of new social realities
Convenors: Laura Miraut Martín; Antonio Tirso Ester Sánchez; Alina Elena Ramaru

ABSTRACT

Human rights constitute one of the most significant legal, political and moral languages of modernity. However, the profound social, cultural and technological transformations of the present age are generating new scenarios of vulnerability that require a reconsideration of their foundations, scope and mechanisms of protection. This Special Workshop proposes a critical and interdisciplinary reflection on new perspectives on human rights in the face of emerging social realities that directly affect human dignity, equality, freedom, integrity and personal autonomy.

The workshop takes as its starting point a central question for contemporary philosophy of law and social philosophy: whether the traditional categories of human rights remain sufficient to respond to new forms of discrimination, violence and threats to the person, or whether they need to be reinterpreted from renewed legal and philosophical perspectives. This question is particularly relevant in a context marked by the persistence of structural inequalities, the impact of new technologies on human subjectivity, and the emergence of renewed forms of violence, exclusion and vulnerability.

The workshop will be organised around three main lines of debate.

The first line will focus on new perspectives on the principle of equality. Equality, as a structural principle of the constitutional State and of the international human rights system, cannot be understood solely in formal terms. Contemporary societies require a more substantive, material and inclusive understanding, capable of addressing structural discrimination, intersectionality, social diversity and the situation of individuals and groups

in conditions of special vulnerability. This line of debate will examine how the principle of equality should be updated in increasingly plural and complex social contexts.

The second line will be devoted to new perspectives on gender-based violence. Violence against women constitutes one of the most serious forms of human rights violation, since it directly affects dignity, freedom, equality and physical and moral integrity. This line of debate will examine the conceptual and normative evolution of gender-based violence, as well as its new manifestations in the digital, institutional and social spheres. It will also consider the limits of traditional legal responses and the need to strengthen mechanisms of prevention, protection and reparation.

Overall, the workshop seeks to provide a forum for dialogue between philosophy of law, social philosophy, human rights theory and contemporary legal studies. Its main objective is to analyse the capacity of human rights discourse to adapt to new realities without losing its critical and protective function. The common hypothesis underlying the workshop is that human rights do not constitute a closed and static catalogue, but rather a dynamic normative framework that must be reinterpreted in response to new forms of inequality, vulnerability, violence and technological transformation.

In this way, the workshop aims to contribute to the debate on the updating of human rights in the twenty-first century, paying particular attention to their legal-philosophical foundations, their practical effectiveness and their capacity to protect the person in the face of new social realities.

Keywords: Human Rights; Equality; Gender-based violence.

REFRAMING THE RIGHT TO FOOD THROUGH AGROECOLOGY

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SW105 · The Right to Food and Nutrition As a Matter of Justice
Convenors: Berfin Kart Tepe; Zeynep İspir

ABSTRACT

In a globalized world shaped by deepening agri-food crises, rethinking the legal frameworks necessary to protect human rights has become imperative. Human rights, grounded in the inherent value of human existence, require legal mechanisms capable of safeguarding them across diverse social and cultural contexts. Within this perspective, access to food must be addressed not merely as a matter of market distribution, but as a fundamental right rooted in justice, sustainability, and collective well-being.

This paper argues that "agroecological law" provides a constructive response to the changing problems of our time. The current agri-food system reveals a fundamental contradiction: Those most actively involved in food production -such as women, migrant agricultural workers, and low-income communities- are often the most disadvantaged in accessing food. Improving their conditions depends on the recognition, visibility and legal enforceability of their rights claims. In this context, the agroecological approach, with its roots in both traditional practices and contemporary social movements, must be examined in connection with the right to food.

Building on international human rights instruments such as United Nations Declaration on the Rights of Peasants and Other Persons Working In Rural Areas (UNDROP), UN Declaration on the Rights of Indigenous People (UNDRIP) and the General Comments of the International Covenant on Economic, Social and Cultural Rights (ICESCR), this study advances a bottom-up reformulation of the right to food. This reformulated framework defines the right as both an individual and a collective human right, incorporating food sovereignty and moving beyond voluntary accountability toward binding obligations for all relevant actors.

This paper comprises three key parts: The first outlines the conceptual framework, the second analyzes agroecological law from the perspective of global legal pluralism and the third introduces the reformulated right to food, assessing its potential to contribute to an agroecological legal transformation.

Keywords: Right to food, agroecology, food sovereignty, human rights, legal pluralism.

HUMAN RIGHT TO WATER: RECOGNITION, JUSTICIABILITY AND ECOLOGICAL PROTECTION IN COMPARATIVE LAW

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SW105 · The Right to Food and Nutrition As a Matter of Justice
Convenors: Berfin Kart Tepe; Zeynep İspir

ABSTRACT

Freshwater change is among the most stressed planetary boundaries in the advancing climate crisis of the Anthropocene. Within this context, the human right to water emerges as an ecological fundamental right situated at the intersection of human rights and the rights of nature. Even when conceived in a narrow, anthropocentric sense as access to sufficient and safe water for human consumption, the sustainability and equitable governance of water resources challenge legal systems to incorporate ecological considerations.

Following its recognition by international human rights bodies, the right to water has increasingly been constitutionalized across diverse jurisdictions. In parallel, several constitutional and supreme courts have interpreted existing legal frameworks to recognize this right, even in the absence of explicit constitutional provisions. Against this backdrop, this presentation examines whether the right to water has ecocentric potential to advance the protection of nature within comparative legal systems.

Adopting a comparative methodology attentive to inequalities across the Global South/North divide, the first part of the analysis outlines the current status and justiciability of the human right to water in Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, France, Italy, and Türkiye. The second part evaluates the extent to which these jurisdictions integrate ecological protection within the framework of the right. Lastly, the presentation critically assesses whether the inclusion of an ecological dimension translates into legal protection in practice.

Keywords: Ecological Constitutionalism, Comparative Constitutional Law, Environmental Law, Rights of Nature, Ecocentrism, Anthropocentrism

ACCESS TO WATER, SANITATION, AND HOUSING: AN EVALUATION WITHIN THE FRAMEWORK OF HUMAN RIGHTS AND PUNITIVE URBAN POLICIES

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SW105 · The Right to Food and Nutrition As a Matter of Justice
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ABSTRACT

The right to water and sanitation and the right to housing address specific needs essential for sustaining a decent standard of living and are complementary. The fact that both rights are regulated under the heading of the right to an adequate standard of living in international treaties and other international legal instruments is a clear indication of this. This complementarity, of course, extends beyond legal documents and is experienced in everyday life. The right to access water and sanitation is defined in the United Nations Committee on Economic, Social and Cultural Rights General Comment No. 15 of 2002 and in United Nations General Assembly Resolution 64/292 of 2010 as the right of everyone to have access to available, safe, acceptable, accessible and affordable water for personal and domestic use. It has also developed specific criteria regarding the provision of the conditions for 'adequate' housing. These criteria are briefly as follows: "Legal Security of Tenure (Legal guarantee of the user's rights in cases of non-ownership such as renting); Availability of services, materials, facilities and infrastructure; Financial affordability; Habitability in terms of structural, environmental and health conditions; Accessibility to housing opportunities for disadvantaged groups; Locational accessibility to spaces where the practices of other rights are realized, such as health centers and schools; not ignoring the cultural context while fulfilling the requirement of the right to housing".

The fulfillment of both rights is possible through spatial policies. In other words, if spatial policies are not regulated in a way that protects human rights, it is not possible to protect these rights. However, the manner in which the government regulates policies is not always such that it protects human rights. In this study, it is observed that, within the context of

the government's urban policies, housing and access to water are treated not as rights, but rather as a governance policy concerning slums and urban transformation (gentrification). In Turkey, particularly following the entry into force of Law No. 6306 on the Transformation of Areas at Risk of Disaster, policies of displacing the poor require a different assessment. In this study, the conceptual works of Loïc Wacquant and Michel Foucault will be drawn upon to explain these policies of displacement.

Foucault's explanation of the power of modern authority through its capacity to "preserve life and abandon to death" indicates, in the context of this study, that the implementation of measures to ensure access to clean water constitutes a strategy for managing the population rather than the fulfilment of the state's duty to provide urban water infrastructure services. The Neoliberal state policies carried out against the poor, whom Wacquant defines as urban outcasts, will also be attempted to be explained by the replacement of the social state with his concept of the "penal state". In slum neighbourhoods, the water policies imposed for the purpose of urban transformation, the failure to provide infrastructure services, and the deprivation of people's housing opportunities to coerce them into accepting eviction will also be explained within this conceptual framework. Ultimately, this paper will discuss whether spatial justice is possible in line with the perspective outlined.

Keywords: Right to Access to Water and Sanitation, Right to Housing, Penal State, Urban Transformation (Gentrification), Spatial Justice

INTERNATIONAL AGRICULTURAL LAW IN THE CONTEXT OF INTERNATIONAL AGRICULTURAL TRADE

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SW105 · The Right to Food and Nutrition As a Matter of Justice
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ABSTRACT

Agricultural law presents itself as a technically complex field of law, both because it is an area where international, national and local rules and institutions coexist, and because it is intertwined with various branches of law. Even within a very broad definition of agricultural law—as comprising regulations and principles relating to agriculture—the problem of defining the concept of 'agriculture' itself arises. The question of what agriculture encompasses is also a topical issue in the context of regulating international agricultural trade. It is possible to regard agriculture as activities aimed at preserving and developing the biological life cycles of animals and/or plants, based on the use of natural resources such as soil and water. This perspective is more advanced than the classical view, which essentially regards agriculture as consisting solely of soil cultivation and livestock farming; for, on the one hand, by taking the biological life cycle as its basis—thereby including, for example, soilless farming practices and fish farms within this field—and, on the other hand, by not limiting livestock farming solely to the production of goods such as food or wool, but also including, for example, racehorse breeding thereby broadening the legal framework of agriculture. The most significant risk that this theoretical perspective could give rise to is that any activity based on the production of living organisms, such as the production of bacteria for use in the pharmaceutical industry, might also be regarded as falling within the scope of agriculture.

It is evident that European Union policies and regulations have significantly broadened the scope of agricultural law in this context. From the perspective of European Union regulations, "agricultural products" refer to "products of the soil, livestock and fisheries, and products obtained at

the first stage of processing that are directly related to these products"; it is accepted that, in references to agricultural policy or agriculture, "fisheries are also included, taking into account the specific characteristics of the fisheries sector". It is noteworthy that the European Union regulation focuses on agricultural products rather than agricultural activities. Within the framework of the European Union's Common Agricultural Policy, the scope of agricultural activity is based on the concept of 'multifunctionality' that has emerged in the international context—namely, the idea that agriculture involves the joint production of both marketable and non-marketable outputs, some of which possess the characteristics of public goods. As an outcome of this approach the concept of producing at lower cost is being replaced by the concept of producing whilst consuming fewer resources. On the other hand it should not be forgotten that the European Union's agricultural regime is market-oriented and that agricultural regulations are primarily based on the final product.

In addition to the technical complexity of the field, the issue is further complicated by the impact of political disputes centred on global food production, the international movement of goods, the use and conservation of natural resources, and large-scale agricultural corporations. Since 2020, there has been a significant increase in hunger, child development issues and obesity worldwide. As of 2020, it is estimated that approximately 811 million people were facing hunger, whilst approximately 2.37 billion people lacked access to sufficient food. The spread of armed conflicts is also exacerbating the global hunger crisis and making the goal of eradicating hunger seem unattainable. It is known that 60 per cent of the approximately 811 million people facing hunger live in conflict zones.

The globalisation of agriculture and food supply is facing the growing problem of famine and food insecurity. In light of this situation, the international dimension of agricultural law and the effective management of food production at an international level are becoming increasingly important. Although proposed solutions and regulatory measures vary widely, there appears to be a consensus amongst international actors that existing international regulations are insufficient to resolve food security issues.

This study examines the most fundamental regulations governing international agricultural trade, focusing on the definition of agriculture in the

context of relevant regulations, agricultural regulations at European Union level, and multilateral regulations within the framework of the World Trade Organisation. Agricultural regulations at European Union level, based on the concept of 'multifunctionality', ensure that agriculture is perceived as an integral part of solutions not only for food production but also for the protection of biodiversity and the environment. In this context, the primary condition for benefiting from Common Agricultural Policy (CAP) support is the fulfilment of environmental requirements. The Common Agricultural Policy is a system based on the promotion of agriculture and also serves as a means of centralising public intervention in the agricultural sector at European Union level.

At the international level, it is evident that agricultural trade is moving largely towards a market-oriented structure as defined by the World Trade Organisation's Agreement on Agriculture. With this approach, which envisages the development of agricultural trade on a free-market basis, it is fair to say that the public dimension of agricultural production is being eroded. It is anticipated that the liberalisation of agricultural activities may lead to the impoverishment and precariousness of farmers in countries where public intervention was previously intensive, whilst simultaneously enabling multinational corporations to easily dominate the agricultural sectors of developing countries. Furthermore, as a consequence of the concept of intellectual property—as enshrined in the TRIPS Agreement linked to the World Trade Organisation, which even regards biological processes relating to the production of plants or animals as falling within its regulatory scope—the conservation of biodiversity and the dissemination of knowledge in the fields of pharmaceuticals and seed production are becoming increasingly difficult in countries outside the developed world.

PART II

WORKING GROUPS

MONDAY 29 JUNE 2026

THE RISE AND FALL OF GLOBAL DEMOCRACY IN CONTEMPORARY INTERNATIONAL LEGAL THOUGHTS

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WG.25 · Theme: International & Private Law

WORKING GROUP · International Law & Gender
Chair: Isabel Lifante

ABSTRACT

This paper argues that the evolution of global democracy within the context of contemporary international law, focusing on the rise and fall of democratic governance in the global arena. The analysis tracks the historical trajectory of democracy as an ideal in international law, the mechanisms that supported its spread, the challenges it faces in the modern geopolitical environment, and the decline of democratic norms in global governance. Special attention is given to the role of international legal philosophers, the influence of global power dynamics, and the impact of emerging authoritarian trends. This paper concludes by considering the future of global democracy and its place within international legal frameworks.

IS KELSEN'S INTERNATIONALISM A FUTURE PROJECT? AN A PRIORI CRITIQUE OF TELEOLOGICAL INTERPRETATIONS

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WG.58 · Theme: International & Private Law

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ABSTRACT

This paper argues that Hans Kelsen's internationalism cannot be understood as a teleological or evolutionary project directed toward a future cosmopolitan order. Rather than anticipating the historical overcoming of the state, Kelsen articulates an a priori condition of legal validity that is always already international. The primacy of international law is therefore not a political aspiration but a logical necessity inherent in the structure of legal cognition. The paper demonstrates that international interconnectedness functions as a constitutive presupposition of validity rather than a historical achievement.

Certain strands of international legal thought conceive the international community as a morally unified order or as the culmination of progressive development beyond the sovereign state. Alfred Verdross advances a value-oriented conception of international community grounded in objective normative principles. Contemporary interpretations attribute a similar progressive narrative to Kelsen. Jochen von Bernstorff reads his universalism as a cosmopolitan political project and a secularized theology of peace, while Alberto Puppo advances a theological and messianic interpretation describing Kelsen's internationalism as an intellectual evolution culminating in the utopian dissolution of states.

Against these readings, the paper reconstructs the problem of juridical recognition and sovereignty to demonstrate that Kelsen's primacy of international law is not a future project but a present structural condition of legal validity. A national constitution cannot ground its own validity without presupposing an external normative standpoint. Purely internal self-validation collapses into normative solipsism. Because the legal existence

of the state depends on recognition within a broader normative order, absolute sovereignty becomes logically untenable and nationalism appears already surpassed once law is understood as objective normativity. If Kelsen's theory is understood as an a priori structure of legal cognition, it cannot express temporal progression. International primacy is not a historical destination but a necessary feature of legal order itself.

UNIVERSAL BASIC INCOME IN THE LIGHT OF SELECTED PHILOSOPHICAL AND POLITICAL-LEGAL DOCTRINES

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WORKING GROUP · International Law & Gender
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ABSTRACT

In the face of technological developments that replace human labour, the problem of technological unemployment is intensifying. One of the most frequently discussed responses to this challenge is universal basic income (UBI), understood as a universal monetary transfer granted to every citizen regardless of their economic situation. The aim of the paper is to compare proposals for the introduction of UBI within various political and philosophical doctrines and to attempt to indicate a model that could gain broad acceptance across ideological divisions.

An analysis of programmatic texts and their hermeneutical interpretation in the context of forthcoming technological transformations makes it possible to distinguish two principal axes of dispute. The first concerns the mechanism of benefit distribution. Within the socialist tradition, the dominant concept is that of a regular monetary transfer. By contrast, liberals are more inclined towards M. Friedman's proposal of a negative income tax. The second axis of dispute concerns the relationship between UBI and public services, namely whether it should function as a complementary solution or as an alternative to the existing welfare state. In this respect, differences also emerge within similar ideological traditions.

The sources of opposition to UBI are also identified. Among libertarians, opposition stems from the redistributive character of its financing. Marxists, in turn, perceive it as a mechanism stabilising consumer capitalism. An analysis of the normative foundations of the respective positions makes it possible to reconstruct differing conceptions of the role of human labour within various philosophical frameworks and to assess the potential

of UBI as a project capable of transcending traditional ideological divisions. It will also be indicated to what extent UBI may serve to realise the model of the state and society advocated by particular political doctrines.

MORAL IMAGINATION'S ROLE IN FEMINIST JUSTICE CONCERNS: OPPRESSIVE MISREPRESENTATION OR POLITICAL CHANGE?

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WG.177 · Theme: International & Private Law

WORKING GROUP · International Law & Gender
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ABSTRACT

Feminist ethics criticises theories of justice that depart from abstract principles and detached argumentation. In John Rawls' thought-experiment of the original position participants reason from behind a "veil of ignorance" that allows them to impartially reflect upon a fair society. This Western-dominated adherence to neutrality and, relatedly, universality rests on a harmful exercise of imagination. Apart from containing theoretical illusions, such imaginative strategies facilitate misrepresentation and oppression. José Medina takes a more nuanced approach towards imagination by recognising its potential for both injustice and liberation. Out of feminist concerns, it could be argued that imagination is precisely what allows one to challenge fixed dominant structures.

Despite feminism's rejection of impartial rules in moral theory, current societies are widely based upon them. Legislation forms an obvious example in this regard. Thomas M. Alexander suggests that laws are not just applied but that their meaning is imaginatively extended throughout various instances. Imagination is indeed called upon in the formulation of principles but also in their application to specific cases. This insight teaches that questions of justice might have less to do with rigid rules and more with ever-fluid and inevitably deviating instances.

However, more than accommodating existing rules, a world facing severe justice crises demands resistance to that status quo. Although radical insurrection might entail a rupture with the law or other dominant norms, it does not break with the general intelligibility of values. Sabina Lovibond regards divergent views not as instances of mere separation but as creative

extensions of the broader language game, made possible by the moral imagination. To envisage, perform and evaluate political change, feminist ethics comes across moral imagination as a pressing topic of inquiry. How can the phenomenon of imagination as a facilitator of impartiality and oppression be understood in accordance with its potential for emancipation and solidarity?

WORDS THAT WOUND, WORDS THAT HEAL: HATE SPEECH, PORNOGRAPHY, AND THE LIMITS OF FREEDOM OF EXPRESSION IN DEMOCRATIC SOCIETIES

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WG.245 · Theme: International & Private Law

WORKING GROUP · International Law & Gender
Chair: Isabel Lifante

ABSTRACT

This article examines the limits of freedom of expression in the face of hate speech and pornography in democratic contexts marked by profound social transformations. Drawing on feminist debates and the philosophy of language, it argues that normative responses based exclusively on censorship tend to produce inhibitory effects on the public sphere, compromising discursive agency and democratic pluralism. The analysis of the chilling effect highlights the systemic risks associated with the suppression of speech, especially for historically marginalized groups. As an alternative, the article proposes an approach grounded in the performativity of discourse, counter-speech, and symbolic listening, understood as strategies capable of confronting symbolic violence without sacrificing freedom of expression. It is argued that, in light of contemporary global challenges, the democratic radicalization of language offers normatively more consistent responses than the suppression of discursive conflict.

IN THE CONTEXT OF VIOLENCE AGAINST WOMEN, CAN WE TALK ABOUT THE RIGHT TO NOT BE FORGOTTEN?

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WG.304 · Theme: International & Private Law

WORKING GROUP · International Law & Gender
Chair: Isabel Lifante

ABSTRACT

This study will discuss whether "NOT BEING FORGOTTEN" can be considered a right in the context of violence against women—specifically regarding the harms experienced (harm resulting from the crime and secondary victimization)—with the aim of addressing these harms as much as possible from the victim's perspective and preventing the recurrence of similar acts, both for the victim and for other women. To this end, the "Right Not to Be Forgotten" will first be examined as an emerging right, and the necessary criteria for a claim to be recognized as a right will be identified. The "Right Not to Be Forgotten" claim will be evaluated based on these identified criteria. As a result of this evaluation, the "Right Not to Be Forgotten" will be recognized as a right. Rights related to the "Right to Be Forgotten" as well as rights that might be considered to conflict with it will be identified and examined, and its boundaries will be delineated accordingly. In this delimitation, the Right to be Forgotten—distinguished from other factual claims to be forgotten—will be directed toward a state structure that assumes the monopoly on adjudication, subsequent punishment, and crime prevention by imposing a prohibition on the enforcement of rights. Fundamentally, in all cases that come before the state's mechanisms for seeking justice—regardless of whether they attract public attention or not— all rights envisaged by the legislature will be upheld with the same diligence, ensuring that no case is overlooked.

HOW LAW (RE)STARTS: ON THE JURIDICAL RESTABILIZATION AFTER MOMENTS OF INSTITUTIONAL CRISIS

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WG.164 · Theme: Rule of Law

WORKING GROUP · Rule of Law I
Chair: Joan McGregor

ABSTRACT

This paper addresses a question at the intersection of legal theory and political philosophy: how does a legal order resume its normative flow after a severe institutional crisis (one that triggered mechanisms of exception such as state of siege, militant democracy, or proscription of political parties) without a complete rupture, that is, without revolution or a new constituent assembly? The inquiry departs from the insufficiency of two classical responses: the normativist answer (Kelsen), which resolves the problem through the logical presupposition of a Grundnorm but cannot account for the crisis itself; and the decisionist answer (Schmitt), which identifies the sovereign in the exception but fails to explain how law returns. Drawing on Hannah Arendt's theory of political foundation and her distinction between liberation and the constitution of freedom, the paper proposes a third path. It argues that the legal order's normative validity is not destroyed but suspended during crisis (a thesis developed through Giorgio Agamben's reading of the Roman iustitium). Building on Walter Benjamin's critique of legal violence, Jacques Derrida's "mystical foundation of authority," Antonio Negri's concept of constituent power as permanent potentia, and Michel Foucault's analytics of sovereignty and discipline, the paper contends that normalization after crisis never amounts to a return to the status quo ante. It then examines three mechanisms through which law resumes: amnesty (read through Agamben's Stasis and the Athenian mē mnēsikakein), transitional justice as a tertium genus between amnesty and revolution, and institutional normalization as reactivation of the normative flow. The central thesis holds that law restarts when the constituted order

reconnects with the consensus iuris, the political community's active sustenance of its shared public space.

CONSERVATIVE CONSTITUTIONAL INSTITUTIONALIZATION: AN OPPORTUNITY OR A THREAT?

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WG.165 · Theme: Rule of Law

WORKING GROUP · Rule of Law I
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ABSTRACT

The classical line of the constitutionalism is generally viewed as being aligned with the philosophy of political liberalism. However, the realm of constitutionalism-which might be described as 'freedom within order'-also embraces some conservative elements. The pessimistic and realistic view of human nature found in conservative thought provides a theoretical basis for mechanisms of checks and balances.

Rather than placing excessive confidence on human reason, conservatism emphasises the importance of experience and tends to uphold historical institutions. One consequence of this approach is the protection of pre-state institutions. Families, local networks and religious institutions can be categorised in this context. This tendency, which includes the preservation of subsidiarity and intermediary institutions, appears as a conservative response to both atomistic individualism and centralized state power. Another contribution of conservative theory in this regard is the establishment of institutions within the architecture of the state that observe conservative concerns. Senates, with their aristocratic origins and conservative functions, serve as examples in this context. These forms of institutionalisation, inspired by the liberal-conservative synthesis, allow for gradual and evolutionary constitutional reforms.

On the other hand, it is also possible to argue that conservative institutionalization may encourage status quo and even reactionary and anti-constitutional tendencies. Such an approach, which refers to Counter-Enlightenment and Conservative Revolution ideas, is in serious tension with classical constitutionalism. Various constitutional and institutional models

have been designed in authoritarian-right and radical-right intellectual networks. That constitutional agenda ranges from an isolationist interpretation of the constitutional identity doctrine to alternative models of political representation, such as corporatist representation.

Consequently, the relationship between constitutionalism and conservative institutionalization has diverse dimensions, involving positive interactions, critical assessments, and fundamental challenges. Therefore, I would like to analyze the potential opportunities and points of tension between conservative institutionalization and constitutionalism.

THE DECONTESTATORY CONSTITUTIONALISM OF NEOLIBERAL TECHNOCRACY

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WG.175 · Theme: Rule of Law

WORKING GROUP · Rule of Law I
Chair: Joan McGregor

ABSTRACT

The first academic discussions of 'technocracy' in the 1960s and 70s tended to focus on the Keynesian welfare states which emerged in the post-war era (Meynaud, 1964; Galbraith 1967; Touraine, 1969; Habermas, 1968; Bell, 1973; Putnam, 1977). However, with the neoliberal transformation of these welfare states after the 1980s, the initial enthusiasm for theorizing 'technocracy' largely fell out of favour. This may, in part, be attributable to the putatively anti-technocratic pretensions of the new neoliberal paradigm, which sought to de-centre the state and combat the extensive social planning and managerialism of the post-war period. In more recent years, there has been a resurgence in the academic usage of the term 'technocracy'. The term has reemerged as a descriptor for certain features associated with the societies that have predominated since the neoliberal turn of the 1980s (Bickerton and Accetti, 2017, Caramani, 2017; Esmark, 2020, Bertsou and Caramani, 2020; Steffek, 2021, Rummens, 2023). Indeed, today, we can meaningfully speak of the rise of a distinctively 'neoliberal technocracy' (Sánchez-Cuenca, 2021; Rummens, 2023).

In this context, I shall argue that there are various technocratic assumptions running at heart of the neoliberal intellectual tradition that imply a 'decontesticatory constitutionalism' which seeks to institute a liberal economic order heavily insulated from democratic pressures. I propose that such assumptions are present not only in the explicitly technocratic forms of neoliberalism, such as German Ordoliberalism (Böhm et al, 2017, Beibricher, 2018) but that they are also present in the thought of anti-rationalist neoliberals such as Friedrich von Hayek (2007; 2011; 2013) and James Buchanan (1975).

LEGISLATIVE THEORY AND THE JUDICIARY

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ABSTRACT

One of the most frequent controversies in modern-day rule-of-law states concerns the functions, powers, and role of the judiciary.

The role of courts and judges is discussed from various perspectives, notably the possible existence of judicial activism that calls into question the separation of powers and the jurisdictional essence of their function.

In this presentation, I propose to reflect on the steps taken since the foundation of liberalism and the implementation of the principle of separation of powers in contemporary constitutions and European legislation.

In fact, the assumptions of liberalism were clear regarding the political pillars of the separation of powers, based on Montesquieu's ideas about the neutral, passive, and secondary role of courts in relation to legislative power. In the end of the XVIII century and during the XIX century the concept of science of legislation reflected this trend.

However, since liberalism, we find legislation that progressively moves away from this way of thinking.

The presentation will focus on how the theory of legislation has moved away throughout the 19th century and resolutely changed this view in the 20th century.

In the field of criminal law, among other examples, with the legislative definition of a penal frameworks and legal circumstances that are decided by the judge.

In civil law, with the use of general principles, indeterminate clauses, standards, and other normative techniques that assign the judge a central role in determining the case and that, in certain cases, allow him to decide according to equity.

In public law, with the attribution to the judiciary of the power to use the principle of proportionality and other principles of great semantic indeterminacy in judging the acts of the administration.

Finally, with the creation of constitutional courts and supreme courts with constitutional functions with the power to judge the constitutionality of laws, using these techniques that, in fact, had already been tested by legal thought and practice.

Thus, the study of the judicial function cannot be separated from the analysis of how the legislation has been attributing to courts with increasing powers in determining how the law is applied to the specific case. This is a central problem for the theory of legislation.

TOWARDS AN IMPARTIAL JUDICIARY: THE MORAL AND EPISTEMIC VIRTUES THAT JUDGES SHOULD DISPLAY

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WORKING GROUP · Rule of Law I
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ABSTRACT

The archetypal image of justice is a blindfolded woman holding scales in one hand and a sword in the other. The blindfold symbolises her impartiality. However, judges, like anyone else, possess biases and prejudices that affect their impartiality. Judicial bias is particularly concerning, given the institutional role of judges and the consequences of their decisions. Such bias can enter through various loopholes. When interpreting facts, biases may arise in the assessment of witness testimony, and stereotypes may affect the application of maxims of experience. When interpreting the law, prejudices may surface in the definition of the scope of principles and in the balancing of rights. To address these loopholes, the law currently provides certain safeguards, such as the duty to justify judicial decisions and the appeals system. However, experience shows that these safeguards are insufficient. To supplement them, my paper offers two types of solutions. First, structural solutions: social integration to combat stigmas and false stereotypes, and diversity within the judiciary to ensure that the perspectives of discriminated social groups are represented. Alongside structural solutions, I propose others relating to the training of judges. Specifically, I outline several moral and epistemic virtues that judges should display: empathy towards those who are different, epistemic responsibility, and the use of public reason and of a human rights approach.

LAW AS A SOCIAL INSTITUTION: A SEARLEAN RECONSTRUCTION OF THE RULE OF LAW

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WG.206 · Theme: Rule of Law

WORKING GROUP · Rule of Law I
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ABSTRACT

This paper argues that the rule of law specifies the conditions for the existence of law as a social institution.

Legal positivism employs three overlapping but insufficiently distinguished conceptions of law: (1) law as the set of rules established and applied by legal officials; (2) law as "a complex social and political institution" (Hart, The Concept of Law, p. 239), and (3) law as the system of (primary and secondary) social rules that describes this institution. Drawing on John Searle's theory of social institutions, this paper clarifies the relation between these conceptions and argues that law should be understood primarily as a social practice rather than as a set of rules.

From Searle's theory it follows that if law is a social institution, it must have a distinctive function. To be able to fulfill this function, law must have specific qualities. As I will show, the required qualities correspond to the classic requirements of the rule of law.

This functional perspective yields a reinterpretation of the rule of law. Rather than a normative ideal, it specifies the existence conditions of law itself. A social institution that poorly meets these conditions can at best be considered as bad law. If it doesn't meet them at all, it cannot be law. These are functional, not moral requirements.

Viewing it primarily as a social institution thus allows for a critical assessment of law, while retaining the positivist insight that the existence of law depends solely on social facts. This is particularly relevant in the global context, given that international law operates within a highly diverse cultural and social context.

RESPONSIVE LAW BETWEEN FUNCTIONALITY AND POPULISM: PROMISES AND PERILS

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WORKING GROUP · Rule of Law I
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ABSTRACT

This article explains why trust in law is important. Using Nonet and Selznick's theory, it compares repressive, autonomous and responsive law. It shows that responsive law, although open to society, can lose clarity and stability when it is shaped too much by social demands and populist expectations. The article also explains how trust depends on clear rules and fair institutions. It shows why legal certainty helps people accept and follow the law. Finally, it warns that law should not change too quickly or only follow political pressure. The greatest threat to responsive law lies in both: its entanglement with functional contexts and populist society expectations.

STATE NEUTRALITY IN LAWS REGARDING TECHNOLOGY AND NEEDS

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WORKING GROUP · AI & Digital Governance I
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ABSTRACT

At first glance, sufficientarianism seems relatively modest in its (re)distributive demands in contrast to other major schools of thought on distributive justice. Sufficientarianism asserts individuals are entitled to enough goods to lead a decent life. But sufficientarianism is deceptively unassuming. It is the very fact that its distributive demands are limited to only the essentials that those demands deserve the utmost philosophical scrutiny. Entitlements to things deemed to be needs bear a high moral urgency and trumping power in political disputes. Because of this special trumping power, care must be taken to ensure the content of sufficiency (where the threshold is set and the kinds of goods included within it) is determined in a manner that is just and legitimate. I assert that legal policies articulating needs and outlining programs to meet needs must adhere to the ideal of state neutrality.

It is important that those who are compelled to make sacrifices in service of meeting the needs of others view that redistribution as in principle just. This calls for the content of sufficiency (the entitlements owed to individuals by the state) to be limited to things generally considered weighty and nontrivial. It is difficult to determine this content within a society that is culturally, religiously, and philosophically pluralistic. A particularly thorny challenge is posed by the newly theorized dimension of eco-relational pluralism. Modern societies contain both people who embrace cutting-edge technologies and those who are devoted to following traditional subsistence practices. How then might we achieve overlapping consensus on the question of what is enough in a society composed of citizens with very different (though all reasonable) ways of life? I will theorize an ideal of impartiality in answer to this question.

HERCULESAI AND COMMON LAW SPLIT JUDGMENTS

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ABSTRACT

This presentation explores the phenomenological significance of common law split judgments with respect to the adjudicative prospects of Legal Artificial Intelligence, distinctly understood as a type of Natural Language Processing technology that implicates domain-specific Large-Language-Models. At face value, the technology appears to be able to manifest Dworkin's dream – that of Hercules, call it HerculesAI for present purposes. Before wholesale adoption of that technology, however, a pause is invited to account for the differences between law's monistic vision, on the one hand, and its pluralistic phenomenon, on the other. Two particular ideas are introduced in this context: (i) the dialectical significance of panel adjudication when multiple judges come together to comprise the appellate bench; and (ii) the privileged personhood of the individual judge within the seriatim decision-making convention constitutive of the common law legal tradition. Both are crucially accountable to Hart's foundational distinction regarding the internal point of view of the law. Are talks about the law in these terms important? If so, can they be preserved or recreated by HerculesAI? If not, are we prepared to push through nevertheless?

THE THORNY ENCOUNTER BETWEEN THE LANGUAGE OF THE DEMOCRATIC CONSTITUTIONAL RULE OF LAW AND THAT OF ARTIFICIAL INTELLIGENCE. WHY BET ON THE TRUTH?

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ABSTRACT

The scenery in which democracy and the constitutional state unfold demands transparent knowledge of the activities of institutions and authorities. Therefore, this setting also entails a discussion about language—that is, how messages are conveyed and how deliberation takes place. Given the still uncertain horizon regarding the uses and possibilities that artificial intelligences can offer, regulation is required so that they do not become tools serving one or a few exclusionary speeches or vehicles for information aimed at manipulating popular will by the sectors that control how information is accessed or produced. It is necessary to return to the question of truth, a topic that seemed to have lost the interest of postmodern societies as the last century progressed and the present one began. Living in a constitutional state means keeping both our capacity to dissent and our ability to recognize and guarantee fundamental concepts intact, without relativizing them. In this context, it is necessary to ask about the scope of freedom, given the extensive margin that artificial intelligence applications currently enjoy. This unrestricted freedom of those who control the technology or use it to disseminate information, whether public or private actors, can threaten the freedoms of thought and expression of those who access biased, conditioned, or manipulated data. According to Sartori, these two freedoms, along with the polycentric nature of the media, are necessary conditions for forming public opinion and, therefore, for democracy. The monopolization or manipulation of information can undermine

the democratic environment; therefore, it is pertinent to ask whether freedom in this technological context requires regulation to protect the truth as the foundation of democracy.

Keywords: Artificial intelligence, Democracy, Constitutional rule of law, Language, Truth, Human Rights.

POST-TRUTH AS A LEGAL PROBLEM IN THE DIGITAL SOCIETY: BETWEEN MISINFORMATION, INSTITUTIONAL TRUTH, AND DEMOCRATIC RESILIENCE

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ABSTRACT

The emergence of so-called "post-truth" challenges not only classical theories of deliberative democracy, but also basic assumptions of legal normativity, by eroding the epistemic trust necessary for the production of legitimate decisions. Starting from the proliferation of fake news and coordinated disinformation campaigns in digital environments, this study aims to investigate the extent to which the crisis of public truth constitutes a specific legal problem, distinct from mere communicational or moral pathologies. In dialogue with Niklas Luhmann's systems theory, it analyzes the differentiation between factual truth, legal truth, and the "truths" produced by the media system and digital platforms, highlighting the risk of pathological couplings between the political, legal, and media systems. The text then explores the constitutional limits of content regulation in regimes committed to freedom of expression, the prohibition of prior censorship, and the protection of pluralistic public debate, examining recent models for combating disinformation (platform regulation, algorithmic transparency duties, labeling obligations, verification mechanisms, and non-criminal responses). The central hypothesis maintains that post-truth should be understood as an institutional problem, which requires less of a substantive definition of "true" from the law and more of a design of procedures and structures capable of strengthening democratic resilience: strengthening public verification bodies, guaranteeing informational integrity in electoral processes, and promoting conditions for mutual recognition between parties in conflict. The contribution thus aims to articulate

legal philosophy, social theory, and constitutional law to propose a normative framework for disinformation that goes beyond criminal response, focusing on institutional arrangements that protect autonomy, political equality, and the very possibility of a democratic public sphere in the digital age.

CIVIL LIABILITY AND ARTIFICIAL INTELLIGENCE: A PHILOSOPHICAL-JURIDICAL APPROACH TO RISK AND HUMAN DIGNITY

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WORKING GROUP · AI & Digital Governance I
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ABSTRACT

1. Introduction and ethical framework The rapid integration of AI into essential sectors such as healthcare, justice, and public administration has created a paradigm shift where technological autonomy challenges traditional legal pillars. From a philosophical - juridical perspective, this research argues that the law must not remain reactive to technology. Instead, it must uphold Human Dignity as the guiding principle, ensuring that individuals are protected against opaque and unpredictable algorithmic decisions.

2. The Failure of Fault - Based Liability In the face of AI's "black box" nature - characterized by the opacity and autonomy - the classic fault-based model (culpa) becomes ineffective. Proving negligence is nearly impossible for victims when decisions are made through statistical correlations and machine learning patterns. This creates a "responsibility gap" that threatens the principle of effective judicial protection.

3. Risk as the Central Criterion for Justice The core of this research proposes a shift toward Objective Liability (Strict Liability) based on the "increased risk" created by the provider. This is not merely a technical choice, but a requirement of Social Justice: those who control the design, manage the updates, and profit from the system must bear the risks associated with it.

4. Reinterpreting the "Development Risk" Defense A key contribution of this work is the critique of the "development risk" exoneration. In the realm of AI, unpredictability is an inherent feature, not an accidental defect. Therefore, allowing providers to claim ignorance of these risks results

in an unacceptable externalization of damages toward the most vulnerable link: the user.

5. Conclusion: Law, ethics and Innovation The proposed model seeks a balance between fostering innovation and preserving the central role of human intervention. By ensuring explainability and transparency, the legal framework protects human agency and guarantees that AI serves as a functional tool without displacing the ethical foundations of our legal systems.

LEGAL LEGITIMACY AND AI-GENERATED NORMS: A CHALLENGE FOR REPRESENTATIVE DEMOCRACIES

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ABSTRACT

This paper examines whether legal legitimacy retains conceptual and practical relevance in democratic legal systems when norms are produced by or with the assistance of artificial intelligence. Departing from a pluralist conception of legitimacy that encompasses procedural compliance, substantive alignment with democratically protected values, and the justificatory engagement expected from those vested with normative competence, the paper investigates the conditions under which legitimacy can be sustained when artificial intelligence participates in the production of legal norms understood in a broad sense, including statutes, judicial decisions, and contracts. The central question driving the inquiry is whether the addressee of an AI-generated norm can trace the reasons behind it, recognize the arguments that sustain it, and identify those accountable for them. Democratic traditions have generally associated legitimacy with the availability of such a justificatory chain, anchored in competent human agents. The paper investigates whether this association is constitutive of legitimacy or merely contingent upon particular institutional arrangements, and whether it can be preserved, transformed, or must be abandoned as artificial intelligence enters the process of norm production.

THE THEORY OF VALUES AND ARTIFICIAL INTELLIGENCE IN LAW: AN INQUIRY

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ABSTRACT

Legal normative production is inherently axiological. Every stage of norm creation and interpretation, from the legislative choice of what conduct to regulate to the judicial attribution of meaning to prescriptive texts, involves valuation. Legal orders prescribe tables of values to be protected, and legal principles function as axiological vectors orienting those who operate within the system. Artificial intelligence now tends to occupy functions previously performed by human agents, and therefore spaces that were inherently permeated by valuation. It processes legal linguistic data, generates prescriptive content, and participates in decision-making processes leading to consequences qualified by law. The theory of values, however, was not built to anticipate this phenomenon. Its presuppositions concern human subjects capable of estimative engagement, of preference, of historically and culturally situated axiological choice. This paper proposes to investigate what the theory of values can offer when confronted with that displacement. The inquiry examines whether the theory retains its explanatory power in this new context, where its analytical reach proves insufficient, and whether the concept of indifference, identified as the true opposite of value, illuminates something essential about what artificial intelligence brings to the spaces it now occupies in law. The paper also investigates whether the theory yields criteria capable of orienting human decisions about the role of artificial intelligence in legal normative production and interpretation.

DIGITAL AUTOPHAGY: ALGORITHMIC HARM AND THE INSUFFICIENCY OF THE FINE

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WORKING GROUP · AI & Digital Governance I
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ABSTRACT

In November 2024, Oxford University Press selected Brain Rot as its word of the year. The choice was a sociological datum signaling a civilization naming its own cognitive pathology. This article argues that the phenomenon Oxford's lexicographers identified is not a cultural curiosity but the visible symptom of a structural process here termed Digital Autophagy, the dynamic by which digitally mediated societies consume, through the very mechanisms created for their flourishing, the cognitive and normative preconditions of social self-reproduction. Drawing on Niklas Luhmann's autopoietic systems theory, Byung-Chul Han's critical phenomenology of digital life, and Hans-Georg Gadamer's philosophical hermeneutics, the article develops a double thesis. First, that Digital Autophagy constitutes an authentic systemic crisis: the behavioral engineering of surveillance capitalism produces systematic deterioration of the psychic systems structurally coupled with every social subsystem simultaneously, eroding the shared hermeneutic horizon on which law's legitimacy depends. Second, that the legal responses so far produced globally, though well-intentioned, remain structurally insufficient: operating through administrative fines and compliance obligations, they respond to the colonization of the legal code by the economic code with instruments of that same economic code. A fine is, from a systemic perspective, the admission that a conduct is tolerable at a price. What can be tolerated at a price will be calculated as a cost of business and perpetuated as long as profit exceeds the penalty. The article argues that restoring the legal/illegal distinction requires moving from pricing to prohibition: the criminalization of deliberate algorithmic cognitive manipulation as a crime against collective cognitive public health. The legal interest, subsidiarity analysis, and mens rea

structure of this proposed type are developed through comparative doctrinal analysis across the Brazilian, Italian, and Spanish legal orders.

ETHICS AND LAW FOR SOCIAL SUSTAINABILITY IN TECHNOLOGICAL INNOVATION: WEARABLE HEALTH DEVICES AS A PARADIGMATIC CASE

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WORKING GROUP · AI & Digital Governance I
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ABSTRACT

Technological innovation — particularly artificial intelligence — increasingly permeates intimate dimensions of human existence, including the body itself. Wearable health-monitoring devices (e.g. smart rings, bracelets, watches) exemplify a broader challenge: the convergence of biometric data collection, automated decision-making, and social regulation. Tracking continuously physiological parameters — heart rate, sleep patterns, physical activity, blood oxygen levels — these devices generate granular personal data whose legal and ethical implications remain largely unaddressed.

Drawing on Foucault's notion of biopolitics, we argue that wearable technologies represent a new paradigm of bodily governance: no longer episodic, as in traditional medical encounters, but permanent, automated, and increasingly delegated to algorithmic systems. This shift raises questions about autonomy, informed consent, and the right to bodily self-determination — questions only partially captured by legal frameworks.

Our analysis focuses on three interconnected dimensions. First, we examine the risks of discrimination and social inequality embedded in wearable data ecosystems: the same data that may improve individual healthcare can be repurposed by insurers, employers, or public administrations to profile, exclude, or penalize individuals — disproportionately affecting women, elderly people, and those in vulnerable situations. Second, we assess existing legal instruments — including the GDPR, the EU AI Act (2024), and the Council of Europe Framework Convention on AI and Human Rights (2024) — in governing these risks, highlighting gaps between pace of technological deployment and hard law responsiveness.

Third, drawing on UNESCO's Recommendation on AI (2021) and relational approaches in legal theory, we contend that ethical soft law, while insufficient alone, plays an indispensable role in orienting regulation toward justice, equity, and fundamental rights protection.

We conclude that wearable health technologies demand an integrated ethics-law framework that treats the body not as a data source to be optimized, but as the locus of irreducible human dignity — one that law is called to protect with renewed conceptual and normative tools.

UNDERSTANDING OF LAW AND TRUST IN LAWYERS. HART, FULLER, AND LEGAL ETHICS

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WG.34 · Theme: Classical & Historical

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ABSTRACT

This article is built upon a simple insight that lawyers can misuse law. Already upon it, it is possible to found a professional ethics of lawyers, or shortly legal ethics. How do contemporary jurisprudence, legal theory, or philosophy of law relate to this insight? What are the implications of ignoring it? What is the relevance of its recognition for trust in lawyers and judiciary?

In this article I will not systematically approach any of these important questions, but I will directly or indirectly address them by means of focusing upon two virtually opposed prominent general accounts of law as regards the issues of trust in lawyers and legal ethics: Herbert Hart and Lon Fuller. While Hart does not deal with these issues or does it only marginally, in Fuller's work they take an important place, despite not being fully developed nor always addressed straightforwardly. The analysis of these two accounts shows how a specific understanding of law either prevents one from grasping or enables one to grasp the topic of trust in lawyers and legal ethics as the structural pillar of the idea of law.

After explaining the Hart-Fuller differences in this respect, I focus upon the idea and phenomenon of professional code of ethics which is usually regarded as an important instrument, or even the core of professional ethics. Typically, codes are held to be the tools for increasing trust in lawyers. However, their status and nature appear to be ambivalent and theoretically unclear. What is their nature? Are they only legal acts and what does the term ethics in their title correspond to? What are the implications of founding ethics only by virtue of law? These are the questions I deal with in the second part of the article.

PRELIMINARY REMARKS ON SCHMITT'S PHILOSOPHICAL ANTHROPOLOGY

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WG.73 · Theme: History, Democracy & Public Power

WORKING GROUP · Classical & Historical I
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ABSTRACT

Over the past decade, Carl Schmitt's political-juridical writings have attracted renewed prominence, perhaps largely owing to the potential for mobilizing his rhetorically charged conceptions, whether in an apologetic or critical vein, so as to diagnose the predominantly political pathologies of our time, namely the crises of neoliberal mass democracies and of the political-economic world-order. If Schmitt's relevance is to be justified, one must proceed in his manner, by conjecturally representing human nature as dangerous and dynamic. Without this a priori anthropological presupposition, the conceptual definition of the political is unattainable, as well as the concept of the state, whose contents, people and land, remain unformed, if deprived of political organization. Schmitt's representations are structured dialectically, as the distinction of sea-humans and land-humans, in his world-historical Meditation demonstrates. From a phenomenological standpoint, this spatial scission of humanity reveals how antagonistic rationalities arise from natural elements. In Schmitt's deductive schema, knowingly inspired by the conception of civil society in Hegel's Philosophy of Right, maritime-oceanic peoples are identified with trade, industry, technical progress, economic rationality and a greater inclination toward freedom. This paper seeks to outline Schmitt's philosophical anthropology, thereby allowing for a better comprehension of the structure of his works, and how his specifically juridical conceptions of concrete order and jurisprudence are articulated with the totality of his thought, which is at once anthropological-psychological, politico-sociological, and religious-philosophical. By unveiling how Schmitt's rhetoric operates through dialectical representations, this paper demonstrates how his occa-

sional alignment with a tradition of political philosophy informed the implicit epistemology of his polemical theses. With and against Hobbes and Hegel, his inquiry into human nature, followed by the political constitution of an anthropomorphic state, discloses its historical counterpart – a mechanistic conception of the state triggering the mechanization of the human.

THE ROMAN CONCEPTION OF STATE AUTHORITY: PHILOSOPHY, LEGEND, AND THE FOUNDATIONS OF THE REPUBLICAN ORDER

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WG.90 · Theme: History, Democracy & Public Power

WORKING GROUP · Classical & Historical I
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ABSTRACT

Already in Antiquity, the success of the Roman state was attributed to the distinctive character of its political organization. Underlying the Republic's resilient institutional structure was a coherent philosophy of authority, discernible through an inquiry into the Romans' own understanding of state power. This understanding found enduring expression in the legendary account of the transition from monarchy to republic and, above all, in the exemplary deeds of individual figures whose conduct became normative for the education and moral formation of successive generations of Roman citizens.

The history and myth of the Roman Republic subsequently functioned as a foundational model in the construction of modern constitutional states, a paradigmatic example being the United States of America. The appropriation of the Roman model as a point of reference in the development of modern constitutional orders established a tradition in which the philosophy of the state was interpreted and legitimized through recourse to Roman history. Yet this reception simultaneously opened the possibility of conceptual distortion, giving rise to persistent misapprehensions of Roman political and legal thought.

By re-examining the philosophical premises embedded in the narratives of the Republic's formative years, the present study seeks to reconstruct the specifically Roman conception of state authority as articulated at the beginning of the first century CE. In the works of Polybius, Cicero, and Livy, one may discern a sustained philosophical narrative whose principal function was formative: to elevate the conduct of Lucius Junius Brutus,

Lucius Tarquinius Collatinus, and Publius Valerius Publicola into paradigmatic standards of statesmanship. The article examines what we can learn about the ideological basis of legal institutions from the Romans, who, notwithstanding their awareness of the legendary character of their early history, nevertheless continued to transmit these narratives across generations. To this end, it proposes a renewed reading of the sources in light of the philosophy of the state and law.

HISTORY AS A METHODOLOGICAL RESOURCE FOR CONTEMPORARY LEGAL KNOWLEDGE. THE CASE OF ROMANIA

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WG.95 · Theme: History, Democracy & Public Power

WORKING GROUP · Classical & Historical I
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ABSTRACT

This paper argues that history constitutes a major methodological resource for shaping contemporary law, with particular reference to the Romanian case. The conceptual trajectory begins from the ontological condition of the human being as a multidimensional entity—biological, psychological, social, axiological—whose development unfolds historically through the interaction between individual and community. Since ubi societas ibi jus, law emerges as a normative expression of social organization, shaped by concrete historical contexts and persistent mental structures. The study integrates dialectical historicism and modern historical analysis, from Thucydides' causal explanation to the reflections of the Annales School and H. I. Marrou's thesis on the inseparability of history from the historian. Three major causal orientations—positivist, historical materialist, and systemic—are critically examined in order to assess their relevance for legal methodology. Applying the historical method to the Romanian experience highlights the continuity of juridicity from Roman legal heritage to the customary Legea țării, the role of village communities and Christian tradition, and the dynamics of an open national identity capable of European integration without losing its specificity. The central conclusion affirms that history is not merely memory of the past but an epistemological infrastructure of legal science, indispensable in moments of strategic reorientation and axiological reconstruction of legal normativity.

WHY VERTICAL INTERACTION MATTERS: RECONSTRUCTING FULLER'S THEORY OF LAW

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ABSTRACT

Lon L. Fuller's theory of law emphasizes that legality depends on a reciprocal relationship between lawmakers and those subject to the law. Although this interactional insight has attracted renewed attention in recent discussions of the rule of law, its deeper theoretical basis has not been sufficiently clarified. In particular, it remains unclear why the interaction between legal officials and legal subjects should be central to explaining the nature and functioning of law.

This paper proposes to reconstruct Fuller's theory of law through the lens of contemporary artifact theory. In the philosophy of artifacts, a growing body of work argues that artifacts cannot be adequately explained solely in terms of the intentions of their authors. Rather, artifacts are sustained and stabilized through patterns of interaction between authors and users. The identity and functioning of artifacts therefore depend not only on design intentions but also on the ways in which they are taken up and successfully used in practice.

Building on this perspective, the paper argues that Fuller's account can be understood as identifying a distinctive form of vertical interaction between legal officials and legal subjects. Law, on this view, is a kind of institutional artifact whose existence and operation depend on the ongoing interaction between those who create and apply legal norms and those who are expected to follow them. Crucially, the success of this interaction is essential for the realization of law's functions: legal norms can guide conduct only if they are publicly accessible, intelligible, and applied in a manner that allows subjects to orient their actions accordingly.

By reconstructing Fuller's theory through artifact theory, the paper clarifies why interaction occupies such a central role in Fuller's conception of

legality and highlights its relevance for contemporary debates in legal and social ontology.

CUTTING OFF THE HEAD OF THE KING: FOUCAULT ON STATEHOOD

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WORKING GROUP · Classical & Historical I
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ABSTRACT

What is State? How should one understand Statehood? Foucault had proposed a bold answer in his study about power and governmentality, that the State should not be understood as an entity, as a substance by itself, nor as "the State", but as an effect of different kinds of power relations. He dedicated himself to a genealogy of modern state, and revolutionized the state theory by a process of dis-fetishization of the state, which not only rejects the assumption that the state is itself an entity, but also the whole tradition of political-juristic theory of power, which could be traced back to social contract theories. He asked us to give up the juristic model of power, which should be replaced by a decentralized microphysics of power, in which the modern state should be analyzed. What exactly did he mean by the "juristic model of power", which he wanted us to give up by "cutting off the head of the king" in our mind? This paper is aimed at giving an interpretation of Foucault's reflection on the "old model" of theorizing state by reading his texts around his "governmentality period" and demonstrating that modern state could be understood as a dynamic internal war of struggling power relations.

DE CATEGORIIS IURIS ROMANI HUMILITATIS ET MISERIAE IN IURE HISPANICO TRANSMARINO

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WORKING GROUP · Classical & Historical I
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ABSTRACT

This article explores how Roman Law was used to frame the legal personality of the Indigenous subjects of the Castilian Crown under the Law of the Indies. It studies how subjects are placed into the law. It suggests that the Roman Law concept of personae miserabilis served as the basis for the Spanish idea of Miserabilidad, which framed the rights and obligations of indigenous subjects in private civil law. This treatment is exemplified by the application of Restitutio in Integrum (an intervention in a procedurally valid yet substantively unjust action) to civil cases involving Native Americans. It also briefly explores how specific intellectual propositions and objections to this categorization laid the philosophical foundations for the recognition of a universal legal personality that contributed to the eventual modern formulation of human rights in continental Europe.

RIGHTS AND CONCEPTIONS OF CONSENSUS IN A DEMOCRACY

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WORKING GROUP · Human Rights
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ABSTRACT

The concept of consensus has been invoked to explain how divergent worldviews can be mutually accommodated in deciding on the features of a just society and in determining the scope of human rights subject to divergent interpretations. Rawls' concept of overlapping consensus seeks to account for an agreement about the framework of justice even within a context of pluralism of worldviews. Meanwhile, the concept of emerging consensus has been invoked in transnational human rights law in a paradigmatic context of the pluralist democracy Rawls' account of justice seeks to accommodate. The European Court of Human Rights has relied on the concept of consensus to justify progressive development or evolution in the scope of rights protection. The concept of emerging consensus presupposes both a prior disagreement and emergent agreement as to the content of rights, more or less implicitly recognising the under-specification of the rights being interpreted. This paper considers to what extent these conceptions of consensus are compatible and in what way or not emerging consensus can contribute to the justification of human rights interpretation in the context of pluralist democracy at a time when political conflict has challenged the existence of shared values.

INDIGENOUS RIGHTS CONTRA HUMAN RIGHTS

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WORKING GROUP · Human Rights
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ABSTRACT

An ambivalent relationship exists between indigenous rights and human rights: on the one hand, what can be observed is a modern endeavour to subsume indigenous rights into the systematic discourse and framework of human rights; on the other hand, however, whenever issues of indigenous rights are at stake, a historical human–barbarian opposition is lurking in the shadows ominously. In this essay, I argue that this ambivalence is situated in the two meanings of human that are in tension. In contrast to the universality attached to the notion of human in its contemporary understanding—an attribute that functions as the ratio of human rights—historically the human has been a more particular, more substantive concept. The latter sense has been manifested in the line of thoughts from the Roman opposition between homo humanus and homo barbarus to the human Bildung, which does not see the notion of human as a status born universally but as a quality cultivated particularly. This substantive sense of human played a critical role in causing the indigenous situation; for example, it became the underlying rationale of civilising missions, which sought to 'cultivate' the indigenous peoples into 'fully grown humans'. Ironically, the notion of human—only this time in its universal sense—later becomes a powerful device to foster theorisations of indigenous rights. This irony calls for a more nuanced reflection when one is contemplating indigenous rights: it is problematic to unquestioningly subsume indigenous rights into human rights discourses, assuming that the former is but a subcategory of the latter; the ambivalence between indigenous rights and human rights ought to be acknowledged, for it itself also points to a justice at issue and an injustice to be addressed.

POPULATION DECLINE AND POSTHUMOUS RIGHTS

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ABSTRACT

This paper analyzes the risk of normative necrocentrism: the prospect that the claims of the dead come to dominate the moral and legal order. That prospect is intensified by a world problem as consequential as climate change, AI, or global migration: sustained population decline. Many scholars worry about its causes; some about its economic effects. I argue that legal theory should worry about its systemic normative consequences. When we scrutinize a concept that will become increasingly salient in a shrinking world – posthumous rights – a deep internal contradiction emerges within our thinking about rights: the population paradox (I.). Permanent demographic reversal guarantees that this paradox will not remain confined to armchair reflection but will arise within finite time. It forces us either to abandon parity between lifetime rights and their posthumous extensions or to risk the collapse of rights themselves. Aristotle foreshadowed the first escape route (II.). He suggested that posthumous wrongs are, in a relevant sense, "lesser" than lifetime wrongs. Unfortunately, each natural interpretation of this Aristotelian conjecture – one concerning stringency, the other persistence – faces a powerful challenge (III.). Cutting against the grain, I develop two underappreciated lines of argument from contemporary moral philosophy and value theory that come to the rescue. Drawing on Andrew Lichter's analysis of obligations as status-embodying features (IV.1.) and Samuel Scheffler's account of evaluative reciprocity (IV.2.), I argue that both challenges rest on a false premise. Together, these considerations show that posthumous rights are less stringent and less persistent than lifetime rights. The law half-knows this but lacks a convincing theory to say it (V.). The account developed here not only defuses a para-

dox that has escaped legal theorists; it also provides a more principled reconstruction of the temporal cutoffs, waning doctrines, and balancing practices structuring legal treatment of the dead.

PUBLIC POLICY EXCEPTION IN THE RECOGNITION AND ENFORCEMENT OF FOREIGN COURT DECISIONS

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WG.114 · Theme: Human Rights, Climate & Culture

WORKING GROUP · Human Rights
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ABSTRACT

Recognition and enforcement of foreign court decisions constitute one of the most significant fields of private international law. With the increasing cross-border legal relations due to globalization, it has become necessary for judicial decisions rendered by courts of one country to produce legal effects in other countries. In Turkish law, this matter is regulated under the Law on Private International and Procedural Law No. 5718 (MÖHUK).

According to this law, recognition and enforcement of foreign judgments are subject to certain conditions, one of which is that the decision must not be contrary to Turkish public policy. The public policy exception aims to protect the fundamental legal values, constitutional principles, and social order of the State, functioning as a safeguard mechanism in the evaluation of foreign judgments. However, the ambiguous nature of this concept may lead to inconsistent interpretations and unpredictable outcomes in practice.

This study examines the role and importance of the public policy exception in the recognition and enforcement process, evaluating its scope in light of doctrine and judicial decisions. In particular, it analyzes how Turkish courts interpret the concept of public policy and in which cases foreign judgments are refused. Furthermore, it discusses whether the public policy exception should be interpreted narrowly or broadly.

In conclusion, it is argued that although the public policy exception is necessary, it should be applied in a limited and proportional manner; otherwise, international legal certainty may be undermined. In this regard, particular emphasis is placed on the importance of a more predictable and consistent application of the concept of public policy under Turkish law.

THE SELF-REFLEXIVE INTERNATIONAL LAW

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ABSTRACT

The self-reflexive international law addresses global uncertainty by integrating its effects on legal practice and research. The model is inspired by Ken Wilber's Integral Theory and connects the external, observable dimension (e.g., historical narratives and legal sources) with the often-neglected internal, subjective aspect, which is accessed through perceptual inquiry and imagination. To be clear, imaginative capacity is not reduced to fantasy; rather, it is viewed as a highly intelligent process of symbolic meaning-making. The core argument is that international law must transition from the postmodern perspective grounded in binaries and hierarchies toward an integral perspective that prioritises genuine multiperspectivism. The post-colonial critique is a necessary sign of clarity in understanding the discipline's colonial origins within postmodernity. It serves as an essential stepping stone to further coherence and attunement, characteristic of the next – self-reflexive - phase of practicing and researching international law.

AUTONOMOUS WEAPONS SYSTEMS AND INTERNATIONAL HUMANITARIAN LAW: THE CASE OF NON-CONSCIOUS ON CONSCIOUS VIOLENCE

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ABSTRACT

One of the most prominent arguments against autonomous weapons systems (AWSs) is that they violate human dignity and thereby international humanitarian law. The act of killing a human with an unthinking, unfeeling machine is thus strongly condemned with reference to the obligations that international law puts on combatants (Asaro 2012, Heyns 2017). But what about autonomous weapons actually violates these obligations? I suggest that the key variable is that AWSs are not conscious and that we intuitively reject the idea of non-conscious on conscious violence. Those who kill another human must always be conscious agents. But is that so? My presentation explores different avenues to advance the dignity-argument and its relationship to humanitarian law, suggesting that ultimately, using AWSs may signal a profound disrespect for the value of human life. However, I argue that this cannot justify a principled ban on AWSs.

HOUSING AS A THRESHOLD RIGHT: A PHILOSOPHICAL JUSTIFICATION AND ITS STRUCTURAL ROLE IN THE EXERCISE OF SOCIAL RIGHTS

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ABSTRACT

Can the "abstract subject" of modern legal theory be conceptualized without a spatial foundation? This study investigates whether the philosophical justification of housing—rooted in dignity, autonomy, and privacy—positions it as an ontological "threshold right" and a mandatory prerequisite for the exercise of other social rights.

This study employs legal philosophy and normative theory. The foundations of the right to housing are analyzed through the concepts of dignity, bodily integrity, and autonomy. By examining the conceptual links between space, identity, and legal agency, the research reinterprets the interdependence of rights through the lens of spatial necessity.

The central argument is that housing is not merely a social welfare object but a constitutive element of legal subjectivity. Housing is a fundamental right because an individual's dignity, privacy, and autonomy can only be realized within a legitimate, stable space where boundaries against the external world are established. In a world partitioned by property regimes, housing provides the individual with a "legitimate ground for existence." This justification elevates housing to a "threshold right." The exercise of other rights—such as education, health, or labor—is structurally dependent on the subject possessing a secure spatial foundation. Thus, housing is not a secondary social right but a structural prerequisite for the entire rights regime.

This paper shifts the discourse on housing from "social policy" to legal ontology. By conceptualizing housing as a "threshold right," it provides a

novel framework justifying the interdependence of rights through spatial necessity. This approach allows housing deprivation to be understood not just as a loss of welfare, but as the systematic dissolution of the individual's legal character and their capacity to exercise all other fundamental rights.

LAS DESAPARICIONES FORZADAS EN MÉXICO, ANÁLISIS FILOSÓFICO JURÍDICO

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ABSTRACT

El reciente uso del artículo 34 de la Convención Internacional para la Protección de Todas las Personas contra las Desapariciones Forzadas respecto de México constituye un punto de inflexión en los mecanismos de supervisión internacional, al activarse ante indicios fundados de una práctica sistemática de desapariciones forzadas. Este trabajo sostiene que dicho mecanismo no solo intensifica el control internacional, sino que evidencia límites estructurales del modelo jurídico estatal para responder eficazmente a violaciones graves de derechos humanos.

A partir de un análisis conceptual y crítico, se examina el tránsito de mecanismos ordinarios de monitoreo hacia formas reforzadas de escrutinio que pueden escalar hasta la Asamblea General de las Naciones Unidas, destacando su carácter excepcional y sus implicaciones para la soberanía y la responsabilidad internacional.

Desde la filosofía del derecho, el estudio propone que la activación del artículo 34 revela una disonancia entre las creencias jurídicas predominantes en México —basadas en un cumplimiento formal de normas— y las prácticas institucionales efectivas, caracterizadas por déficits en investigación, sanción y prevención. Esta brecha cuestiona la legitimidad del sistema jurídico y obliga a repensar la relación entre validez normativa y eficacia social.

Se concluye que el caso mexicano no solo tiene relevancia empírica, sino que ofrece un marco para analizar cómo los sistemas jurídicos internalizan —o resisten— los estándares internacionales, aportando a la teoría del derecho una reflexión sobre el papel del control internacional en contextos de incumplimiento estructural.

INALIENABLE IN THEORY, EGREGIOUSLY WRONG IN PRACTICE: HUMAN RIGHTS AND THE QUESTION OF STARE DECISIS

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ABSTRACT

Despite their general commitment to democracy and liberal values, many outstanding thinkers, like Bentham and Kelsen, objected to the inclusion of human rights in legal texts. They believed that the formulations of these rights would inevitably be too abstract and therefore incapable of guiding judicial decisions. Nowadays, a proposal to remove the bill of rights from a constitution or denounce all international human rights treaties would be too radical, so modern opponents of controversial judicial interpretations of these rights employ a different rhetoric: they accuse judges of excessive "activism" and advocate "judicial restraint". In line with this criticism, the U.S. Supreme Court issued its decision in Dobbs v. Jackson Women's Health Organization four years ago, where it overruled Roe v. Wade and Planned Parenthood v. Casey. While the women's right to abortion is hardly a fundamental criterion for the existence of law and liberal democracy, the very fact that a right previously recognized by the highest court and enjoyed by people for decades can be declared an "egregiously wrong" understanding of liberty gives rise to concern about many other rights not stated expressis verbis in a primary source of law. In fact, due to the abstract character of rights, virtually any concrete aspect of liberty can be called into question on account of insufficient justification. When voicing this concern, the dissenters in Dobbs invoked the doctrine of stare decisis to argue that the Court must have adhered to its previous decisions. This paper examines the normative foundations of this doctrine as applied in human rights adjudication. In the author's opinion, the traditional reasons for it based on the rule of law and equality considerations

do not seem convincing in this context; an appeal to some natural law concepts like the concept of inalienability of rights seems more promising.

THE VISION OF YOUNG STUDENTS TOWARDS ENVIRONMENTAL LAWS AND CULTURE

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WG.46 · Theme: Criminal Justice

WORKING GROUP · Criminal Justice I
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ABSTRACT

When we analyze the history of environmental question, we can easily think that the industrialization and the economical mutations are the principal cause of new social and environmental problems: water and soil pollution, poor air quality, deforestation, social inequality, social conflict, disease, etc. In an attempt to find solutions, new sciences emerged at that time. Let us remember that it was in this context that sociology emerged as an autonomous and institutional discipline, with its origins in three revolutions: the industrial revolution, the political revolution and the scientific revolution. According to Oscar Navarro (2016), concern for environmental quality emerged in Western society in the 1960s, when people became aware of the deterioration of the biosphere and its effects on human well-being and survival. The degradation of the natural environment, pollution of all kinds, the depletion of resources essential for life, food security, the energy crisis and global overpopulation were the source of widespread concern. She believes that this reality has made the environment a social issue, as it is a source of debate and conflict between different groups. (Lo Monaco, Delouvée and Rateau, 2016, p. 265) Through this proposition of communication, we try to analyse the relationship that young students have with the environmental laws and culture. In this way of analysis we will also ask the question of the influence of university education toward the environment and the ecological behaviors and laws?

Keywords: sociology, young, ecology.

FULL EXCUSES NEGATE WRONGDOING

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WG.208 · Theme: Criminal Justice & Legal Subjectivity

WORKING GROUP · Criminal Justice I
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ABSTRACT

Full excuses – considerations that fully negate an agent's culpability for an act or omission – are central to both legal and moral accountability practices. The standard view in both domains is that excuses differ from other exculpatory defences (e.g. exemptions and denials) in that they negate culpability alone, without negating the act's wrongfulness. On the standard view, that is, full excuses imply blameless wrongdoing: they presuppose the act was morally or legally impermissible, but negate the agent is blameworthy or liable to punishment for it (cf. Austin 1957; Brandt 1969; Robinson 1982; Zimmerman 2004; Baron 2007; Duff 2007; Goudkamp 2013; Kelly 2013; Goldberg 2015; Sliwa 2019).

My aim is to reject the standard view, in both domains. I will argue that excuses negate culpability by negating wrongdoing. I will first defend this rare view with regard to moral excuses (cf. Strawson 1962, Wallace 1994), and will then translate the argument to the legal domain. I will do so, however, without assuming that legal excuses mirror the structure or content of moral ones. As I will mention, the differences between legal and moral accountability practices are too many and too deep for us to expect that legal and moral defences closely resemble one another.

The main problem with the standard view, I contend, is that it necessarily entails that (legal or moral) obligations concern not intentional action but action itself. I will raise several doubts against this view, and one key objection: namely, that since acting unintentionally (accidentally, inadvertently, etc.) cannot be done for reasons, it cannot be governed by the reasons provided by moral or legal norms; so it cannot be construed as violating norms (what cannot be governed by norms is not subject to norms). Unintentional conduct can be construed as impermissible only if

indirectly culpable, i.e. resulting from negligence or recklessness. Blameless unintentional conduct cannot (conceptually) be impermissible. Therefore, full excuses – e.g. inadvertence, accident, or mistake – negate wrongdoing.

NEW POLICING MODELS IN TIMES OF SECURITIZATION: OPERATION "SEGURANÇA PRESENTE" (2019-2024) IN RIO DE JANEIRO

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WG.229 · Theme: Criminal Justice & Legal Subjectivity

WORKING GROUP · Criminal Justice I
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ABSTRACT

This paper analyzes Operation Segurança Presente (OSP), a public urban security policy in Rio de Janeiro, as a vanguard for a "deformed" paradigm of contemporary policing. Since its legislative expansion in 2019, the OSP has challenged traditional binaries that categorize policing as either state-centralized or community-local. By examining how the OSP tensions the limits between democratic legality and governmental rationality, this study contributes to the reevaluation of legal frameworks in the face of changing global problems. The research employs a qualitative approach inspired by Foucault's archeogenealogy, combining a systematic literature review on securitization with a normative-documental analysis of acts, decrees, and administrative agreements (convênios) from 2019 to 2024. The central hypothesis posits that the OSP is not merely an institutional irregularity but a "technology of government" characterized by selective territorial control and flexible normativity. Preliminary findings reveal a two-phase evolution: the first phase (2014–2018) relied on direct private funding through convênios with commercial entities, such as Fecomércio-RJ, where "those who finance choose" the policing focus. The second phase (2019–2024) introduced a complex "hybrid legalization". Following a judicial prohibition on direct private funding, a series of decrees and specific laws—notably Law 8.597/2019 and Law 8.729/2020—established public funds capable of receiving transnational private donations, effectively bypassing restrictions through institutional engineering. Critically, audits indicate that increased spending has not reduced crime rates, nor has the "feeling of security" ever been measured. Ultimately, this study argues that

the OSP represents a shift toward a securitarian governmentality that utilizes decrees and administrative flexibility to justify opaque, privatized management in the name of efficiency and order.

LEX SPECIALIS REVISITED: CHALLENGES OF FORMALISATION IN CRIMINAL LAW

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WG.234 · Theme: Criminal Justice & Legal Subjectivity

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ABSTRACT

The lex specialis principle is a well-established rule of statutory interpretation, serving as a priority rule in cases of conflicting norms (concurrence). Long-standing debates have centered on the matter of its essence – a formal or teleological one. It applies especially to criminal legal doctrine, where the first attempts to formalise this principle precede by many years research carried out in the AI & Law domain, which dominated the discussion recently. What makes it even more interesting is the fact that these discourses are isolated from each other. While doctrinal scholars do not utilize the instruments offered by modern logic, AI & Law researchers lack insight into judicial practice. This calls for an attempt to bridge the gap between these discussions.

Using the formal framework as proposed in AI & Law literature, this paper analyses critiques posed by doctrinal scholars (of Polish and German origin) against the idea of the strictly formal nature of lex specialis in the field of criminal law. The paper shows that the focal point is the question of the multiplicity of offences arising from a single act. It ties closely with the matter of formalisation of the rules in both the Special Part of the penal code (definitions of offences) and the General Part (rules of concurrence). These, however, are again deeply immersed in doctrinal debates that have not only been going on for many years, but are also dependent on the very shape of certain legal orders. In conclusion, the paper shows a strong connection between both AI & Law and doctrinal scholarship in their endeavours to operationalise binding law. This connection should be considered in any future studies regarding the formalisation of conflicts of norms.

‘BORDER POSTS’ OF IUS PUNIENDI: A THEORETICAL MODEL FOR THE IMPLEMENTATION OF INTERNATIONAL LEGAL NORMS IN NATIONAL CRIMINAL LAW.

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WORKING GROUP · Criminal Justice I
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ABSTRACT

International law significantly impacts the content of national criminal law. However, its implementation is all too often chaotic and ad hoc. In my presentation, I will criticise the 'point-by-point' method of implementation, which assumes the separate implementation of individual obligations. I will highlight its inefficiencies and the risk of inconsistency. I will then propose an alternative method in which the subject of implementation is not a single treaty provision, but rather an entire set of norms derived from the full package of obligations (treaties, customs, and general principles). This approach enables states to avoid implementing outdated or non-binding norms. Rather than concerning a single provision of international law, the implementation process refers to an international legal norm whose shape is determined by three phenomena: multicentricity, fragmentation, and the constitutionalisation of international law.

The proposed model assumes a two-stage implementation process. First, the content of the norm binding on the state must be determined horizontally, taking into account the applicable methods of interpretation in international law. The second step involves breaking down this norm according to the competences of the relevant national authorities, which are divided into legislative, executive and judicial powers. This enables us to determine which elements of the international norm require statutory implementation (e.g. due to the need to respect the nullum crimen principle) and which can be incorporated into the application of criminal law at a national level.

CONTRIBUTING TO CRIME: STATE MISCONDUCT AND THE LIMITS OF CRIMINAL PROCESS REMEDIES

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WG.288 · Theme: Criminal Justice & Legal Subjectivity

WORKING GROUP · Criminal Justice I
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ABSTRACT

Sometimes the state is implicated, directly or indirectly, in crimes later brought before court: either through immediate solicitation by public officials or through conduct that creates or sustains conditions that lead to offending. Unlike other forms of state misconduct, these cases sit uneasily within recognised grounds for criminal process remedies such as stay of proceedings or sentence mitigation. Prosecuting defendants to whose offending the state has contributed seems particularly objectionable. That intuition is widespread but has resisted adequate principled explanation.

This article advances an account of the bases for such remedies, using entrapment as its focal case.

First, two views are rejected. The first appeals to the offender's blameworthiness or the state's shared responsibility for the offence. Such approaches rest on mistaken notions of responsibility and cannot explain why state involvement matters when analogous private behaviour does not. The second holds that the state's contribution to offending undermines its authority to enforce the criminal law. The latter relies on a distorted picture of the role state authority plays in criminal law.

I argue that the only promising route is duty-based: the state's contribution to offending constitutes a distinctive wrong because it breaches a duty owed to the defendant. Any criminal process consequences must rest on the secondary duties thereby generated. The article defends the most plausible version of this view. Two difficulties nonetheless remain. First, offenders will typically lack a valid complaint against being punished. Second, while state contribution may cancel self-regarding reasons for punishment, other-regarding considerations — desert, prevention, vindication of victims — largely ground punishment and survive any impairment in

the state–offender relationship. Criminal process remedies are thus not the appropriate currency for discharging the state's remedial duties.

The conclusion is deflationary: any justified remedy rests on considerations neither specific nor essential to entrapment or other forms of state-contributory misconduct.

AXIOLOGICAL LAW INTERPRETATION

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WG.134 · Theme: Legal Reasoning

WORKING GROUP · Legal Reasoning I
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ABSTRACT

The fundamental goal of every law interpretation is to recreate an appropriate pattern of behavior. To achieve the desired effect, specific interpretative directives are used: linguistic, functional, and systemic. The types of these directives and the manner of their application are usually subordinated to the theory of interpretation adopted in a given doctrine. One such theory is the theory of the rational legislator. According to this principle, the entire legal system, defined as a properly ordered set of binding legal norms, is the result of the activity of a rational subject—a subject who, guided by specific knowledge and a coherent and stable system of values, chooses from among the possible actions that will lead to the most preferred state of affairs. Therefore, every act of legal interpretation and its effect—a norm of conduct—should conform to the model of rationality. One type of interpretative directive—functional directives—are intended to ensure that the reconstructed legal norms find proper axiological justification in the system of values attributed to a rational legislator. This raises the question of how to legitimize values as those held by the legislator. Axiological law interpretation, which involves not recreating norms from legal provisions, but recreating the legislator's values from the entire normative material—including decoded norms—may provide an answer. The assumption that the legislator's axiological system includes primarily (but not exclusively) legally binding values, i.e. those that the legislator himself introduced into the system, provides a basis for attempting to formulate appropriate directives of axiological interpretation, e.g. a directive that a norm ordering the realization of an appropriate state of affairs makes this state of affairs legally positive, or directives that principles of law defined as orders to realize specific values – values most often reflected in

names, such as the principle of legal certainty, where legal certainty also serves as the name of the appropriate value – directly point to these values.

A JURISPRUDENTIAL APPROACH TO CONCEPT OF "PHILOSOPHY OF CORRECTABILITY"

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WG.162 · Theme: Legal Reasoning

WORKING GROUP · Legal Reasoning I
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ABSTRACT

Contemporary society is largely predicated on the prevailing belief that the ideals of the Enlightenment and liberal democracy have been actualized. However, the frequent failure of social discourse—occurring just as often as its success—remains a profound concern for intellectuals. For instance, recent mass riots in South Korea and the United States were driven by minority factions who embraced falsely justified beliefs as truths. The persistent and unresolved nature of such incidents exemplifies the breakdown of dialogic engagement. This paper focuses deliberately on the debate between Jürgen Habermas and Richard Rorty concerning the "conditions of discourse" and cultural transformation, elucidating that their dispute fundamentally revolves around the preconditions demanded of discourse participants. Habermas posited that the "public sphere" is forged when rational players engage in discourse according to the rules of communicative action. However, contemporary cases indirectly demonstrate the profound difficulty of realizing this normative ideal.

As a theoretical alternative, this paper introduces Hiroki Azuma's concept of "correctability" and evaluates its jurisprudential validity. The notion of correctability serves as a viable alternative to Habermasian communicative action in two pivotal respects. First, it expands the discursive space by continuously modifying the very preconditions of the dialogue. Second, it provides a framework for iteratively revising universally mandated concepts—such as human rights—to adapt them to the exigencies of the 21st century, while preserving a minimal normative baseline. Thus, correctability, as a dynamic and self-revising mechanism, offers a more pragmatically viable foundation for sustaining democratic discourse in an era defined by epistemic pluralism and persistent social fragmentation.

FROM NORM TO PRACTICE: LEGAL REALISM AND THE CRISIS OF LEGAL KNOWLEDGE IN THE MODERN STATE

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WG.163 · Theme: Legal Reasoning

WORKING GROUP · Legal Reasoning I
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ABSTRACT

This study reinterprets the legal realist movements of the early twentieth century not merely as a critique of legal formalism, but as a response to a definitional crisis produced by the expansion of the administrative and regulatory capacities of the modern state. While conventional accounts describe realism as emphasizing the indeterminacy of legal rules in judicial decision-making, this explanation fails to clarify why realism emerged at a specific historical moment. Accordingly, this study examines not only what realists argued, but why such arguments became necessary at that time.

The classical model of legal reasoning, proceeding linearly from norm to decision, proved increasingly inadequate in capturing the complex governance practices of the modern state. As the state's regulatory and administrative capacities expanded, this inadequacy shifted the focus of legal knowledge from abstract norms to observable practices. This shift marks the increasing visibility of law's embeddedness in social and institutional contexts, rendered unavoidable by the expansion of the modern state's regulatory and administrative capacities. By the early twentieth century, this inadequacy had become structural: it was no longer tenable to conceive legal decisions as merely the logical application of norms.

Although different strands of realism diverge, they converge in redirecting the object of legal inquiry toward observable practices. American, Scandinavian, and Russian realisms, within their respective contexts, reconceptualized law as an outcome-oriented instrument grounded in decision-making practices, an empirically structured form of social ordering, and a form of authority rooted in psychological and social foundations.

These variations do not merely reflect intellectual diversity; they represent context-specific responses to a shared transformation in the conditions under which legal authority operates. Legal realism thus expresses a transformation in the regime of legal knowledge, through which the new legal reality produced by the institutional and administrative transformation of the modern state becomes intelligible.

ANALOGY IN LEGAL REASONING: A RHETORICAL APPROACH BETWEEN INVENTION, CONSTRUCTION AND JUSTIFICATION

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ABSTRACT

This paper presents a reconsideration of analogy in legal reasoning by situating it within a Rhetorical Theory of Law. Departing from the dominant view in civil law traditions, which treats analogy as a subsidiary technique for filling normative gaps, the study argues that analogical reasoning performs not only a strategic (persuasive) function but also a material (constitutive) one. In this sense, analogy contributes to the construction and reproduction of shared legal topoi, reducing the cognitive gap between general legal texts and singular cases. The analysis unfolds in three steps. First, it revisits the concept of analogy, drawing on classical and contemporary accounts to show that analogy operates through structured similarity and relevance, and is central to both civil law and common law practices. Second, it outlines the foundations of a Rhetorical Theory of Law inspired by authors such as Theodor Viehweg and Katharina Gräfin von Schlieffen, emphasizing Law as a communicative, community-based practice shaped by symbolic constructions, conflict, and shared expectations. Within this framework, rhetoric is understood in its strategic, analytical, and material dimensions. Finally, the paper reassesses the role of analogy, engaging with rhetorical models and its critiques such as that of Richard Posner. It argues that analogy functions both heuristically (guiding the discovery of premises) and for justification purposes (supporting decisions), while simultaneously reinforcing the communal topica that constrains legal practice. Rather than a mere logical or manipulative device, analogy emerges as a core mechanism through which legal actors reproduce and transform the "semiotic web" of law. The paper concludes that analogy is indispensable to understanding legal reasoning as a rhetorical practice. By

embedding innovation within shared argumentative patterns, it sustains both the stability and adaptability of legal systems, countering simplistic dichotomies between formalism and judicial arbitrariness.

DIVERGENT CONCEPTIONS AND LAW

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ABSTRACT

In an age when keeping count of our constructed identities has become an impossibility, we find ourselves surrounded by strangers within our ever-narrowing social circles. It is said that we have inherited from our ancestors a fear of the unknown - a fear they developed as a consequence of the conditions in which they lived: small groups in the wild, perpetually exposed to every manner of danger. Who can claim that this fear is felt any less acutely today?

Global unease, fear, and anxiety prompt us to question how everything could have gone so wrong, and some among us may already have ready-made answers. We may hold ideologies, systems, powers, and social classes responsible. We may subject the application of law to theoretical scrutiny and engage in conceptual analysis. A few of us may even venture to propose solutions. It is my conjecture that in every idea we generate, a responsible Other will be found. I believe that the most difficult point in the exercise of subjecting all acquired concepts, thoughts, and views relating to law - whether one's own or those of others - to rigorous skepticism, under the guidance of knowledge and critical thinking, lies precisely in the distinction we draw between ourselves and the Other.

The theory of mind concerns our awareness of the existence of other minds. While everyone else constitutes an “other” to each of us, within this field a further categorization has emerged: the distinction between the neurotypical and the neurodivergent. Under this division, grounded in neurodevelopmental differences, autism, attention deficit hyperactivity disorder (ADHD), dyslexia, dyscalculia, and certain other conditions are classified within the category of neurodiversity. Autism has come to occupy a prominent position in current debates and scientific research within the context of neurodiversity. Despite the fact that every mind operates in a distinctive

manner, a substantial body of research has been conducted - drawing on indications of shared characteristics among autistic minds - concerning the functioning of autistic minds and the ways in which that functioning differs from neurotypical minds. The differences characteristic of autistic minds are examined across social, sensory, and behavioral domains.

It is my view that drawing upon findings from research addressing the differences in the functioning of other minds could contribute significantly to any endeavor aimed at enabling us to interrogate our own conceptions of law. This study aims to contribute to a perspective of inquiry into the human dimension of legal thought by presenting select research examples which may include findings concerning a divergent understanding of a foundational legal concept such as justice.

JUDGING, ACTING, REFLECTING: JURISPRUDENCE AND THE FORMATION OF CRITICAL LEGAL CONSCIOUSNESS

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WORKING GROUP · Legal Reasoning I
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ABSTRACT

This paper argues that legal philosophy occupies a privileged position within contemporary legal education as a platform for critical pedagogy, enabling the formation of critical legal consciousness oriented toward judgment, action, and reflective reassessment. Rather than treating jurisprudence as an abstract supplement to doctrinal training, the paper conceptualises it as a pedagogical space in which future lawyers learn not only how to reason, but how to judge, act, and reflect responsibly within law's normative and social dimensions.

The analysis begins with accounts of critical thinking as purposeful, self-regulatory judgment involving interpretation, evaluation, inference, and metacognition (Davies 2015). Building on theories of criticality, it is argued that critical thinking in higher education remains incomplete unless it includes a commitment to action in the world (Elen, J., & Verburgh, A. 2023). In legal contexts, however, action cannot be understood as a final stage. This paper therefore foregrounds self-reflection after action as an integral moment of critical judgment.

The paper then engages critical pedagogy, understood not merely as criticism but as critique: a practice of uncovering hidden assumptions, power relations, and ideological structures embedded in legal norms and knowledge production (Burbules & Berk 1999). While critical pedagogy has sometimes been viewed as external or politicising in legal education, legal philosophy provides the conceptual distance required for such critique without collapsing into indoctrination.

Synthesising these perspectives, the paper proposes critical legal consciousness as a dynamic process intertwining awareness, judgment, action,

and reflection (Douzinas et al. 1990; Conklin 2002; Wintersteiger 2019). Finally, it concludes that jurisprudence can and should serve as a critical and constructive site for educating lawyers capable of responding thoughtfully to the changing problems of the world.

LIMITED AGENCY WITHOUT EXEMPTION: WEAK NORMATIVITY AND GRADUATED RESPONSIBILITY UNDER STRUCTURAL CONSTRAINT

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WORKING GROUP · Legal Reasoning I
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ABSTRACT

This paper asks whether structural explanations of domination must entail normative exemption. Drawing on feminist critiques of beauty labor, it argues that although subjects are formed and constrained by capitalism, patriarchy, and disciplinary norms, structural causation should not be conflated with moral innocence. The problem becomes acute in Althusserian structuralism, which explains the production of compliant subjects through ideology, but also risks dissolving subjectivity and responsibility into structural determination. Existing critiques of Althusser identify this deficit, yet they do not fully reconstruct a principled account of responsibility under conditions of limited agency.

To address this impasse, the paper brings Judith Butler into dialogue with Gianni Vattimo and Santiago Zabala. Butler's theory of performativity not only demonstrates how norms constitute subjects through reiterative practices, but also offers a powerful critique of normative violence: norms exclude, discipline, and render certain lives unintelligible. At the same time, her persistent effort to resist re-stabilizing normative judgment generates a "de-normativizing" tendency, in which the conditions for distinguishing between different forms of compliance—especially between survival-oriented conformity and the active reproduction of oppressive norms—remain underdetermined. The issue, therefore, is not that Butler eliminates normativity, but that her framework makes it difficult to justify even minimal evaluative distinctions without reintroducing the very normative violence she critiques. It is precisely at this point that Vattimo and

Zabala's weak thought becomes necessary. By interpreting metaphysical foundations as historically contingent formations that sustain forms of conceptual and social violence, weak thought opens a space for normative claims that do not rely on strong, exclusionary grounds. This anti-foundational yet non-relativist stance provides the meta-normative basis for the weak-normative test developed in the following section, allowing evaluative judgment to be reformulated without collapsing into either moral absolutism or normative suspension.

On this basis, the paper develops a graded model of responsibility with an additional weak-normative test. Before responsibility is assigned, a norm must pass the test of whether it can be maintained without appealing to strong metaphysical foundations, while remaining open to contingency, plurality, and the vulnerability of situated agents. Within this framework, the model distinguishes minimal compliance, competitive compliance, and reproductive compliance, and separates wrongness, blameworthiness, and intensity of censure. Structural constraint mitigates responsibility, but it does not erase evaluability. Using beauty labor as a case study, the paper argues that even structurally constrained agents retain a limited capacity to refuse reproducing oppressive norms toward others. "Non-heroic resistance" names these modest practices of maintaining critical distance, limiting compliance to what is necessary, and refusing to police others' appearance choices. The paper thus offers a framework for critical theory that avoids both moralistic individualism and normative nihilism.

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SPECIESISM, COLONIALISM, AND THE HUBRIS OF INTERNATIONAL LAW

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WG.17 · Theme: International & Private Law

WORKING GROUP · International Law
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ABSTRACT

Human beings have colonized each other, leading to great cruelties such as mass displacement, cultural imperialism, and genocide. Human beings—nearly all of us to various degrees—have colonized the planet as well, resulting in severe harms to nature and nonhuman life forms. The colonization of the planet has been driven, or at least supported, by speciesist commitments to a vision of humans as evolutionarily superior and imbued with virtue and rationality. Accordingly, humans are permitted to, and perhaps even obligated to, exercise dominion and domination over the planet and its other life forms. Speciesism is deeply woven into the hubris that permits the use and destruction of non-human life forms.

Many are inclined to look to the criminal law as the proper tool for addressing the most serious acts of wrongdoing, such as genocide and other mass atrocities. This inclination has led some to call for adding the crime of "ecocide" to the Rome Statute, which would give the International Criminal Court jurisdiction over perpetrators of acts carried out with the knowledge 'that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts'.

We argue, however, that international criminal law is not the right mechanism for addressing the wrongdoing or harms of speciesism. International criminal law has been unable to address, or even acknowledge, the wrongdoing perpetrated by the hubris of colonialism. Rather, it has redistributed 'accountability' amongst victims of colonialism. Through an analysis of the parallels between colonizers of other humans and colonizers of non-human life, we contend that attempts to criminalize the hubris associated with speciesism will also fail to properly attribute wrongdoing

and prevent ongoing and future harms. We instead argue for a reimagining of an anti-speciesist future outside of extant international legal structures.

THE COEXISTENCE TEST FOR UNILATERAL LEGISLATION: A KANTIAN STANDARD FOR THE NORMATIVE LIMITS OF EXTRATERRITORIAL LAWMAKING

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ABSTRACT

Unilateral legislation with extraterritorial effect poses a foundational problem for legal philosophy: a norm may be fully valid under domestic law yet lack normative authority over foreign subjects. Existing approaches, whether positivist hierarchy theory or international jurisdictional principles, address legality while leaving legitimacy unresolved.

This article argues that the normative limits of unilateral extraterritorial legislation are best identified through a standard derived from Kant's Universal Principle of Right: a state's extraterritorial legislation lacks the normative ground to claim authority over foreign subjects unless it is compatible with the equal external legislative freedom of all states under a universal law. This standard is reconstructed as a formal jurisdictional criterion, not a moral judgment on state conduct, that identifies the conditions under which states may exercise legislative authority across borders within a pluralist legal order.

The argument proceeds in three steps. First, the coexistence standard is derived from the Universal Principle of Right in Kant's Doctrine of Right. Since extraterritorial legislation constrains the legal space available to foreign subjects and sovereigns, it constitutes an external act subject to coexistence testing. Second, the standard is applied to three cases of increasing complexity: WTO-authorised retaliation passes the test; secondary sanctions fail; the GDPR reveals that the test must be applied separately to legislative objectives and enforcement mechanisms. Third, three objections are addressed: the collective-subjects objection misreads Kant's own argument, in which states occupy a position analogous to individuals in the

state of nature; the indeterminacy objection conflates formal open-endedness with practical irrelevance; the enforcement objection conflates legitimacy conditions with compliance mechanisms.

The coexistence standard, reconstructed as a jurisdictional rather than moral criterion, offers a formally neutral and universally accessible basis for assessing the legitimacy of unilateral extraterritorial legislation, a contribution neither Kantian international legal theory nor positivist approaches have previously developed in this form.

WHAT CONSTITUTES THE AUTHORITY AND LEGITIMACY OF INTERNATIONAL LAW?

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WORKING GROUP · International Law
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ABSTRACT

The authority and legitimacy of international law have long remained the focal point of philosophical inquiries into international law. In particular, the legitimacy of international law continues to attract the interest of many scholars.

Nevertheless, there is no clear consensus regarding the object of what the terms authority and legitimacy of international law aim to elucidate. Both the authority and legitimacy of international law have been invoked by inheriting the discourse on the authority and legitimacy of the state and state law. Consequently, the authority and legitimacy of international law discussed thus far have centered on right to rule and the duty to obey the law.

However, applying the concepts of authority and legitimacy from the state and state law directly to international law gives rise to several issues. For instance, international law lacks officials who exercise right to rule, as is the case in state law. Basically, international law likely does not attempt to exercise governance over states or the individuals who constitute them. Similarly, unlike state law, it is not always clear what constitutes a state of obedience to the law. This is because the interpretation of a specific rule of international law may vary depending on each subject.

If that is the case, what are the elements that constitute the authority and legitimacy of international law? This paper posits that individuals are emerging as the ultimate subjects of modern international law. It aims to reconstruct the authority of international law as a tool or framework for describing and analyzing the normative chains that exert a normative in-

fluence on the actions of individuals. Furthermore, it argues that the content-independent justification of these normative chains constitutes the true meaning of the legitimacy of international law.

RECLAIMING LAW THROUGH PEOPLE'S TRIBUNALS: LEGAL PLURALISM AND THE TRANSFORMATION OF INTERNATIONAL LAW

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WG.226 · Theme: International & Private Law

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ABSTRACT

People's tribunals are forums established by civil society to address serious violations that disturb the global conscience. Although they frequently draw upon the language and procedures of international law, they simultaneously question its adequacy in representing and protecting "peoples" as distinct legal and political subjects. From the Russell Tribunal to recent sessions of the Permanent Peoples' Tribunal, these initiatives have functioned not merely as symbolic performances but as significant legal-political interventions. Critics often dismiss people's tribunals as "non-law," yet their work exposes deep normative and epistemic limitations of international law. They give voice to those excluded from official institutions and place emphasis on the root causes of injustice -intertwining political, economic, and ecological analysis in ways formal adjudicative bodies often cannot. They also reintroduce "peoples" as a legal subject in a field that often oscillates solely between the individual and the state, offering a critical intervention into dominant human rights paradigms. Their inquiries contribute to both truth-telling and norm generation, serving as participatory and imaginative forms of international legal discourse. People's tribunals do not merely amplify marginalized voices; they confront systemic legal blind spots -most notably, the limitations of international law in addressing the root causes of violence and holding powerful actors accountable. Especially in relation to peace, people's tribunals emphasize the systemic inability to adjudicate the use of force, aggression, or crimes against peace under existing international legal mechanisms. By engaging with these issues while centering the interests of peoples, they highlight the critical value of peace and solidarity as normative commitments. This

study, argues these forums unsettle the image of international law as a static system, instead foregrounding its plural, contested and evolving nature. In doing so, these tribunals open up space for a broader rethinking of legal authority and normativity, demonstrating how law is continuously reconstituted through diverse social practices beyond formal institutional settings.

LEGAL PLURALISM IN THE BRITISH PROTECTORATE OF CYPRUS AS A HISTORICAL MODEL FOR CONTEMPORARY MULTICULTURAL SOCIETIES

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ABSTRACT

This paper examines legal pluralism as practiced under the British protectorate in Cyprus (1878-1914) and considers what this historical experience can tell us about governing multiple legal traditions within a single jurisdiction today. During this period, the British administration retained the existing Islamic-Ottoman legal framework while gradually introducing common law institutions. At the lower court level, this produced a dual structure: the sharia courts, presided over by Ottoman qadis applying Islamic law, and the newly established district courts, staffed by British judges operating broadly along the lines of the former Ottoman Nizamiye courts. Above both branches sat the Supreme Court of Cyprus, composed of British justices, serving as the final appellate authority. This arrangement posed a central methodological problem: justices trained in common law tradition were required to interpret and apply Islamic-Ottoman rules with which they had limited familiarity. A jurisprudential analysis of 338 Supreme Court decisions reveals how the justices responded to these difficulties in practice. They consulted translated Ottoman codes, drew on classical Islamic jurisprudence (fiqh), sought opinions from muftis and qadis, and turned to English, French, and Roman law for comparative guidance. The result was a hybrid legal system, which can be called “Anglo-Ottoman law”, that neither fully preserved Ottoman structures nor simply imposed British ones. This hybrid order provides a concrete, well-documented case study for assessing how legal pluralism works and where it breaks down. The paper argues that the Cyprus experience is particularly relevant to three recurring problems in today’s multicultural societies: the

adjudication of cross-normative disputes, the institutional viability of pluralist structures, and the balance between recognizing distinct legal traditions and maintaining uniform standards of justice.

THE INDETERMINACY OF PRESCRIPTIVE JURISDICTION IN INTERNATIONAL LAW

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ABSTRACT

Jurisdiction to prescribe refers to the state's authority to enact laws based on six recognized grounds: territoriality, nationality, protective principle, passive personality, universal jurisdiction, and negative effects. When it comes to jurisdiction assertion in transnational criminal law, although a certain level of mutual understanding can be reached among states, the interpretation and application of jurisdictional principles are confusing and inherently uncertain. Without a completed written treaty, states, particularly the powerful actors, are applying jurisdictional principles with excessive freedom, yet there is an apparent lack of effort from states to seek consistency. This is unusual since criminal justice is inseparable from human dignity and personal freedom, clarity, and certainty remain fundamental in the system. This research builds on Critical Legal Studies and offers a substantive discussion of the relationship between the indeterminacy of principles of jurisdiction and state politics in transnational criminal law. The underlying contradictions in the jurisdiction system demonstrate a lack of objectivity in its rules. One could not find a neutral position from which to assess, interpret, or apply the principles of jurisdiction. This research argues that states, especially the powerful ones, recognize that exercising jurisdiction is a political choice that serves their national interests. The research will use the US and China as case studies, with a primary focus on their law on transnational crimes. The United States has been recognized as a major advocate for national security and has established its global leadership, frequently invoking extraterritorial principles unilaterally. The discussion will include, but not be limited to, the USA PATRIOT Act, the Maritime Drug Law Enforcement Act, the Foreign Corrupt Practices Act, and the CLOUD Act. As for China, it has

a long-standing stance emphasizing political control and social stability, prioritizing state sovereignty and the principle of non-intervention. The discussion will include, but not be limited to, the Anti-Money Laundering Law, Counter-Terrorism Law, Data Security Law, and Anti-Espionage Law. A detailed examination of the case studies will demonstrate how the powerful states exercise prescriptive jurisdiction to preserve their national interest and impose political ideologies. At the end, the research will propose that certain efforts could be made by building mechanisms that foster mutual trust and cooperation between states to avoid impunity and promote justice in transnational criminal law.

THE CARIBBEAN COURT OF JUSTICE AND THE LIMITS OF LEGAL ADAPTATION: PRIVATE INTERNATIONAL LAW IN THE FACE OF CHANGING GLOBAL REALITIES

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WORKING GROUP · International Law
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ABSTRACT

This paper examines the role of the Caribbean Court of Justice (CCJ) in responding to the changing problems of the contemporary world, focusing on its underdeveloped engagement with private international law (PIL). In an era defined by increasing cross-border mobility, transnational commerce, and legal pluralism, PIL serves as a key mechanism through which law engages with the realities of a globalized society. Yet, after two decades of operation, the CCJ has not produced a single "pure" PIL decision addressing classical conflict-of-laws questions such as jurisdiction, choice of law, or recognition and enforcement of foreign judgments.

The paper argues that this absence is not merely doctrinal but reflects a deeper jurisprudential orientation of the CCJ toward constitutional and public law reasoning, even in cases involving inherently transnational disputes. Through an analysis of the Court's original jurisdiction jurisprudence under the Revised Treaty of Chaguaramas and its appellate decisions on the enforcement of foreign arbitral awards, the paper shows that the CCJ encounters the realities of cross-border legal interaction but reframes them through the lens of sovereignty, constitutional supremacy, and regional integration.

This raises a broader philosophical question: how does law respond to changing social realities when its institutional structures and interpretive habits remain anchored in traditional categories? The CCJ exemplifies a form of legal adaptation that is indirect and mediated—where new problems are absorbed into existing doctrinal frameworks rather than generating new ones.

The paper concludes that while the CCJ's contribution to PIL remains embryonic, its position at the intersection of public international law, regional integration, and domestic constitutionalism provides a unique opportunity to rethink how courts can more explicitly engage with the normative challenges posed by globalization and develop context-sensitive forms of transnational legal reasoning.

IS TAIWAN CURRENTLY FACING A DEMOCRATIC CRISIS? AN ANALYSIS BASED ON A CONSTITUTIONALIST PERSPECTIVE

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WG.49 · Theme: Rule of Law

WORKING GROUP · Rule of Law II
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ABSTRACT

Since the formation of the current Congress (Legislative Yuan), challenges to Taiwan's democracy have been launched from within it. For major controversial bills, the majority of the Congress, composed of Kuomintang legislators and People's Party legislators, has almost deprived the minority of the rights as legislators through serious abuse of procedural rules. These laws seriously violate the constitutional principle of separation of powers and gradually dismantle the separation of powers in the government system, especially against executive and judicial powers.

Although the amendment to the "Legislative Yuan Exercise of Powers Act", was eventually declared unconstitutional by the Constitutional Court, the Legislative Yuan still gradually eroded the executive power through other law enactments and boycotts of the budget. In order to eliminate the main obstacle to its unconstitutional seizure of power, the judicial review, the Legislative Yuan has amended the Constitutional Procedure Law and not passed the new justices, resulting in the paralysis of the Constitutional Court.

In the face of various acts that undermine the constitutional system of the Legislative Yuan, Taiwan's civil society wanted to change the seat distribution of the Legislative Yuan and launched a campaign called the "Great Recall" to launch a recall of regional legislators in 32 constituencies. Unfortunately, this movement ultimately failed, and not a single legislator was removed.

This article argues that from the perspective of constitutionalism, it can be found that, on the one hand, due to the extreme abuse of the procedural

process, the Legislative Yuan has undergone qualitative changes, subverting its own democratic nature. On the other hand, by passing many highly controversial laws that are unconstitutional, especially by greatly weakening the executive power and paralyzing the Constitutional Court, not only are these laws unconstitutional, but the constitutional separation of powers system has been seriously damaged.

RULE OF LAW AND JUSTICE IN THE POST-TRUTH ERA: EPISTEMIC PRECONDITIONS FOR THE FUNCTIONING OF PUBLIC INSTITUTIONS

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WG.57 · Theme: Rule of Law

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ABSTRACT

This paper explores the rule of law as a dynamic social practice that requires specific epistemic preconditions to function effectively. The authors posit that the realization of justice within the public sphere depends on a stable baseline of epistemic trust and shared criteria for factual assessment. In the post-truth era, however, the disintegration of common standards of reasoning directly undermines the state's capacity to maintain the authority of public institutions, particularly independent courts.

The study investigates how the erosion of epistemic trust, exacerbated by digital fragmentation, distorts the perception of legality and leads to the delegitimization of institutional arbitration. By analyzing the socio-legal mechanisms of the recognition of justice, the authors argue that the rule of law is inherently vulnerable to the degradation of the public epistemic environment. The paper concludes by identifying institutional transparency as a vital safeguard for the integrity of the judicial system.

CONSTITUTIONAL INTERFACES AND THE IMPLEMENTATION GAP: A SOCIOLOGY-OF-LAW METHODOLOGY FOR FEDERAL PLURALISM IN LIGHT OF WATTS'S THREE TRENDS AND NEPAL'S 2015 SETTLEMENT

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WG.153 · Theme: Rule of Law & Courts

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ABSTRACT

Federalism scholarship increasingly acknowledges what Ronald Watts identifies as three defining trends in contemporary federal systems: the proliferation of hybrid constitutional forms, the pragmatic acceptance of asymmetry, and the rise of multi-level governance above the nation-state. Yet the dominant methodology for studying these trends remains textualist - centred on formal allocations of competence, doctrinal exegesis, and comparative institutional design. This paper argues that textualism is structurally incapable of grasping the very phenomena Watts describes, and that a sociological-legal methodology - grounded in Ehrlich's programme of reconstructing the "inner order of associations" and in the processual turn in legal anthropology - is indispensable for understanding, evaluating, and designing federal arrangements in plural societies.

The argument is tested against Nepal's 2015 Constitution, where all three of Watts's trends converge: a hybrid form combining federal, unitary, and consociational elements; pronounced asymmetry across provinces; and an emerging multi-level architecture linking local, provincial, federal, and treaty-based obligations. Nepal simultaneously exhibits a stark implementation gap. The majority of disputes bypass the formal justice system, progressive judicial pronouncements function as performances of modernity rather than operative norms, and constitutional text has been asked to do more work than textualist method can sustain - through what the paper terms "literal living constitutionalism," a drafting technique that seeks recognition through exhaustive enumeration rather than general clauses.

The paper develops the concept of "constitutional interfaces": revisable institutional devices designed to enable two-way normative exchange between state law and non-state orders, rather than one-directional recognition or managed containment. It argues that a methodology attentive to the plurality and immanence of everyday legal practice can narrow the implementation gap precisely because interfaces, so conceived, channel living normative orders into constitutional structure while allowing formal law to be reshaped by the communities it purports to govern. Nepal's federal settlement serves as both illustration and test of this claim.

HOW LEGAL IS AUTOCRATIC LEGALISM, CONSTITUTIONAL HARDBALL, AND ABUSIVE CONSTITUTIONALISM?

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WG.219 · Theme: Rule of Law

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ABSTRACT

The current authoritarian wave is often presented as a legal one. One of the most influential views of this sort is that of Kim Scheppele, writing on autocratic legalism. Other influential concepts, even if a bit older, that continue to shape debates about the recent authoritarian wave are Mark Tushnet's constitutional hardball and David Landau's abusive constitutionalism. In this paper, I argue that it is often not the case that what authoritarians are doing is adopting clever legal strategies, even when we consider many of the examples provided by these authors. Instead, they are departing from law as a form of governance.

Even if these concepts have yielded interesting empirical findings that describe repetitive patterns across countries, they overlook the fact that many of the measures they describe are indeed in contradiction not only with democratic values or a set of substantive rights, but also with the very form of law as captured in a formal conception of the rule of law. They seem to assume a positivist description of law and to overlook why and how a formal conception of the rule of law matters. More precisely, they overlook the principles of legality, due process, and integrity.

In this paper, I present an outline of Scheppele's, Tushnet's and Landau's arguments and contrast them with a view of the rule of law that, although still formal, is in tension with many of the examples of authoritarian measures they provide. This will give us both more clarity on our political commitments and, at least for those in the legal profession, firmer grounds to fight these measures.

BETWEEN INSTRUMENT AND IDEAL: SOCIAL AND ECONOMIC RIGHTS CODIFICATION AS LEGAL TECHNOLOGY IN POST-AUTHORITARIAN CONSTITUTIONAL ORDERS

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ABSTRACT

Can codification be understood as technology? This paper argues that the constitutional entrenchment of social and economic rights - and their enforcement through judicial review- constitutes a paradigmatic instance of legal technology: a deliberately designed institutional apparatus mediating between political power, distributional claims, and human dignity. The argument develops through comparative analysis of constitutional court jurisprudence in Spain, Colombia, Argentina and Turkey, all of which constructed social rights frameworks under conditions of democratic transition or consolidation.

The "law as technology" framing, drawing on Teubner's autopoietic systems theory, foregrounds the engineering dimension of rights codification: whether rights are justiciable or programmatic, what mechanisms individuals may access, and how courts calibrate proportionality review for resource-dependent claims.

The comparative analysis anchors these claims in concrete jurisprudence. Colombia's Constitutional Court has produced landmark structural injunctions -T-760/2008 on systemic health rights and T-237/2023 on pandemic triage - treating violations as requiring judicial re-engineering of public institutions. Argentina's Supreme Court intervened through polycentric structural orders. Spain's Tribunal Constitucional has engineered the boundary between justiciable rights and programmatic social principles across STC 34/2023 on education, STC 44/2023 on reproductive health,

STC 92/2024 on public health, and STC 140/2024 on social security. Turkey's "bireysel başvuru" operates within significant institutional constraints, as the 2023 judicial crisis made visible.

Drawing on Gargarella's engine room critique and his 2022 framework of law as a conversation among equals, the paper interrogates a central tension: codification promises emancipatory outcomes, yet remains susceptible to capture, formalism and democratic deficit.

The paper concludes that treating codification as technology forces the question of whether the instrument works and for whom, under what conditions, and at what democratic cost. Unlike engineering artifacts, legal technologies are constitutively contested -shaped by interpretive communities and political struggles- and require a critical legal sociology attuned to the social conditions of institutional design.

A PROPOSAL FOR THE CONCEPT OF CONSTITUTIONAL IGNORANCE

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ABSTRACT

Although theories of responsibility in legal philosophy have traditionally been based on the concept of free will, the idea that responsibility is more closely related to cognitive control, including judgement and belief, is becoming more appealing. In this context, the most extreme constraint on freedom is ignorance. Willful ignorance is a state in which one does not attempt to recognize or learn the truth because maintaining ignorance is advantageous, even though information is readily accessible. Willful ignorance can be understood as intrinsically linked to the desire to avoid thinking about one's own inherent vulnerability.

Constitutional ignorance can be defined as a state in which one is unaware or caught in epistemic akrasia that the exercise of power by the law or state institutions lacks constitutional legitimacy. It can also refer to a situation where the exercise of power by state institutions is unconstitutional, yet this fact remains undisclosed to the legal community or has not been clearly adjudicated.

Since constitutional institutions are directly responsible for the political and legal systems that render specific forms of suffering visible or invisible, and bear the constitutional duty to eliminate deep ignorance within such systems and develop them into better ones, they can be held to bear primary responsibility—rather than derivative responsibility—for their constitutional ignorance. If a state institution fails to pay sufficient attention to someone suffering in the public sphere despite that person having raised their voice, the state institution bears full responsibility for its constitutional ignorance precisely because of such willful ignorance.

For this reason, constitutional epistemological justification must be objectively evaluated based on extrinsic grounds. Constitutional institutions

are required not only to continuously verify evidence and memories on an individual level but also, from the perspective of an inquirer, to identify reliable sources that consistently provide information on relational vulnerability and to listen attentively to them.

Keywords: Willful Ignorance, epistemic akrasia, vulnerability, public sphere, primary responsibility

HOW AI AFFECTS THE LEGITIMATE AUTHORITY OF COURTS

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ABSTRACT

The use of AI in courts is regarded with ambivalence, and assessed by a confusing compilation of normative standards and analogies. The paper suggests that our joint reflections improve by taking as fundamental the question of how AI affects the legitimate authority of courts, for better and worse. This helps bring order to the various standards, and sheds light on when trust in the use of AI by courts is justified – and why that matters.

The paper starts by asking when and on what grounds do court and other adjudicatory bodies [henceforth courts] make justified claims to be legitimate authorities – i.e. that their subjects have reasons to defer to their judgments and interpretations. Following Joseph Raz' proposal, this is centrally a question of whether the authority enables the subject to better act as it has appropriate reasons to – including self- and other-oriented interests. Courts may provide such services when they adjudicate impartially based on legal rules by judicial method, and when they offer interpretations of those legal rules.

The paper then asks how AI may strengthen or challenge such justifications for the legitimate authority of courts, by influencing how, and how reliably the judges and the judiciary provide those services – and how the affected parties can be assured thereof – hence the role of trust.

The paper addresses five stages/aspects of adjudication where some of these aspects of legitimacy are at stake in ways affected by AI: The legal process (case filing, allocation of judges ..), legal problem solving (identification of issues and legal rules), harmonisation (based on 2nd order considerations regarding legal problem solving); and issuing justified judgment and authoritative interpretation – and then legitimation/maintaining

legitimacy by showing that trust is deserved in the particular decision and in the judicial system.

The paper asks under what conditions various uses of AI can strengthen – or weaken – these requirements at the various stages.

One general finding is that legitimacy is more at stake when AI shares or takes over the authority hitherto enjoyed by judges – particularly their discretion of various kinds which has legal implications.

THE PRE-COOKED MEAL PARADOX: GENERATIVE AI AND THE EROSION OF JURIDICAL SUBJECTIVITY

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ABSTRACT

Current discussions of generative AI in law tend to focus on technical risks such as hallucinations, bias, fabricated citations, and questions of compliance. This paper addresses a deeper jurisprudential concern: does generative AI, by supplying low-friction legal answers, reshape the conditions through which legal subjectivity is formed?

The paper argues that this challenge lies not merely in the risk of occasional error, but in AI's capacity to reshape the very conditions under which legal judgment is formed, legal language is internalized, and responsibility for reasons is assumed. By supplying low-friction, readily consumable "legal" answers, generative AI may gradually shift legal actors from being authors of legal reasoning to becoming recipients of pre-structured conclusions. What is therefore at stake is not only the reliability of a tool, but the conditions of juridical subjectivity itself.

The argument proceeds in three steps. First, the answer-generating logic of generative AI may weaken meaningful human control over legal reasoning, thereby eroding authorship in legal judgment. Second, the semantic smoothing of primary legal texts, while increasing accessibility and efficiency, may reduce the formative friction through which legal method and interpretive discipline are acquired. Third, when the formation of reasons is persistently externalized, professional responsibility may also become attenuated: if the legal subject no longer experiences themselves as the genuine author of reasons, accountability is more likely to become formalized and displaced.

The paper does not argue for rejecting generative AI. Rather, it suggests that legal responses to AI must go beyond technical governance and attend

to the preservation of human beings as interpretive and responsible subjects within legal practice.

THE MINIMAL EPISTEMIC CONDITIONS OF LAW IN ALGORITHMIC ENVIRONMENTS: WHY LAW MAY NEED TO PROTECT ITSELF

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ABSTRACT

This paper argues that the most significant impact of artificial intelligence on law does not primarily lie in the emergence of new regulatory challenges, but in the transformation of the epistemic conditions upon which law depends. Legal systems operate by addressing subjects capable of understanding norms, evaluating reasons for action, and engaging with decisions within structured epistemic environments.

The paper advances and defends a theoretical framework according to which the functioning of law presupposes three minimal epistemic conditions: reconstructability, contestability, and attributability. These conditions are not presented as features of a specific doctrinal approach, but as constitutive requirements that underlie the functioning of law across competing traditions. Drawing on legal philosophy and interdisciplinary research on algorithmic nudging, automation bias, algorithmic appreciation, and cognitive offloading, the paper shows how contemporary digital infrastructures increasingly mediate the processes through which judgments are formed, evaluated, and justified.

As a result, individuals may progressively rely on algorithmic outputs not merely as informational tools but as sources of evaluation and decision-making. If this transformation weakens the epistemic autonomy of legal subjects, the implications extend beyond the regulation of artificial intelligence itself. The challenge raised by algorithmic environments therefore concerns the preservation of the epistemic conditions upon which the functioning of law itself depends, raising the question whether the function of law can remain unchanged or must be rethought

AI PREDICTION AS DOMINATION: A REPUBLICAN PERSPECTIVE

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ABSTRACT

This paper examines machine learning-based predictive optimisation through the lens of contemporary republican political philosophy. While public institutions increasingly deploy these technologies for decision-making about individuals–from welfare fraud detection to pretrial risk assessment–the focus has largely been on fairness and bias rather than more fundamental political questions. Drawing on republicanism's conception of freedom as non-domination, this article argues that predictive optimisation creates three significant problems that undermine political freedom: (1) the impossibility of common knowledge regarding the reasoning behind decisions, (2) the depoliticisation of decision-making through technocratic governance, and (3) the absence of meaningful possibilities for contestation. Through philosophical analysis, the article demonstrates that these problems are intrinsic to machine learning-based decision systems rather than implementation failures. It concludes that if freedom from domination is valued as a normative concept, public institutions should prefer rule-based over machine learning-based automated decision-making. The article points to promising work on simplifying complex machine learning models into interpretable rule-based systems with comparable predictive accuracy as a potential way forward that better aligns with republican principles of controlled power and political freedom.

COMPARATIVE ANALYSIS OF THE STABLECOIN LEGISLATION IN HONG KONG AND THE U.S.: A STUDY OF SIX DIMENSIONS INCLUDING REAL-NAME REQUIREMENT, RESERVE ASSETS, AND CAPITAL THRESHOLDS

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ABSTRACT

The legal definition of stablecoins is established in Hong Kong's "Stablecoin Ordinance" (Cap. 656), which describes them as digital representations of value designed to maintain stability against specific assets, particularly in Hong Kong dollars or other currencies. This ordinance is effective on August 1, 2025, regulated under a single licensing framework administered by the Hong Kong Monetary Authority. In contrast, the U.S. "Guiding and Establishing National Innovation for U.S. Stablecoins Act of 2025" (S. 394, or GENIUS Act) passed procedural votes in June 2025, adopting a federal-state dual regulatory approach. Both pieces of legislation are among the first globally to specialize in stablecoins, yet they manifest structural disparities that yield divergent compliance and business pathways for investors and the industry. This paper aims to analyze six critical dimensions of these two legislative frameworks: (1) obligations for real-name registration; (2) specifications of reserve assets; (3) capital thresholds; (4) interest policy; (5) redemption timelines; and (6) extraterritorial effectiveness. The findings reveal that Hong Kong's stringent regulatory requirements are traded for diverse asset bases and interest opportunities, catering to investors seeking statutory yields and institutional credibility. Conversely, the U.S. framework offers a relatively lower entry barrier and zero-interest design, appealing to liquidity-driven, dollar-denominated scenarios. This juxtaposition fosters a dual-structured framework for entities holding licenses in both jurisdictions, facilitating asset

and liability management across diverse regulatory environments and potentially expanding market user bases. The discussion will contribute to the ongoing discourse on global stablecoin regulations, offering insights into their implications for future digital finance initiatives.

THE ILLUSION OF NEUTRALITY IN ARTIFICIAL INTELLIGENCE: AN INQUIRY INTO ALGORITHMIC BIAS, FEMINIST ARTIFICIAL INTELLIGENCE, AND DATA FEMINISM

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ABSTRACT

This study examines the assumption that artificial intelligence operates as a neutral and objective decision-making technology and argues that such neutrality is largely illusory. Building on my research on algorithmic bias, equality, and data feminism, I demonstrate that AI systems are shaped by the social realities from which their data are derived. Rather than existing outside social structures, these systems often reflect and reproduce historically embedded inequalities and discriminatory patterns. A central finding of my work is that algorithmic bias should not be understood solely as a technical malfunction. Instead, it emerges from broader social, institutional, and legal contexts that influence data collection, categorization, and model design. In this regard, AI systems may reinforce existing inequalities while presenting their outputs as objective and impartial. This creates a risk that discriminatory outcomes become normalized through the authority attributed to algorithmic decision-making. As an illustrative example, my research engages with the problem of gender inequality and discusses feminist approaches to artificial intelligence. Feminist AI scholarship demonstrates how algorithmic systems can reproduce discrimination against women when trained on datasets reflecting unequal social conditions. Cases involving biased recruitment tools, unequal representation in training data, and discriminatory automated assessments reveal that seemingly neutral technologies may disadvantage women and other marginalized groups. These examples show that algorithmic discrimination is not limited to isolated technical errors but is closely connected to structural forms of inequality. The study further analyzes the implications of these

developments for equality and data feminism. Data feminist perspectives emphasize that data practices are shaped by power relations and social structures, making it essential to critically examine whose experiences are represented, whose are excluded, and how these choices influence technological outcomes. However, many AI systems operate through complex statistical processes that are difficult to understand, challenge, or justify. This opacity raises significant concerns regarding accountability, procedural fairness, and equal treatment. Drawing on feminist AI scholarship and data feminism, my research argues that addressing algorithmic bias requires more than improving technical accuracy. These approaches provide critical tools for identifying how power relations shape data production, classification practices, and technological design. Data feminism, in particular, highlights that datasets are never neutral representations of reality but are produced within social contexts marked by unequal distributions of power and visibility. A feminist approach to AI therefore contributes to data feminism by making hidden biases more visible, promoting inclusive and representative data practices, and strengthening mechanisms of accountability and transparency. Rather than treating equality concerns as secondary corrections to otherwise neutral systems, feminist AI places substantive equality at the center of technological governance. In this sense, feminist and data feminist perspectives offer an essential framework for developing AI systems that are not only technically effective but also compatible with democratic values, legal legitimacy, and the protection of fundamental rights.

MORAL PROGRESS THROUGH THE LENS OF KANTIAN PHILOSOPHY OF LAW

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WG.2 · Theme: History, Democracy & Public Power

WORKING GROUP · Classical & Historical II
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ABSTRACT

This paper aims to explore the concept of moral progress from the perspective of Kant's philosophy, as well as the question of whether law could play a constitutive role in addressing the urgent problems of our times such as migration crisis. In the second part of "The Conflict of the Faculties,'' Kant addresses the question, "Is the human race continually progressing toward the better?'' He identifies law as the guiding thread of moral progress: not an ever-growing quantity of morality with regard to intention, but an increase of the products of legality in dutiful actions whatever their motives. Nevertheless, Kant asserts that the greatest problem faced by the human species is the achievement of a civil society that uniformly upholds the principles of justice. Furthermore, Kant argued that the purpose of his philosophy is to serve the restoration of human rights. The human being, as a subject of law, possesses rights, should not be treated as a means but as an end-in-itself. In his final work, the Opus Postumum, Kant repeatedly emphasizes that the human being is a person, meaning a being who has rights that can be acknowledged. However, I wonder: How, then, can these rights be claimed? Not only against others but also against state sovereignty. What is the appropriate method for bringing about political change? Through subjects who publicly use their own reason, even on legislative matters, Kant believes that improvements in state constitutions and reforms for better political institutions can be achieved. Emphasis will be placed on the third definitive article of Perpetual Peace, where Kant maintains that cosmopolitan right shall be limited to conditions of universal hospitality, which provides citizens with the opportunity to present themselves through free communication and free trade.

A DILEMMA FOR INTERPRETIVIST THEORIES OF TORT LAW

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WG.5 · Theme: History, Democracy & Public Power

WORKING GROUP · Classical & Historical II
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ABSTRACT

Tort law theorists often adopt a justificatory interpretive approach, seeking to both explain and normatively or morally justify legal doctrines and practices. I argue that these interpretivists face a dilemma. The first horn is the problem of proportionality: We do not know how much a theory should explain and how much it should justify in order to be counted as successful. To resolve this, justificatory interpretivists could appeal to considerations in the contemporary philosophy of psychology: i.e., a conception of rationality as morality (being rational = being moral) and the idea that rationality is necessary for intelligibility. By integrating these considerations, justificatory interpretivists could argue that normatively or morally justifying tort law makes it rational – and thus intelligible, which is the ultimate goal of the theory. This means they should maximize justification and explain just enough to make sure the subject is still tort law. Yet this solution leads to the dilemma's second horn: By relying on rationality as morality, justificatory interpretivists are unlikely to understand what tort law actually is. I argue that tort law emerges from the behaviours and thoughts of different minimally rational agents – individuals with varied moral views and non-ideal cognitive capacities. Thus, tort law is unlikely to be morally justified, and interpretivists fail to capture this reality. Hence the dilemma. It also shows that the appropriate conception to understand tort law should be another conception: minimal rationality.

ON THE (NON)APPLICABILITY OF LOGICAL PRINCIPLES TO LEGAL NORMS: KELSEN'S "GUILLOTINE" AND ITS EFFECTS

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ABSTRACT

Kelsen's rejection of the applicability of logical principles (especially the law of non-contradiction and the rule of inference) to legal norms is one of the most significant, but, at the same time, one of the most controversial changes of his views that take place in the late, post-1960 stage of the development of his legal philosophy.

In this paper, I seek to identify the deeper philosophical motivations underlying Kelsen's later insistence on the impossibility of norm-logical deduction, and to assess some of its most important consequences, both for his own theory and for contemporary research on legal reasoning and argumentation. I introduce the metaphor of "Kelsen's guillotine" to capture his severing of inferential ties between norms, particularly between general legal norms and corresponding individual norms (i.e. particular legal decisions). This metaphor is intended to suggest that Kelsen's position may be understood as a culmination of the intellectual effect of the original "Hume's guillotine", insofar as it reflects his explicit endorsement of core Humean motifs, including the Is–Ought duality, the distinction between thinking and willing, and the denial of reason's norm-generating capacity.

Although I argue that Kelsen's denial of norm-logical deduction has problematic consequences for the internal consistency and viability of his account of legal normativity, I suggest that, from a logical and argumentation-theoretical perspective, his general approach to the relation between logic and law retains considerable significance. The paper thus highlights how Kelsen's general approach to the relation between logic and law opens the possibility of a "middle way", avoiding both logical-deductivist rigorism and what has been described as "normative irrationalism".

DWORKINIAN SEMANTICS

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WORKING GROUP · Classical & Historical II
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ABSTRACT

In „Law's Empire" (1986) Ronald Dworkin famously rejected "criterial semantics" for manifold reasons (theoretical disagreements, antirealism, problems with semantic criteria, evaluative character of legal terms etc.). In this paper we will scrutinize Dworkin's attack on criterial semantics. After summarizing the current state of the debate, we argue, that Dworkin's claim that so-called pre-interpretive theories (like a „naive" version of positivistic theory) rely on such semantics is wrongheaded and spreads misunderstanding regarding their theoretical commitments. Dworkin's picture is inadequate (with the exception of strictly formalist theories of interpretation). Moreover, he fails to provide a satisfactory interpretive theory himself, for his account of „fit" and "justification" is too vague to provide adequate (truth-) conditions for legal propositions. We will focus on the corollaries and relation between pre-interpretive, interpretive and post-interpretive stages of interpretation. While concluding, we will also track certain „criterial" elements in Dworkin's own version of interpretivism.

THE FIELD OF INTERNATIONAL LAW AND THE DYNAMICS OF CHANGE: A BOURDIEUSIAN ANALYSIS

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ABSTRACT

To understand the role of international law in global society, we must step beyond the disciplinary boundaries of legal academia. Pierre Bourdieu's social theory offers international lawyers powerful analytical tools by transcending the objectivism-subjectivism dichotomy while recognizing the reality of structural domination alongside the inevitability of change.

I draw on Bourdieu's fundamental concepts of habitus (systems of dispositions), fields (relatively autonomous social universes), and capital (that which confers power); and explain that in Bourdieu's theory (a) there is no social existence without practice and (b) practice redefines the habitus and the field. These understandings render his formula of practice an expression of relationality: [(habitus)(capital)]+field=practice[1], meaning that habitus and field cannot be understood beyond their relation. Furthermore, the hysteresis effect (i.e., the lag/mismatch between habitus and field) makes structural change through adjustments inevitable, such that ongoing cumulative change is built into social structures. However, an unresolved issue in Bourdieu's framework is distinguishing between global and national fields.

Against this background, I turn to Bourdieu's theory of the state and explain how the concentration of meta-capital (i.e., power over other forms of capital) creates the state condition that lowers the rate of habitus differentiation by turning state culture into legitimate culture, generating the national habitus. I argue this marks the difference between global and national fields. In the absence of the state condition in global fields, the Bourdieusian framework expects more frequent and layered structural transformations. This expectation finds support in studies of other global fields,[2]

but not in international law, which raises questions about its capacity to respond to contemporary global crises. This divergence could be linked to proceduralization, where necessary submission to forms and formats defers substantive engagement with underlying issues. If proceduralization limits less advantaged participants' capacity to induce otherwise expected cumulative change, are we to expect change primarily through "crisis of the field", and what would that mean for international law's responsiveness to global challenges?

[1] Pierre Bourdieu, Distinction (London: Routledge, 2010) 95

[2] Larissa Buchholz, "What is a global field? Theorizing fields beyond the nation-state", The Sociological Review Monographs 64, no 2 (2016): 39–40; Simon Marginson, "Global field and global imagining: Bourdieu and worldwide higher education", British Journal of Sociology of Education 29, no 3 (2008): 313

RAZ ON THE CONTINUITY OF LEGAL SYSTEMS

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WG.144 · Theme: History, Democracy & Public Power

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ABSTRACT

What constitutes the diachronic identity of a legal system? In other words, what makes the legal system in a particular place at a particular time identical to or different from the legal system in that place at a different time, and since the problem of continuity is often seen as a problem of identity, what makes legal systems in different places at the same time identical or different? Periods such as revolutions, coups, and independence are when the problem of continuity is most evident, and the theory of continuity one adopts carries significant practical consequences.

In the theories of Austin, Kelsen, and Hart, one can find explanations regarding the continuity of legal systems. However, these explanations conflict with legal practice. Despite the failure of the most prominent theories of the concept of law to account for the continuity problem, this subject has been largely neglected. Recognizing this, Raz attempts to provide an explanation for the continuity of legal systems. According to Raz, continuity of legal systems cannot be explained by relying on some ultimate rule, such as the grundnorm or the rule of recognition. Legal systems always belong to more complex forms of social systems, such as religions, states, and tribes. Therefore, according to Raz, continuity of legal systems, that is, their identity over time, depends on the identity of the social forms to which they belong. Consequently, continuity of legal systems cannot be explained solely through studies within legal philosophy.

While Raz's account may be regarded as a significant advancement over those of his predecessors, this study aims to demonstrate that Raz's explanation also fails to encompass certain factual situations. Finally, it will be argued that the problem of continuity reveals that law has a less systematic structure than commonly assumed.

LA AUTONOMÍA DEL DERECHO FRENTE A LA SOBERANÍA DEL NÚMERO: UNA LECTURA HARTIANA DE LA TIRANÍA DE LAS MAYORÍAS

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WG.147 · Theme: History, Democracy & Public Power

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ABSTRACT

This paper examines the structural tension between legal authority and democratic majoritarianism from a Hartian perspective. It argues that the "tyranny of the majority" is not merely a moral concern, but a structural one: it arises when political will attempts to displace the normative criteria that constitute law as an autonomous practice. Drawing on H.L.A. Hart's distinction between primary and secondary rules, the paper contends that the stability and authority of legal systems depend on the integrity of the rule of recognition and the institutional practices that sustain it.

The central claim is that contemporary forms of majoritarianism threaten the autonomy of law by intervening in the secondary rules—recognition, change, and adjudication—that determine how legal norms are identified and applied. When these rules are manipulated to reflect immediate political preferences, the shared criteria of legal validity are undermined. The paper further argues that constitutionalism functions as a contemporary expression of the rule of recognition, securing the continuity of legal reasoning against political contingency. Judicial independence is thus not merely an institutional arrangement, but a condition for the possibility of legal authority itself.

By analyzing recent institutional redesigns justified by appeals to "popular mandate," the paper shows that the erosion of secondary rules transforms law into an instrument of political power. It concludes that democratic validation cannot substitute for normative authority: a legal system can only guide conduct if it preserves a structure capable of generating

publicly justifiable reasons, rather than reflecting fluctuating majoritarian preferences.

BETWEEN THE “PEOPLE” AND THE “KING”: THE CONSTRUCTION OF POLITICAL PHILOSOPHY IN LAOZI’S THEORY OF HUMAN NATURE

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WG.158 · Theme: History, Democracy & Public Power

WORKING GROUP · Classical & Historical II
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ABSTRACT

This paper examines the theory of human nature in the Daodejing and the political philosophy underlying it. It argues that the text's discourse on human beings unfolds primarily within a given social and political framework, and that Laozi's vision of an ideal human life can only be properly understood within this framework. In other words, this paper contends that, in a context distinct from that of classic political philosophy, Laozi's account of human nature articulates—through a distinctive approach in Chinese philosophy—the proposition that "man is a political animal." By analyzing the figures of the "people" (min) and the "king" (wang) in the Daodejing, as well as the relationship between them, this study seeks to elucidate the conception of human nature underlying the ideal political image of "small state with few people" (xiao guo gua min), and to highlight its fundamental differences from the tradition of Western political philosophy.

THE STRUCTURE OF HEGEL'S PHILOSOPHY OF LAW AS AN ORDER OF SOCIAL ACTION

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WORKING GROUP · Classical & Historical II
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ABSTRACT

Hegel's "Philosophy of law" was published (1821) before the emergence of the social sciences, which developed in stark contrast to theses such as his. Time, however, has revealed the common roots between Hegel and certain premises of sociology (Norbert Elias, 2001, 62). It's noteworthy the parallelism between the structure of his Philosophy of law (morality, ethicality, state, as he sets them forth in the note to § 30) and the way Weber structures the legitimate social order through its internal (moral) and external (conventional and legal) guarantees; or Philip Pettit speaks of psychological, ethical, and political freedom; or Alf Ross speaks of psycho-individual norms, psycho-collective norms, and legal norms. This paper seeks to demonstrate that the Hegelian conceptualization of the structure of social action—as expounded in his philosophy of law—engages with certain contemporary debates in sociological theory, so it continues to offer an illuminating viewpoint. In particular, the distinction between morality and ethicality broadens the scope of debates that typically revolve around the terms "law and morality." And, especially, the dialectical relationship between morality, ethicality, and the state (§ 31), in the context of contemporary social sciences, means that the social construction of meaning (in the sense that "meaning" has for Weber or Luhmann) is only possible as a dynamic interplay between individual, cultural, and institutional constructions of meaning, each governed by its own specific processes.

BIOPOLITICAL TRANSLATION: A GENEALOGY OF BODIES IN BRAZILIAN LAW

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ABSTRACT

This paper argues that the Brazilian Judiciary displaces the "right to have rights" (Arendt) toward a "right to sell rights" and examines the mechanism through which this occurs. Drawing on Roberto Esposito's immunitary paradigm and Friedrich Nietzsche's genealogy of morality, it demonstrates that two contemporary institutional practices, the monetization of vacation and special leave entitlements, currently under review by the Brazilian Supreme Court (STF) as Theme 635, and the treatment of full telework as a possible commodity reserved for bodies deemed strategically valuable under Resolution 481/2022 of the National Council of Justice (CNJ), operate according to an immunitary logic: the functional body is included through the cession of its own rights, and institutional continuity is sustained by the dose of negation that such cession entails. The paper traces this logic genealogically, connecting the present to the moment in which Brazilian legal modernity was constituted as a selective translational operation. Lima Barreto (1881–1922), a retired civil servant reclassified as an "indigent" upon commitment to a public asylum in 1914, is the point at which this translation fails and exposes its mechanism: the institution administers what each body is worth and what each body costs. In 1914, the body was excluded by the erasure of its functional bond; in contemporary practice, it is included voluntarily through the conversion of its own rights into monetary equivalence. These are distinct movements of the same paradigm: the community preserves itself by administering what composes it. The paper concludes that the contemporary challenge for Law, in the face of the world's multiple problems, is to rethink the lexicon through which life is administered, opening passage, in the Nietzschean sense, for what Esposito names biopotency.

POLITICAL EXPERIENCE AND THEORETICAL DEVELOPMENT: THE EMERGENCE OF KARL RENNER'S SOCIOLOGY OF LAW

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WG.240 · Theme: History, Democracy & Public Power

WORKING GROUP · Classical & Historical II
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ABSTRACT

In his 1904 work, Die soziale Funktion der Rechtsinstitute - published in a second, revised edition in 1929 -, Karl Renner sought not only to establish the law as a legitimate object for Marxist theory but, more importantly, to inaugurate a new form of scientific analysis of the law that should complement legal doctrine, the sociology of law. My objective in this paper is to present the emergence of Renner's sociology of law as a theoretical response to a specific perception of the political experience of his time: the struggle of the labor movement for the universal vote.

To do so, I will first outline Renner's theoretical self-understanding and his affiliation to the broad Marxist tradition to argue that taking this theoretical self-understanding with its fundamental idea of a unity between theory and practice seriously requires us to understand his work as a theoretical response to a specific perception of the political experience of his time. In the following section, I will then seek to reconstruct this perception with recourse to archival materials and contemporary published writings by the author. The third and final section will then be dedicated to, building on the previous sections, present the development of his Marxist sociology of law as a theoretical response to a primarily practical problem: the labour movement's struggle for the universal vote.

Viewed through this perspective, Renner's analysis of the change of function of private law institutes throughout the course of the historical development of capitalism appears as the product of a theoretical innovation tailored to work through a specific perception of the political experience to condense it into a diagnosis of time capable of fulfilling the task

ascribed to theory in the Marxist tradition: guiding the emancipatory political practice of a labour movement on the verge of conquering the right to vote.

A REINTERPRETATION ON THE TRADITIONAL CHINESE GOVERNING PATTERN OF "OUTER CONFUCIANISM, INNER LEGALISM"

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WG.248 · Theme: History, Democracy & Public Power

WORKING GROUP · Classical & Historical II
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ABSTRACT

The notion of "outer Confucianism and inner Legalism" is a one-sided depiction of traditional Chinese governance thinking. It fails to fully reflect the ancient Chinese conception of social governance and inaccurately characterizes the relationship between Confucianism and Legalism, thereby fostering the misleading stereotype that ancient Chinese people were duplicitous in thought and conduct.

In fact, Confucianism and Legalism share the same ideological origins, social ideals and value positions. In the social governance of ancient China, Confucianism undertook the mission of value guidance and consolidated the foundational legitimacy of governance, while Legalism implemented Confucian values and social ideals through the formulation and enforcement of institutions. Rooted in a common value foundation, the two schools achieved functional integration and complementary coordination.

In view of this, the expression — "outer Confucianism and inner Legalism, with Confucian connotations embedded within Legalist governance" — may serve as a more reasonable interpretation of the wisdom of traditional Chinese governance.

FOUCAULT ON JURIDIFICATION

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WORKING GROUP · Classical & Historical II
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ABSTRACT

The paper looks at how the term 'juridification' applies to Foucault's account of how there is an increasingly legalistic understanding of state and society over a long period of history. The starting point is the role of law, justice and avowal in Oedipus the King. In Wrong-Doing, Truth-Telling, Foucault refers to the Athens of this time in transition between myth and legalistic reason in the application of justice. Oedipus's methods of truth seeking and interrogation are examples of the newly formed legal rationality, while the presence of Apollo's intervention and prophecy refer back to a sacralised idea of justice. Most of Foucault's discussion refers to emergence of legal institution in medieval Europe in relation to the development of Confession as a religious practice, the authority of the church over conscience, the enforcement of conscience, and the inquisitorial procedures developed to investigate heresy. The history of confession goes back to early Church history (The Hermeneutics of the Subject), so the legalistic aspect has a long prehistory. The history of the juridification of society also refers to the idea of a pastorate, a shepherd's rule over a flock, as it is transformed in the medieval and early modern history of state and legal institutions (Security, Territory, Population). In particular it includes church inspired inquisitorial practices in the civil legal system (Wrong-Doing, Truth-Telling). The paper will investigate this history in relation to Foucault's account of medieval German law rooted in tribal law (Penal Theories and Institutions). Here we find an indication of how Foucault's belief that government should govern as little as possible might be expressed. Germanic law rested on localised communal consensus with punishments largely restricted to financial compensation and exile. This might not be the best possible example of the best kind of institutions and practices, but it does represent an example of heterotopia which challenges our

ideas of the necessary and normal. The history of juridification does not have a clear beginning or end, but the looks at it as extending from classical Athens to the 1789 Revolution in France. In the early modern period, Foucault looks at how juridification expands through increases in state sovereignty, ideas of the criminal as an enemy of society, the process in which localised rebellions that may appeal to legal institutions are repressed in the interests of a bureaucratised control of feudal rents. These are aspects of intensified governmentality and prepare the way for the disciplinary punitive society that Foucault discusses in Discipline and Punish. The move from spectacular punishment to disciplinarity is taken as the end of the process of juridification, which finds another expression in the claims of the French Republic to absolute sovereignty and completely legal foundations. The history of governmentality does not end with the emergence of disciplinarity, but a long historical process which submits state institutions, civil society institutions and everyday life to legal definitions and enforcement attains some kind of completion. The intrusion of state centred law which is fundamental to juridification turns into other forms of intrusion.

CHANGING GENDERS AND CHANGING LAW

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WG.3 · Theme: Human Rights, Climate & Culture

WORKING GROUP · Gender & Climate
Chair: Harun Bodur

ABSTRACT

One of the most hotly debated changing problems of the world that the law faces is that of gender – namely, changing gender. This paper explores the role of the law in defining and responding to gender as it changes and exists within familial relationships.

In a 'traditional' family, the terms 'mother' and 'father' are based on reproductive roles, where the person who gives birth is the mother and the person who provides sperm is the father. But where does this leave parents who have transitioned from the sex/gender they were assigned at birth?

For legal recognition, some transgender people are required to be diagnosed with a disorder and undergo surgery. In many countries this included sterilisation to be unable to reproduce – the reasoning being that changing gender without sterilisation confuses parent-child relations. It is only in the last decade that this has been deemed unconstitutional.

The existence of transgender pregnancy and parenthood has implications for the legal frameworks that shape these experiences. Some trans people want to be recognised as parents according to their gender, yet many jurisdictions conflate 'birth-giver' and 'mother' in ways that demonstrate an incongruency between legal understandings and the diverse ways that parenthood is experienced.

I compare that of English and Welsh law with EU law, and look to international human rights bodies who have signalled a need for reform. The Parliamentary Assembly of the Council of Europe and the United Nations Human Rights Council have called on states to recognise the gender identity of transgender parents on birth certificates, and The Yogyakarta Principles, which outline human rights protections for LGBTQIA+ individuals, explicitly support this shift.

Recognising trans parenthood is not just about legal accuracy reflecting social reality - it's about reproductive justice and the right of all families to be treated with dignity and respect.

LEGITIMACY AND JUSTICE: ADJUDICATING COMPETING ENVIRONMENTALIST VISIONS

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WG.9 · Theme: Human Rights, Climate & Culture

WORKING GROUP · Gender & Climate
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ABSTRACT

How should a liberal society respond to urgent ecological crises without compromising its core commitments to legitimacy and justice? This paper develops a philosophical framework for adjudicating environmental conflicts by clarifying the often-overlooked distinction between justice and legitimacy in environmental governance. It argues that fully endorsing any single environmental vision (e.g., ecomodernism, restraint-oriented environmentalism, the subsistence perspective, etc.) as society's singular goal is incompatible with liberal principles. Instead, it defends a pluralist approach, which is grounded in public reason and the protection of vital interests, while remaining open to a range of environmental visions. By categorizing conflicts as involving vital versus non-vital interests, competing vital claims, or competing non-vital claims, the framework offers practical guidance for how liberal eco-states can navigate deep environmental disagreements without betraying their foundational ideals.

PRISONS AND THE ENVIRONMENT: TOWARDS AN ECOLOGICAL DESCRIPTION OF CARCERAL INSTITUTIONS

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WG.38 · Theme: Human Rights, Climate & Culture

WORKING GROUP · Gender & Climate
Chair: Harun Bodur

ABSTRACT

Prisons are far from being in the core of the ecological crisis. However, there are many relations to be drawn between both areas, which are relevant both to philosophy of law and political philosophy. As Angela Davis points out, carceral institutions are often conceived as abstract places to the extent that it is sometimes difficult to think of them as material institutions, and therefore inscribed in complex ecological relations. In particular, the high ecological impact of these institutions is often overlooked, even though they are strongly industrial in nature, and very demanding in terms of their consumption of energy and materials. Data also reveals their operation is highly polluting, as they produce high levels of waste such as sewage or food waste. Industrial workshops can also often be found in these institutions, leading to the emission of harmful gases. Moreover, research reveals prisons are often situated in dumping grounds, sites previously used for harmful activities such as mining, or close to industrial zones, factories, waste treatment plants… This means that Angela Davis' criticism of prisons as "ideological dumping grounds" becomes more literal than it might seem at first. In fact, this closeness of prisons, industrial sites and landfills situates carceral institutions in areas where both nature and humanity are treated as dispensable or even worthless. In this context, greening the exercise of law ought to involve rethinking penal institutions, regarded as one of the main mechanisms for the enforcement of law. This involves connecting the juridical aspect of their architecture with their material nature. As regards philosophy of law, prisons cannot be described merely through juridical vocabularies. On the contrary, it is crucial that we

are able to describe them through an ecological lens, in order to shed light on their connections with broader ecological issues.

LOOKIST SEXUAL PREFERENCE

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WG.48 · Theme: Human Rights, Climate & Culture

WORKING GROUP · Gender & Climate
Chair: Harun Bodur

ABSTRACT

Many of us choose sexual partners at least partially based on their physical attractiveness. Call this phenomenon lookist sexual attraction. The motivating question for this paper is: what, if anything, is morally or politically problematic about lookist sexual attraction? I begin by arguing that sexual relations, as an integral part of our social life, require that the parties recognize one another's humanity. I argue that humanity involves at least two dimensions: moral personhood and concrete individuality. Building on Kant, I take moral personhood to refer to the status of being a moral person—someone who a) can act morally and b) who counts morally. Building on Murdoch, I define concrete individuality as that which makes one this particular individual rather than anyone else. For X to recognize Y's moral personhood requires (a) that X acknowledges Y's moral agency—that is, Y's capacity for autonomous decision-making, value formation, and moral action; and (b) that X acknowledges Y's moral status—that Y's interests are morally considerable and must figure in X's deliberation. To recognize Y's concrete individuality is to apprehend Y's particularities: Y's distinctive dispositions, interests, desires, perspectives, and values. I argue that recognizing one's humanity matters especially in the sexual domain, where goods such as physical intimacy, love, self-esteem, and respect are at stake. Lookist sexual attraction, therefore, obscures the humanity of those so evaluated, thereby undermining the possibility of ethical sexual relations. Moreover, such attraction contributes to structural and distributive injustices in access to some of the most significant goods that come with sexual life.

NOMOS AT THE CROSSROADS: SCHMITT, ARENDT AND COMPETING FUTURES OF ENVIRONMENTAL LAW

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WG.77 · Theme: Human Rights, Climate & Culture

WORKING GROUP · Gender & Climate
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ABSTRACT

Environmental law stands at a crossroads. Contemporary legal systems face a tension between demands for economic growth and the need to preserve the natural conditions that sustain human life. This crossroads is not merely a policy dilemma. It reflects a deeper conceptual question about how law understands the ordering of land, the place of nature, and the conditions of a shared human world. This paper argues that this division becomes clearer when examined through two contrasting conceptions of nomos developed by Carl Schmitt and Hannah Arendt.

For Schmitt, nomos originates in the foundational act of land appropriation through which a concrete spatial order is established. Land is taken, divided, and distributed, creating the framework within which political authority and legal norms operate. Law stabilizes and maintains this territorial order by regulating the control and organization of space. Although Schmitt did not formulate this theory with environmental concerns in mind, such a conception of nomos emphasizes the productive organization and use of land. In contemporary debates, this orientation often resonates with legal approaches that prioritize economic growth.

Arendt approaches nomos from a different perspective. For her, political life depends on the durability of a shared world in which human beings can appear, act, and relate to one another. Law, therefore, has the task of preserving the conditions that sustain this common world. Rather than deriving from territorial appropriation, the significance of law lies in its capacity to protect the space of human plurality and collective existence. Alt-

hough Arendt does not address environmental law directly, her understanding of the common world provides a framework for thinking about legal responsibilities toward the environments that sustain political life.

Placing these two conceptions side by side, the paper argues that contemporary conflicts between economic growth and environmental protection reflect a deeper disagreement about the meaning of nomos. Clarifying this divide helps illuminate the competing futures shaping current debates on environmental law.

INTERNATIONAL CLIMATE LAW AND ADAPTATION: A COMPARATIVE ANALYSIS OF THE US AND NIGERIA

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WG.104 · Theme: Human Rights, Climate & Culture

WORKING GROUP · Gender & Climate
Chair: Harun Bodur

ABSTRACT

Law, apart from a set of enforceable rules, is also a philosophical construct whose authority depends on contested meanings of legitimacy, obligation, and the rule of law. These concepts vary in validity across political contexts, shaping how states experience law as either negotiable or compelling. Within this frame, international climate law illustrates how global norms operate both as enforceable rules and as contested philosophical constructs, shaping the incentives and constraints that guide state behaviour. Why, then, are some developed countries less compliant with international climate law than some developing countries? I compare the adaptation of international climate law between the US and Nigeria from 2015–2025. Building on neoclassical realism, my theory explains that the divergent climate law adaptation behaviors of the US and Nigeria are shaped by incentives and constraints guided by international law and norms alongside domestic interests, mainly political consensus and interest groups such as NGOs and MNCs. The US, despite being a liberal democracy with strong institutions, vast economic capacity, a long-standing role as a rule-maker in the international system, and being a major emitter, has resisted adopting international climate law, constrained by fragmented domestic consensus, powerful interest groups, and its ability to reinterpret and/or delay frameworks such as the Paris Agreement. Nigeria, by contrast, although facing economic and institutional constraints and contributing negligible emissions, shows greater compliance, driven by access to climate finance, stronger political consensus, supportive interest groups, and the binding effect of evolving frameworks. The comparison highlights how states internalize the normative force of law differently: for the US, law remains pliable and subject to domestic pluralism, while for Nigeria, it functions as

a binding framework tied to reputational standing and material benefits. By situating these cases within international climate law, this study offers original insights into the philosophy of law, political philosophy, and comparative political science.

Keywords: International Climate Law, International Legal Development, Neoclassical Realism, Interest Groups, Domestic Political Consensus.

THIRD ORDER EPISTEMIC INJUSTICE AND INDIGENOUS ENVIRONMENTAL CLAIMS: REIMAGINING JUSTICE BEYOND BOUNDARIES

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WG.108 · Theme: Human Rights, Climate & Culture

WORKING GROUP · Gender & Climate
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ABSTRACT

This article employs the concept of Third Order Epistemic Injustice (TOEI) to examine the challenges Indigenous communities face when seeking to protect nature within non-Indigenous legal systems. It argues that this form of epistemic injustice is frequently overlooked when courts and policymakers assess Indigenous environmental claims. This article engages directly with the theme of IVR 2026— 'Law in the Face of the Changing Problems of the World'—by reflecting on how epistemic justice is under examination against the backdrop of climate change and legal pluralism.

TOEI arises when speakers and hearers rely on divergent epistemic resources, such that the hearer's entrenched epistemic framework prevents genuine engagement with the speaker's testimony. In this sense, TOEI identifies a systematic failure that may persist even where procedural fairness appears intact. In the environmental legal context, one of the consequences of TOEI is that the epistemic resources of Indigenous communities are rendered incapable of contributing to the societal knowledge; instead, they are swept under the rug as 'cultural identity'.

The article captures this tension by analyzing how TOEI manifests in public debates and judicial reasoning concerning Indigenous efforts to protect the environment in South America and Oceania. It focuses on cases in which, regardless of the outcome, Indigenous communities do not receive adequate recognition of their distinct epistemological frameworks. Instead, they are often 'translated' into terms compatible with dominant legal paradigms, thereby reinforcing existing epistemic boundaries.

The article concludes by considering the virtuous approach as a possible response. Grounded in epistemic reflexivity, this approach calls on legal actors to examine their own assumptions and to engage meaningfully with Indigenous knowledge systems.

UNMASKING THE GENDERED STATE: SINGLE-UNMARRIED WOMEN AS A PARIAH UNDER SURROGACY LAW

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WG.122 · Theme: Human Rights, Climate & Culture

WORKING GROUP · Gender & Climate
Chair: Harun Bodur

ABSTRACT

The paper looks at the embodied experience of a single-unmarried woman and her body as a site of juridical writing to interrogate the assumptions, biases and stereotypes that often go unchecked in insular legal analysis. It adopts the lens of embodied experience to avoid generalised theorisation while bringing the focus to the subjectivity of the body. Through this mechanism it highlights the insidious ways in which power with its productive and juridical tools leads to the production of a particular form of subjectivity. It focuses on the surrogacy law in India - Surrogacy (Regulation) Act 2021 that disallows single-unmarried women to be 'intended mothers' while allowing single women who have been previously married (divorced/widowed) and currently married to avail a child through surrogacy. The framing of such laws with the attendant judicial discourse has framed single-unmarried women as a pariah category built upon the patriarchal foundations and gendered nature of the state. This judicial classification of women is a moment of discrimination while disciplining those who defy the hegemonic heterosexual matrix of the institution of marriage and family. Taking this pariah category as one marked by social exclusion and political vulnerability, the paper shows the inability of the current equality framework and the rigidity of anti-discrimination theory in unearthing the forms, assumptions, biases and stereotypes in the categorisation of single-unmarried women.

The paper critiques the logic of anti-discrimination theory which is rooted in protecting immutable choices or effectively immutable choices.

This theory only addresses discrimination for reasons that the single unmarried intending mother has no real effective choice. Therefore they have to be protected from being targeted. Nonetheless, this theory frames such choices as deviant choices within the heteronormative patriarchal society. The paper argues that discrimination has to be protected not because the discriminated group is unable to choose any differently but for reasons of these being choices exercised by the group. To correct the logic of anti-discrimination theory, the paper argues for adopting the framework of discrimination as stigmatisation to offer protection to all choices which are seen as deviant under the heteronormative structure.

SEX AND AUTHORITY: RETHINKING AUTONOMY IN AN UNJUST WORLD

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WG.185 · Theme: Human Rights, Climate & Culture

WORKING GROUP · Gender & Climate
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ABSTRACT

Contemporary legal systems often treat consent as the decisive boundary between lawful and unlawful sexual conduct. Yet this framework becomes unstable in relations shaped by authority, where consent may be formally present but normatively constrained. This paper argues that the law, facing the contemporary world, cannot adequately address such cases unless it moves beyond a narrow consent-based model and confronts the ethical significance of authority in intimate life.

The paper develops the concept of sex in authority relations (SAR) as a distinct category of wrongdoing. Authority is understood not simply as inequality or influence, but as a role-based and socially recognised form of power, justified by service-related purposes. When sexual intimacy emerges within such relations, the problem is not exhausted by impaired choice alone. Rather, the wrongfulness lies in the distortion of agency, the breach of role-based obligations, and the erosion of institutional trust. These harms reveal a breakdown in the proper normative function of authority.

On this basis, the paper proposes a graded account of sex in authority relations, distinguishing cases in which authority is peripheral, influential, or determinative in shaping the subordinate party's practical options. This framework helps explain why some cases are more appropriately addressed through ethics or professional regulation, while others justify criminal prohibition.

By connecting doctrinal questions in sexual offences law with broader philosophical concerns about dignity, autonomy, and institutional responsibility, the paper contributes to current debates on how law should re-

spond to changing social problems. It suggests that a more just legal approach requires not only protecting sexual autonomy but also recognising the conditions under which autonomy can be meaningfully exercised.

KELSEN'S CONSTITUTIONAL THRESHOLD: "SEVER MARRIAGES," SECULARISM, AND FEMINIST LEGAL CRITICISM

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WG.151 · Theme: Gender & Feminist Theory

WORKING GROUP · Gender & Climate
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ABSTRACT

This paper re-examines the November 5, 1927, Sever Marriage decision - which lay at the heart of the process leading to Hans Kelsen's de facto exclusion from the Austrian Constitutional Court during the 1929 constitutional reform - through the theoretical tension between Catharine A. MacKinnon's critique of law and Kelsen's normativist understanding of the constitution. The study argues that conceiving of secularism solely as a separation of church and state is insufficient; it contends that secularism can be reduced to a formal discourse of neutrality if the material effects of the constitutional norms on gender are not taken into account.

At the beginning of the first Republic, marriage law retained its confessional character. For Catholics, the marital bond was considered indissoluble, only "separation from bed and board" was permitted. After 1918, administrative authorities in Lower Austria granted exemptions for marriage impediments based on Article 83 of the Civil Code, effectively paving the way for divorce and remarriage. However, the higher courts' invalidation of these proceedings led to a serious crisis of authority and legitimacy between the administrative and judicial branches. In 1927, the Constitutional Court recognized the exclusive authority of the administration, ruling that courts review exemptions as a preliminary matter. According to Kelsen, the state's act of both permitting marriage and simultaneously declaring it invalid constituted a contradiction that undermined the authority of the legal order.

However, this solution did not safeguard material dimensions of secularism. In light of MacKinnon's critique of neutrality and the "private sphere", it is argued that the constitutional judiciary's assumption of family

as an apolitical sphere renders the gendered consequences of the confessional marriage regime indivisible. Thus, the Sever Marriage decision is interpreted as a historical threshold revealing the limits of normativism regarding both secularism and gender equality. The Courts' restructuring following the 1929 reform and Kelsen's departure, however, demonstrates the fragility of formal constitutional safeguards in the face of authoritarian political transformations. In this regard, the paper proposes a feminist constitutional theory aimed at rethinking secularism from the perspective of substantive equality.

THE CRISIS OF THE SUBJECT IN LAW: THE EROSION OF THE CONCEPT OF CITIZENSHIP

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WG.78 · Theme: Criminal Justice & Legal Subjectivity

WORKING GROUP · Legal Subjectivity
Chair: Harun Tepe

ABSTRACT

The most fundamental concept that distinguishes modern philosophy can be defined as the subject. The subject is conceived as one of the contemporary legal theory. Since citizenship as the decisive subject on the political plane must be considered together with the nation or polis, it is in contact with the idea of public interest. Citizen, which entered the legal athenian democracy, is one of the main concepts in the modern era. However, in the contemporary neocolonial age the separation of economic and political spheres has become an unquestionable presupposition. With the increasing emptying of the political sphere the concept of citizenship is eroding and the social equivalent of the legal subject is weakening. It is aimed to discuss the change in the position of the legal subject by examining the transformation of citizenship under the conditions of capitalism and neoliberalism. Critical approaches to the separation of economic and political spheres and neoliberal interventions will be evaluated.

BEYOND JURIDICAL HUMANISM: OBJECT-ORIENTED ONTOLOGY AND THE RECONFIGURATION OF LEGAL THEORY

Adriana

WG.117 · Theme: Criminal Justice & Legal Subjectivity

WORKING GROUP · Legal Subjectivity
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ABSTRACT

Modern legal theory remains structurally anchored in a juridical humanism that assigns exclusive ontological and moral centrality to the rational subject. Agency, responsibility, and normativity are conceived as emanating from a sovereign human will, while objects, infrastructures, documents, and technical systems are reduced to passive intermediaries. This paper argues that such anthropocentric foundations are no longer conceptually sustainable.

Drawing on the ontological frameworks of Bruno Latour and Graham Harman, the paper proposes a reconfiguration of legal theory beyond the modern subject–object bifurcation. First, mobilizing Latour's flat ontology and actor-network theory, I argue that law emerges from heterogeneous networks of human and non-human actants. Judicial decisions are not merely expressions of sovereign consciousness nor mechanical applications of norms, but materially mediated events produced within distributed sociotechnical assemblages. Law is thus understood as a mode of existence sustained by infrastructures, texts, archives, technologies, and embodied practices.

However, to avoid collapsing normativity into pure relationalism, the paper incorporates Harman's object-oriented ontology, particularly the concept of withdrawal. Legal norms do not exhaust themselves in their applications or social effects; they retain an ontological surplus that grounds their relative autonomy and stabilizes juridical objectivity. This withdrawn dimension prevents both sociological reductionism and radical constructivism.

The central claim is that responsibility must be reconceptualized as distributed rather than exclusively subjective. The juridical subject is not

eliminated but reinscribed as a point of condensation within complex normative ecologies. Law, therefore, cannot remain humanist in its metaphysical architecture, yet neither can it dissolve into fluid relational networks.

This ontological reorientation offers a post-humanist framework for contemporary legal philosophy capable of addressing technological, ecological, and institutional complexity without abandoning normative consistency.

PATERNALISM, CHILDREN AND RELATIONAL AUTONOMY

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WG.130 · Theme: Criminal Justice & Legal Subjectivity

WORKING GROUP · Legal Subjectivity
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ABSTRACT

Traditional liberal approaches to the justification of paternalism, such as Joel Feinberg's theory, tend to emphasize respect for personal autonomy: 'soft paternalism', which interferes with 'less than voluntary' actions is considered permissible, whereas 'hard paternalism' is often regarded as morally objectionable because it imposes external preferences on individuals who are deemed fully competent. This approach also determines our views on paternalism with respect to children: paternalistic treatment is generally seen as justified on the grounds that children are not fully autonomous decision-makers. My paper argues that the traditional approach and the corresponding legal regulations face at least two major challenges in their application to children. (1) Since the traditional approach is based on the idea of personal autonomy, which is associated, at least partly, with the ability to make decisions, it remains seemingly neutral with respect to the age of the individual. In practice, however, children are typically presumed to lack such ability solely by virtue of their age and status as minors. This can be discriminatory as it fails to account for instances where a child has the capacity to deliver a specific decision. Most legal systems draw a firm and arbitrary line between minors and adults based on the person's age and do not adequately take into account the fact that mental capacity is context-dependent, developmentally fluid, and exists on a spectrum rather than as a binary state. (2) At a broader level, if one moves beyond the close correlation between mental capacity and autonomy and conceptualizes autonomy as inherently relational, social relations can affect whether a child is perceived as autonomous. Thus, instead of paternalism, a more desirable approach would involve the fostering of enabling relations that support the child's agency.

FROM "ATOMIZED IDENTITY" TO "INTERACTIVE RECOGNITION"—MARX'S CRITIQUE AND TRANSCENDENCE OF THE SUBJECTIVITY UNDERLYING CAPITALIST HUMAN RIGHTS

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WG.137 · Theme: Criminal Justice & Legal Subjectivity

WORKING GROUP · Legal Subjectivity
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ABSTRACT

The development of human rights is the aspirational goal of human society, and the driving force of human rights is the fundamental element that determines whether and how human rights can develop. In capitalist society, constrained by the subjectivity driven by "atomized identity", human rights manifest as egoistic human rights within civil society, materialized monistic human rights under the domination of capital, and formalist human rights in capitalist laws. Faced with fierce human rights conflicts and widespread demands for recognition under capitalist conditions, Marx reconstructed the dynamic mechanism of human rights within the intersubjective framework of "interactive recognition", initiating the construction of a human rights civilization with the free association of free individuals as the recognition subject, free and conscious social labor as the recognition medium, and the free and comprehensive development of human beings as the recognition goal. In the era of globalization, human rights have undergone international expansion towards "interactive recognition", but they have also suffered unilateral destruction from Western-style human rights hegemony. By inheriting and developing Marx's transcendent insights on the driving force of human rights, the construction of a community with a shared future for mankind contributes an original approach to global human rights governance, providing direction and guidance for contemporary humanity to accelerate the creation of a new form of human rights civilization.

BASIS OF HUMAN RIGHTS AND SOCIAL RELATIONSHIPS: DEFENCE OF RELIANCE ON HUMAN INTERESTS AND DIGNITY

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WG.191 · Theme: Criminal Justice & Legal Subjectivity

WORKING GROUP · Legal Subjectivity
Chair: Harun Tepe

ABSTRACT

Recently, in the philosophy of human rights, a new right has been proposed: the human right to social relationships. While the prominent author advancing this right, Kimberley Brownlee, is agnostic as to whether it can be grounded in human dignity, this paper argues for grounding it in human interests identified through an interpretation of dignity.

The paper proceeds as follows. First, it addresses the criticism that the right to social relationships, especially when understood as an individual right, cannot meet the 'correlativity thesis', according to which the content of a right must correspond to that of a duty. Stephanie Collins argues that applying this thesis raises problems of the distribution of correlative duties, demandingness, and motivation. I argue that individual interests can still ground this right by stressing the following, building on the points emphasised by Brownlee, Collins, and others: duties can be allocated primarily to institutions; the right is a right to opportunities for social relationships; and while not everyone must care for the right-holder, there is a duty to ensure that the right is appropriately considered.

Second, the paper highlights the advantages of invoking dignity. If dignity involves agency-related and equality-related requirements, it helps situate this right within current human rights practice. Moreover, agency is constituted within social relationships, and the egalitarian, specifically anti-inferiorisation, aspect of dignity captures the wrong of exclusion.

The paper concludes that there is a strong prospect of justifying this right by appealing to individual interests, using dignity as a significant navigational aid.

DEFENDING HUMAN RIGHTS IN "POST-SECULAR" TERMS

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WG.193 · Theme: Criminal Justice & Legal Subjectivity

WORKING GROUP · Legal Subjectivity
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ABSTRACT

Drawing on the Habermasian idea of "post-secularism" and the Rawlsian notion of an "overlapping consensus", the paper focuses on the normative presuppositions of a genuine defence of human rights by religions, both within modern multicultural societies and at the universal level. These presuppositions are detected in two specific areas: in the institutionally organized interreligious dialogue, and in the efforts to bring religious and secular (public) discourse closer together.

Specifically, as the examination of the religious and interreligious declarations of human rights indicates, an explicit commitment by contemporary religions to supporting the universal normativity of human rights can be fostered through innovative re-interpretations of sacred texts and traditions that link rights to the idea of God-given human dignity. Interreligious dialogue therefore presupposes a mutual commitment to mitigating doctrinal differences and cultivating a genuine "overlapping consensus" among believers on the idea of human rights.

At the same time, the paper argues that the cultivation of a "bilateral apprenticeship" between secular and religious discourse on human rights constitutes an expression of respect for the fundamental principles of liberal democracy -namely, freedom and equality. These principles are reaffirmed through "translational practices" that facilitate mutual engagement between religious and non-religious citizens. Through such practices, contemporary religions contribute to the semantic and value-based enrichment of human rights, while public reason simultaneously broadens its scope by incorporating post-secular otherness.

PRECEDENTS AND PREDICTABILITY: A MATTER OF DECISION-MAKING AND NOT TEXT INTERPRETATION

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WORKING GROUP · Legal Reasoning II
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ABSTRACT

The debates following the adoption of binding precedents in Brazil's 2015 Procedural Code have raised important questions. One of the most important is the debate over whether binding precedents enhance predictability, comprehended as "treating like cases alike". The paper does not aim to answer that question. The objective is, rather, to explore a prior one. Precedents are, in some measure, texts. Just like legal statutes. So, can the matter of their predictability-enhancing capabilities be reduced to their ability, as texts, to be interpreted more stably than legal statutes? This paper claims the answer to this question is a negative one. Actually, the question concerning the (in)ability of precedents to enhance the predictability in a certain legal system can be better understood if one is to treat it as a matter of how precedents are "used" in legal decision-making. This claim is mostly founded upon a specific approach to the theory of constraints formulated by Katharina Gräfin Von Schlieffen and, separately, by Michel Troper. According to it, despite the room for different interpretations of legal texts, the activity of legal decision-making tends to be relatively stable. This behaviour could, from a theoretical standpoint, be explained by multiple social, institutional and pragmatic factors. Henceforth, precedents could help to enhance predictability, for example, because they are "rules" created by a hierarchical institution, which tends to enforce its own understandings. They could also help judges who face an overload of work to find quick, ready-made rulings. All of those claims need to be empirically tested. Nevertheless, they offer an overview of the advantages of treating precedents' ability to enhance predictability as a matter of legal decision-making. Examining how precedents are used in legal decision-making may

clarify their advantages and their limitations, and also inform efforts to improve their role within the legal system.

CAN LEGAL CAUSATION EXCLUDE NORMATIVE ELEMENTS?

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WORKING GROUP · Legal Reasoning II
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ABSTRACT

Legal causation is usually regarded as a distinct concept, separate from natural or philosophical causation. In this prevailing understanding, the concept of causation serves as the basis for determining the existence and scope of legal liability.

In Causation in the Law, 2nd ed. (1985), by H. L. A. Hart and T. Honoré, it is argued that legal causation is one of the grounds for determining the existence and scope of legal liability. In formulating legal causation, Hart and Honoré introduced the normative element of the concept of 'ordinariness', building upon J. S. Mill's theory of causation. Hart and Honoré's theory of legal causation currently forms the basis of the NESS theory, which is a formulation of legal causation.

On the other hand, M. S. Moore takes a position that differs from the prevailing view. In Causation and Responsibility (2009), Moore argues that legal liability cannot arise without moral liability, and that moral liability cannot arise without causation as a natural relation. Insofar as he maintains that legal liability cannot arise without causation, his view does not differ from the prevailing view. However, Moore's argument is understood as reducing legal liability to natural causation, thereby attempting to connect it with theories of causation in philosophy. Furthermore, within philosophical theories of causation, Moore suggests the primacy of physicalist causation.

Focusing on the concept of legal causation, a distinction can be identified between the conventional understanding and Moore's view. The difference lies in whether the concept of legal causation is purely natural or includes normative elements. In this presentation, I argue that legal causation cannot be fully reduced to natural causation because certain normative

criteria remain indispensable even under contemporary interventionist accounts, particularly Halpern's singular causation theory.

OVERJURIDIFICATION AND LEGAL POSITIVISM

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ABSTRACT

The primary objective of legal positivism is to determine what law is and to distinguish legal rules from other normative rules. In this study, legal positivism's effort, which is based on distinguishing the legal from the non-legal, will be examined by focusing not on what constitutes law, but on what remains outside the realm of law. The concept of "over-juridification" serves as a tool we will use to focus on what is not law.

In our study, we will first define the concept of over-juridification. The most comprehensive definition of "juridification"—the basic form of this concept—in the literature is provided in Blichner and Molander's article titled "Mapping Juridification." According to this definition, juridification is characterized by five dimensions: constitutive, expansion, conflict-solving, judicial power, and legal framing. Of these, conflict-solving and legal framing are the elements we will use to explain over-juridification. Additionally, we will address the points where over-juridification diverges from resembling concepts such as legal fetishism and the colonization of the life world—which are used in a similar sense in the literature—and justify our conceptual choice.

This article examines legal positivism through the concept of overjuridification, focusing on the legal theories of Hart, Raz, and MacCormick. In Hart's distinction between primary and secondary rules, secondary rules; in Raz's authority thesis, exclusionary reasons for action; and in MacCormick's theory of institutional normative order, institutionalization have been identified as the key features distinguishing law from non-law. For the purposes of this study, the existence (or absence) of primary rules, first-order reasons for action and a pre-institutional normative order will be

taken as the main points of analysis. The central claim is that, due to over-juridification, the positivist attempts to distinguish between what counts as law and what does not has lost much of its significance.

THE LEGISLATIVE PROCESS – REQUIREMENTS IN LEGISLATIVE CREATION AND METHODOLOGICAL COORDINATES. PHILOSOPHICAL AND LEGAL ACCENTS

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ABSTRACT

The increasingly complex social development, the celerity of social phenomena require the reconsideration of the normative activity regarded as one of the fundamental ways of performing the functions of the state, being a creative activity of law according to the needs dictated by the evolution of society. It is carried out by the state bodies according to the attributes and competences established, first of all, in the Constitution, as well as in infra-constitutional normative legal acts, in compliance with methods, requirements, procedures and principles that respond as precisely as possible to a clear, coherent scientific regulation. The totality of means, procedures, methods and techniques used by the state bodies with normative competence in the process of drafting and applying normative acts form the legal technique. As part of legal technique, legislative technique (or formal legalism) is the art of making laws and consists not only in drafting the text of the law or organizing it into subdivisions (plans, titles, etc.), but also in coordinating the ways of enunciating the rule of law and the technical procedures for its implementation. The problem of the legislative technique and the methodology of the elaboration of legal norms is not only a problem related to legal sciences, but in certain aspects, it transforms itself into a legal regulation, it becomes a legal obligation for the competent public authorities when they prepare, initiate or adopt a normative legal act. The elaboration of normative acts is a process of great complexity, in which political, economic, moral, social, historical, national and international factors, the legal consciousness and the trends of evolution of

society, the specificity of legal normativity, etc., must be taken into account, a process that must tend to embody the rationality and normality of the law, and which requires the observance of certain principles (requirements), including: the principle of scientific substantiation of the activity of elaboration of normative acts, the principle of ensuring a natural relationship between the dynamics and statics of law, the principle of correlation of the system of normative acts, the principle of accessibility and economy of means in normative elaboration. The latter principle is conditioned by: the choice of the external form of the regulation, the choice of the modality of the legal regulation, the choice of the conceptualization procedures and the language of the legal norm, here, emphasizing the construction of the norm and the style and language of the legal (conciseness, sobriety, precision). In addition to complying with the requirements of lawmaking, the elaboration of normative acts also implies the existence of stages (phases), with distinct procedures aimed at streamlining the legislative process and enacting a correct legal act constructed from a legislative point of view. The main stages are: legislative initiative, debate of the draft law, voting (adoption) of the draft law, promulgation and publication of the law. The observance of these principles and methodological norms will lead to the adoption of a normative legal act that will contribute to the achievement of its purpose: stability, prosperity and social harmony.

THEORETICAL DISAGREEMENT AND LARGE-SCALE DISAGREEMENT IN SPECIFIC CASES: THE CHALLENGE FROM POLARIZATION

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WG.212 · Theme: Legal Reasoning

WORKING GROUP · Legal Reasoning II
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ABSTRACT

This paper reviews Ronald Dworkin's theory of theoretical disagreement and several prominent critiques of this theory. Through an analysis at two levels—adjudication in specific cases and massive adjudicative consensus—this paper argues that the real challenge facing the theory of theoretical disagreement is not whether such disagreement exists, whether it contains a moral core, or whether it can account for massive adjudicative consensus. The real problem is that, with regard to certain legal issues over which there are broad and profound social disagreements, the conflicting views of the disputing parties can often hardly be bridged by the community consensus advocated by Dworkin. While the approach of appealing to official conduct to determine which of the conflicting views carries legal significance can succeed in formal terms, it fails to address the question of how law can maintain its stability and authority, and it also suffers from numerous shortcomings when applied to issues of international law. In the current context of intensifying political polarization and social division, how to resolve disagreements among different groups over the understanding of the meaning of law has become an unavoidable practical issue for every political entity, and it also poses new challenges for research in jurisprudence and legal philosophy.

INADEQUACY OF MOTIVATIONALISM AND ACCOUNTABILISM ON BINDING FORCE OF DUTIES

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WORKING GROUP · Legal Reasoning II
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ABSTRACT

Having a duty to j is more stringent than merely having reasons to j. In some sense, if one has a duty to do X, doing X is not just one option to be compared with others anymore. One is bound to do X, absent special reasons. Two prominent theories of the additional demand that constitutes the binding force of a duty to do X, distinguishing it from a reason for doing X, are:

Joseph Raz's Motivationalism: A duty to do X is a reason r to do X, together with a reason not to be motivated by some conflicting reasons ('excluded') not to do X.

Stephen Darwall's Accountabilism: A duty to do X is what motivationalism states to be a duty, together with a reason to be accountable for failure to do X to others who have authority to demand your doing X.

In this presentation, I will discuss examples illustrating that these two prominent accounts are extensionally inadequate, because they are too weak. That is, there are cases in which these accounts falsely classify conduct as fulfilling a duty. In addition, I will argue that Darwall's account lacks intuitive support when it comes to duties to self. While they pose certain puzzles, the idea of duties to self is coherent. Therefore, a theory of duties that has difficulty in conceptualising duties to self is, in that regard, intensionally inadequate. I will conclude by briefly sketching, as a solution, an alternative account of the bindingness of duties:

Reliabilism: A duty to do X is a reason r to do X together with a reason to act in the most reliable way to conform to the balance of r and special reasons not to do X.

LEGALISM OR CONFUCIANISM: AN ANALYSIS OF THE VALUE ORIENTATION OF THE JUDICIAL CONFIRMATION SYSTEM——DISCUSSION ON THE POSSIBLE CONTRIBUTION OF JUDICIAL CONFIRMATION SYSTEM TO PROMOTING CHINA'S GOVERNANCE CAPACITY

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WG.66 · Theme: Rule of Law & Courts

WORKING GROUP · Online Presentations
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ABSTRACT

The judicial confirmation system is an important system in China's modern judicial system, and its value orientation is deeply influenced by legalism and Confucianism in Chinese traditional culture. Through the analysis of judicial confirmation system and its value orientation, we can better understand the important role played by this system in the balance of law and morality, power and right, order and freedom. At the same time, judicial confirmation research also helps us to understand the potential contribution of judicial confirmation system in improving the governance capacity of our country. In the future judicial practice, we should give full play to the advantages of judicial confirmation system, balance the relationship between law and morality, and improve the governance efficiency of our country.

SHOULD LAW BE MORE LOVECRAFTIAN? ONTOLOGICAL HUMILITY AND THE LIMITS OF LEGAL RATIONALITY

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WG.69 · Theme: Legal Reasoning

WORKING GROUP · Online Presentations
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ABSTRACT

Modern law, as an heir to Western rationality, has been structured around anthropocentric and dichotomous categories, most notably the distinction between persons and things. Far from neutral, this framework operates as an ontological dispositif that organizes reality according to human-centered parameters of intelligibility, reducing non-human entities to objects, resources, or property. This paper argues that such a framework encounters fundamental limits when faced with entities and worlds that resist juridical translation.

Drawing on Graham Harman's object-oriented ontology and Marisol de la Cadena's notion of earth-beings, the paper proposes that H. P. Lovecraft's At the Mountains of Madness offers a philosophical lens through which to rethink these limits. Lovecraft's depiction of the shoggoths—amorphous, protoplasmic beings that escape taxonomy—stages an aesthetic of withdrawal and excess that mirrors the law's encounter with entities that cannot be fully captured by legal categories. Harman's concepts of horizontal and vertical gaps help articulate how these beings exceed both descriptive saturation and relational access, revealing an irreducible surplus at the heart of reality.

A similar ontological excess emerges when legal systems confront earth-beings, such as sacred mountains and rivers in Andean cosmopolitics, which act, speak, and establish relations of responsibility but cannot be adequately reduced to "natural resources" or "environmental goods." In both cases, the juridical impulse to translate alterity into familiar categories risks dissolving what is most significant about these entities.

Rather than proposing the extension of legal personhood or anthropomorphization, the paper defends a stance of ontological humility in law. Inspired by Lovecraftian horror and speculative realism, it argues that law should acknowledge the partiality of its grasp and create normative spaces capable of accommodating radical alterity, repositioning law as a reflective practice attuned to the changing problems of a world that exceeds human-centered rationality.

IS "WELLNESS" A RESIDUAL CATEGORY IN DIGITAL HEALTH LAW AND POLICY?

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WG.236 · Theme: AI & Digital Governance

WORKING GROUP · Online Presentations
Chair: Yılmaz Şahin

ABSTRACT

The term "wellness" was initially coined to refer to a positive, holistic and dynamic understanding of health. In contemporary digital health law and policy, however, it increasingly appears as a term used to distinguish health products or technologies subject to lighter oversight from those considered to have a medical purpose. Although "wellness" is not uniformly defined in legislation, it operates in regulatory frameworks and policy discourse as a term with significant classificatory consequences. But is "wellness" in digital health law and policy a genuine substantive category, or does it function mainly as a residual boundary category for products that remain outside the domain of medical purpose and its associated regulatory frameworks? This paper, through bibliographical research and a conceptual, exploratory legal analysis, first reconstructs the historical meaning of "wellness", originally expressed as an aspirational and holistic understanding of health. It then examines the role of intended purpose in contemporary U.S. and EU digital health classification, where the distinction between wellness and medical devices often depends on whether a product is intended for medical purposes such as diagnosis, monitoring, prediction, prevention, or treatment. The paper evaluates whether "wellness" can operate as a substantive category with identifiable positive content, whether it should instead be understood as an open-textured concept characterized by uncertain margins, or whether it is more accurately described as a residual boundary category defined primarily by exclusion from medical purpose. It further considers the implications of such a categorization, including whether alternative formulations, such as "non-medical", would provide greater conceptual clarity. It concludes that "wellness" operates primarily as a classificatory boundary term marking what falls outside

medical purpose, with the effect of concealing evaluative choices behind an apparently descriptive label.

CORRECTIVE JUSTICE, DISTRIBUTIVE DEFAULT: COLOMBIA AND THE STRUCTURAL LIMITS OF THE TRANSITIONAL JUSTICE PARADIGM

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WG.302 · Theme: International Law / Transitional Justice

WORKING GROUP · Online Presentations
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ABSTRACT

Over two decades, Colombia has run three iterations of the transitional justice paradigm: the Justice and Peace Law of 2005, the 2016 Final Agreement with the FARC-EP, and the ongoing Total Peace policy. This article reads that sequence as a problem in legal philosophy rather than as a national chronicle. It argues that the concept of justice mobilized by Colombian peace processes evolved within what the article calls the corrective register, attenuated retribution and then victim-centred restoration, while the distributive register, the transformation of the structural conditions that the Colombian state itself identifies as causes of the armed conflict, was articulated on paper and left unexecuted. Drawing on the Aristotelian distinction between corrective and distributive justice and on the concept of structural violence, the article contends that this is not an incidental policy gap but a limit built into the transitional justice paradigm. Thus, the paradigm is conceptually equipped to adjudicate the act of political violence and conceptually under-equipped to transform the structure that produces it. The article then isolates the mechanism that turns this deferral from a tolerable debt into a destabilizing one. As illegal economies become the dominant register of cohesion and reproduction of armed actors, the paradigm's borrowed legitimacy, which rests on treating the combatant as a political subject in transition, erodes; and demobilization unaccompanied by distributive transformation produces a revolving door back into armed illegal economies. Colombia is offered as the case that exposes this limit with unusual clarity, having run the paradigm three times in twenty years. The article closes by asking what it would mean to re-ground transitional justice on its constitutive link to distributive justice and public policy.

Keywords: transitional justice; corrective and distributive justice; structural violence; Colombia; peace processes; illegal economies; philosophy of law.

REPARATIVE FUTURES AND LEGAL GLOBAL ORDER: A PAN AFRICAN APPROACH

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WG.305 · Theme: Law & Culture

WORKING GROUP · Online Presentations
Chair: Yılmaz Şahin

ABSTRACT

Reparative justice and the reimagining of global order without moral accountability is a sham. Nothing is as difficult as demanding justice in a world that continues to benefit from historical injustice while denying its obligations. The question is, does the contemporary global order truly seek justice? Or is it merely performing the language of justice while evading its demands? Global justice is a condition in which people and nations exist with dignity, recognition, and the restoration of what has been unjustly taken. Yet the modern international system paradoxically proclaims commitments to human rights and equality while preserving institutional arrangements rooted in slavery, colonialism, and racial capitalism. The enduring consequences of these histories are evident in global inequalities between Africa, the Caribbean, and the Global North. Why then does the global order affirm justice while resisting reparations? Why do multilateral institutions sustain structural imbalances rather than facilitate historical redress? These questions expose a deep contradiction at the core of global governance. The hindrances to reparative justice are denial, selective historical amnesia, and the persistence of exploitative institutional frameworks on an unjust trajectory. This study argues that the refusal to confront historical responsibility, the marginalisation of Pan African political agency, and a distorted hierarchy of values that privileges power and profit over justice continue to obstruct meaningful transformation of the global order. Focusing on Pan African thought as a transcontinental political formation linking Africa and its diasporas, the research advances the idea of reparative futures as a framework for reimagining global order through institutional transformation, political solidarity, and historical redress. It re-

positions reparative justice not as a peripheral moral claim but as a necessary condition for restructuring global relations. Hence, a normative and institutional re-orientation grounded in truth, restitution, recognition, and solidaristic political action is imperative for any credible and just global future.

Keywords: Reparative Futures, Pan Africanism, Global Order, Global Justice, International Law

THURSDAY 2 JULY 2026

WHAT PATENT CLAIMS CANNOT SAY: A KANT–WITTGENSTEIN FRAMEWORK FOR THE PATENTABILITY OF NEURAL NETWORKS

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WG.113 · Theme: International & Private Law

WORKING GROUP · Private and Economic Law
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ABSTRACT

Patent law has always rested on a fundamental premise: that an invention can be disclosed in language. The claim is simultaneously the instrument of disclosure and the boundary of the monopoly granted. This premise, largely unexamined in doctrinal scholarship, collapses when applied to artificial neural networks (ANNs). The operative layer of an ANN, its trained weights, emerges from a training process and cannot be specified, known, or recited at the time of filing. The claim can only describe the architecture and training methodology, not the outcome. The result is a structural gap between what the claim says and where the technical character is - a gap that has generated genuine doctrinal incoherence across every major patent jurisdiction.

In Emotional Perception AI Limited v Comptroller-General of Patents [2026] UKSC 3, the United Kingdom Supreme Court, having formulated a feature-by-feature test for identifying technical character in ANN inventions, found itself unable to apply that test and remitted the case. In the United States, the black-box nature of ANNs strains the written description and enablement requirements of 35 USC § 112 to breaking point. In India, the Courts and the 2025 CRI Guidelines appear — perhaps inadvertently — to have arrived at a structurally more defensible approach by asking what the invention does rather than mapping claim elements.

This article argues that the crisis of ANN patent claims is not merely a technical or drafting problem but a philosophical one. Two foundational thinkers — Immanuel Kant and Ludwig Wittgenstein — identified, in different but structurally analogous ways, the precise limit at which language

and knowledge reach their boundary. Kant's transcendental distinction between phenomena (the world as constituted through the mind's categories) and noumena (the thing-in-itself, inaccessible to experience) maps with surprising precision onto the architecture/weights distinction. Wittgenstein's distinction in the Tractatus Logico-Philosophicus between what can be said and what can only be shown maps onto the distinction between what a patent claim can recite and where the technical character of a trained ANN actually resides.

PROPERTY AS A SOCIAL INSTITUTION: LEGAL FORMALISM, HISTORICAL CONTESTATION, AND THE RECOVERY OF OWNERSHIP'S PUBLIC DIMENSION

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WG.157 · Theme: International & Private Law

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ABSTRACT

In contemporary philosophy of law and political philosophy—much as in mainstream economics—the analysis of property has often marginalised its historical and normative dimensions. Scholarly debates have primarily focused on the institutional arrangements devised to secure private property rights, while paying comparatively little attention to their justificatory foundations or to the historical processes through which such rights have been constituted, contested, and transformed. As a result, the struggles over hegemony, resistance, and redistribution that shape property relations have frequently been treated as analytically secondary. This orientation has contributed to the consolidation, within the social sciences, of an understanding of property as a politically settled and technically neutral institution, rather than as a dynamic field of conceptual, legal, and material contestation.

This paper argues that the persistence of a strongly privatised conception of property—reinforced by entrenched economic, social, and political interests—is closely connected to the predominance of legal formalism. In the illustrative case of the United States during the second half of the nineteenth century and the early twentieth century, such formalism tended to relegate public law to a residual or merely corrective function in relation to private law. At the same time, it promoted an expansive conception of property grounded in contractual freedom and an atomised understanding of legal relations, within which property appears primarily as a bundle of individual entitlements insulated from broader social considerations.

The paper further examines how legal realism and subsequent interdisciplinary developments across the social sciences fostered more pluralistic,

relational, and historically situated approaches to property. These perspectives contributed to the expansion and rearticulation of the concept of the social function of property, recovering its public dimension and reconfiguring it as a social institution shaped by enduring conflicts over individual and collective interests.

THE CHANGING ROLE OF LAW BETWEEN STATE, INDIVIDUAL AND MARKET UNDER GLOBAL CAPITALISM

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WG.277 · Theme: International & Private Law

WORKING GROUP · Private and Economic Law
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ABSTRACT

This paper aims to examine the transformation of the role of law in the relationship between state, individual, and the market under global capitalism from a historical perspective. It argues that the changing functions of law cannot be understood independently from the transformation of capitalist production relations and the restructuring of the state under neoliberal globalisation. Rather than accepting law as an autonomous entity, the paper takes it as a historically conditioned social form shaped by the dynamics of capitalist accumulation. Especially after the Second World War, the individual was primarily defined as a citizen who holds both political and social rights. Within the Fordist-Keynesian framework, law functioned not only as a mechanism limiting state power through the ideal of the rule of law, but also as a means of institutionalising social, political and economic compromise between labour and capital. In this context, welfare mechanisms, labour protections and social rights became central elements in the formation of the citizen. However, the rise of neoliberal globalisation transformed both the structure of the state and the functions of law. Contemporary forms of legal regulation increasingly reconstruct the individual not only as a citizen but also as a market-oriented economic subject shaped by market rationality, flexibility, and productivity. In this context, the regulatory and market-oriented functions of law become increasingly central to the organisation of social and economic relations. The paper, therefore, aims to contribute to contemporary debates on neoliberalism and the changing role of law through this analysis.

THE INTERSECTION OF ECONOMY AND LAW: A CRITICAL ANALYSIS OF LEGAL TRANSFORMATIONS THROUGH THE PRACTICE OF TRADE

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WG.278 · Theme: International & Private Law

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ABSTRACT

In the realm of commerce, law is predominantly viewed as a technical regulatory framework tailored to the sector's immediate needs. Characteristics such as flexibility, speed, resistance to formalism, and extraterritoriality are commonly ascribed to commercial law. This perspective often links trade with liberty and peace, finding its historical bedrock in the Lex Mercatoria—a body of law applied across Europe amidst absent centralized powers in Middle Ages. Consequently, a direct connection would be established between peaceful exchange and the liberal conception of law.

This paper challenges this conventional view. Investigating the historical and social origins of modern commercial law, it asserts that private law is not a neutral technical field but a normative structure that institutionalizes and legitimizes specific historical economic relations. Given the complexity of commercial relations, analysis must focus on elements of continuity. Since commerce is essentially a mode of exchange, its evolution is best traced through transformations in the instruments of exchange.

Negotiable instruments serve as a primary example. Their functional and formal evolution reveals the profound relationship between law and capitalist exchange. By deciphering the economic-normative logic underlying private law, this study offers a theoretical perspective on the nexus between law and economics. The development of these instruments illustrates the transition of social trust from personal reciprocity to legal forms of market rationality.

Ultimately, this discussion explores how economic and social relations construct legal norms, with the central theme of the work being the quest for historical underpinnings to analyze

PRIVATE LAW AND THE STRUCTURE OF RESPONSIBILITY IN A CHANGING WORLD: INTERPERSONAL JUSTICE AND THE COMMON GOOD

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WG.282 · Theme: International & Private Law

WORKING GROUP · Private and Economic Law
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ABSTRACT

Contemporary legal thought often assumes that the world's changing problems primarily require new forms of public regulation, global governance, or institutional design. Technological transformation, environmental degradation, global economic interdependence, mass migration, and new forms of vulnerability undoubtedly demand renewed legal responses. Yet these complex problems also raise a more fundamental jurisprudential question: how does law understand, attribute, and structure responsibility among persons?

This paper argues that private law constitutes a fundamental axis for understanding legal responsibility in a changing world. Far from being a merely technical field concerned with isolated individual transactions, private law provides the conceptual grammar through which legal systems identify harm, determine duties, attribute responsibility, and articulate forms of repair. Tort, contract, property, and remedies are not merely doctrinal categories; they are juridical forms through which the correlativity of rights and duties—and thus responsibility between persons—becomes intelligible.

The central claim of the paper is that private law is private in its immediate structure, but not in its normative significance. By structuring relations of justice between individuals—harm and repair, promise and obligation, ownership and use, wrong and remedy—private law shapes the moral and juridical conditions of broader social life. These interpersonal

relations are not isolated from the common order: they affect trust, cooperation, economic exchange, social peace, and the concrete protection of human dignity.

At the same time, private law cannot be understood as a closed system of purely bilateral relations. Interpersonal responsibility must be situated within a broader legal order oriented toward the common good. Drawing on the dialogue between formal accounts of corrective justice and natural law theories of practical reason, the paper proposes an integrative account of private law: one in which juridical form, interpersonal responsibility, and the common good are mutually related. Ultimately, private law appears not as a marginal or merely technical domain, but as a foundational legal form through which justice gives rational structure to human coexistence.

THE RELEVANCE OF PRIVATE ACTS IN ADMINISTRATIVE ACTS

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WG.283 · Theme: International & Private Law

WORKING GROUP · Private and Economic Law
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ABSTRACT

The main question to be addressed in this presentation is the relevance of private acts in the validity and effectiveness of administrative acts, in light of the paradigm of a cooperative Public Administration.

Since the beginning of the last century, there has been scientific recognition of the legal relevance of acts performed by individuals in Administrative Law, alongside the legal acts of Administration. However, more recently, this matter has fallen out of the spotlight in line with new developments in administrative law. This is perhaps because the actions of administrative entities continue to have a decisive influence on administrative relations.

Among the various areas in which private acts have legal relevance in Administrative Law, this presentation focuses on their role in the creation and termination of administrative legal relationships established through administrative acts:

First, concerning private acts that contribute to the creation of administrative acts, it will be necessary to make a distinction between private acts that constitute a requirement for the administrative act (v.g., administrative acts on request) and private acts that must follow the administrative act, particularly those occurring at the final stage of the procedure and are related to its effectiveness (v.g., administrative acts subject to the consent of private individuals).

Second, the presentation examines the relevance of private acts in the termination of the legal effects produced by administrative acts.

The presentation concludes that the growing relevance of private acts in administrative action reflects a reassessment of the role of the Administration in its relationship with individuals, who are increasingly recognized as having autonomy in shaping administrative action.

THE RATIONAL ACTOR ASSUMPTION IN PRIVATE LAW: AN ASSESSMENT IN LIGHT OF EMPIRICAL FINDINGS

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ABSTRACT

This paper examines the extent to which the traditional rational actor assumption underlying private law can be sustained in light of contemporary empirical and behavioral findings. Classical private law theory, particularly in the fields of contract and obligations, is largely built upon the premise that individuals act as autonomous, rational, and utility-maximizing actors capable of making informed and voluntary choices. Within this framework, legal validity and fairness are often inferred from the formal existence of consent and freedom of contract.

However, developments in behavioral economics, experimental psychology, and socio-economic legal studies increasingly challenge this assumption. Empirical studies such as the ultimatum game, the endowment effect, framing experiments, and research concerning racial and socio-economic disparities in bargaining processes demonstrate that individuals frequently act contrary to the predictions of classical rational choice theory. Human decision-making processes appear to be substantially influenced by cognitive biases, perceptions of interpersonal fairness, social conditioning, informational asymmetries, and structural inequalities.

In this context, the paper argues that the merely formal recognition of consent may be insufficient to ensure substantive fairness within private law relationships. A party's acceptance of a contractual arrangement does not necessarily indicate the existence of genuinely autonomous and rational decision-making. Socio-economic background, relative deprivation, behavioral manipulation, and market power may significantly shape individual preferences and choices.

Accordingly, this study seeks to reassess the normative foundations of private law through an interdisciplinary perspective combining private law theory, behavioral economics, and empirical social science research. It further evaluates whether traditional concepts such as freedom of contract, autonomy of will, and legal equality remain adequate in contemporary socio-economic conditions. Ultimately, the paper aims to contribute to ongoing discussions concerning the necessity of a more realistic and socially responsive understanding of private law and legal subjectivity.

IMPLEMENTATION DILEMMA AND CONSTRUCTION OF RULES OF THE RULE OF LAW FROM THE PERSPECTIVE OF THE GLOBAL GOVERNANCE INITIATIVE

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ABSTRACT

The Global Governance Initiative represents China's answer to what kind of global governance system should be built and how to reform and improve global governance. The Global Governance Initiative advocates five commitments, including sovereign equality, the rule of law internationally, multilateralism, putting people first and pursuing tangible results. Meanwhile, international rule of law is regarded as the fundamental guarantee for global governance. Moreover, the advocates of the Global Governance Initiative are closely linked to international rule of law and endowing it with new ideological connotations. On one hand, international rule of law from the perspective of the Global Governance Initiative has transcended the traditional governance model under Western-dominated international relations. On the other hand, it takes moral priority and regards opposing double standards as the core requirements of the international rule of law. Although there are no globally absolute, fair, and reasonable rules, it is undeniable that the proposal of the Global Governance Initiative provides a feasible path for the world to address the current governance deficit. This paper will make a definition of the international rule of law under the Global Governance Initiative firstly. Secondly, the paper will analyse the implementation dilemmas in observing the international rule of law, such as the selective application of the international rule of law and the supremacy of power over rules, in light of the two recent high-profile events—the U.S. detention of the Venezuelan President and the joint U.S.-Israel bombing of Iran. All mentioned above are reflecting prob-

lems of the absence of international rule of law in terms of rules, mechanisms, and capabilities. Last, the paper will put forward a multi-dimensional collaborative rule-building of the observance of the international rule of law, including the renewal of concepts, the alignment of rules, the innovation of mechanisms, and the joint construction of capabilities.

RETHINKING JURISPRUDENCE THROUGH W. H. AUDEN'S "LAW, LIKE LOVE"

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ABSTRACT

This paper offers a jurisprudential reading of W. H. Auden's poem "Law, Like Love." The poem challenges attempts to define the nature of law in fixed conceptual terms. Rather than functioning merely as a literary illustration, the poem unfolds through a sequence of archetypal voices: gardeners, elders, priests, judges, and scholars. Each group exposes the instability of defining law through rigid doctrines. The paper argues that Auden develops a reflective account of law that emerges from indeterminacy, ethical exposure, and relational responsibility.

Written in 1939, as Europe moved toward war, the poem diagnoses a particular danger: the collapse of law into either collective identity ("Law is We") or solipsistic sovereignty ("Law is Me"). In this context, the paper contributes to debates in legal humanities. It treats poetry not simply as an example of ideas, but as a medium for rethinking jurisprudential problems. A close reading reveals how Auden brings different understandings of law into conversation: natural law, legal positivism, the historical school, and legal realism. Yet none ultimately succeeds in stabilizing the meaning of law when justice is reduced to nature, authority, or social fact. In dialogue with David Lloyd's reflections on lyric and justice, and with Derrida's account of undecidability, the paper argues that legal indeterminacy marks the fragile space in which the possibility of justice remains open.

The poem's concluding comparison between law and love therefore takes on philosophical significance. Alongside Jeffrie G. Murphy's reflections on agape and James Boyd White's notion of "justice as translation," the paper proposes that legal judgment is less a mechanical application of rules than an ongoing effort to translate the complexity of human experi-

ence into the language of justice. In this sense, Auden's poem points toward a conception of jurisprudence grounded in the fragile conditions of the truly human within law.

THE RELATIONSHIP BETWEEN ENLIGHTENMENT PHILOSOPHY AND GOVERNMENT EFFECTIVENESS IN THE BRITISH CONSTITUTIONAL SYSTEM

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ABSTRACT

This paper addresses the question of whether Enlightenment values contributed to the effectiveness of British governments. It is widely recognised in the literature that the British constitutional system produces effective (strong) governments (political executives). Existing scholarship on what enhances government effectiveness in the UK is generally concerned with legal mechanisms. However, this paper argues that there are other mechanisms that increase the effectiveness of British governments, some of which are philosophical. Enlightenment values such as democracy, human rights, and the separation of powers have been widely adopted in the UK. As a result, the far right and the far left have not been able to become powerful in the UK so far. Furthermore, due to the secularisation triggered by the Enlightenment, phenomena that could cause social cleavages, such as religiosity, sect, and lifestyle, do not have this effect. For these reasons, the fact that Enlightenment values have been adopted to a large extent ensures a large degree of consensus on core values in the UK. This social structure contributed to the prevention of the emergence of a highly fragmented parliament that struggles to reconcile. Consequently, it significantly reduces the likelihood of the main reasons why governments are ineffective, namely, protracted government formation processes, frequent government changes, or government defeats due to inter-party disagreements. Therefore, it increases the effectiveness of the British governments. Statistics concerning election results, government formation duration, average government duration, and government defeats in the UK, as well as the extent of the ideological differences among the prominent British parties, serve to substantiate these claims. Ultimately, these metrics will be

utilised as empirical evidence throughout this paper. The significance of the embeddedness of Enlightenment values in preserving the strength of British governments is currently overlooked and understated, primarily because the UK already operates under an entrenched two-party system. However, its true importance will become evident upon the highly probable collapse of the two-party system in the next elections.

Keywords: Government Effectiveness, Enlightenment Values, Two-Party System, Multi-Party System

THROUGH THE PRISM OF LEGAL REGULATION: LEGAL ASSEMBLAGES AND THE LIMITS OF REFLEXIVE CONSTITUTIONALISATION

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ABSTRACT

This paper revisits the concept of legal regulation within systems theory by distinguishing between reflexive legal self-regulation and legal morphogenesis. While reflexive regulation stabilises normative expectations through second-order observation and processes of constitutionalisation, legal evolution generates new configurations that structurally exceed the categories through which such stabilisation operates.

To address this mismatch, the paper introduces the concept of "legal assemblage" as an analytical category designating formations that emerge in the gap between these dynamics. Legal assemblages are neither organisations nor contractual networks, but unstable configurations provisionally held together by legal operations that only partially capture their internal relations.

This argument is illustrated through the legal qualification of social media users, for example, in EU law, where bilateral models of contract and consent—particularly under the General Data Protection Regulation—fail to account for the collective and relational production of value within platform environments. These configurations exceed subject-based legal categories while remaining only partially accessible to reflexive stabilisation.

Building on and revising Ladeur's account of "serial law", the paper asks whether law can develop second-order reflexive mechanisms capable of organising such assemblages without reducing them to pre-existing categories, thereby re-specifying regulation as a recursive operation on emergent configurations and asking whether it can produce forms of self-organisation and political coordination.

CICERO'S RELEVANCE FOR MODERN CONSTITUTIONAL REASONING

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WORKING GROUP · Rule of Law III
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ABSTRACT

This paper examines the relevance of Cicero for contemporary discussions of modern republicanism by focusing on his theory of natural law and the methodological framework through which it is to be discovered and applied. It argues that, although Cicero does not present a constitution in the modern sense, his methodological commitments display notable structural parallels to constitutional reasoning.

In De legibus and De re publica, Cicero presents natural law as perfect reason (recta ratio) rooted in nature. On this view, only what accords with recta ratio can rightly be leges, which are therefore necessarily just. Natural law must be discovered and concrete laws must be created. For this purpose, Cicero relies on a dialectical methodology to identify and approximate natural law.

At least three interrelated dialectical levels structure this process. First, individuals perfect their individual reason through reflection and philosophical inquiry, enabling them to perfect their individual reason. Second, history itself operates as a diachronic dialectic in which reason becomes progressively refined, converging toward more just institutional arrangements. Third, the mixed and moderated institutional setting of the res publica allows for dialectic processes. On all three levels, dialectical reasoning advances ratio towards being recta, allowing lawmaking to approximate justice and the natural law.

The paper argues that Cicero's dialectical approach functions like higher-order norms comparable to constitutional principles: they structure how concrete laws are generated, how they are justified, and how they are

institutionally implemented. Reconstructing Cicero's multi-level dialectical theory reveals an early, yet significant contribution to constitutional reasoning.

THE UNCHANGING IN A CHANGING WORLD: THE RULE OF LAW OR DICTATORSHIP

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ABSTRACT

From the perspective of state theory, we see that republics were interrupted in the 20th century and replaced by dictatorships. The multi-party structure of the Weimar Republic gave way to National Socialism. Hermann Heller's work analysing the approaching fascism is "Europe and Fascism". In this work, Heller notes that there were thinkers and politicians, such as Schmitt, who sought to establish the foundations of fascism in Germany by examining Italian fascism. Another significant work he wrote against fascism is "The Rule of Law or Dictatorship". In this work, Heller discusses the importance of the separation of powers and warns that without this separation, a slide into dictatorship is all too easy. Citing the example of Italian fascism, he argues that in the absence of political parties, corruption cannot be detected and a climate of repression prevails. Whilst all these debates may seem to belong to the past, with the rise of increasingly authoritarian states in the 21st century, Heller's works such as "The Rule of Law or Dictatorship" and "Authoritarian Liberalism" are once again coming to the fore, and his striking observations serve as a source of insight for the present day.

PEACE BUILDING AND ACCESS TO KNOWLEDGE

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ABSTRACT

The first step toward a solid foundation for peacebuilding is to imagine that an alternative future can exist outside the logic of oppression and domination. One of the most serious obstacles to this imagination is the "extermination of knowledge and way of knowing." In particular epistemic oppression and epistemic violence in conflicts does not only silence marginalized groups and exclude them from knowledge building processes, but also prevent individuals belonging to dominant groups from evaluating conflict issues with open-mindedness. Because the oppression and erasure of the knowledge constitute powerful tools in that they can make the already discussed and subsequent aspects of power dynamics and hegemony around knowledge a non-issue, access to knowledge is a very important topic in conflicts and for peace. Therefore epistemic liberation is essential for embodiment of peace. However, epistemic liberation like peace itself, does not happen spontaneously. For epistemic liberation, epistemic injustices and the epistemic violence caused by these injustices must be realized.

Firstly, being aware of epistemic injustices and epistemic violence make room for those who have been silenced to participate in peacebuilding process through equal voice. In this context, equal voices are essential for ensuring that the narratives of those silenced find audiences. Therefore the free discussion of alternative narratives provides an opportunity for conflicting parties to confront their prejudices against each other. Typically, there will be conflicting narratives between conflicting parties that tell different and often mutually exclusive versions of what has happened and who they are.

Of course the goal of a free discussion does not mean reaching complete agreement on how and why events occurred. The aim of such a discussion

is for the parties to understand each other, to acknowledge each other's pain and to learn to share grief in a way that transforms it from a source of conflict into a source of peaceful coexistence.

IS LAW MORE IMPORTANT THAN SURVIVAL?: JUSTICE IN EMERGENCY

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ABSTRACT

Our societies frequently confront crises, such as war, pandemic or natural disasters. In emergency situations, quite a few people claim the necessity of extrajudicial measures like martial laws to maintain social order. This paper considers how far can or should we keep the value of the rule of law in the emergency situations by examining Japanese cases in COVID-19 pandemic. Thereby I will insist that we should not compromise our basic values of rule of law for the sake of the needs for short-term economical interests or even subsistence. Certainly, rule of law is not good at dealing with emergency. For example, legal decision-making takes somewhat long time. However, without the fundamental commitment to the value of rule of law, we cannot expect our society to recover well after the crisis leaves, and enjoy long-term developments. So I will conclude that even if rule of law is contradictory to the short-term interests for survival, it must contribute to the long-term survival and prosperity of our societies on the basis of the theory of F.A. Hayek and Karl Popper.

A DISCOURSE-THEORETICAL CONCEPTION OF LAW: RECONCILIATION BETWEEN UNIVERSALISM AND CONTEXTUALISM IN LAW

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ABSTRACT

Whether there is a necessary connection between the concept of law and morality is one of the classical questions of legal philosophy. In the tradition of modern Western law, a necessary connection between the concept of law and universal normative ideals such as justice, human rights, and democracy has often been defended. At the same time, scholars in postcolonial thought and legal anthropology have pointed out that asserting such a connection may lead to the neglect of the particular contexts of non-Western societies or traditions and, in some cases, may even become oppressive by imposing "modern Western" values in a one-sided manner. Against this background, this paper attempts, from the perspective of discourse theory, to clarify the relation between the universal and contextual dimensions of law and to show how they can be reconciled. According to the conception proposed here, what I call the discursive essential is a universal moral norm: the requirement that all persons subject to a society's normative order must be equally recognized as participants in the processes through which that order is interpreted, justified, criticized, and revised. In this sense, they must not merely be treated as addressees of norms, but as persons entitled to participate in discourse concerning the norms that govern them. Whether a connection arises between this requirement and the concept of law, however, depends on the character of the legal tradition of the society in question. In the context of a legal tradition whose constitution contains something corresponding to the discursive essential, such a connection arises between this requirement and the concept of law. In contexts where this is not the case, by contrast, asserting such a

connection is not only theoretically difficult; from a postcolonial perspective, there is good reason to exercise restraint in seeking such a connection.

THE THEORETICAL DISCOMFORT OF LAW: LEX DIGITALIS AND THE LIMITS OF CLASSICAL LEGAL PHILOSOPHIES

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WG.139 · Theme: AI & Digital Governance

WORKING GROUP · AI & Digital Governance III
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ABSTRACT

Contemporary legal philosophy confronts a profound theoretical discomfort. The consolidation of autonomous normative systems in major social media platforms has produced what can be termed "lex digitalis": rules that function with the practical force of law, yet originate from private technological infrastructures rather than state authority. This phenomenon raises fundamental philosophical questions that challenge the very foundations of legal thought.

How can we conceptualise normativity when binding rules are generated and enforced by algorithms rather than by human legislators or judges? What remains of the concept of legitimacy once sovereignty is detached from territory and exercised through global corporate infrastructures? How should legal philosophy understand authority, validity, and justice when the sources of law are no longer public but private, and the mechanisms of enforcement are opaque and automated?

This paper argues that lex digitalis does not merely represent a new regulatory technique; it constitutes a genuine philosophical problem that exposes the limits of classical jurisprudential categories. It forces legal theory to reconsider core notions such as the nature of law, the conditions of legal obligation, and the relationship between power and legitimacy in the digital age. By analysing the structural paradoxes inherent in platform governance the paper explores both the explanatory boundaries of traditional legal philosophy and the conceptual possibilities of a new normative paradigm better suited to the changing problems of the contemporary world.

RETHINKING LEGAL AUTHORITY THROUGH FOUCAULT'S CONCEPT OF BIOPOWER: GLOBAL TECH COMPANIES AS NON-STATE ACTORS

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ABSTRACT

In this paper, the position of global technology companies within contemporary forms of power will be analyzed within the framework of Michel Foucault's concepts of biopower and governmentality.

Biopower corresponds, first, to disciplinary mechanisms focusing on the biological body. Through discipline, bodies are shaped and transformed into obedient, productive, and controllable subjects. Second, biopower is directed at regulating the population as a biological whole. Processes such as birth, death, life expectancy, health levels, and productive capacity exemplify this dimension. This approach also forms the basis of the concept of "governmentality," which suggests that power operates not only through sovereignty or discipline, but also through techniques that guide individual conduct and regulate populations.

According to Foucault, classical political theory focuses excessively on sovereign power and legitimacy. Power is not a structure belonging to a particular subject; rather, it is dispersed throughout social relations and operates through various forms of pressure.

In line with this, the idea that power is not concentrated in a single center opens up a reconsideration of the presumed sovereignty competition between nation-states and global technology companies. Power operates through horizontally structured networks rather than vertical hierarchies. Global technology companies can be understood not as entities replacing the sovereign state, but as carriers of biopower that are both integrated with and relatively autonomous from the state.

Sovereignty operates not only through laws but also through digital norms and data surveillance. Leading technology companies store and analyze user data and influence behavior. This indicates a form of power operating through algorithms that indirectly shape behavior. Accordingly, nation-state sovereignty has not weakened but transformed. This transformation reconfigures traditional legal authority through digital infrastructures.

ON NEUROTECHNOLOGIES, NEUROPOWERS, NEURORIGHTS, AND THE EMERGING HEGEMONY OF TRANSHUMANISM

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ABSTRACT

This paper critically analyses the impact of the emergence of private and public neuropowers on the Constitutional Rule of Law (CRL). To account for the complexity of this argument, we employ a methodology based on, but not limited to, linguistic analytical philosophy and legal theory. First, we draw on the analysis of power by Gramsci and Foucault to discuss the impact of a new form of hegemonic power exerted by libertarian transhumanists. Second, by redefining key concepts, such as "power" and the "Constitutional Rule of Law", we assess the compatibility of the transhumanist agenda with the fundamental principles of the CRL. Finally, our analysis will demonstrate their incompatibility, justifying the introduction of neurorights as a counterbalance to neuropowers

DEMOCRACY UNDER THE GRIP OF DIGITALIZATION

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ABSTRACT

This study aims to examine the impact of the accelerating process of digitalization over the past quarter century on democracy, both in terms of the opportunities it provides and the ways in which it transforms the will of decision-making. Historically, democracy has evolved as a dynamic balance between the individual's right to self-determination and the requirements of social order. From the practices of direct participation in Ancient Greece to modern representative systems, the central debate has revolved around the form of participation. Today, however, digitalization shifts this debate to a new plane: it not only expands modes of participation but also reshapes the nature of decision-making processes and the position of the subject within them. The core issue, therefore, is no longer merely how participation occurs, but under what conditions and to what extent it is grounded in a genuinely free will. In this context, the study addresses the following question: does digitalization extend democracy into an expanded field of participation, or does this expansion simultaneously generate new constraints due to the transformation of decision-making agency? To answer this, the study situates digitalization within the historical trajectory of democracy, tracing the transition from direct participation to representative structures and linking this transformation to the emerging digital phase. While population growth and increasing social complexity rendered direct democracy unsustainable, representative democracy emerged as an institutional solution. With modernization, the rational capacity and autonomy of the individual became central, and democracy was institutionalized as a political form limiting arbitrary rule. However, the bureaucratization of representative systems and the reduction of citizen participation to electoral cycles have generated a perception of democratic contraction. Digital technologies, in this regard, appear as tools that reduce

participation costs and promise a more inclusive public sphere. The study conceptualizes the impact of digitalization on democracy along two interrelated axes. On the one hand, digital technologies expand access to information and enable faster, broader participation in political processes, while offering visibility and voice to previously excluded groups, thereby strengthening pluralism. Increased transparency of public authorities can also reinforce mechanisms of accountability. From this perspective, digitalization produces an opportunity space that expands the historically limited participatory dimension of democracy. On the other hand, the same process generates dynamics that transform the very subject upon which these opportunities depend—namely, the individual decision-making will. The capacity of data-driven algorithms to shape individual preferences calls into question the assumption of free will. Shoshana Zuboff's concept of "surveillance capitalism" provides a crucial framework for understanding how personal data is converted into tools of behavioral prediction and influence. Moreover, the increasing delegation of decision-making processes to autonomous systems redefines the position of the individual as a political subject. This development can be associated with a tendency, reminiscent of Thomas Hobbes' notion of the delegation of authority in exchange for security, whereby modern individuals share the burden of decision-making with technical systems in response to growing complexity. In light of these considerations, the study argues that digitalization does not represent a unidirectional expansion or contraction of democracy. Rather, it simultaneously enhances democratic opportunities while transforming the will that makes these opportunities meaningful. The central claim is that the expansion of participation and the transformation of decision-making agency may, under certain conditions, neutralize one another. In other words, a quantitative increase in participation does not necessarily imply that such participation remains qualitatively free and autonomous. More broadly, the study contends that digitalization signifies neither the end nor the ultimate triumph of democracy. Instead, it constitutes a new phase within its historical development. Just as the mechanization of production during the Industrial Revolution did not eliminate human labor but transformed its nature, digitalization does not remove humans from decision-making processes; rather, it reshapes the form and intensity of their involvement. Accordingly, the study critically engages with both dystopian and overly optimistic perspectives that either predict a post-human

order excluding human agency or assume that digitalization will resolve the structural limitations of democracy. In conclusion, this study positions digitalization not as the end or final form of democracy, but as a new stage within its historical trajectory—one that simultaneously expands the possibilities of participation while transforming the will that underpins it. The future of democracy, therefore, depends less on the technological opportunities themselves than on how these opportunities are related to and integrated with human decision-making capacity.

WHY DOES REALITY MATTER? DEEPFAKES, MIMESIS, AND THE LAW

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ABSTRACT

Technology has always operated through the imitation of reality, extending and amplifying human capacities. The digital condition, however, radicalizes this paradigm to an unprecedented degree. What is distinctive about the digital is its capacity to detach the signifier from any stable referent, allowing for its indefinite reproduction from signifier to signifier. In this sense, digital reality constitutes the historical occasion for the deconstruction of the analog paradigm—and, ultimately, for its closure. The paradigmatic instance of this transformation is the deepfake: an AI-driven technique of synthetic image and sound production capable of generating content that is false yet phenomenologically indistinguishable from the real. Through such technologies, reality can be imitated across one or more dimensions with extraordinary fidelity, and at a scale and speed that continue to expand while costs diminish. If this logic of functional mimesis is further intensified—potentially through the convergence with quantum technologies—such that synthetic reproductions of reality reach a point of perceptual indiscernibility for human agents, then two fundamental questions emerge. First, why should the distinction between reality and synthetic reality matter at all? Second, what becomes of law, whose central operation has historically depended on the possibility of establishing, with epistemic reliability, the genealogy of the real?

COMMON GOOD IN THE DIGITAL SOCIETY TO GUARANTEE EQUALITY RIGHTS

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WG.275 · Theme: AI & Digital Governance

WORKING GROUP · AI & Digital Governance III
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ABSTRACT

The paper reflects on the concept of the common good within the classical Thomistic natural law tradition. From this perspective, the common good cannot be reduced to the mere aggregation of individual preferences or private interests; rather, it refers to the social, legal and political conditions that enable all members of the community to achieve an authentic human society. In the Thomistic understanding, law is fundamentally oriented toward the common good and grounded in the rational order of natural law.

The contemporary technological context gives renewed urgency to this classical framework. The increasing integration of digital technologies into every dimension of civic and personal life has transformed the conditions under which human beings participate in society. Digital infrastructures, digital governance, and artificial intelligence now shape access to communication, political participation, education, labor, and personal identity. These developments raise fundamental jurisprudential questions regarding the relationship between technological power, human dignity, and the common good.

From the Thomistic Natural Law tradition, this paper argues that technological systems and digital governance should not be evaluated solely according to efficiency, autonomy, or market utility, but according to their capacity to foster the integral development of the human person within political community and equality as a primary topic.

Ultimately, the common good must also be understood as a foundational value underlying fundamental rights and constitutional order. As a principle oriented toward social coexistence, justice and solidarity, it seeks to secure not merely formal equality among citizens, but the real conditions

necessary for human flourishing and authentic participation in political community. In this sense, the common good remains an essential juridical and ethical criterion for evaluating the legitimacy of contemporary technological and digital structures within democratic societies to guarantee equity rights and as a consequence freedom.

RESEARCH ON THE COLLABORATIVE GOVERNANCE OF TECHNICAL STANDARDS AND LAWS FOR AUTONOMOUS DRIVING ENTERPRISES GOING GLOBAL FROM A GLOBAL PERSPECTIVE

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WG.295 · Theme: AI & Digital Governance

WORKING GROUP · AI & Digital Governance III
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ABSTRACT

Against the backdrop of current global trade competition, the global governance framework has not yet taken shape and even fallen into a "prisoner's dilemma" due to geopolitical games, "decoupling" confrontations and technological monopolies. As a representative application field of artificial intelligence technology, autonomous driving faces more intuitive and severe challenges when enterprises go global. Specifically, they include cross-border data issues, ethical issues, and supply chain security issues in autonomous driving. With the increasing maturity of China's autonomous driving technology and the continuous growth of its international market influence, the trend of technological and even economic decoupling caused by geopolitical games has posed severe challenges to the "going global" of China's autonomous driving industry. By sorting out the governance practices of technical standards and legal systems, this paper summarizes practical difficulties such as cross-border data, ethical norms and supply chain security in the internationalization of China's autonomous driving technology, demonstrates the advantages of collaborative governance of technical standards and laws, and on this basis constructs a collaborative governance mechanism oriented to promoting industrial development and internationalization: first, strengthen the leadership of technical standards to consolidate the foundation of autonomous driving governance; second, enhance the legislation of artificial intelligence to improve the legal guarantee for autonomous driving; third, expand the influence of international governance by relying on initiatives such as the "Belt

and Road". This will enhance China's voice in global governance and safeguard the high-quality "going global" of China's autonomous driving sector

WHAT ARE RATIONALLY DESIRABLE POLITICAL INSTITUTIONS?

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WG.11 · Theme: History, Democracy & Public Power

WORKING GROUP · Democracy & Public Power
Chair: Zeynep İspir

ABSTRACT

In this paper, I seek to address the political philosophic problem of the absence of clear normative guides for the organization of political institutions. The absence of clear normative guides is because of insufficient philosophic grounding for the acceptable range of political institutions within the contemporary period. I address this problem by outlining the following set of assumptions: all persons do not share a comprehensive doctrine; persons can judge reasons; social cooperation is necessary between persons; persons need to have knowledge to make judgments; and persons have an interest in developing their capacity to acquire knowledge. I use this interest of persons to define the following political precept: it is rationally desirable for persons to develop political institutions that are intended to fulfill the interest of persons. The rational desirability of institutions can serve as a normative guide for the organization of political institutions in the contemporary period since this rational desirability is not based on a comprehensive doctrine. In the final part of the paper, I note that institutions developed with the intent to fulfill the interest of persons are similar to what is commonly conceived of as democratic institutions. But I argue that these similarities are not the important result. Rather, the important result is a consideration of what should be the sound normative guides for the selection of political institutions. I end this paper with an outline of the main tasks that need to be addressed in future work on normative guides for the selection of political institutions.

THE MISSING ARBITER: THE ENFORCEMENT GAP IN EUROPEAN PARLIAMENT ELECTIONS

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WORKING GROUP · Democracy & Public Power
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ABSTRACT

Romania annulled the national election results, citing foreign interference; France disqualified a candidate; and Hungary has a track record of unfair elections. Similar actions could occur before the 2029 European Parliament elections, significantly impacting EU democracy—yet decisions rest entirely with national authorities. This creates a critical enforcement gap for EU-level democracy.

Values have become central to the EU's constitutional vocabulary, yet democracy remains amongst the least enforced. In Commission v Malta (C-181/23), the Court of Justice held for the first time that European Parliament elections are of systemic importance to the EU, linking democratic rights in one Member State with consequences for the entire Union. This landmark ruling concludes the Court's democracy jurisprudence and helps ensure strong enforcement of democracy, similar to the enforcement of the rule of law.

Just as with courts, European Parliament elections cannot be fair if one or more national systems are fundamentally flawed. But whilst courts can reject decisions from courts lacking independence, no review mechanism exists for European Parliament elections. The EU legal order is thus far more dependent on Member State action in elections than in judicial cooperation.

Over 45 years since the first directly elected European Parliament, the CJEU has heard barely a dozen election cases—an astounding absence given that elections provide democratic legitimacy to all EU decision-making. What barriers prevent the enforcement of democratic values?

I argue that procedural inertia undermines the Union's capacity to defend foundational values. National courts hesitate to refer cases due to the CJEU's slow pace. Following the US Supreme Court's practices, the Court must introduce expedited procedures for election-related preliminary rulings. The Commission and Member States must also act swiftly under Articles 258 and 259 TFEU, requesting interim measures during election periods.

LEGISLATIVE INFLATION IN THE EUROPEAN UNION – AN EMPIRICAL APPROACH

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WG.50 · Theme: History, Democracy & Public Power

WORKING GROUP · Democracy & Public Power
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ABSTRACT

This paper introduces a novel empirical methodology for examining legislative inflation in European Union law. Moving beyond the "shallow approach" that merely counts pages or words in official journals, the study suggests a multi-dimensional framework that draws on empirical jurisprudence, econometrics, and natural language processing (NLP) techniques.

The central hypothesis is that legislative inflation is not a uniform phenomenon but differs markedly among regulatory types and content. To test this, I am developing a system of multiple "legal stocks" (L0, L1, L2...), inspired by macroeconomic monetary aggregates (M0, M1, M2...), which relativises legal provisions according to formal factors (provision type: substantive, amending, transitional) and substantive factors (branch of law: civil, administrative, criminal).

The planned empirical analysis will cover the entire corpus of EU legislation from 1958 to 2024, employing ML classification, text mining, and NLP techniques to categorise provisions and track quantitative changes throughout various legal subgroups. This methodology tackles two critical shortcomings of existing research: first, the implicit assumption that every word or page bears equal practical significance for legal subjects; and second, the cumulative measurement error that preliminary studies suggest can reach 600% over a 15-year period when not accounting for repealed or amended provisions.

At this stage, I have completed a comprehensive literature review and developed the conceptual framework, including operationalised definitions of key concepts and relevant statistical indicators. The empirical work is now underway: the corpus construction phase has begun, and initial exploratory analyses are being conducted. Preliminary findings from

analogous research on the Polish legal corpus (1918–2023) support the hypothesis that inflation intensity differs across legal subgroups, thereby validating the proposed approach.

The paper adds to the ongoing theoretical debate between purely quantitative and quantitative-qualitative understandings of legislative inflation, while supplying researchers and decision-makers with transparent, replicable tools for assessing where inflation occurs and at what scale – a prerequisite toward developing effective remedial measures.

POST-POPULISM: A THEORETICAL ACCOUNT

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WG.154 · Theme: History, Democracy & Public Power

WORKING GROUP · Democracy & Public Power
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ABSTRACT

This paper takes its point of departure in the observation that 'illiberalism' has in 2020s largely consumed the previous uses of 'populism' in discourses on democratic backsliding. This substitution, we suggest, should not be understood as only a case of conceptual improvement nor as an insignificant shift of terminology, but as a symptom reflecting the fact we have entered a 'post-populist stage'. We introduce 'post-populism' as a timeframe when the anti-establishment and oppositional rhetoric of populist actors has waned as they have increasingly occupied positions of power and their ideas have become part of the mainstream. Post-populism, however, also marks a moment of insight and awareness in the discourses on democratic backsliding: there can be no simple return to the liberal democracy of the kind we had before populism in the 2010s started reconfiguring the field of political and legal struggle.

In this paper we elaborate in greater detail on what the 'post-' of post-populism connotes: What have we left behind and what is the nature of the legal and political condition we find ourselves today? 'Post-populism', we argue, manifests itself in an open-ended process in which liberal and illiberal standards confront themselves plurilocally, entangled without clear resolution. With this understanding of shift in temporality we will aim to describe illiberal law as arising from a certain 'post-'.

CRITICAL EXAMINATION OF HABERMAS' THEORY ON DEMOCRACY: AUTONOMY AND WELFARE

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WG.246 · Theme: History, Democracy & Public Power

WORKING GROUP · Democracy & Public Power
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ABSTRACT

In modern society, the ideal of publicness (Öffentlichkeit) has been endowed with a distinctive role as a sphere for the democratic governance of large-scale administrative apparatuses—a role that cannot be reduced to the state, the market, or the community. For a democratic society to function effectively, consensus must be formed through deliberation both within and beyond parliamentary institutions. Such consensus confers legitimacy upon governmental decision-making and guides the proper functioning of judicial, legislative, and administrative bodies. According to Jürgen Habermas, modern legal-rational domination derives its legitimacy exclusively from "procedural rationality," understood as possessing a moral content. This legitimacy, in turn, depends on the organization of a political public sphere grounded in deliberation. Habermas's claim thus seeks to provide a foundational grounding for the ideal of democratic society. However, it appears to encounter difficulties at the level of its basic conceptual apparatus. If these difficulties can be overcome, it may be possible to arrive at an alternative conception of democratic society. This chapter therefore aims to move beyond the contradictions inherent in Habermas's foundational concept of communicative action, and to reconstruct the legitimacy of democratic society along two dimensions: critical retention and maturation.

THE POPULIST PRODUCTION OF NORMS: THE PROBLEM OF THE AUTHORITY OF LAW IN A CHANGING WORLD.

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WG.264 · Theme: History, Democracy & Public Power

WORKING GROUP · Democracy & Public Power
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ABSTRACT

This article examines how contemporary populist movements transform the foundations of legal authority by engaging in what can be described as populist norm production. Rather than merely eroding the rule of law, populist actors construct an alternative normative order grounded in majoritarian identity, crisis politics, and institutional capture. Drawing on comparative case studies from selected countries, the article demonstrates how populism operates as a constitutional project and reshapes the institutional architecture responsible for producing and interpreting law.

The analysis identifies four core mechanisms of populist norm production: the re-legitimation of legal sources, the strategic capture of institutions, epistemic erosion through the delegitimation of expertise, and the rise of performative legality. Together, these mechanisms generate a hybrid legal order that preserves the formal appearance of constitutional democracy while hollowing out its substantive constraints.

The article argues that reconstructing legal authority requires more than institutional repair. It demands the renewal of constitutional culture, the strengthening of judicial independence, the restoration of epistemic credibility, and the revitalisation of deliberative democracy. Ultimately, the study shows that the authority of law is not self-sustaining: it depends on social trust, institutional resilience, and civic commitment, all of which are challenged—but also illuminated—by the populist moment.

POLITICAL HOPE BEYOND FAILURE

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WG.292 · Theme: History, Democracy & Public Power

WORKING GROUP · Democracy & Public Power
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ABSTRACT

This article analyzed the reciprocal relationship between the concept of hope and politics, a relationship that has been largely overlooked in contemporary political thought due to its association with utopianism, idealism, and accusations of political infeasibility. The article explored the constructive and conflictual nature of hope from both individual and collective perspectives, emphasizing the concept's political and moral functions. In this regard, the article addressed the questions of what political function hope serves, how hope connects with reality in difficult times, and the historical relationship between hope and disappointment. Hence, it argued that political hope is neither a passive emotion nor wishful thinking, but it operates as a practical, imaginative, and conflictual impulse that upholds political agency and ethical responsibilities. The article further argued that hope has historically been embedded within political struggles and that political failures have not diminished the transformative impact of political hope. In this context, the concept of political hope was examined as a concept that evolves alongside despair toward the pursuit of justice. By this argument, the article employed a conceptual methodology, also drawing on a critical approach. Political hope, in this sense, also bears implications for the philosophy of law, as a normative impulse oriented toward justice, it interrogates the legitimacy of existing moral basis of political resistance. This study began with a conceptual analysis of hope and proceeded to examine the relationship between the concept and political memory. This study concluded by highlighting the constructive and conflictual aspects of the emotion of hope as expressed both individually and collectively. In doing so, the article contributed to the growing literature on hope in political theory by establishing a connection between hope as an emotion and political and social realities.

Keywords: politics, hope, conflict, historical failures

CARING FOR CLIMATE DEMOCRACY: AN ETHICS OF CARE PERSPECTIVE ON DEMOCRATIC PARTICIPATION IN THE CLIMATE TRANSITION

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WG.145 · Theme: Human Rights, Climate & Culture

WORKING GROUP · Climate
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ABSTRACT

Democratic governance of the climate transition faces a fundamental normative challenge. While participatory mechanisms have been embedded in climate legislation - most notably in the EU's European Green Deal - they tend to construct citizens as consumers rather than as co-regulators of the transition (Machin 2025; Çelik 2025). Climate responsibilities are individualised, engagement is framed in economic terms, and the transition's core policy aims remain beyond democratic contestation. As a result, participatory mechanisms operate within a logic that structurally limits the political agency of citizens and communities.

This paper examines this dynamic through a critical analysis of the EU's procedural climate governance. While the European Climate Law and the Governance Regulation have expanded public participation as a function of throughput legitimacy (Kulovesi et al. 2024; Schmidt and Wood 2019), their provisions remain vague, lack mechanisms for meaningful inclusiveness, and leave access to justice unaddressed (Oberthür et al. 2024; Roberts 2023). The paper argues that these shortcomings reflect a deeper normative failure in how climate governance conceives of democratic agency.

Addressing this dynamic requires a normative reorientation of the principles underpinning participatory climate governance. Drawing on the ethics of care - from its foundations in feminist moral theory (Gilligan 1982; Fisher and Tronto 1990) through its political elaboration as a democratic framework (Tronto 1993, 2013; Held 2006) to its application to environmental governance and ecological citizenship (MacGregor 2006; Puig de

la Bellacasa 2017) - the paper argues that care offers not merely a corrective lens but a substantive normative alternative. Principles of interdependence, relational responsibility, and attentiveness to vulnerable communities challenge the liberal-individualist assumptions of existing participatory frameworks, providing the normative foundation for a "climate democracy" (Oberthür et al. 2024) that moves beyond instrumental participation toward genuine democratic engagement.

GLOBAL NUCLEAR ENERGY REVIVAL: ANALYZING THE WORLD BANK'S COLLABORATION WITH THE IAEA IN NUCLEAR ENERGY DEVELOPMENT

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WORKING GROUP · Climate
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ABSTRACT

This paper examines why the World Bank has recently partnered with the International Atomic Energy Agency (IAEA) to support the safe and secure use of nuclear energy in developing countries, despite its historically cautious stance toward nuclear power. Using a neoclassical realist framework and drawing on elite speeches, policy documents, international reports, and economic indicators, the study finds that structural factors, most notably accelerating climate change and geopolitical disruptions such as the wars in the Middle East and Ukraine, created the strategic conditions for timing to cooperate with the IAEA. At the institutional level, shifts in World Bank leadership and evolving perceptions of nuclear-related risks with technological advancements shaped the organization's readiness to commit to nuclear energy. The paper offers a timely, theoretically informed empirical contribution to research on international organizations and international political economy, providing policy-relevant insights into how climatic factors, geopolitical dynamics alongside leadership preferences, and changing risk assessments have influenced the World Bank's evolving stance on nuclear energy in the Global South.

THE INSTRUMENTAL ROLE OF LEGAL SCHOLARSHIP AS AN AUXILIARY SOURCE OF LAW: A CASE STUDY ON CIVIL LIABILITY FOR ENVIRONMENTAL DAMAGE IN BRAZIL

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WG.166 · Theme: Human Rights, Climate & Culture

WORKING GROUP · Climate
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ABSTRACT

The role of legal scholarship is undoubtedly one of the most debated topics in legal theory throughout history. Its scientific rigour, application, and influence on judicial practice are essential for the development of legal research that generates practical impact, whether in legislative, judicial, or theoretical contexts.

This study explores its effects in the context of environmental torts. Due to the complexity of remedying environmental damage, various classical institutions of private law are being reinterpreted. This represents a movement toward the greening of private law, grounded in positive law but led by legal scholarship, to better adapt tort law institutions to the demands of environmental remediation. For this reason, it is a particularly interesting area of law for analysing an auxiliary function of legal doctrine. In Brazil, where major environmental disasters such as the Mariana (2015) and Brumadinho (2017) dam failures have occurred, the theme is particularly relevant.

From this context emerges the research question addressed by this article: What is the function of legal doctrine in the development of civil liability for environmental damage in Brazil? To answer this, it first seeks to define basic theoretical assumptions on legal scholarship as a legal source. Next, a brief digression is made on the role of legal doctrine in English law, particularly to highlight the difference this function has taken on throughout history in legal systems of distinct traditions. Third, it is ana-

lysed how the case law of the Superior Court of Justice (STJ) and the Federal Supreme Court (STF) in Brazil utilises contributions from legal scholarship in civil liability cases for environmental damage. Finally, original conclusions are drawn regarding legal scholarship as an auxiliary source of law of growing impact on that matter, based on the openness of Brazil's higher courts' case law to its contributions.

BEYOND THE "CONSTITUTION FOR THE EARTH": A YIN-YANG CONSTITUTIONAL ENGINEERING FOR THE LIQUEFIED HUMAN AND NEGATIVE SOCIAL CONTRACTS

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WG.230 · Theme: Human Rights, Climate & Culture

WORKING GROUP · Climate
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ABSTRACT

The global legal order faces a structural paralysis in the wake of the collapsing axis mundi—driven by the climate crisis, mass migrations, and digital fragmentation. While eminent projects like Luigi Ferrajoli's "Constitution for the Earth" offer a noble normative response, they largely rest on the Enlightenment's assumption of a "rational, virtuous, and participative (solid)" citizen.

This paper argues that these optimistic models collapse precisely as a result of this paralysis. Under existential global shocks, humanity faces a profound crisis of trust and loss of faith in institutions. Simultaneously, the interaction of capitalist production with the frenzy of consumption transforms the individual into a liquefied biological entity—one who evades not only public duties but also the responsibility of choice through a process of liquefaction. While Enlightenment institutions depend on the existence of rational and well-defined (solid) individuals, the current crisis and consumption spiral melt the individual into political and social apathy, "amorphizing" them into reactive predators driven solely by survival instincts.

In this liquefied landscape where the vision of a "positive social contract" based on shared virtues remains distant from contemporary reality, it is mandatory to confront the reality of the "Negative Social Contract"—formed by masses who mutually exclude each other but are compelled to stay together to avoid collective destruction.

As a way out of this structural crisis, instead of approaches that assume universal morality as a starting prerequisite (or a magic bullet to solve the crisis alone), a "Yin-Yang Constitutional Engineering" that acknowledges the ambivalent nature of human nature is proposed. Institutional structures should rely not on virtuous actors, but on "cold and mechanical friction areas" that neutralize impulses by clashing them against each other. This engineering envisions a dual-mode design:

The Yin (Security/Stability): A security (Pax) mechanism that rapidly scales up defensive and operational capacities during existential crises, while placing structural brakes on power consolidation.

The Yang (Freedom/Culture): A mechanism that sheds the security armor as soon as the threat threshold recedes, immediately restoring the axis mundi and the liberal-democratic space of freedom (culture).

Finally, the paper discusses how this transition between the "state of exception" and the "state of liberty" can be designed without succumbing to Schmittian decisionism, conspiracy theories, false redeemers (Heilsversprecher), and the manipulation of populist leaders. The core objective is to analyze how a constitutional "neutral sensor" can be established to prevent the holder of power from transforming into a tyrant.

TRANSITIONAL JUSTICE, ENVIRONMENTAL RACISM AND TECHNOLOGY WITHIN THE NEO-AUTHORITARIAN WAVE IN LATIN AMERICA

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WG.259 · Theme: Human Rights, Climate & Culture

WORKING GROUP · Climate
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ABSTRACT

The paper focuses on the role played by alternative justice models such as Transitional Justice and Restorative Justice on dealing with an emergent social and environmental problem situated in the imbalance between the Global North and the South.

It assesses the relationship between green transition (and socio-environmental impacts of wind energy farms in Latin American Countries, displacing and marginalizing Indigenous and Afro-Descendant Quilombola populations) and the emergent environmental data colonialism carried out by big techs with their technological infrastructure of massive data centres exploiting natural resources and land in Latin America, reinforcing colonial patterns of extraction and dispossession. The paper encompasses qualitative research with document analysis and “legisprudence".

PUNISHING OR HEALING: A CONFUCIAN VIEW OF CRIMINAL JUSTICE

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WG.8 · Theme: Criminal Justice & Legal Subjectivity

WORKING GROUP · Ethics Religion & Criminal Justice
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ABSTRACT

When someone commits a crime, the first thing that comes into our mind is often to punish the person. Philosophers have thus been keen to develop theories to justify such punishment. Generally speaking, there are two dominant theories. The consequentialist theory holds that punishment is just if it can serve the function to deter the criminal, and other persons, from committing the same crime again in the future. The retributive theory aims to return to the criminal the exact same amount (not more nor less) of harm the criminal has brought to their victims through their criminal activities. Confucianism, however, regards a criminal as someone who is sick, although not externally (physically) but internally. So just as when a person is sick physically, the first thing we need to do is not to punish the person but to help the patient cure the disease, when a person commits a crime, the first thing we need to do is not to punish the person but to help them heal their heart-mind that is harmed. That is why Confucianism pays so much attention to moral education, which can be done in multiple ways, including sending the criminals into jail. Since jail sentence here is served not as a way of punishment but as a way of moral education (just as a surgery on a patient is not punishment but a way of curing), if such jail time is indeed needed as a way of moral healing, it must be preceded, accompanied, and followed by other ways of moral education, including moral persuasion and, more importantly, moral exemplification. This Confucian view has often been characterized as a rehabilitational conception of criminal justice, one common objection to which is that it is concerned more about criminals than their victims. The Confucian response to it is that when the criminal's heart-mind is healed, they will not only not commit the same crime again in the future (the goal of consequentialism) but

will also do things to undo the harm they brought to their victims, and make compensation to their victims, as far as it is possible (the goal of retributivism).

THE INFLUENCE OF RELIGION ON LAW ENFORCEMENT: PERSPECTIVE OF LEGAL PHILOSOPHY

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WG.23 · Theme: Criminal Justice & Legal Subjectivity

WORKING GROUP · Ethics Religion & Criminal Justice
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ABSTRACT

The relationship between religious norms and state law remains a central issue in legal and social philosophy. This paper examines the concrete influence of religion on the practical operations of law enforcement and argues that religious frameworks shape legal application not only as external moral systems but also as embedded cultural forces that guide discretion and decision-making.

Situated within the interdisciplinary field of Law and Religion, the analysis builds on the work of scholars such as John Witte, Jr., who highlights the historical impact of religious thought on Western legal traditions. It also draws on Harold J. Berman's demonstration that modern Western contract law, with its principles of promise and obligation, arose from medieval canon law. This development provides an example of the way in which religious doctrines became institutionalized in secular practice.

The paper is structured in three parts. First, it explores how religiously informed social values influence the interpretive practices and institutional priorities of judges. Second, it considers the role of a judge's conscience, shaped by religious belief, in discretionary decisions. This idea reflects Eugen Ehrlich's conviction that the internal discretion of legal actors profoundly shapes legal outcomes. Third, it addresses the challenges of legal pluralism in multicultural societies, where authorities interact with communities that follow religious legal orders outside the state system.

Engaging debates between legal positivism and natural law, the paper analyzes the dynamic relationship between transcendent religious claims

and state authority. It argues that historically grounded philosophical understanding is essential for developing more reflective and legitimate law enforcement in diverse societies.

SCIENTIFIC JUDGMENT BEYOND EMPIRICISM: A FRAMEWORK FOR TRUTH IN SCIENCE, ETHICS, AND THEOLOGY

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WORKING GROUP · Ethics Religion & Criminal Justice
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ABSTRACT

Scientific theories are traditionally grounded in empirical observation, experimentation, and replication. Yet, many truths recognized by human societies—such as artistic value, moral principles, or the belief in a Creator—lie beyond the grasp of experimental verification. This paper introduces and defends scientific judgment as a legitimate epistemic tool for affirming non-empirical truths. Drawing from philosophical traditions, real-world examples, and the interplay of intuition, expertise, and consensus, this study expands the scope of scientific inquiry beyond material observation. It proposes a normative framework for applying scientific judgment across domains such as aesthetics, ethics, and theology—especially in evaluating the existence of God—without compromising scientific integrity. This reorientation opens the way for a more inclusive epistemology rooted in reasoned human discernment.

IF THE STATE IS (A) GOD, WHAT IS THE LAW? CONCEPTUAL REFLECTIONS TOWARD AN ALTERNATIVE POLITICAL THEOLOGY

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ABSTRACT

Hobbes famously conceived the state as a "mortal god." Jellinek, in turn, interpreted early forms of the state as manifestations of theocracy, in which the ruler was seen as a god or the son of a god. Building on Jellinek's influential idea of the state's self-obligation to obey the law, Kelsen analyzed this concept in God and the State, interpreting it as a religious rudiment in legal science. According to Kelsen, Jellinek laid the foundation for the Rechtsstaat on the form of the Christian kenosis, Christ's self-abasement, humility, and submission to the Law.

My paper will examine the implications of these positions for the concept of law: in Hobbes's vision of the state as a mortal god; in Jellinek's culturally law-abiding state; and in Kelsen's interpretation of a humble, religiously inspired Rechtsstaat. I argue that these seemingly diverse conceptions, all of which engage religious ideas for scientific and political purposes, can be explained through a shared model of presenting the state as a god or at least as a focal point for the sacralization of politics and law.

Developing this perspective further in relation to Christian theology, my paper will propose an analogy between the ruler as incarnation of the state and the relationship between state and law, on the one hand, and the theme of God and His Law in the Old and New Testaments, on the other. I will further explore how the dualistic relationships between God and Son, Spirit and Letter, and power and humility can be used as analogies to illuminate the disputes between Jellinek and Kelsen concerning the two-sided theory of the state and the unity of law and state.

THE PRINCIPLE OF NORMALIZATION AND OTHER SENTENCING PRINCIPLES

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WG.72 · Theme: Criminal Justice & Legal Subjectivity

WORKING GROUP · Ethics Religion & Criminal Justice
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ABSTRACT

Because in a liberal democracy, the most fundamental value that governs all public institutions is the protection of individual rights, the best penal policy is the one that best serves this purpose.

Can the widely supported penal principle, namely, the principle of proportionate punishment, serve the liberal democratic purpose of protecting individual rights? It is not self-evident that it can. In fact, various empirical studies have shown negative impacts of imprisonment on convicted offenders, e.g., prisonization-effect, labeling effects, etc. Clearly, the implementation of this principle seems to undermine the liberal democratic purpose of protecting rights.

One way to reconcile the demand to protect individual rights and that of proportionate punishment is to allow for flexibility in the selection of forms of punishment. This allows us to impose proportionate punishment in ways that also serve the demand of rights protection. For instance, if imprisonment is associated with the prisonization-effect, then perhaps we should try to cut down on the use of imprisonment and take advantage of other forms of punishment with less severe negative impacts, e.g., community services or monetary fine, which are not associated with prisonization-effect.

While this may be the best any desert theorist can do, I argue that this is not good enough for the sake of rights protection. Policies which focus on giving offenders what they deserve pays insufficient attention to the protection of citizens' rights. The latter requires that we prioritize helping convicted offenders to rehabilitate and reform so that they can lead a normal life after serving their sentence. This is the only way to help protect

individual rights. Accordingly, in designing sentencing policies, the principle of normalization must take precedence over the desert principle.

UNIVERSAL JUSTICE OR WESTERN LEGAL UNIVERSALISM? A RADBRUCHIAN CRITIQUE OF INTERNATIONAL CRIMINAL JUSTICE

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WG.75 · Theme: Criminal Justice & Legal Subjectivity

WORKING GROUP · Ethics Religion & Criminal Justice
Chair: Reyda Ergün

ABSTRACT

This study examines the universal claim of justice within international criminal justice, focusing on the normative structure of the Rome Statute and the practices of the International Criminal Court (ICC). International law historically emerged from the tension between natural law and positivist law. While natural law is based on universal principles, the positivist law produced hierarchical distinctions between legally recognized and unrecognized political communities. From a post-colonial perspective, it can be argued that contemporary Western legal systems tend to present their own legal understanding as universal law.

The ICC's understanding of justice is largely based on a retributive model that defines crime as a violation against the state and the law. In contrast, many traditional justice practices in Africa emphasize restorative approaches that aim to repair the harm caused. However, such practices are often considered inadequate because they do not meet the formal procedural standards of international criminal law. This tension has strengthened critiques that the ICC's conception of justice does not sufficiently take into account different legal cultures.

This study evaluates these debates through the framework of Gustav Radbruch's formula. According to Radbruch, positive law loses its validity when the distance between law and justice exceeds a certain threshold. This perspective demonstrates that international criminal law is not grounded solely in positivist legal rules but also in supra-positive principles of justice. Nevertheless, the political structure of the Security Council

and the Court's tendency to prioritize Western retributive justice raise important questions about the normative legitimacy of the international criminal justice system.

Finally, drawing on Aristotle's distinction between natural justice and legal justice, the study highlights the tension between "universal justice" and "plural conceptions of justice" within international criminal law. In this context, it argues that the ICC should move beyond a single Western-centered model of criminal justice and open itself to more pluralistic understandings of justice that take different legal traditions into account.

WHICH TRUTH? PARRĒSIA, SUFFERING, AND THE DIALOGICS OF MISRECOGNITION

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WG.217 · Theme: Legal Reasoning

WORKING GROUP · Legal Reasoning III
Chair: Gökçe Çataloluk

ABSTRACT

Resistance occupies a central place in Foucault's thought: power and resistance are immanently related, co-dependent forces within a single field, and freedom is not the absence of power but its necessary correlate. Yet this picture generates a serious difficulty. If resistance is structurally guaranteed by power relations, it risks being no more than a reflex, a shadow cast by force rather than a genuine political act. The difficulty deepens when truth enters the picture. If truth is what counts as true within historically specific games and regimes of truth, and the subject is an effect of the power/freedom/truth nexus, then there is no standpoint from which one regime can be judged better than another, and resistance collapses into sectarian preference. Foucault, in short, appears unable to ground principled opposition to the configurations of power he so compellingly describes. This article argues that the impasse can be resolved by attending to the role of suffering in the subject's relation to truth. Engaging critically with Daniele Lorenzini's reconstruction of Foucault's late work (The Force of Truth, 2023), the article argues that by separating the epistemic from the ethico-political dimensions of truth, Lorenzini leaves the force of parrēsia unexplained. The corrective proposed here is the concept of 'felicitous truth': a relation to truth in which lived experience is adequately articulated by available games and regimes of truth. When that adequacy breaks down – when truth becomes infelicitous – the resulting dissonance is felt as suffering and registered as misrecognition. It is this suffering, drawing on Honneth's phenomenology (The Struggle for Recognition, 1992) and Butler's ontology of precariousness (Frames of War, 2009), that furnishes the motivational ground of resistance and the existential source of parrēsia.

THE IMPARTIALITY OF THE MEDIATOR IN POLAND: A COGNITIVE LINGUISTIC ANALYSIS OF CONCEPTUALISATIONS IN INTERVIEW DATA AND ETHICAL FRAMEWORKS

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WG.224 · Theme: Legal Reasoning

WORKING GROUP · Legal Reasoning III
Chair: Gökçe Çataloluk

ABSTRACT

Impartiality constitutes a foundational principle of mediation ethics; however, its practical realisation remains open to empirical scrutiny. This work-in-progress investigates the extent to which mediators maintain impartiality in their conceptualisations, focusing on their linguistic construals as evidenced in interview data. The study draws on qualitative data derived from several dozen semi-structured interviews conducted with criminal mediators in Poland.

Adopting the framework of Cognitive Grammar as applied to legal and mediation discourse, particularly the notions of construal, profiling, prototypicality, and domain organisation, the analysis examines how mediators linguistically encode their roles, the parties, and the conflict itself. Special attention is paid to recurrent patterns that may indicate asymmetrical profiling or implicit alignment with one party, thereby signalling potential departures from the ideal of impartiality.

These empirically attested conceptualisations are subsequently compared with normative models of mediation derived from professional codes of ethics. Such documents are treated as instantiating prototypical configurations of the mediator's role within a structured domain of professional knowledge. The study seeks to identify correspondences and divergences between these prototypical models and the conceptualisations emerging from actual discourse.

It is hypothesised that deviations from impartiality may not be intentional but may arise from entrenched cognitive patterns, particularly those

shaped by the mediator's professional background (e.g. legal training). By mapping these patterns, the study aims to contribute to a more nuanced understanding of impartiality as a gradient and cognitively mediated phenomenon, rather than a fixed normative category.

FROM SACRED REDEMPTION TO TECHNICAL NECESSITY: SECULARIZED MESSIANISM AND THE TRANSFORMATION OF LEGAL REASONING

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ABSTRACT

Contemporary political discourse increasingly mobilizes eschatological and messianic narratives, often intertwined with claims of technical necessity and emergency governance. Rather than representing a "return of the religious," these phenomena can be understood as transformations of messianic structures within a secularized and technicized world. This paper argues that such narratives do not simply accompany political power, but contribute to reshaping the very conditions of legal justification.

In classical legal theory, the legitimacy of law is grounded in argumentative practices: reasonableness, adversarial procedure, and the discursive construction of legal truth. However, in contexts marked by global crises (pandemics, security threats, geopolitical instability) these argumentative frameworks are increasingly reconfigured through narratives of urgency, inevitability, and salvation. Political actors appeal not only to values or interests, but to quasi-eschatological scenarios in which decisive action appears as the only viable response to an impending or ongoing catastrophe.

This shift is reinforced by the public and legal representation of technological knowledge. While contemporary epistemologies emphasize the plural, provisional, and contestable nature of technical expertise, political and institutional discourse often frames technical solutions as necessary and unavoidable. In this convergence between secularized messianic narratives and the rhetorical construction of technical necessity, law risks becoming less a space of open argumentation and more a device for implementing what is presented as inevitable.

Rather than interpreting these developments in terms of the authenticity or degeneration of the sacred, the paper proposes to analyze them as a

structural transformation of legal discourse. Drawing on rhetorical and argumentative theory, it aims to clarify how secularized messianism and the discursive framing of technology jointly contribute to the reconfiguration of law in the face of changing global problems.

CONSENT WITHOUT AGREEMENT: HOW EXPERIMENTAL JURISPRUDENCE REVEALS THE GAP BETWEEN LEGAL DOCTRINE AND LAY INTUITIONS ON CONSENT

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WORKING GROUP · Legal Reasoning III
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ABSTRACT

This paper examines the divergence between formal legal conceptions of consent and the intuitive judgments of ordinary individuals, using two recurring and socially systemic case types as analytical anchors: the practice of requiring tenants to sign blank promissory notes as a condition of housing access, and the conclusion of binding contracts through misrepresentation in institutionally trusted environments. Drawing on the methodology and findings of experimental jurisprudence (X-Jur), particularly the work of Sommers on consent, the paper argues that existing legal doctrine—across both civil law and common law traditions—systematically fails to capture what ordinary people understand consent to mean. The paper further contends that where fraud is structural and forecloses realistic exit options, lay intuition may shift away from Sommers' finding that fraud-induced consent is treated as valid, approximating instead the intuitive response reserved for coercion. The evidentiary architecture of contract law compounds this problem by rendering fraud-based defences practically unenforceable even where doctrine nominally recognises them. Reform proposals grounded in X-Jur insights are advanced.

Keywords: experimental jurisprudence, consent, fraud, promissory notes, contract formation, lay intuition, legal doctrine, Civil law, common law

THE INTERDISCIPLINARY TRANSFORMATION OF LEGAL SCIENCE: A FOCUS ON LEGAL REALISM

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WG.274 · Theme: Legal Reasoning

WORKING GROUP · Legal Reasoning III
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ABSTRACT

This paper examines the interdisciplinary transformation of legal science through the lens of American legal realism. Since Christopher Columbus Langdell famously presented law as a science, legal scholarship has repeatedly sought to define what makes the study of law "scientific." For Langdell, legal science was primarily an internal and doctrinal enterprise: law was to be studied through cases, principles, and the systematic ordering of legal materials. This model helped establish law as an academic discipline, but it also tended to identify legal science with the autonomous analysis of legal doctrine. American legal realism transformed this understanding. Rather than simply rejecting the scientific ambition of Langdellian formalism, many realists redirected it toward the study of courts, institutions, social behavior, and the practical effects of legal rules. In this respect, legal realism should be understood not merely as an attack on formalism or a skeptical theory of adjudication, but as a methodological project that opened law to external forms of knowledge. On this basis, the paper proposes to redraw the history of interdisciplinary legal scholarship through legal realism. As law is increasingly called upon to respond to the changing problems of the world, interdisciplinary approaches to law have attracted renewed attention. Yet many of their central questions were already anticipated by legal realism: the relation between doctrine and social facts, the institutional conditions of legal reasoning, the behavioral effects of rules, and the incorporation of external knowledge into legal analysis. Placing legal realism at the center of this history allows us to understand legal science as a changing methodological project that negotiates the relation between legal doctrine and external forms of knowledge.

LAW AS A NORMATIVE SYSTEM: CONSISTENCY, COMPLETENESS, AND META-NORMS

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WORKING GROUP · Legal Reasoning III
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ABSTRACT

This paper examines whether law, understood as a normative system, can be conceived as a consistent and complete order. By comparing Kelsen's theory of legal order with von Wright's norm logic, it questions whether legal gaps and contradictions are logically impossible, or whether they are instead addressed through meta-norms, interpretive techniques, and rules of conflict. Particular attention is given to the distinction between weak and strong permission and to the role of legality in criminal law. The paper argues that consistency and completeness are not empirical features of legal systems, but regulative ideals of legal rationality.

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RETHINKING RESPONSIBILITY FOR GLOBAL STRUCTURAL INJUSTICE: INDIVIDUAL, OUTRAGE AND 'SOCIAL CONNECTION' MODEL

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WG.71 · Theme: International & Private Law

WORKING GROUP · International Law and Human Rights
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ABSTRACT

The aim of the paper is to provide an internal critique to Iris Marion Young's Social Connection model in her work 'Responsibility for Justice'. She claimed that individuals have differential responsibility for addressing global structural injustices as individuals across countries are complicit through their roles in the long chain that leads to such structural injustices and therefore, those individuals should embrace differential responsibility on axis of power, privilege, interest and collective ability based on their social positioning.

The paper contends that though Young's Social Connection Model is able to expose the sinews of global structural injustice but is not potent enough to dent the edifice and scaffolding of such structural injustices. To address this gap, the paper argues that structural injustices remain embedded on a long line of asymmetrical interests where such injustices have to do with how individuals receive or process such structural injustice. This has to do with the limited mind-space of an individual which is already bombarded and saturated with threats of direct injustice and everyday evil thus it becomes difficult to give space to or hold on to the incidents which comes coiled in elements of structural injustice.

To address this, the paper contends that for Social Connection model to be effective, there is a need to first acknowledge the inability of mind to generate outrage as a missing element which makes individuals numb or indifferent to their complicity in structural injustice and then consequently look at the situation where moral outrage can be deployed as an affective catalytic tool to make the individuals connected through the social model

– hear, feel and talk about the structural injustice. The paper does not make a linear connect between outrage and addressal of structural injustice but posits that the generation of outrage around structural injustice is imperative for individuals to gain awareness and be able to comprehend the evil design of structural injustice which often works through the nexus of corporations, international rules and state regulatory framework which provides it a veneer of legitimacy. The inability of mind-space to generate any outrage and process the structural injustice as routine is crowded out or marginalised by direct evils which are amplified in age of technology and social media, thus making it very difficult to even register structural injustice on our mind-space.

The ennui, indifference or numbness that often engulfs the issues of structural injustice means that the Social Connection model to be effective has to explore the possibilities of moral outrage to be generated for the complicit humanity to embrace the mentality of undertaking responsibility. Hence the paper explores the applied ethics model of generating outrage which includes civil disobedience organised around a charismatic leader, fast unto death, non-cooperation or boycott methods to generate outrage around structural injustice. After examining the various modes of manufacturing outrage, the paper will give a theory of moral outrage which is different from the dominant theory of moral outrage centred on a disinterested agent. In contrast, the paper will argue for a theory of moral outrage which is more attuned to structural injustice being epistemic and socio-constructionist and therefore the moral agent of outrage can be any agent who feels moved by the injustice and is not necessarily a disinterested agent as per her social positioning to the site of structural injustice.

THE NEW GLOBAL ORDER AND THE FUTURE OF INTERNATIONAL HUMAN RIGHTS LAW

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WG.79 · Theme: International & Private Law

WORKING GROUP · International Law and Human Rights
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ABSTRACT

The changes that we are experiencing in these days seem to reflect the birth of a new global order. The same big players with different interests around the world. Seems to be a new wave of nationalization, renationalization that bring countries to the essence of the State that we saw their birth in the post Westfalen age.

It seems to be that international law does not matter or is ineffective, changing the form that we see the world in terms of international law that was intended to create a more homogeneous world, especially in the protection of human rights according to its international obligations.

Therefore, what's need to change regarding international law in this new reality? It is necessary to modify two of the main principal organs of the UN System? How to attend these new global problems (insecurity, polarization, renationalization, violation of human rights)? How to see the human right's violations of in terms of the rule of law?

These questions about the future of international law matters the most when we are in presence of human rights violations because they must be protected by the States in order to comply with international human rights treaties (such as the International Covenant on Civil and Political Rights). This is even more critic when the universal and regional systems of human rights protections depend on the state will to guarantee these right in favor of its citizens.

HUMAN RIGHTS CONCEPTS IN WORLD CLASSICAL CIVILIZATIONS: TOWARD A SUBSTANTIVE UNIVERSALITY OF INTERNATIONAL HUMAN RIGHTS STANDARDS

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WG.103 · Theme: International & Private Law

WORKING GROUP · International Law and Human Rights
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ABSTRACT

Contemporary international human rights law confronts the dual crises of formal universality and substantive alienation. Although international human rights instruments centred on the Universal Declaration of Human Rights have gained widespread acceptance in positive law, their normative foundations have long relied upon atomistic individualism rooted in a specific Western liberal tradition. This theoretical presupposition obscures the systematic interpretations of core categories such as humanity, dignity, and freedom formulated across diverse civilisations, resulting merely in a thin universality devoid of profound cultural resonance.

Faced with challenges including cultural pluralism, global collective crises, and the reconciliation of individual and collective rights, the prevailing human rights regime is trapped in the theoretical dilemma between universalism and relativism. To construct a more inclusive and explanatory substantive universality, this study adopts comparative legal functionalism and Comparative Axiology to conduct cross-civilisational analysis.

This article selects embryonic normative ideas with primordial human rights implications, namely Ren in Chinese, Shapat in Mesopotamian, Ma'at in ancient Egyptian, and Logos in ancient Greek, extracting their core connotations concerning dignity, justice, and responsibility. Functionally equivalent in addressing universal social predicaments throughout history, these foundational concepts collectively reveal the relational, con-

textual, and practically normative dimensions of human dignity, constituting a critical corrective and profound source for modern human rights doctrines.

The normative vitality of international human rights standards depends on their capacity to absorb and institutionalise core values from plural civilisations. Accordingly, international human rights law necessitates concrete institutional reforms: expanding the participation of the Global South in inductive law-making processes, promoting normative feedback from regional human rights systems to global standards, and strengthening the proceduralization of rights review conducted by UN treaty bodies concerning indigenous normative applications. Only through such bottom-up normative reconstruction can a more inclusive and sustainable global human rights governance framework be established.

Keywords: International Human Rights Standards; Universality of Human Rights; Human Rights Concepts; Human Nature; Dignity

THE POINT OF DEMOCRACY AND WHAT IT TELLS US ABOUT THE DEMOCRATIC LEGITIMACY OF INTERNATIONAL LAW

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WG.107 · Theme: International & Private Law

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ABSTRACT

When is international law democratically legitimate? I argue that part of the determination of whether international law is democratically legitimate should depend on whether the resulting system best safeguards (or does not violate) core democratic values.

What makes democracy valuable? Democracy facilitates self-rule: the idea that one ought to be one's own master. I distinguish between two conceptions of democracy as self-rule: (i) democratic procedure is the constitutive means upon which a people exercise collective self-determination; (ii) democracy makes the exercise of authority consistent with the individual autonomy of those affected by or subjected to such authority. Whereas the collective self-determination conception is subject to an exclusionary pull (i.e., it is cautious about expanding the scope of the demos), the autonomy conception has an inclusionary pull (i.e., it is in favor of expanding the scope of the demos). I argue in favor of the individual autonomy conception of self-rule.

I propose a revisionist understanding of individual autonomy: (i) the law one is subject to has to be the result of a process which one is committed to; (ii) the commitment must be consistent with seeing oneself as an equal to others in deciding collective matters. Applying my autonomy principle to the question of the boundary or domain of democracy, I argue in favor of a restrictive version of the all-affected principle (AAP): a law is democratically illegitimate if it sufficiently affects the autonomy of individuals (regardless of citizenship) without giving them a democratic voice on the issue. I consider what accepting this all-affected principle

means for international law. Accepting this principle would mean that international law has to be justified democratically, perhaps indirectly through democratic procedures in nation states. It would also mean that international laws do not violate democratic legitimacy merely because it poses restrictions on state powers.

EQUALITY WITHOUT COMMUNITY? G.A. COHEN AND THE INSUFFICIENCY OF JUSTICE

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WG.199 · Theme: International & Private Law

WORKING GROUP · International Law and Human Rights
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ABSTRACT

G.A. Cohen's concept of community in political philosophy has been relatively neglected, much like the fate of the ideal of fraternity in the literature. Yet this notion points to an ideal of common life that has both weakened in modern societies and remained undertheorized at the normative level. In Cohen's account, community names a mode of relating in which individuals care about one another and care about caring for one another. The question for Cohen concerns not only the social positions people occupy, but also how they orient themselves toward one another.

It is often assumed in the Cohen literature that a genuine community requires a certain level of equality. This paper reverses that direction of dependence and asks: is a form of equality possible without community? If so, why would such a social order still remain normatively deficient? The central claim is that a certain form of equality without community is indeed possible, and that such an order may well count as just, yet still fail, from Cohen's perspective, to qualify as a good society. A society may secure an equal distribution of income, welfare, opportunities, or rights. It may grant equal status to its members and significantly reduce relations of domination. Yet it may still leave individuals in a mode of relating marked by distance, coldness, and indifference. Taken as a whole, such a society falls short of being a genuinely desirable and substantively good form of common life. For this reason, community should be reconsidered as an essential dimension that exposes the limits of contemporary theories of justice and reveals their need for completion, including relational egalitarianism.

BETWEEN HIERARCHY AND DIALOGUE: COMPETING MODELS OF CONVENTIONALITY CONTROL IN INTER-AMERICAN HUMAN RIGHTS LAW

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WG.209 · Theme: International & Private Law

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ABSTRACT

This presentation develops a theoretical contrast between two competing models of conventionality control, each grounded in a distinct understanding of the relationship between domestic constitutional orders and international human rights law.

The first is a monist, hierarchical model, most prominently articulated by the Inter-American Court of Human Rights. On this account, conventional law—encompassing treaties, judicial decisions, and related interpretive materials—enjoys normative supremacy over the entirety of domestic law, including constitutional provisions. Domestic authorities are therefore under an obligation to give it direct effect and to disapply or invalidate conflicting national norms. The Court's jurisprudence, moreover, is treated as binding beyond the parties to a given case, effectively institutionalizing a form of vertical precedent within the inter-American system. While this model aspires to maximize the protection of rights, the presentation argues that it does so at a significant cost: it raises acute concerns about democratic legitimacy and institutional competence, and risks provoking resistance from domestic actors, thereby undermining compliance and, ultimately, the effectiveness of the system itself.

Set against this is a pluralist, dialogical model, exemplified by the Colombian Constitutional Court. Here, international human rights norms do not displace the Constitution but are instead integrated into it through a process of systematic interpretation. Inter-American jurisprudence is treated as highly persuasive but not formally binding in all contexts. This approach preserves a meaningful margin of appreciation for domestic in-

stitutions and conceives rights adjudication as a dialogic enterprise involving multiple authoritative interpreters. Rather than presupposing a rigid hierarchy, it accommodates interpretive pluralism and institutional interaction across levels of governance.

The presentation argues that this dialogical model offers a more normatively attractive and institutionally sustainable framework. By mediating the tension between international commitments and democratic self-government, it fosters cooperative engagement rather than hierarchical imposition, thereby enhancing both the legitimacy and the long-term effectiveness of human rights protection.

THE NEW DYNAMICS OF AUTHORITY IN HUMAN RIGHTS: EPISTEMIC AUTHORITY AS AN OBSERVATIONAL STANDPOINT

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ABSTRACT

The authority of human rights is undergoing prolonged erosion, evidenced by widespread violations across diverse geopolitical landscapes. This paper argues that the diminishing legitimacy and effectiveness of human rights stem from two primary failures: an unresolved debate over the moral versus political foundations of human rights, and the lack of an epistemic framework for integrating human rights knowledge into practice. Current human rights theories, from foundationalist to functionalist, remain fragmented across moral and political domains, offering only partial justifications that fail to address the systemic decline in the global standing of human rights, nor do they address the question of the authority of human rights. To address this crisis, the paper proposes a shift towards epistemic foundations and epistemic authority. It argues that human rights must be justified as objective knowledge of the standpoints of people subjected to violations. By establishing an epistemic standpoint, we can reconnect human rights discourse with individuals' lived experiences, particularly those of people facing systemic oppression and vulnerability in authoritarian regimes, where moral and political debates are often disconnected from the human condition. Thus, an epistemic approach bridges this gap by demonstrating how knowledge of human suffering can inform public reasoning and sustain the authority of human rights. Ultimately, this paper argues that epistemic authority must take precedence over the diminishing moral and political authority of human rights. By emphasising knowledge grounded in human vulnerability and lived experience, epistemic authority can create a stronger, more legitimate, and more resilient foundation for human rights, both in theory and in practice.

FROM MORAL JUSTIFICATION TO LEGAL RECONSTRUCTION: THE LEGALITY AND LEGITIMACY DIVIDE IN UNILATERAL HUMANITARIAN INTERVENTION

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WG.239 · Theme: International & Private Law

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ABSTRACT

This paper examines the divide between legality and legitimacy in unilateral humanitarian intervention (UHI) and advances a conceptual reconstruction of its legal justification. Under the prevailing interpretation of Article 2(4) of the UN Charter, UHI (defined as the use of force without Security Council authorisation to protect populations from severe human rights violations) remains unlawful. Legal debates have attempted to accommodate UHI by invoking implicit exceptions, the purposes of the UN, or restrictive readings of territorial integrity or political independence. However, these approaches fail to resolve the structural tension between the prohibition of force and claims of moral necessity.

This paper argues that the characterisation of UHI as 'illegal but legitimate' reflects a conceptual instability. It reveals a situation in which legality and legitimacy, which ought to coincide within a coherent legal order, are dissociated. Where legality is detached from legitimacy, it loses normative authority, and the assessment of UHI cannot remain confined to a binary distinction between legality and illegality. At the same time, legitimacy grounded solely in moral reasoning risks indeterminacy and abuse. Moving beyond a merely justificatory discourse, the paper proposes a shift from moral justification to legal reconstruction.

It argues that legitimacy, while distinct from legality, should move beyond moral justification and be reoriented towards legal legitimacy within legal reasoning, directed at protecting a defined scope of human rights. Existing accounts rely on indeterminate notions such as 'fundamental' or 'basic' human rights, which obscure the justificatory threshold for UHI.

This paper contributes by specifying the scope of human rights capable of grounding UHI, enhancing conceptual clarity and constraining discretionary intervention.

On this basis, the paper advances a model of ‘conditional legitimacy’, in which UHI may be understood as conditionally legitimate when its use of force is directed towards protecting a defined category of human rights.

THE RETURN OF THE SUPREME LAW: SURVIVAL AS THE HIGHEST VALUE IN LAW.

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WG.126 · Theme: Rule of Law

WORKING GROUP · Rule of Law IV
Chair: Wibren van der Burg

ABSTRACT

The post-Cold War decades were a time of relaxation backed by the conviction that the world steers toward peace and constructive business competition. Law and its implementation, at least in Europe, was reoriented to reflect the lack of existential threats. Law revolved increasingly around individuals and states were perceived as the enemy of freedoms rather than their guardian. External threats went unnoticed. In XXI century economic rivalry has lost its economic innocence: new technologies support economic and political dominance. Trade and AI came to be viewed as an existential threat.

The traditional structure of law and the philosophy of its operation needs to be adapted to the new reality. Law must be able to rapidly and effectively fend off external threats in order to assist societies in their economic and existential survival. The inflexibility of the chains of authorizations needs to be replaced by a new model where the common interest clearly dominates over other considerations in the spirit of the Caesar's motto: Salus Populi Suprema Lex Esto. At the same time human rights must be observed in a way which does not ignore the existential threats. Law can no longer distribute justice without asking in whose interest it operates. It must respect the fact that investments can be a Trojan horse in a hybrid war. And in the relationship between the states and AI the principle of distrust must be established. The preservation of human rights must take into account not only individual rights but also collective rights of the society, which until recently seem to be neglected by legislators and courts. Collective human rights should form a new generation of fundamental rights.

FIVE PHILOSOPHICAL DIMENSIONS OF THE RULE OF LAW

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WG.128 · Theme: Rule of Law

WORKING GROUP · Rule of Law IV
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ABSTRACT

In the Common Law tradition, a familiar distinction is that between formal and substantive conceptions of the rule of law. Jeremy Waldron has added a third, procedural conception. I argue that we should not regard these different conceptions as competing theories, but as dimensions of the rule of law that are partly overlapping and partly complementary. A full theory of the rule of law should address each of these dimensions.

We should add two other dimensions. These familiar three dimensions have been developed in the context of the Common Law, and neglect some important elements that have been developed in continental European understandings of the rule of law that focus on the state, like in the German (and Dutch) word Rechtsstaat. In this approach, the notion of the trias politica (or checks and balances) is a core element. And so are the notions that the state is bound by the law and that its actions should be based on the law. We may call this fourth dimension of the rule of law the institutional dimension. It focuses on how the organization of the state and its various subdivisions may be structured to help curb the risk of arbitrary exercises of power.

The last and fifth dimension is that of an ethos of legality. The rule of law is upheld – or undermined – by humans, by judges, politicians, lawyers, companies and ordinary citizens. Upholding the rule of law requires more than simply following the rules. If we focus on a 'living rule of law', the practice of the rule of law by all relevant actors, the ethos of legality should be understood as a crucial dimension, perhaps as the most important one.

INSTITUTIONAL IMAGINATION AND SYNCRETIC LEGAL ORDERS: TOWARD A RECONSTRUCTIVE THEORY OF DEMOCRATIC CHANGE

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WG.155 · Theme: Rule of Law

WORKING GROUP · Rule of Law IV
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ABSTRACT

This paper develops a reconstructive theory of democratic change by reinterpreting syncretic legal orders as sites of institutional learning rather than as symptoms of incoherence, deficit, or incomplete modernization. Much of legal and political theory remains attached to an ideal of institutional purity: legal orders are typically evaluated according to their internal coherence, stable identity, and fidelity to abstract models of constitutional design. Against this background, hybrid or syncretic formations tend to appear merely pathological, transitional arrangements, residues of domination, or failures of legal rationalization. I argue that this diagnosis is conceptually impoverished and normatively disabling.

Drawing on John Dewey's experimentalism and Roberto Mangabeira Unger's institutional imagination, the paper proposes an alternative framework. On this view, institutions are not fixed containers of social life but revisable arrangements for organizing collective learning, cooperation, and conflict. Syncretism should therefore be understood not simply as mixture, but as the historically sedimented coexistence of heterogeneous normative forms within the same legal order. The relevant question is not whether such orders satisfy an ideal of systemic coherence, but whether their internal tensions can be converted into resources for democratic reconstruction.

The argument proceeds in three steps. First, it reconstructs the dominant deficit-oriented treatment of legal hybridity in modern jurisprudence and constitutional thought. Second, it develops a pragmatist account of institutions as experimental hypotheses subject to revision in light of social con-

sequences. Third, it outlines a reconstructive vocabulary (revisability, institutional plasticity, and democratic learning) through which syncretic orders can be assessed and redesigned. The paper concludes that democratic theory needs to move beyond the opposition between coherent legality and defective hybridity. What is required instead is a jurisprudence of institutional imagination capable of treating mixed legal forms as materials for deliberate democratic change.

WHEN LAW CEASES TO BIND: ASYMMETRIC BINDINGNESS AND THE ONTOLOGICAL LIMITS OF THE RULE OF LAW

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WG.159 · Theme: Rule of Law

WORKING GROUP · Rule of Law IV
Chair: Wibren van der Burg

ABSTRACT

Rule of law theories often focus on institutional architecture—separation of powers and procedural safeguards—while treating law's binding nature as an unexamined constant. This paper argues that the rule of law cannot be understood without addressing the conditions under which law actually binds.

Drawing on Martin Krygier's teleological account, I approach the rule of law as a practice aimed at taming arbitrary power. For law to "count" as a constraint, it must operate as an effective limit on those capable of exercising power. Integrating Leon Petrażycki's psychological jurisprudence, I conceptualize law as a "normative fact" grounded in the psychic experience of obligation (imperative-attributive).

The core thesis is that law's binding force is structurally asymmetrical. For ordinary individuals, law functions as a constraint even without an internalized sense of obligation, as external enforcement remains operative. Here, the legal order may be weakened but does not collapse.

Conversely, for political actors, law cannot function as a constraint unless experienced as binding at the level of internal obligation. Since these actors can neutralize external enforcement, the disappearance of law as an internal constraint undermines its capacity to limit power. Thus, the persistence of legal institutions does not guarantee the continued existence of law as a meaningful normative order.

The paper argues that contemporary crises of the rule of law are best understood as ontological disruptions in bindingness at the level of power,

reorienting theory from formal structures to the conditions under which law binds those who wield it.

THE HIDDEN FACE OF ARTIFICIAL INTELLIGENCE: DIGITAL EXPLOITATION

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WG.30 · Theme: AI & Digital Governance

WORKING GROUP · AI & Digital Governance IV
Chair: Şule Şahin Ceylan

ABSTRACT

In the literature on artificial intelligence (AI) and legal philosophy, it is assumed that one of the major issues with newer AI technologies is digital unemployment. Many authors follow Hannah Arendt's labor and work distinction and claim that the first jobs to be replaced will be labor-heavy jobs such as manufacturing, cashiering, and so on. However, when newer AI technologies, including large language models (LLMs), are examined closely, it can be seen that these models are producing similar outputs to jobs that are classified as work. Most LLM users' purpose is to get help with their intellectual tasks. On the other hand, replacing labor with AI technologies requires an infrastructure change, which can take years and cost a lot of money. Moreover, the AI technologies themselves need constant moderation and data work to maintain. This moderation and data work is usually not visible due to the nature of digital works. The technology companies hire data workers from the least developed countries, make them work in poor conditions without employment security, and pay them less money than the minimum wage in the companies' origin countries. Data workers work from either the centers that are established by intermediaries or their homes. By this means, the users of the AI technologies never know about the data workers who prepare everything that is necessary for automation, and believe that every step in the "automation" process is actually automated without human interference. While digital unemployment is the primary concern of scholars and lawyers, the new sectors that are created and the labor of data workers are invisible. Therefore, the aim of this paper is to highlight the "digital exploitation" instead of the alleged digital unemployment, and suggest a different legal and philosophical frame for this matter.

DOES ASSESSING THE EFFECTIVENESS OF LAWMAKING HELP US DESIGN LAWS WITH GREATER EFFICACY IN AN ERA OF ACCELERATED TECHNOLOGICAL CHANGE?

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ABSTRACT

Many discussions treat effectiveness as the default basis for improving efficacy. Because effects can be observed and measured, ex post evaluation seems natural: identify where outcomes miss objectives, then revise the text or strengthen enforcement. A common inference follows: once measurement indicates a "cause of failure", reform should reverse that cause. For example, in analyses of the effectiveness of GDPR implementation, one factor identified as contributing to limited effectiveness is that regulated parties, such as businesses, face difficulties in understanding legal requirements in conditions of indeterminate legal language. A common inference then follows: once measurement indicates a cause of failure, reform should reverse that cause. The remedy thus appears to be more precise drafting together with stronger interpretation and communication, so that effects improve.

The counterintuitive point is that this chain can fail at its key step and misdirect reform. Understanding is not a stable property of a provision but a condition distributed across actors and drifting with context and time. Seeking a uniform understanding through "more precise language" risks hitting a moving target with a fixed sight. More importantly, reducing failure to "unclear text" often conceals the source of normative traction. This instability is magnified in fast-moving technological domains. In such domains, this inference becomes especially fragile: the objects of regulation, relevant organisational practices, and surrounding technical affordances often change faster than the cycle of measurement and amendment.

This article does not deny the evaluative value of effectiveness; it avoids treating evaluative findings as a "design specification" for efficacy. It proceeds in two parts. The first is epistemic: effectiveness and efficacy cannot be conflated and do not belong to a single logical chain. The second is methodological: treating law as an adaptive mechanism, it proposes an element-identification approach and a triangle-zone method to locate the traction from purpose to effect. The element-identification approach is intended to identify, from cases and data, the key elements that repeatedly shape the operation of law and to elevate them into transferable mechanism principles. These elements are understood as dynamic factors participating in the mechanism of legal operation, rather than as negatively coded "causes of failure". They are operative influences without inherent positive or negative valence, whose significance lies in how they condition, redirect, enable, or constrain the movement from purpose to effect. The triangle-zone refers to the evolving space between legal provisions, legal purpose, and the behaviour of regulated actors. It is the space in which rules are generated, formal bottlenecks are bypassed, and legal efficacy is realised, displaced, or undermined. Its function is to analyse not how law stands at the level of text, but how it actually operates in this intermediate space through embedding, displacement, substitute pathways, or the spontaneous generation of rules.

Keywords: Legislative effectiveness; Legal efficacy; Ex ante regulatory design; Feedback and adaptive governance.

ROUGH INTENTION, RECOGNITION, EMBODIMENT: A HYPOMNEMATA-BASED PHENOMENOLOGICAL MODEL OF HUMAN-AI CO-CREATION

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ABSTRACT

While the copyrightability of AI-generated content has been extensively debated, a critical gap remains: no study attempts a micro-level, cognitive-phenomenological description of how creation changes when humans co-create with GenAI. This oversight renders the legal standards proposed in existing literature incapable of genuinely capturing human mental contribution. To address this, the article reintroduces the phenomenological concept of hypomnemata. Historically a passive external memory for reflection and self-constitution, hypomnemata in the GenAI era becomes an active archive of collective human knowledge, generating not only what we intend but also what we have not yet conceived. This surplus of fulfilment may either accelerate or derail the creator's intention, forcing a process of recognition: the creator must identify, from the generated multiplicity, the fragment resonating most closely with their still-vague intention, then iteratively approximate it and finally, upon satisfaction, embody it as their own. Creation thus becomes a recursive loop: rough intention → intention description (prompting) → recognition (choosing outputs) → approximation (inpainting) → embodiment.

This model exposes two blind spots in prevailing legal imagination. First, the idea-expression dichotomy, while useful for limiting protection in infringement analysis, does not dichotomize the creative process; the view that "prompt input is idea, AI output is expression" is fundamentally wrong. Second, "process originality" theories treat recordable traces (prompts, logs, edits) as evidence of creation, while the decisive acts—the pre-linguistic rough intention, the moment of recognition, the satisfaction

through which embodiment is completed—remain intrinsically unrecordable. They also presuppose that originality resides in discrete choice points, whereas intentionality runs continuously through the entire process. Since these "black-box" contributions can never be fully externalized and recorded, the law must shift its epistemic apparatus, like admitting intentionality narratives (first-person phenomenological accounts) and reconstructing the creative field—the ecosystem in which human, AI, training data, and cultural tradition intersect.

LABOUR DIGNITY: AI AND THE CRISIS OF LABOUR-BASED RECOGNITION

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ABSTRACT

While contemporary debates on AI primarily focus on unemployment and economic disruption, I argue that the deeper crisis concerns the destabilization of the social structures through which human dignity has historically been realized in modern societies. The central question is therefore how we can secure the realization of human dignity once labour loses its social function as a medium of participation, social recognition, and ultimately self-realization. To address this question, I combine conceptual analysis, social theory, and legal-philosophical inquiry. First, I distinguish between dignity as unconditional moral status and the social conditions required for its realization. Human dignity is understood as unconditional in principle and therefore independent of productivity or economic contribution. However, while dignity remains intact at the normative level, its realization depends upon institutional and social conditions that enable individuals to act as self-determining agents. The thesis argues that Labour has historically functioned as a central medium of recognition, social participation, agency, and self-realization. Drawing on thinkers such as Karl Marx, Hannah Arendt, Axel Honneth, and Michel Foucault, I aim to show how capitalist societies increasingly transformed economic productivity into a dominant metric of social value, thereby mediating recognition through market participation. Against this background, AI introduces a fundamental ambivalence. While the automation of labour promises liberation from alienating forms of work, modern societies remain structurally dependent on labour as the primary gateway to social recognition and participation. This brings us to the second dimension of labour as a medium for the realization of dignity: the vita activa in Arendt's sense. The question is therefore not merely whether AI replaces labour, but whether it may ultimately deprive human beings of meaningful participation in a shared

world that they shape artistically, morally, and politically through communicative engagement?

VIRTUAL SWARMS: GOVERNANCE THROUGH IRRATIONALITY

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ABSTRACT

Today, advances in neuroscience have made it possible to gain a deep and new understanding of the processes that lead us to make decisions, or to undertake actions, on the basis of emotional triggers and automatic mechanisms that are faster than our thought. These advances have profoundly called into question the assumption of human rationality and freedom of action.

This awareness has deeply altered the normative structure of our lives, which today are deliberately directed on the basis of formulas developed in new fields of knowledge, such as nudging, neuromarketing, and neuropolitics – fields that arose precisely from the exploitation of such knowledge, rather than on the basis, at least predominantly, of norms grounded in rationality and freedom.

With regard to the social effect produced by the conditioning of the behaviours and emotions of individuals and communities, especially in the world of the web, it is remarkable how widely the metaphorical image of the "swarm of bees" has recently been used by authors such as Hans Ulrich Gumbrecht, Shoshana Zuboff, Jonathan Haidt and, above all, Byung-Chul Han.

The aim of the paper, which focuses on the symbolic value of this metaphor, is to reflect on both its antecedents and its implications.

A DEEPFAKE ABUSE TYPOLOGY: WHAT CONSTITUTES 'INTIMATE', 'PRIVATE', 'SEXUAL', 'EXPLICIT', 'SEXUALISED' OR OTHERWISE 'EXPLOITATIVE' MATERIAL?

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ABSTRACT

The world is witnessing the rapid rise of 'deepfake' abuse or non-consensual synthetic intimate images, videos, and audio. Women and girls are disproportionately affected by this evolving form of sexual violence - a form of image-based sexual abuse that captures a range of behaviours, including the non-consensual distribution of authentic intimate material.

As this crisis evolves, so too have the ways that people's faces, bodies, and likenesses can be appropriated. Women from certain racial, ethnic, and religious backgrounds can be digitally altered to depict them without their religious, traditional, or cultural attire. Women's images, videos, or audio can be used as training data for AI models that can be used to generate deepfake abuse of other people or people who do not exist. Women's bodies can be edited to 'dignify' them in more modest attire. Women can be depicted in 'sexualised' deepfakes, such as in swimwear or with enlarged body parts, that might not depict them in a state of undress but are nevertheless exploitative. Women's images can be used in the generation of videos that depict men ejaculating on those images.

Given the many ways deepfake abuse can be perpetrated, what exactly constitutes deepfake abuse or image-based sexual abuse? What ought to be considered an 'intimate', 'private', 'sexual', 'explicit', 'sexualised' or otherwise 'exploitative' material? What are the legal implications for the way we characterise/define this issue - and how do we navigate the grey areas? For example, while understandably politically charged, how should the viral leaked photos of former US Secretary of Homeland Security Kristi Noem's husband Bryon Noem be captured in this discussion?

This session explores the legal definitions and concepts, and philosophical underpinnings that can help governments and civil society make sense of this evolving form of sexual exploitation.

CIVIL DISOBEDIENCE IN THE FACE OF A CHANGING WORLD: BEYOND THE LIBERAL PARADIGM AND BACK AGAIN?

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ABSTRACT

Contemporary theories of civil disobedience often seek to move beyond the so-called liberal paradigm, most prominently associated with the work of John Rawls. This ambition is typically motivated by attempts to conceptually grasp the challenges of a changing world—such as post-democracy and the internationalization of decision-making—or to accommodate new forms of protest. In recent years, the theory of civil disobedience has therefore undergone a "democratic turn", rightly criticising the classical liberal approach as overly restrictive, both in its focus on severe violations of minority rights and in its demanding criteria for justified civil disobedience. Yet, particularly radical democratic accounts tend to expand the concept of civil disobedience in ways that undermine normative clarity regarding the grounds on which such acts can be justified.

The paper therefore begins by examining the normative foundations that render civil disobedience in need of justification. These can be understood in terms of a prima facie expectation that democratic decisions be recognized as binding—an expectation grounded in both substantive and procedural elements of democratic legitimacy. On this basis, a conception of civil disobedience is developed that combines liberal elements—such as serious violations of rights—with deliberative elements—such as procedural democratic deficits—as distinct but complementary grounds for justified disobedience. Subsequently, the classical criteria defining and justifying civil disobedience are revisited in light of this account.

At the same time, this position allows the rejection of radical democratic approaches that understand civil disobedience as a genuinely democratic practice and thereby expand and blur its conceptual boundaries.

Treating civil disobedience as a normal form of democratic political action is difficult to reconcile with the value of democratic procedures and with the prima facie expectation that democratic decisions be recognized as binding.

LOBBYING IN THE LAW-MAKING PROCESS AND THE THEORY OF DELIBERATIVE DEMOCRACY

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ABSTRACT

In contemporary democratic states, the process of law-making is generally transparent and open to public proposals. In the course of legislative consultations, social groups articulate their needs and expectations, resulting in adopted laws that typically reflect compromises among political and social actors, including interest groups. These groups employ a variety of strategies to secure favourable regulations. In this context, the phenomenon of lobbying emerges, which, in essence, signifies the practice of influencing the decision-making process by interest groups. Lobbying is a contentious practice, frequently associated with corruption. In democratic societies, this form of covert or corrupt lobbying is not accepted. This does not imply that lobbying is categorically proscribed. Instead, a global trend has emerged towards its legal regulation to ensure transparency and compliance with democratic standards. Additionally, international organisations such as the OECD and the Council of Europe have developed principles for its democratic regulation.

In light of the trend towards the democratisation of lobbying, it seems worthwhile to analyse this phenomenon in the context of one of the theories of democracy: the theory of deliberative democracy (especially within Habermas's tradition). This theory posits that law should be formed on the basis of dialogue (characterised by equal participation, openness, and accessibility etc.). The purpose of this paper is to present the findings of research focused on the question of whether lobbying can be considered a component of deliberation. This necessitates a comparison of the principles of lobbying with those of deliberation and an examination of whether lobbying is compatible with the principles of the theory, and if so, under what conditions. The analysis will consider both the commonalities and

the tensions between these concepts. The findings of the research will form the basis for proposing de lege ferenda proposals for the regulation of lobbying in a deliberative spirit.

TECHNOCRACY AND THE LAW: IDEOLOGY, PRACTICE, AND STYLE

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ABSTRACT

There has been growing interest in technocracy in recent years. Technocracy is often portrayed as a form of power in which experts, organized in counter-majoritarian institutions, operate with limited responsiveness, accountability, or exposure to democratic pressure. Much of the literature focuses on executive bodies (such as central banks or the EU) that fit this model relatively easily. Nonetheless, as scholars in the field admit, it remains controversial whether the judiciary can be considered a technocratic body. Courts share features commonly associated with technocracy, including insulation and reliance on specialized reasoning. Yet their authority is typically grounded in constitutional frameworks that derive from democratic processes.

This paper argues that the judiciary can be understood as technocratic when analyzed across three distinct levels: ideology, practices, and style. First, technocratic ideology refers to the conviction that the legitimacy of political decisions or institutions depends on epistemic success, particularly the correctness of outcomes. On this view, theories such as Ronald Dworkin's rights-based account of adjudication, as well as broader epistemic defenses of judicial review, exhibit technocratic features insofar as they justify courts by their capacity to reach substantively correct decisions. Second, technocratic practices arise when the democratic delegation of authority to experts becomes disconnected from its proper channels of legitimation. Much of the technocratic deformation of law occurs at this level, through forms of epistemic distortion such as exclusion (limiting whose knowledge counts and how decisions may be contested), capture (the influence of organized interests), and closure (resistance to external critique and demands for justification). For example, collegiality may

function as a form of closure by discouraging dissent and shielding decision-making from scrutiny. Finally, technocratic style refers to a mode of reasoning that presents decisions as products of neutral, technical necessity (such as the language of "balancing") thereby obscuring interpretive plurality and masking the availability of alternative readings.

THE POLITICAL AGAINST POLITICS: CONSTITUENT POWER IN SCHMITT AND LOUGHLIN

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ABSTRACT

Back in January, Canadian Prime Minister Mark Carney drew attention at the World Economic Forum to the widening gap between normative rhetoric and reality in today's international order. The normative narratives we traditionally upheld—such as territorial integrity, respect for sovereignty, and human rights—remain valid, but only on the condition that they are collectively believed and sustained. Once one actor ceases to play along, the stability of the system begins to unravel. This diagnosis extends beyond international relations to contemporary constitutional orders.

Today, extraordinary politics—that is, the antithesis of institutionalised and elite-centred political and legal processes—is on the rise globally in various forms, including emergency governance, anti-establishment movements, and increasing political polarisation. This development reflects a deeper tension between politics as an institutionalised order and the political as its underlying, constitutive, and existential condition, often expressed in Carl Schmitt's term of friend/enemy distinction.

This paper approaches this tension through the concept of constituent power, focusing in particular on the internal dynamic between constituent power—people's supreme power of self-determination—and constituted power—the existing constitutional order. Through a comparative engagement with Schmitt and Martin Loughlin, it shows, first, that Schmitt identifies the unbounded nature of constituent power and the irreducible role of conflict in the constitution of political order, but resists integration into constructive governance. By contrast, Loughlin reconstructs constituent power as a critical and generative power that unsettles the closure of institutionalised politics while simultaneously enabling its ongoing reconstitution. In this way, constituent power is not confined to moments of rupture

but can operate within the constituted power. This paper concludes that Loughlin's reconstruction offers important theoretical resources for re-thinking how the political can be sustained but also mediated within public law, rather than appearing solely as an external and disruptive force.

WHO ANSWERS TO THE PUBLIC? RELIGIOUS AUTHORITY AND THE EROSION OF RESPONSIBILITY IN DEMOCRATIC DISCOURSE

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ABSTRACT

Modern democracy presupposes more than institutional procedure; it requires that political actors remain answerable through practices of justification, contestation, and reciprocal accountability. Democratic responsibility thus depends upon a public sphere in which claims to authority remain open to scrutiny and revision through shared processes of reasoning. Yet contemporary democratic life increasingly encounters forms of political discourse that reject this horizontal structure of justification by grounding political legitimacy in transcendent religious authority, divine mandate, or salvation-oriented moral claims insulated from public contestation. This paper examines how such discursive formations challenge the normative foundations of democratic responsibility.

It argues that when political actors justify public action through appeals to transcendent authority, they displace the source of political legitimacy from the public realm of intersubjective justification to a vertical framework of sacred obedience. In doing so, the political subject no longer appears primarily as one who answers to fellow citizens, institutions, or constitutional norms, but as one who answers to a higher authority beyond democratic contestation. The consequence is not merely a rhetorical transformation of political discourse, but a structural reconfiguration of accountability itself: responsibility ceases to be grounded in public answerability and becomes reoriented toward fidelity to transcendent command.

Drawing on Habermasian theories of communicative legitimacy and democratic justification, this paper contends that the problem posed by such discourse exceeds conventional concerns regarding secularism or church-state separation. At stake is a deeper normative conflict between

democratic responsibility and forms of political legitimation that immunize themselves from public contestability by invoking absolute authority. By reframing the issue through responsibility, the paper proposes that certain forms of religious-political discourse do not merely participate in democratic disagreement but destabilize the discursive conditions upon which democratic legitimacy depends.

VISUAL CULTURE AND THE DRAMATURGY OF NORMATIVITY: FICTION AS A GENERATOR OF DEMOCRATIC VALUES IN A GLOBAL AGE

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ABSTRACT

This paper explores the normative power of fiction within global visual culture as a generator of democratic values and human rights consciousness. Drawing on a dramaturgical-sociological framework, it argues that democracy is not sustained solely through institutional design or legal argument, but through performative narratives and visual imaginaries that shape collective moral expectations. Fiction—particularly in cinematic and visual forms—functions as a site where dignity, equality, and legitimacy are symbolically staged and socially rehearsed. By examining how visual narratives construct shared normative horizons, the paper proposes a theory of "dramaturgical normativity" to explain the cultural foundations of democratic authority in a global age.

BREAKING THE CENTER, MULTIPLYING LIFE: DECENTRALIZATION AS AN EMANCIPATORY PRACTICE IN DELEUZE AND GUATTARI

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ABSTRACT

Decentralization is often confined to the technical domains of administrative law or organizational theory. This paper, however, proposes a radical conceptual shift by reimagining decentralization as a lived, ontogenetic practice of emancipation. Guided by the fundamental question of how it is possible to "breathe" within rigid, arboreal structures, this study examines decentralization through a thoroughly Deleuzian–Guattarian perspective. Moving beyond molar formations toward molecular movements, it argues that genuine emancipation is not a gift bestowed by a benevolent center; rather, it is a rhizomatic potential that continuously unfolds beneath and beyond every form of centralization.

The study reconsiders the concept of decentralization in the philosophy of Gilles Deleuze and Félix Guattari through the dynamics of being and becoming. Here, the center is understood as a mode of thought grounded in stability, identity, and representation, whereas decentralization is interpreted as the condition of possibility for continuous transformation, multiplicity, and creative becoming. Through the concepts of deterritorialization, lines of flight, the rhizome, and becoming, the paper explores modes of thinking and experience that exceed predetermined boundaries of existence. From this perspective, the subject is understood not as a fixed or completed identity but as an ongoing process continually constituted through encounters and relations. Decentralization is therefore approached not merely as the opposite of a center but as a philosophical horizon that reveals the plurality, creativity, and openness of life itself. By engaging with the conceptual framework developed by Deleuze and Guattari, this presentation invites a renewed reflection on the movement of becoming

and the productive force of difference. Ultimately, it proposes decentralization as a collective practice of becoming autonomous, one that opens new possibilities for thinking existence beyond fixed centers and stable identities.

Keywords: Decentralization; Emancipatory Practice; Rhizome; Micropolitics; Lines of Flight; Molecular Revolution; Nomadism.

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RHETORIC AS THE SOCIAL TECHNOLOGY OF LAW: HOMO RHETORICUS FROM THE PERSPECTIVE OF BRAZILIAN PHILOSOPHY OF LAW

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ABSTRACT

Rather than thinking about the history of rhetoric from the perspective of forensic rhetoric, this proposal aims to present the possibilities of thinking about rhetoric as a form of philosophy, particularly a philosophy of law, especially since the second half of the 20th century. To this end, authors such as Ernesto Grassi and Hans Blumenberg allow legal scholars to update the achievements of the German Mainz School of Legal Rhetoric (Theodor Viehweg and Ottmar Ballweg). This is the proposal initiated by João Maurício Adeodato in Brazil. Despite the fact that there are different representations of the human being, for example as animal rationale in the Aristotelian tradition, it would also be possible to represent the human being as homo juridicus, not as a purely rational subject, but as homo rhetoricus, rearticulating rhetorical categories in a constitutive way for the life-world. In this sense, one of the existential modes of human action is "actio per distans" through concepts. Historically, law is one of the most important social techniques for representing absent objects in order to consolidate relations of cooperation and intersubjective integration. For this reason, the attempt to present rhetoric from an anthropological perspective, especially philosophical anthropology, aims to reconstruct an overly rationalist vision in legal studies, which presupposes a concept of the human that is challenged when thinking about intersubjective practices in a global context and in the age of technology. In conclusion, the potential contribution of the proposal is to correlate in an interdisciplinary way what may initially seem alien to each other, such as the relationship between law, rhetoric, philosophy and anthropology. Therefore, rethinking rhetoric as a

philosophy in the tradition of the philosophy of law, renewed by philosophical anthropology and the philosophy of technology, can update some important studies in the legacy of the history of rhetoric in the 21st century.

JUSTICE BEFORE THE HASHTAG: CRIME-BASED REALITY TELEVISION AND POPULAR LEGAL CULTURE IN TURKEY

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ABSTRACT

Long before social media popularised the idea of "trial by Twitter," criminal cases in Turkey already attracted public attention through newspapers and courtroom galleries. This paper argues that crime-based reality television is not merely a recent media trend but part of a longer social practice in which people follow legal disputes outside the courtroom.

This genre has existed in Turkish broadcasting since the early 1990s. Early examples such as Sıcağı Sıcağına (1993) presented unsolved crimes and police investigations to television audiences. Over time, the format evolved from simple crime reconstructions into studio-based broadcasts combining expert testimony, field reporters, victims' relatives, and live audience participation. Today, long-running programmes such as Müge Anlı ile Tatlı Sert (2008–present), Esra Erol'da (2015–present), and Didem Arslan Yılmaz'la Vazgeçme (2020–present) reach millions of viewers daily. The continuity and proliferation of this format across three decades raise an important question: why do legal conflicts increasingly find resolution in media spaces rather than in courts?

Drawing on Lawrence Friedman's concept of popular legal culture, the paper examines how people develop their understanding of law and justice through media rather than formal legal experience. Building on Ewick and Silbey's theory of legal consciousness, it analyses why citizens who feel unheard by formal institutions turn to television programmes as more accessible and responsive forums. Weber's typology of legitimate authority then explains why programme hosts come to be perceived as credible arbiters: in a space vacated by rational-legal authority, charismatic authority steps in.

The paper concludes that crime-based reality television deserves serious attention from legal philosophy because it reveals how public understandings of law are shaped not only by legal institutions but also by widely shared media experiences — and at what cost.

SYMBOLIZATION AND VISUALIZATION IN LAW: TRENDS IN THE DEVELOPMENT OF FORM AND CONTENT

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ABSTRACT

The paper aims to establish scientific criteria to distinguish between two processes that, while outwardly similar, are intrinsically different and hold particular significance for modern legal regulation: symbolization and visualization. In legal theory and practice, a clear separation between legal symbols and visualization tools is often lacking, despite their differing natures and functions. The author suggests a distinction: visualization primarily enhances the effective presentation of legal material, driven by global trends such as technological progress and the "visual turn." Conversely, symbolization more often deals with the content of legal regulation—its ideological and value-based components—and is present at all stages of legal development, intensifying during certain periods under social and political influences. The challenge of differentiating these processes, understanding their nature, forms of expression, influencing factors, and conditions—including their advantages and limitations in legal regulation—remains unresolved in legal scholarship and represents a significant intellectual pursuit. Beyond merely differentiating them, there is a need to evaluate their combined role within a broader conceptual framework. The tentative term "image-bearing legal forms" is proposed to reflect this, emphasizing the importance of developing scientific criteria and methodologies for their assessment and analysis. This gives an opportunity to understand the underlying mechanisms of these processes, assess the scale and depth of changes affecting legal forms, and develop tools for a comprehensive evaluation of visual and symbolic images used in law. This research is particularly relevant in contemporary legal reality, where there

is a simultaneous increase in attention to visualization tools and the legal mediation of various symbols. This trend responds to the societal demand for accessible, intuitive, and comprehensible legal norms and decisions.

Keywords: symbol, symbolization, legal symbol, prohibited symbol, visualization, legal design, infographics, legal regulation

WHITE'S PROPERTY OVER BLACK'S FREEDOM: HAITI'S RECOGNITION BY FRANCE

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ABSTRACT

The Haitian Revolution is the first successful slave revolution in history. This revolution, led by Black people, has become one of the main topics of discussion about universalization of human rights and the content of first-generation rights and liberties. However, in these discussions, the connection between human rights and international relations must not be overlooked.

Although this revolution against France, Haiti's former colonizer, was not initially a demand for independence, it eventually evolved in that direction. Following prolonged wars and negotiations with France, France recognized Haiti's independence in 1825 on the condition of a substantial compensation payment. They intended to cover the losses of former plantation owners who had lost their property rights, but beyond that, they aimed to punish the successful rebellion and to prevent other enslaved communities from revolting. This situation highlights the tension between the property rights and supremacy of whites, and the freedom and sovereignty of Blacks. To pay this indemnity, Haiti took out high-interest loans from French banks; the payment of the compensation continued until 1883, and the repayment of the debts to the banks was not completed until the 1950s. Therefore, Haiti was left in an economic crisis for many years, significantly affecting its development process. As a result, the price Haiti paid for its abstract freedom has, in concrete terms, served as an obstacle to the freedom of its citizens.

Through a literature review and an examination of legal documents, this study will investigate the relationship between human rights—particularly the right to property—and the international recognition of states within a

colonial context. This study seeks to answer questions regarding the position of state recognition, treaty practice, and the right to property within the legal framework of that era.

DISTRIBUTING JUSTICE IN CAPTIVATING WAYS: TURKISH REALITY SHOWS AND THE NEOLIBERAL EROSION OF MODERN LAW

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ABSTRACT

Modern law constructs its legitimacy through a systematic and depersonalised language that promises to distribute justice neutrally, universally, and insulated from market pressures. Within this legal framework, the modern state establishes itself as the sole legitimate authority over the normative order, transforming this foundational claim to neutrality into the core of the modern legal project.

This paper argues that in Türkiye, the structural withdrawal of the state from its legal responsibilities, driven by neoliberal governmentality has produced a normative vacuum filled by television programmes, notably Müge Anlı ile Tatlı Sert, and other media apparatus. This process does not reflect a shift in media culture; it signals a crisis in the legitimacy of modern law itself.

The paper examines how the state, once the sole legitimate subject of punishment, now delegates this sphere to private actors operating under market logic. Justice, formerly a public good requiring state guarantee, is reconstituted as a shared civic duty distributed across individuals and commercial media platforms. The show mobilises its audience into "surveillance labour" and positions viewers as active citizens, while institutions increasingly orient themselves toward audience engagement rather than legal principle.

Within this framework, crime becomes a commodity of entertainment. Emotionally charged narratives construct guilt and victimhood before any judicial determination, rendering foundational principles such as the presumption of innocence structurally invisible. Judgment migrates from

courtrooms to studios, and legal authority dissolves into performative spectacle shaped by ratings.

The paper contends that this constitutes a form of "legally sanctioned private adjudication", indicating that neoliberal transformation is producing a new reformed legal order. The extreme privatisation of jurisprudence is not simply an overlap with the privatisation of public services: it is structurally more corrosive, because it erodes the very normative foundations upon which modern law stakes its claim to legitimacy.

THE RHETORICAL FOUNDATION OF LAW: TRUST, RELATIONALITY, AND TRUTH IN AN ARISTOTELIAN PERSPECTIVE

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ABSTRACT

When speaking of rhetoric, one commonly refers to the study of persuasion and, ultimately, to a technique aimed at securing assent within public debate. Such an understanding originates with the Sophists, who first systematized persuasive discourse. Yet the Sophistic conception of rhetoric was famously criticized by Plato and, in a different and more constructive manner, by Aristotle.

This paper develops an Aristotelian account of what may be called the "rhetorical foundation of law." Its central claim is that rhetoric should not be reduced to a neutral technique of persuasion, but understood instead as an essential dimension of the zoon politikon: the human being as inherently linguistic, relational, and political. From this perspective, intersubjective relationality is not a secondary product of social organization, but an originary feature of human coexistence. Law emerges within this relational space as the practice through which conditions of reciprocal intelligibility, coordination, and trust are established and maintained.

On this basis, the paper argues that rhetorical trust constitutes a fundamental juridical category. Such an approach overcomes the rigid separation between the vertical and horizontal dimensions of law, conceiving legal order not merely as a system of authoritative norms but also as a practice embedded in social relations and mutual expectations. In this sense, the rhetorical foundation of law supports a substantive conception of the rule of law grounded in the stability and credibility of public discourse.

ANTECEDENTS AS PRECEDENTS? EXPLORING THE INTEROPERABLE CRIMINAL JUSTICE SYSTEM (ICJS) IN INDIA

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ABSTRACT

The ICJS, is an initiative of the Supreme Court of India, with technical and structural support of the Ministry of Home Affairs (MHA). It aims to create a system, integrating information from different pillars of the criminal justice system viz. police, jails, Courts, forensic laboratories, juvenile homes. The ICJS has received sustained funding from the MHA, and there are also plans to expand the database to include other regulators like the Food and Drug Administration, Municipal Authorities, Labour Welfare Boards, Forest Department, etc.[1]

The primary purpose is to collate information across states from multiple regulators which oversee civil and criminal sanctions, and to provide a searchable database to State agencies including the Courts. Artificial Intelligence will be leveraged within this database to catalyse predictive analysis of fines and crimes across sectors. This information will be available to judges and regulators for the purpose of decision-making. In the near future, depending on categories introduced for information collation, it will be possible to search out records through names, dates and other social indicators like religion, linguistics, caste, region, education backgrounds, etc.

Judges will therefore have access to information, other than what is brought on record by the prosecution and defence, through the ICJS. Access to additional information, will in most instances, allow judges to take into consideration, extraneous information (such as litigant's name featuring as witnesses or accused in other cases), or the knowledge that commu-

nities from a specific region, are prone to a certain kind of criminal activity. Antecedents of litigants will be considered by the judge and may influence their judicial decision, in effect making them prejudicial.

Legal rules governing trials, aim to provide an equitable opportunity to litigants, specifically in case of criminal sanctions, where the presumption of innocence, forms the bedrock of criminal justice systems. In law, precedents are conceptualized as a system of judgement referencing through which judicial discipline is sought to be maintained, while providing for the authoritative development of law, through jurisprudence. Availability of additional information from the ICJS, inaugurates a new form of precedents. Epistemically, law lacks the resources to regulate this new form of precedents and if left unaddressed, can undermine, the moral authority of the criminal justice system and indeed, the legal order.

[1] See https://ecommitteesci.gov.in/icjs/ accessed on 2 April, 2025.

MENTAL HEALTH AND CRIMINAL RESPONSIBILITY: A SOCIO-JURIDICAL ANALYSIS OF THE EVOLVING RELATIONSHIP BETWEEN CRIMINAL LAW AND PSYCHIATRY

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ABSTRACT

The ongoing crisis of the retributive theory of punishment has called into question the very foundations of criminal responsibility. While some scholars advocate for its reinterpretation, others argue for its complete abandonment. One of the most controversial aspects of this debate concerns the role of offenders' mental health, which in many legal systems may exclude criminal responsibility in cases of mental illness. However, both legal and psychiatric scholarship have highlighted the conceptual fragility of these categories, particularly given the absence of a scientifically stable notion of mental illness that can be effectively translated into legal reasoning. Despite these critiques, criminal responsibility in most jurisdictions continues to be grounded in assessments of mental health, producing the so-called "dual-track system": individuals deemed mentally healthy are held responsible and subject to punishment, whereas those diagnosed with mental disorders are considered not responsible and are instead subjected to security measures.

This study aims to critically analyze the legal concept of criminal responsibility considering evolving psychiatric understandings of mental health. Adopting a critical criminological perspective, the research conceptualizes legal and punitive practices as socially constructed and ideologically embedded. It engages with the debate on criminal responsibility, focusing on critiques that challenge its coherence and applicability. In parallel, it draws on phenomenological psychiatric literature, which emphasizes the multifactorial and context-dependent nature of mental disorders.

The study seeks to contribute to ongoing debates on criminal responsibility and proposes a rethinking of legal language capable of better capturing the complexity of social phenomena.

NEW FORMS OF STATE CRIMINALITY AND WAR CRIMES: TESTIMONY AS INTERVENTION

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ABSTRACT

The situation regarding allegations of Israeli war crimes remains a central focus of international legal bodies and human rights organizations. The legal landscape is currently defined by active cases at the International Criminal Court (ICC) and the International Court of Justice (ICJ). In late 2024, the ICC Pre-Trial Chamber issued arrest warrants for Prime Minister Benjamin Netanyahu and then-Defense Minister Yoav Gallant. These include the war crime of starvation as a method of warfare, murder, and intentionally directing attacks against a civilian population. The ICJ continues to hear the case brought by South Africa alleging that Israel's actions in Gaza violate the Genocide Convention. The court has issued several binding orders (most recently reaffirmed in 2025) requiring Israel to prevent genocidal acts, allow humanitarian aid, and prevent the destruction of evidence. A February 2026 UN report detailed the deaths of at least 463 Palestinians from starvation in Gaza, characterizing the denial of aid as a methodical use of food as a weapon. UN Human Rights Chief Volker Türk noted in April 2026 that over 290 journalists and nearly 600 aid workers (including 397 UN staff) have been killed since October 2023. These patterns are cited as evidence of "sweeping impunity." Organizations have documented systematic unlawful force, house demolitions, and arbitrary detentions in the West Bank, which UN experts have described as part of an effort to maintain "domination and control." Similar events are taking place during the joint American-Israeli offensive against Iran and Israeli incursions in Lebanon. This paper will discuss the importance of the testimonial evidence provided by surviving health workers, journalists and civilians confirming the nature of the attacks against civilians and the sys-

temic violation of humanitarian law. The importance of individual testimonies in the context of war crimes and crimes against humanity cannot be overstated; they are the "lifeblood" of international and regional criminal trials. While satellite imagery and forensic data provide the "skeleton" of a case, personal accounts provide the "flesh"—the human experience and the necessary legal proof of intent. Individual testimonies from survivors or "insider" witnesses (defectors or low-level soldiers) are often the only way to link high-level decision-makers to specific atrocities on the ground. While a single drone strike might be viewed as a technical error, consistent testimonies from multiple individuals across different locations can establish a systematic pattern, which is a requirement for a "Crime Against Humanity." Testimonies serve as a permanent, public record that counters denialism and "historical revisionism." War reduces victims to numbers. Testimonies restore the dignity and identity of those affected, ensuring the world sees them as individuals rather than collateral damage.

CHILDREN IN CONFLICT WITH THE LAW: COMMUNITY AND NGOS AS THE CONSTITUTIVE CORE OF JUVENILE JUSTICE

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ABSTRACT

Juvenile crime has become a growing crisis in Türkiye and across migration-receiving states, where displacement, poverty, and social media have widened the channels through which children enter criminal pathways. The dominant legal and political response has narrowed the debate to two variables: the age of criminal responsibility and the length of punishment. This paper argues that this framing rests on unexamined jurisprudential assumptions and misidentifies the problem law currently faces. It also fails on its own terms: punishment presupposes an agent who can fully grasp right and wrong, yet a child's moral judgment is still being formed, and the experience of punishment itself damages the very capacity that would make her responsible. The question that matters is: what kind of legal order is capable of intervening at a child's first contact with crime, before isolated incidents harden into criminal careers. The paper develops this as a problem in philosophy of law. Its contested thesis is that the capacity for such intervention is structurally unavailable to the state acting alone. Centralised state law operates through generality, abstraction, and formal equality, features of legal modernity. Yet the child at first contact with crime is precisely the case in which legal generality fails: she requires the individualised, contextual, longitudinal recognition that the legal form of the state cannot itself supply. Only community and accredited civil society, embedded in the child's everyday life, can. Existing scholarship treats their involvement as a useful supplement. This paper advances a stronger jurisprudential thesis: they are constitutive of any juvenile justice order that takes its own normative premises seriously. The paper compares

two legal architectures as responses: the Canadian framework, with its Indigenous justice provisions recognising tribal councils as constitutive participants in diversion, and the Spanish Ley Orgánica model formally embedding accredited NGOs into the judicial process. It then discusses which model is most suitable for Türkiye.

GENOCIDE, IDENTITY, AND GROUP RIGHTS

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ABSTRACT

The international crime of genocide criminalizes not only the killings and other serious harms perpetrated against the individual human beings who are members of certain groups. What it really criminalizes is the use of the atrocities committed against the individual members as the means to attack the groups themselves. This paper explores questions concerning the moral status of the relevant groups and what accounts for their rights, including the right not to be destroyed. Are they irreducibly group rights or are they ultimately individual rights? The answer to this question is important for the compatibility of the crime of genocide with the human rights regime if we take human rights to be individual rights.

REVENGE AS A FACTOR IN THE INTEGRATION AND DISINTEGRATION OF LAW

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ABSTRACT

The aim of this article is to analyze revenge as a multidimensional phenomenon influencing the formation and functioning of legal systems. The starting point is a distinction between different concepts of revenge: from revenge in the psychological sense—understood as an emotional response to a suffered wrong, motivated by anger, humiliation, or a desire for retaliation—to revenge as an institutionalized mechanism of administering justice, historically manifested in forms such as blood feuds or community-sanctioned retaliation. In this perspective, revenge ceases to be merely a private act of retribution and becomes an element of the normative order regulating social relations.

The article also addresses the relationship between revenge and justice. Revenge is often perceived as a primordial form of realizing the social sense of justice—a mechanism for restoring a disturbed moral balance and providing symbolic redress for harm. In this sense, it reflects the collective conviction that wrongdoing should be met with proportional response. At the same time, the transformation of private revenge into public punishment may be interpreted as a process of institutionalizing this sense of justice, leading to the state's monopoly on the legitimate use of force.

Revenge affects the legal system in an ambivalent manner. On the one hand, it may serve as an integrative impulse, fostering the creation of legal norms that channel the desire for retaliation into controlled, proportionate, and formalized procedures. In this dimension, it contributes to the stabilization of social order and to the legitimization of law as an instrument of justice. On the other hand, uncontrolled private revenge leads to the escalation of conflicts, undermines the authority of public institutions, and contributes to the disintegration of legal order. In such cases, it becomes a

factor of erosion, replacing formal norms with the logic of retaliation and self-help.

The analysis demonstrates that revenge is a borderline phenomenon situated between emotion and institution, between spontaneous individual reaction and a structural element of the normative order. Its role in law lies not only in its historical function as a foundation for criminal sanctions, but also in the enduring tension between the social sense of justice and the principles of legality and proportionality. Understanding this ambivalence allows for a deeper insight into the dynamics of integration and disintegration within legal systems.

BURDENS OF ARGUMENTATION, NORMATIVE PREFERENCE RELATIONS, AND LEGAL DECISION-MAKING UNDER UNCERTAINTY

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ABSTRACT

This paper explores how burdens of argumentation arise from, and interact with, normative preference relations. Burdens of argumentation are conceived as normative effects of preference relations favoring a specific outcome, imposing special justificatory demands on those who seek to displace that outcome. As a result, they function as institutional devices for managing the uncertainty inherent in the subideal conditions under which legal systems operate, by performing three important roles.

First, burdens of argumentation contribute to the stability of the priority relations that support them in the resolution of concrete cases, insofar as they provide a solution that may be regarded as expected or natural in the case at hand.

Second, as the other side of the same coin, burdens of argumentation make it more difficult to reverse the preference relations that sustain them, to the extent that they increase the decision-making costs associated with justifying why certain prima facie normative priority relations should be defeated in particular cases.

Third, burdens of argumentation establish stopping points in legal argumentation when the development of argumentative chains is unable to determine whether, in a given concrete case, a specific preference relation should be maintained or overturned. In such situations of normative uncertainty, burdens of argumentation favor the maintenance of the initial priority relation, in accordance with the principle of inertia.

Although they may intersect with other types of burdens, it is also argued that burdens of argumentation should not be conflated with burdens

of proof, which concern the justification of facts, nor with burdens of justification in the Rawlsian sense.

THE DETERMINANTS OF NORMATIVE THEORIES OF LEGAL INTERPRETATION

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ABSTRACT

Are semantic arguments necessary in legal interpretation? Normative theories of legal interpretation are based on: (i) theories of meaning, (ii) general theories of law, (iii) political moralities. Theories like textualism, interpretivism, purposivism, apply the word "meaning" in different, frequently unspecified ways. However, as we will demonstrate, solving semantic problems is not per se the purpose of legal interpretation, but rather a means to achieve its goal which ultimately is to determine the legal content of a statute (rather than its linguistic meaning). Nonetheless, this does not make semantic considerations irrelevant, but impinges on their status. The directives provided by normative theories of legal interpretation are determined neither by the merits of semantic theories, nor by general concepts, but by other factors such as the adopted values of political morality and the hierarchy of those values. An informed application of any such theory requires attention to these factors.

THE DENIABILITY OF CONVERSATIONAL IMPLICATURES IN LEGAL DISCOURSE

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ABSTRACT

Since P. Grice, philosophers of language have paid sustained attention to "what is unsaid," that is, to the non-explicit content of utterances conveyed by a speaker. Among such forms of non-explicit content, conversational implicatures play a central role. Resorting to implicating rather than explicitly stating something may serve various aims, including verbal efficiency, politeness, stylistic purposes, or misleading without lying. A further goal is deniability: by communicating indirectly, a speaker may veil her intentions and, if needed, deny having conveyed a message. This use of implicature is characteristic not of cooperative, but of strategic communication.

The aim of this paper is to examine the plausibility of denying conversational implicatures in legal language, which—unlike everyday language—is predominantly strategic rather than cooperative. I argue that such denial should be considered less plausible and less acceptable in legal discourse, as it may lead to more serious negative consequences than in cooperative communication. The paper analyses instances of strategic implicature (1) in contract drafting by private parties and (2) in statutory drafting.

In contract law, the use of conversational implicatures may enable unfair practices and manipulation, allowing a party to assert something literally true while deliberately implicating something known to be false, thereby avoiding material or reputational costs. This problem is illustrated by Patrons Oxford Mutual Insurance Co. v. Marois (1990), where contractual language implied to a lay insured that all monetary damages would be covered, despite the insurer's awareness of a narrower, technical meaning of "damages."

Deniable implicatures may also be employed strategically by lawmakers, undermining legal certainty and enabling an overextension of legislative power. This issue is examined through Yates v. United States (2015), concerning 18 U.S.C. § 1519, where statutory wording suggested applicability to any "tangible object," yet was later interpreted by the Supreme Court as excluding a fish.

LEGAL EVOLUTION AND HISTORICAL RATIONALITY: A PHILOSOPHICAL INTERPRETATION OF THE THREE CORE MECHANISMS

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ABSTRACT

Legal history does not offer prescriptive checklists for the future but provides a genealogy of humanity's historical survival amid societal transformations. By extending the temporal perspective to 500–2,000 years, this paper identifies three recurring mechanisms that drive legal evolution: normative lag, authority reconstruction, and knowledge spillover. Normative lag manifests as an inherent "gap" between social change and legal adaptation, which is filled by quasi-legal practices (e.g., customs, precedents) before being resolved through event shocks and authority reconstruction—exemplified by the integration of local customs into England's common law after the Black Death. Authority reconstruction involves the shifting locus of lawmaking power, from monarch-church-parliament to parliament-court-expert committees, accompanied by alternating cycles of codification and decodification, as seen in the development of civil codes and the resurgence of flexible norms in the digital age. Knowledge spillover enables the law to develop tools for new variables through interdisciplinary integration: from Roman law and scientific methods shaping conceptual-system jurisprudence to economics, climate science, and digital technology enriching legal frameworks. These three intermeshing mechanisms explain why the law, though perpetually "late" in responding to upheavals (e.g., industrialization, digitization, climate crisis), ultimately adapts and endures. This historical insight suggests that the law will continue to traverse contemporary challenges—such as data deluges and geopolitical restructuring—through renewed authority reconstruction and knowledge spillover.

ON THE IMPORTANCE AND ADVANTAGES OF SYMBOLIC LAW

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ABSTRACT

This paper examines the importance and advantages of symbolic law through an analytical framework based on an open catalogue of criteria for identifying and evaluating symbolic legal norms. Rather than treating symbolic law as a rigid or pejorative category, the paper argues that symbolicity should be understood as a graduated and context-dependent legal quality. Legal provisions may be symbolic to different degrees, for different audiences, and at different stages of institutional development. Accordingly, the paper proposes a non-exhaustive set of criteria that enables a more precise assessment of when symbolic law performs a legitimate constitutional and social function, and when it risks becoming merely declaratory.

THE METHODOLOGY OF LEGAL INTERPRETATION BETWEEN EPISTEMOLOGY AND POWER

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ABSTRACT

The article analyzes the methodology of interpreting legal norms from the perspective of the relationship between knowledge and power. Starting from the assumption that legal interpretation is simultaneously an epistemic and political process, the study investigates how interpretative practices not only reveal the meaning of the norm, but also contribute to the production and legitimization of certain power relations. The aim of the research is to highlight the epistemic and political dimensions of legal interpretation and to show the extent to which it participates in the configuration and stabilization of authority structures within the legal order. The theoretical framework is inspired by Michel Foucault's conception of the relationship between knowledge and power. The research methodology combines conceptual and philosophical-legal analysis with the interpretative method and critical analysis of legal discourse, highlighting the role of legal institutions, doctrine, and judicial practice in shaping the meaning of legal norms.

CAN THE RULE OF RECOGNITION SURVIVE HUME'S LAW?

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WG.83 · Theme: Legal Reasoning

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ABSTRACT

As one of the most influential legal philosophers of the twentieth century, H. L. A. Hart's rule of recognition (RoR) has generated extensive academic debate. Hart introduces the RoR as an answer to one of the most fundamental questions of legal philosophy: the problem of legal validity. The RoR functions as the ultimate and supreme rule that determines the criteria of legal validity and identifies which norms belong to a given legal system.

The originality of the RoR lies in the fact that Hart does not characterize it as a norm, but rather as a rule constituted by the practices of legal officials, whose existence is factual rather than normative. By grounding legal validity in factual conditions - namely, the convergent practices of legal officials - the rule of recognition appears to confront Hume's Law, which denies the possibility of deriving norms from purely factual premises. Unlike Hans Kelsen, who avoids this difficulty by grounding the legal validity of norms in a higher norm, Hart's account situates validity within social practice. This conceptualization constitutes a serious test for the theoretical robustness of the rule of recognition.

In this regard, the structural similarities between the rule of recognition and customary rules grounded in consistent practice and common belief, as well as conventions arising from social consensus, provide a useful framework for analysis. Accordingly, the presentation will first examine the factual foundation of the rule of recognition and identify the precise points at which it encounters Hume's Law. It will then explore the parallels between the rule of recognition and customary norms and conventions which likewise emerge from factual practices and operate at the boundaries between the factual and the normative. In doing so, the study ultimately

invites a reconsideration of whether the divide between the factual and normative fields is as sharp as it is often assumed to be.

A LOGICAL PRESENTATION FOR CONTEMPORARY LEGAL FORMALISM

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WG.115 · Theme: Legal Reasoning

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ABSTRACT

This paper offers a logical manual for lawyers to make formalistic legal arguments that are informed by contemporary legal formalism. One of the central issues of CLF concerns the interpretation of statutory law. It involves two practical aspects: applying the law as it demands, and not applying the law as it does not demand. This paper outlines the structural indeterminacies in the reasoning process of these two aspects and offers a framework to navigate through the argumentative steps. Based on the framework presented in this paper, lawyers can develop a solid standard to distinguish between good and bad formalistic legal arguments. At a theoretical level, this paper demonstrates the multiple forms of indeterminacy that characterize formalism in contemporary legal reasoning and suggests that CLF's presumptions of maximizing legal stability and consistency may come at the expense of legal coherence.

LAW AND THE METHODOLOGICAL STRATEGY IN CONTEMPORARY SOCIETY

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WG.116 · Theme: Legal Reasoning

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ABSTRACT

This study, Law and the Methodological Strategy in Contemporary Society, advances the thesis that law, in an age marked by complexity, uncertainty, ruptures, and networked processes, faces unprecedented methodological pressure. Revisiting the classical maxim ubi societas ibi jus, the paper argues that contemporary transformations challenge the persistence of dogmatic methodological positions and reveal the growing insufficiency of closed, self-referential paradigms within legal science.

The central hypothesis proposes the necessity of an open and integrative methodological strategy, grounded in the human being and informed by exemplary historical experience. Law is approached as a transcultural product and as an expression of the human spirit in its multiple hypostases. The analysis clarifies the conceptual distinctions and interrelations within the "methodological family" — method, methodology, and methodological strategy — emphasizing the latter as a dynamic, reflexive, and anticipatory framework.

A key argument develops the idea of a methodological coalition between philosophy and legal science. Philosophical paradigms and paradigms of legal science are not antagonistic but complementary, jointly providing cognitive, axiological, and normative resources for understanding and shaping law in contemporary society.

At the core of this strategy lies the human being as a decisive methodological resource. The concept of homo juridicus is expanded from legal thinking to the formation of a "legal mind," integrating diverse human ty-

pologies — homo sapiens, homo symbolicum, homo aestimans, homo faber, homo emotionalis, and homo visionarius. Their coalition offers a multidimensional foundation for legal knowledge and governance.

The study concludes that the contemporary methodological strategy of law must be open, integrative, and oriented toward the unlimited potential of the human spirit, including reflection on the unknown and the transcendence of future societal horizons.

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Ömer Çelik · WG.299 1385
José Renato Gaziero Cella & Lia Loana Curial Oliva · SW52 708
Karolina M. Cern · SW78 1002
Beren Şen Çetiner · SW85 1079
Miran Çetiner · SW85 1076
Nursena Çetingül · SW12 202
Danny José Cevallos · SW68 888
Şule Şahin Ceylan · SW23 356
Şule Şahin Ceylan · SW75 966
Chao-Chin Chan & Po-Yin Chiang · SW64 851
Brian C. Y. Chang · WG.49 1314
Hung-Ju Chen · SW43 617
Li-kung Chen · SW15 253
Weicong Chen & Lai Wei · WG.181 1297

Yijing Chen · WG.250 1310
Pierluigi Chiassoni · SW18 282
Pierluigi Chiassoni · SW24 402
Pierluigi Chiassoni · SW37 535
Ming-Yuan Chin · SW29 454
Lucía Aparicio Chofré · SW88 1128
José Chofre-Sirvent · SW10 180
Eliza Chojecka · WG.42 1539
Jack Y-J Chou · SW19 307
Jack Y-J Chou · WG.47 1266
Nupur Chowdhury · WG.99 1525
Vasileios Christodoulakis · WG.193 1375
Maria Christofidis · SW79 1022
Hasan Basri Çifci · SW02 71
Hasan Basri Çifci · SW97 1186
Ceyda Çınar · SW97 1189
Rodrigo Suzuki Cintra · SW17 278
Wojciech Ciszewski · SW83 1053
Jesús García Cívico · SW71 924
Jesús García Cívico · WG.54 1511
Joshua Clarke · WG.175 1235
Nuno M. M. S. Coelho · SW23 352
Nuno M. M. S. Coelho · SW78 992
Gerard Conway · WG.43 1265
Luís Cordeiro-Rodrigues · SW65 865
Silvia Corradi · SW87 1103
Roger Ventura Cossin · WG.180 1505
Luís Pereira Coutinho · SW48 683
Ion Craiovan · WG.116 1547
Carmen Cuadrado · SW10 177
Bojana Čučković · SW24 367
Bogdan Cuza · WG.95 1260
Filip Cyuńczyk · SW74 947

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Paolo D'Erasmo · SW71 928
Agata Dąbrowska · SW16 261

Agata Dąbrowska · SW78 1000
Gaurav Dahiya · WG.113 1396
Melike Dalkılıç · WG.76 1512
Margherita Daverio · SW03 83
Margherita Daverio & Fabio Macioce · WG.211 1253
Alex Davies · SW58 783
Julian Davis · SW15 250
Marina L. Davydova · SW36 520
Marina L. Davydova · WG.257 1518
Rıdvan Değirmenci · SW38 555
Burcu Değirmencioğlu · SW55 746
Aleksey Degtyaryov · WG.23 1455
Juan José Iniesta Delgado · SW30 458
Juan José Iniesta Delgado · SW32 485
Feyza Delibalta · WG.75 1461
Ömer Faruk Deligönül · SW76 976
Andrew R. DeLoach · SW22 341
Beyza Nur Demir · WG.30 1491
Esra Demir · SW87 1105
Nezahat Doğan Demiray · SW74 952
Nezahat Doğan Demiray · WG.151 1367
Hüseyin Dengiz · SW05 129
Michał Derek · SW27 438
Özge Yücel Dericiler & Başak Ozan Özparlak · SW12 210
Jenny Elizabeth Lindo Díaz & Yurani Martínez Díaz · WG.302 1391
Anton B. Didikin · SW12 206
Anton B. Didikin · SW36 521
Anton B. Didikin · SW70 904
Ana Dimishkovska · SW24 371
Ana Dimishkovska · WG.19 1336
Cornelia Beatrice Gabriela Dinu · WG.82 1543
Melda Ezgi Toydemir Doğan · WG.278 1401
Robin Lockyer-von Dorrien · SW79 1024
Andreea Drăghici · SW91 1159
Marlena Drapalska-Grochowicz · SW29 452
Marlena Drapalska-Grochowicz & Sara Smyczek · SW42 605
Alessandro Drigo · SW38 546

Brisa Paim Duarte · SW13 217
Brisa Paim Duarte · SW16 263
Brisa Paim Duarte · SW71 914
David Duarte · SW18 299
David Duarte · SW21 326
Gabriel Alejandro Encinas Duarte · SW05 137
Gabriel Alejandro Encinas Duarte · SW06 141
Gabriel Alejandro Encinas Duarte · SW53 720
Florina Ramona Duminică · SW91 1162
Corina Adriana Dumitrescu · SW91 1155
Arnulfo Daniel Mateos Durán · SW86 1099
Hanna Duszka-Jakimko · WG.254 1240
Maciej Dybowski · SW63 840
Adam Dyrda & Tomasz Gizbert-Studnicki · WG.29 1337
Adam Dyrda & Tomasz Gizbert-Studnicki · WG.28 1538
Weronika Dzięgielewska · SW63 843

E

Kenneth Ehrenberg · SW21 324
Pedro Caballero Elbersci · SW56 759
Pedro Caballero Elbersci · SW57 778
Pavlos Eleftheriadis · SW48 681
Pavlos Eleftheriadis · SW76 987
İsmail Cevher Elgin · SW105 1215
Katarzyna Eliasz · SW60 805
Katarzyna Eliasz · SW83 1055
Antonio Luis Vecino Elices · SW39 571
Carinne Elion-Valter · SW31 482
Hamit Furkan Elmalı · SW58 796
Hamit Furkan Elmalı · WG.303 1332
Armin Engländer · SW40 577
Susan Erck · WG.31 1241
Sermet Erdem · WG.265 1427
Reyda Ergün · SW45 656
Abdullah Eryiğit · SW03 92
Ertuğrul Doğan Erzengin · WG.286 1406
Johann Sebastian Benfeld Escobar · SW14 245

Juan Bautista Etcheverry · SW03 77
Hande Evsen · SW59 798

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Jorge Luis Fabra-Zamora · SW21 329
Yingjie Fan · WG.45 1541
Mohamed Akli Faradji · WG.46 1277
Konstantinos Farmakidis · SW79 1019
Andrea Favaro · SW03 85
Wei Feng · SW05 125
Wei Feng · SW21 321
Wei Feng · SW53 725
Wei Feng · SW86 1093
Patricia Valcárcel Fernández · SW13 241
Alessandro Ferrara · WG.101 1328
Alfonso J. García Figueroa · SW13 216
Douglas Luis Binda Filho · WG.236 1389
Genival Silva Souza Filho · WG.41 1245
Suki Finn · WG.3 1351
Imer B. Flores · SW27 432
Javier Miguel Ortiz Flores · SW62 834
Zsófia Folková · SW44 640
Andreas Follesdal · WG.16 1324
Teresa López Franco · WG.38 1354
Duška Franeta · SW101 1199
Duška Franeta · WG.34 1255
Lucia Franke · SW40 590
Matteo Frau · SW22 342
Oscar Pérez de la Fuente · SW11 183
David Quintero Fuentes · SW14 246
Andreas Funke · SW26 422
Andreas Funke · SW48 689
Shannon Fyfe & Mark A. Drumbl · WG.17 1300

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Tomáš Gábriš · SW41 595
Tomáš Gábriš · SW44 635
Marcelo Galuppo · SW24 392

Marcelo Galuppo · SW25 418
Marcelo Galuppo · SW72 932
Aurelio de Prada García · SW03 100
Aurelio de Prada García · SW39 558
Aurelio de Prada García · SW64 856
Aurelio de Prada García · SW71 920
Cristian Pérez García · SW04 110
David García García · SW23 358
David García García · SW62 836
Johanna Mildred Pinto García · WG.139 1423
Juan Ramon Fallada García-Valle · SW93 1166
Franco Gatti · SW13 221
Ana Margarida Simões Gaudêncio · SW19 306
Ana Margarida Simões Gaudêncio · SW72 934
Viktor Gazda · SW53 723
Viktor Gazda · SW54 730
Santiago Salvador Gimeno · SW13 231
Luis Martínez Giner · SW10 176
Clemence Van Ginneken · WG.177 1227
Triantafyllos Gkouvas · SW30 468
Triantafyllos Gkouvas · SW32 489
Triantafyllos Gkouvas · SW61 818
Angelo Junior Golia & Giorgia Valentini · SW05 123
Manuel A. Gómez · SW73 939
Ricardo Juozepavicius Gonçalves · SW06 145
Ricardo Juozepavicius Gonçalves · SW11 197
Lucas de Alvarenga Gontijo · SW93 1167
Carlos Marcelo Orive González · SW03 78
Carlos Marcelo Orive González · WG.282 1402
José Molinelli Gonzalez · WG.138 1264
Ewa Górska · SW16 265
Wojciech Graboń · SW84 1066
Amós Arturo Grajales · SW13 225
Michael Steven Green · SW21 327
James Greenwood-Reeves & Rosie Fox · SW67 884
James Greenwood-Reeves & Rosie Fox · SW71 926
Simeon Groysman · SW07 150

Simeon Groysman · WG.32 1458
Ksenija Grubišić · SW65 861
Thiago Azevedo Guilherme · WG.164 1231
Hazal Gül · WG.163 1289
Yahya Berkol Gülgeç · SW21 333
Remzi Orkun Güner · SW45 660
Susmita Sen Gupta · SW11 194
Susmita Sen Gupta · SW30 460
Ayşe Nur Güreşçi · SW04 112
Çağrı Gürkanlı · SW48 687
Çağrı Gürkanlı · SW76 985
Şeyma Sağdıç Güven · WG.270 1522

H

Irmak Kepenek Hacaloğlu · WG.83 1544
Matthias Hächler · SW65 866
Ellen Hagedorn · SW04 106
Ellen Hagedorn · SW82 1046
Michael Haiden · WG.120 1271
Syed Muhammad Ihsan Haider · SW79 1028
David Haines · SW22 340
Denis De Castro Halis · SW11 196
Denis De Castro Halis · SW68 891
Tomi Hämäläinen · SW23 354
Peng Han · WG.301 1330
Ivar Hannikainen · SW58 793
Jasminka Hasanbegović · SW24 361
Yoko Hasegawa · SW75 961
Tsutomu Hashimoto · WG.246 1441
Nicoleta-Elena Hegheș · SW91 1157
Carsten Heidemann · SW21 312
Paul-Vincent Heisenberg · SW87 1107
Jessica Hellani · SW59 801
Altan Heper · SW89 1143
Adolfo Jorge Sánchez Hidalgo · SW04 115
Adolfo Jorge Sánchez Hidalgo · SW39 567
Adolfo Jorge Sánchez Hidalgo · SW88 1138

Ho Hock Lai · SW34 511
Waldemar Hoff · WG.126 1485
Jessica Holl · SW40 579
Jessica Holl · SW67 881
Jessica Holl & Diogo Campos Sasdelli · SW101 1208
Justyna Holocher & Urszula Kosielińska-Grabowska · SW11 190
Justin Holt · WG.11 1435
Pedro Barbas Homem · WG.182 1236
Klaudyna Horniczak · SW46 662
Ming-Yun Hsieh · WG.158 1343
Xin Huang · WG.67 1492
Yong Huang · WG.8 1453
Carla Huerta · SW21 332
Carla Huerta · SW37 534
Liesbeth Huppes-Cluysenaer · SW23 359

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Yeşim Öztürkmen İcan · WG.169 1293
Mohid Iftikhar · WG.148 1447
Hirono Ikeda · SW29 446
Emanuela Iorio · SW78 994
Mario Armando Sandoval Islas · SW58 787
Zeynep İspir · SW24 414
Zeynep İspir · SW64 853
O. Vahdet İşsevenler · SW85 1074
Stoyan Ivanov · SW78 998

J

Paweł Jabłoński · SW74 954
Witold Jakimko · WG.264 1442
Bartosz Janik & Leonard Hoeft · SW58 792
Tiago Cappi Janini · SW39 572
Emilia Jankiewicz · WG.102 1503
Michael Lima de Jesus · WG.238 1509
Emmanuel Jeuland · SW05 121
Yu Ji · WG.84 1494
Yu Jia & Xie Zuote · WG.103 1475
Miodrag Jovanović · SW18 284

Miodrag Jovanović · SW61 827
Miodrag Jovanović · SW101 1204
Sandra Gómora Juárez · SW30 470
Minjae Jung · WG.162 1288
Anna Juzaszek · SW42 607

K

Hiroshi Kabashima · SW54 739
Daniel Kačer · SW48 698
Przemysław Kaczmarek · SW74 957
Lorenz Kaehler · SW70 902
Michihiro Kaino · SW43 619
Vladyslava Kaplina · SW18 286
Olcay Karacan · WG.256 1418
Ulviye Kılıç Karakelle · SW97 1182
Vera Karanika · SW79 1030
Harri Karpén · SW50 703
Taro Katayama · SW26 427
Takayuki Kawase · WG.262 1420
İnci Sevi Kaya · SW87 1109
Refia Kaya · WG.152 1531
Sevgi Kayak · SW89 1145
Eylül Kayraklık · WG.304 1230
Damian Kazimierski · WG.65 1225
Marin Keršić · SW37 531
Julian Kessler · SW66 871
Julian Kessler · WG.247 1415
Gulshan Khan · SW60 809
Maja Kierzkowska · SW46 673
Markku Kiikeri · SW93 1168
Ryo Kikuchi · WG.274 1469
Muharrem Kılıç · SW55 742
Recep Orhun Kılıç · WG.144 1340
Gunoo Kim · SW65 863
Derya Nur Kır · SW89 1151
Stephan Kirste · SW66 872
Şahika Gözde Kıvrak · SW89 1149

Kosuke Kiyama · WG.191 1374
Matthias Klatt · SW05 134
Matthias Klatt · SW21 320
Bart van Klink · SW31 480
Paweł Kłos · SW87 1111
Andrea Kluknavská · SW44 642
Halil Kökcü · WG.215 1516
Marek Kokoszczyński · SW58 781
Nikolaos Kolisis · SW29 450
Martin Koloušek · SW18 281
Martin Koloušek · SW23 355
Martin Koloušek · SW53 726
Keisuke Kondo · SW05 135
Doohyun Kong · SW26 423
Marzena Kordela · WG.134 1286
Jonas Koschmieder · WG.81 1501
Urszula Kosielińska-Grabowska & Justyna Holocher · WG.57 1316
Dawid Kostecki · WG.52 1542
Sofya Koval · SW36 524
Sofya Koval · SW70 911
Mario Krešić · SW30 464
Mario Krešić · SW37 532
Mario Krešić · SW83 1048
Michał Krotoszyński · SW18 289
Anne Kühler · SW40 585
Gonca Kuru · SW64 849
Oğuzcan Kutkan · WG.111 1412
Elif Küzeci · SW12 200
Daniel Kwiatkowski · SW83 1050
Dimitrios Kyritsis & Matthew Lewans · SW48 691

L

Nicoletta Bersier Ladavac · SW100 1195
Stuart Lakin · SW48 696
Jakub Łakomy · SW74 949
Paulina Landecho · SW93 1170
Marta Breichová Lapčáková · SW42 611

Pablo Nicolás Cerame Lardiés · SW62 829
Diana Latova · SW38 550
Migle Laukyte · SW99 1193
Matteo Lauri · SW03 99
Jón E. Laxdal · SW65 867
Fernando Leal · WG.10 1536
Wojciech Leder · WG.224 1464
Hsin-Wen Lee · WG.72 1459
Win-Chiat Lee · WG.178 1533
Lei Lei · SW87 1112
Alain Lempereur · SW15 248
Lourenço Kantorski Lenardão & Ingo Wolfgang Sarlet · WG.166 1448
George Letsas · SW48 695
George Letsas · SW66 873
Raymundo Gama Leyva · SW54 736
I-Ming Liao · SW36 528
Jyr-Jong Lin · SW43 621
Wang Lin · SW43 623
Yinglu Lin · WG.63 1408
José Manuel Aroso Linhares · SW71 922
José Manuel Aroso Linhares · SW78 1005
Chang Liu · SW79 1013
Yang Liu · WG.129 1263
Ziyu Liu · SW57 779
Bartosz Liżewski · SW87 1114
Cristina Hermida del Llano · SW39 570
Yichen Lo · WG.115 1546
Alba Lojo · SW21 323
Alba Lojo · SW32 488
Mônica Sette Lopes · SW25 420
Pedro Moniz Lopes · SW60 806
Antonio Miño López · SW13 235
Alfonso Vicente Lorca · SW03 93
Miguel Ángel López Lozano · SW03 96
Lorena Ramirez Ludeña · SW99 1191
Constantin Luft · WG.59 1267
Anna Lukina · SW15 254

Anna Lukina · SW63 839
Yizhong Luo · SW43 625

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Renru Ma · WG.174 1302
Yufei Ma · WG.295 1433
Ronaldo Porto Macedo Jr · SW43 626
Fabio Macioce · SW09 157
Maciej Macuga · SW83 1058
Jary Leticia Méndez Maddaleno · SW03 80
Jary Leticia Méndez Maddaleno · WG.275 1431
Raúl Madrid · SW03 89
Raúl Madrid · WG.271 1430
Matthias Mahlmann · SW24 370
Bernardo Souto Maior · SW41 600
Bernardo Souto Maior · WG.133 1376
Sergiy Maksymov · SW24 407
Luca Malagoli · SW56 764
Luca Malagoli · SW57 773
Marek Malinowski · SW83 1051
Tomás K. Manguel · SW76 983
Isabel Turégano Mansilla · SW62 830
Leandro Nascimento Mantau · SW52 715
Leandro Nascimento Mantau · WG.232 1345
Sergei Manzhosov · WG.244 1275
Maurizio Manzin · WG.263 1466
Gökçe Maraşlı · SW95 1173
Veronika Marceková · SW31 484
Elena Marchese · SW34 501
Elena Marchese · SW63 848
Tanasije Marinković · SW24 411
Réka Markovich · SW52 714
Andrei Marmor · SW18 292
Andrei Marmor · SW21 318
Carolina De Miguel Márquez · SW38 542
Ilenia Bruna Marraffa · SW82 1044

Laura Miraut Martín, Alina Elena Ramaru & Antonio Tirso Ester Sánchez · SW102 1210
Noelle Martin · WG.296 1499
Jacopo Martire · WG.217 1463
José Antonio Sendín Mateos · SW13 238
Célia Matias · SW19 300
Saulo de Matos · SW57 769
Saulo de Matos · SW64 855
Piero Mattei-Gentili · SW32 495
Piotr Mazurkiewicz · SW22 335
Marco Mazzocca · SW26 428
Marco Mazzocca · SW42 603
Allan McCay, Talya Deibel & Ozan Erözden · SW12 204
Joan McGregor · SW27 435
Pascal Felix Meier · SW65 860
Bjarne Melkevik · SW22 339
Henrique Mello · SW39 561
Henrique Mello · WG.171 1249
Henrique Mello · WG.172 1250
Fernando de los Santos Menéndez · SW38 548
Fernando de los Santos Menéndez · WG.184 1238
Angus J. L. Menuge · SW22 349
Nergis Kulaksızoğlu Mercan · WG.156 1424
Federico Freydell Mesa · SW76 989
Sevtap Metin · SW85 1072
Flavio Scuderi Di Miceli · SW69 898
Igor Milinković · SW24 382
Ángela Aparisi Miralles · SW03 88
Ángela Aparisi Miralles · SW88 1129
Lucas E. Misseri · SW68 893
Kento Miyata · WG.267 1421
Vanja Mladineo · SW15 255
Diana M. Mocanu · SW04 109
Krystyna Mokrzycka · SW16 267
Yohan Molina · SW10 182
Josep Ochoa Monzó · SW10 174
Francisco Miguel Mora-Sifuentes · SW86 1098

Diego Medina Morales · SW39 563
Josep Joan Moreso · SW18 290
Yuichiro Mori · SW17 274
Daniel Morosini · WG.229 1280
Jordi Mundó · WG.157 1398
Joaquín Rodríguez-Toubes Muñíz · SW13 212
José María Carabante Muntada · SW88 1133
Kiwako Murata · SW81 1041

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Ulfrid Neumann · SW40 574
Rostam J. Neuwirth · SW06 146
Rostam J. Neuwirth · SW19 311
Joshua Nichols · SW56 765
Joshua Nichols · SW57 767
Mert Nomer · SW65 859
Milica Novaković · SW24 395
Celeste Novaro · WG.124 1527
Marcin Nowicki · SW60 811
Akiko Nozaki · SW75 967
Miguel Fernández Núñez · SW32 491
Miguel Fernández Núñez · SW38 552

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Timotej F. Obreza · SW32 499
Timotej F. Obreza · SW46 671
Mehmet Odabaşı · WG.280 1470
Columbus N. Ogbujah · SW27 431
Vitaly Ogleznev · SW13 214
Vitaly Ogleznev · SW36 526
Vitaly Ogleznev · SW52 709
Ignacio Aymerich Ojea · WG.204 1344
Nmesoma Michael Okeke · WG.305 1393
Jan Okoński · SW16 270
Antonio Olguin-Torres · WG.79 1474
Lia Loana Curial Oliva & José Renato Gaziero Cella · SW52 711
Nisanur Önay · WG.227 1272
Isabela Erika Ungureanu Orosz · WG.53 1247

Ilsse Carolina Torres Ortega · SW42 609
Ilsse Carolina Torres Ortega · SW83 1056
Adrián García Ortiz · SW10 173
Asya Ostroukh · SW67 885
Asya Ostroukh · WG.252 1312
Pinar Ozcan · SW41 598
Pinar Ozcan · WG.131 1338
Ilgın Özkaya Özlüer · SW95 1178
İlayda Tuana Öztunçel · SW45 658
Bergen Coşkun Özüaydın · SW97 1184

P

Charles-Maxime Panaccio · SW48 693
Alexandros Papadimitriou · SW66 874
Konstantinos A. Papageorgiou · SW66 875
Elena Papangelodemou · SW44 644
Juan Antonio Cruz Parcero · SW68 889
Elena Pariotti · SW27 440
Elena Pariotti & Isabel Trujillo · SW24 379
Hannah Park · SW42 602
Patryk Patoleta · SW87 1115
Nikolaos Pavlakos · SW40 581
Reut Yael Paz & Alberto Puppo · SW07 152
Michał Paździora · SW74 951
Tevfik Can Peker · WG.277 1400
Jonathon W. Penney · SW19 309
Juan Antonio Corredor Pérez · SW03 95
Tomás de Domingo Pérez · SW32 494
Ginés Marco Perles · SW39 557
Ana-Paz Garibo Peyró · SW88 1136
Roberta del Pezzo · WG.243 1414
Maciej Pichlak · SW31 476
Maciej Pichlak · SW80 1032
Federico Picinali · SW34 505
João Tomé Pilão · WG.283 1404
Fabiana Oliveira Pinho · SW40 583
Alberto Pino-Emhart · SW09 164

Ryszard Piotrowski · SW15 256
Oskar Polański · SW15 252
Diego Poole · SW03 103
Leticia Poole · SW03 76
Petar Popović · SW03 73
Ralf Poscher · SW21 316
Ralf Poscher · SW63 841
Satya Prasoon & Shilpi Singh · WG.71 1472
María Concepción Gimeno Presa · SW13 223
Karolina Prochownik & Guilherme de Almeida · SW58 794
Filip Przybylski-Lewandowski · WG.198 1534
Rafael Diniz Pucci · WG.259 1452
Aleksandra Puczko · SW60 816
Alberto Puppo · SW18 288
Federico Puppo · WG.276 1524
Andra Nicoleta Puran · SW91 1165

Q

Shawn Shaw Quek · SW46 667
Michael Quinlan · SW22 347

R

Julieta Agustina Rabanos · SW61 826
Julieta Agustina Rabanos & Bojan Spaić · SW18 294
Michał Rachalski · WG.234 1282
Tihomir N. Rachev · WG.90 1258
Dragos Marian Radulescu · SW91 1161
Alfonso Henríquez Ramírez · SW13 226
Pablo Raúl Bonorino Ramírez · SW13 219
Pablo Raúl Bonorino Ramírez · SW71 919
Pablo Rapetti · SW61 822
Amy Reed-Sandoval · SW79 1008
Nicolas Reina · SW27 436
Isaac Reis · WG.168 1291
Svan Relac · SW37 536
Jenna Renwick & Dwight Newman · SW22 344
Karla Ressler · SW09 155
Caio Gentil Ribeiro · WG.219 1319

Clara Isabel Velasco Rico · SW99 1192
Peter Rijpkema · WG.206 1239
Juan Carlos Riofrio · SW02 68
Juan Carlos Riofrio · SW03 97
Nicola Riva · SW46 665
Manuel Rodeiro · WG.9 1353
Ángeles Ródenas · SW10 168
Tikumporn Rodkhunmuang · WG.25 1222
Marcin Romanowicz · SW31 477
Olga Rosenkranzová · SW44 637
Olga Rosenkranzová · SW44 646
Jaime Rosero · SW54 740
Lara Jiménez de Parga Rosety · SW04 116
Nicole Roughan · SW05 128
Sebastián Figueroa Rubio · SW56 763
Ramón Ruiz Ruiz · SW11 185
Encarnación Fernández Ruiz-Gálvez · SW88 1135
Michał Rupniewski · SW22 348
Michał Rupniewski · SW78 991
Jan Rykojć & Daria Byczko · SW49 701
Patrick Rysiew & Cindy Holder · SW27 433
Mikołaj Ryśkiewicz · SW84 1070
Mikołaj Ryśkiewicz · WG.50 1438
Wojciech Rzepiński · SW63 846

S

Mariana Oliveira de Sá · WG.245 1229
Maria Sagmeister · SW11 187
Maria Sagmeister · SW82 1047
Yılmaz Şahin · SW54 734
Tetsu Sakurai · SW75 965
João Inês Salazar · SW71 921
Tina Salerno & Silvio Russo · SW87 1117
María José García Salgado · SW04 118
Frank Saliger · SW40 576
Alex Saltout · SW11 184
Andrés Santacoloma Santacoloma · SW40 593

José-Antonio Santos · SW88 1139
Rika Sasaki · SW29 444
Diogo Campos Sasdelli · SW52 706
Diogo Campos Sasdelli · SW67 883
Nataliia Satokhina · SW93 1171
Vanja-Ivan Savić · SW09 159
Burak Saygılı · WG.165 1233
Gizem Gözübüyük Sayım · SW97 1187
María Gabriela Scataglini · SW37 530
María Gabriela Scataglini · SW56 766
Sofia Michelle Schaff · WG.290 1496
Bilge Bingöl Schrijer · SW55 755
Aaron Schultz · SW17 280
André Schutten · SW22 345
Ana Colomer Segura · SW88 1134
Mortimer Sellers · SW24 399
Selvi Müleyke Şen & Yusuf Enes Karataş · SW54 732
María Díaz Senet · SW10 181
Cesar Serbena · SW52 712
Alessandro Serpe · SW60 813
Victoria Iturralde Sesma · SW13 228
Michael Sevel · SW05 131
Merve Sena Sevindik · SW47 679
Neslihan Özeler Sezici · WG.187 1380
Yahya A. Sharif · WG.26 1457
Wenke Shen · WG.137 1373
Jan-Reinard Sieckmann · SW05 124
Jan-Reinard Sieckmann · SW53 727
Hülya Şimga · SW97 1180
Emre Şimşek · SW71 917
Shilpi Singh & Satya Prasoon · WG.122 1363
Theodoros Skalidakis · WG.2 1334
Jacob Skelhorn-French · SW79 1015
Paweł Skuczyński · SW80 1035
Karolina Śliwecka, Wojciech Ciszewski & Maciej Próchnicki · SW46 669
Sara Smyczek · SW85 1089
Raphael de Souza Lage Santoro Soares · WG.69 1387

Marta Soniewicka · SW31 473
Silvia Soriano · SW10 171
Carlos Isler Soto · SW03 98
Nikki Souris · SW27 430
Pavlos Sourlas · SW40 578
Jorge Vinícius Salatino de Souza · SW39 568
Rubin Assis da Silveira Souza · WG.58 1223
Torben Spaak · SW18 283
Torben Spaak · SW21 315
Bojan Spaić · SW34 504
Bojan Spaić · SW63 845
Bojan Spaić · SW101 1206
Horacio Spector · SW18 298
Samantha Springer · SW65 858
Alexander Stachurski · SW62 831
Alexandru Ștefănescu · SW91 1164
Francesco Stocchi · WG.225 1426
Barry Stocker · WG.249 1349
Elisa Stracqualursi · SW19 302
Antonia Stummvoll · SW04 104
Antonia Stummvoll · SW65 857
Nikos Stylianidis · SW48 684
Po-Jung Su · SW05 119
Zeynep Suluç · WG.114 1269
Nisa Sunca · SW95 1172
Sigurrós Alice Svöfudóttir · SW79 1026
Dániel G. Szabó · WG.22 1436
Piotr Szczekocki · SW87 1119
Antal Szerletics · WG.130 1372

T

Shinichi Tabata · SW47 678
Hirohide Takikawa · SW47 677
Zhiwei Tang · SW40 588
Marcelo Thompson · SW19 304
Christian Thönnes · SW61 824
Christian Thönnes · SW86 1095

Christian Thönnes · SW87 1121
Katrín Pálmadóttir Þorgerðardóttir & Gyða Margrét Pétursdóttir · SW29 448
Maris Köpcke Tinturé · SW21 317
Sara Todeschini · WG.145 1445
Serena Tomasi · SW71 930
Dmitrii Tonkov · SW36 516
Evgenii Tonkov · SW36 513
Denitza Toptchiyska · SW02 69
Denitza Toptchiyska · SW24 374
Elif Topuz · SW76 971
Mariano C. Melero de la Torre · SW38 540
Mariano C. Melero de la Torre · SW62 833
Zoltán J. Tóth · SW41 597
Alexandre Travessoni Gomes Trivisonno · SW53 728
Alexandre Travessoni Gomes Trivisonno · SW86 1092
Giordana Truscelli · SW88 1142
Ivana Tucak · SW24 385
Kıvılcım Turanlı · SW45 649
Ahmet Ulvi Türkbağ · SW03 87
Ahmet Ulvi Türkbağ · SW74 945
Gözde Türkeli · SW66 876
Jan Turlej · SW79 1016
Giovanni Tuzet · SW34 512
Giovanni Tuzet · SW63 842

U

Michele Ubertone · SW34 506
Koga Ueda · WG.188 1304
Fatma Süzgün Şahin Ünver · SW55 753
Fatma Süzgün Şahin Ünver · SW89 1147
Serdar Ünver · SW55 750
Serdar Ünver · SW74 959
Serdar Ünver · SW89 1148
Serdar Ünver · SW105 1217
Damla Ustaoğlu · SW89 1153

V

Fernando de Arnaiz Valdivia · SW88 1130

Álvaro Núñez Vaquero · SW18 293
Álvaro Núñez Vaquero · SW30 456
Álvaro Núñez Vaquero · SW32 492
Jorge Mena Vázquez · WG.228 1274
Annalisa Verza · WG.291 1498
Horacio-José Alonso Vidal · SW10 175
Horacio-José Alonso Vidal · SW32 497
Osmar Fernando Camacho Vizcaya · WG.147 1341
Stijn Voogt · SW05 132
Stijn Voogt · SW80 1033
Vasilis Voutsakis · SW66 878
Emmanuel Voyiakis · SW57 771
Dragica Vujadinović · SW101 1196

W

Saori Wada · WG.239 1483
Linghao Wang · SW43 627
Yubo Wang · SW43 628
Yubo Wang · WG.5 1335
Yuqing Wang · WG.61 1326
Tomasz Widłak · SW87 1123
Michał Wieczorkowski · SW63 837
Jan Winczorek · SW80 1037
Katarzyna Wiśniewska · SW09 161
Bartosz Wojciechowski · SW78 1003
Mateusz Wojtanowski · SW74 950
Jenna Woodrow · SW81 1040
Marcin Woźny · SW84 1067
Jingjing Wu · WG.108 1361

Y

José Ángel Camisón Yagüe · SW10 178
Cevat Can Yalı & Bengisu Mert · WG.258 1520
Yachiko Yamada · SW58 789
Yachiko Yamada · SW87 1125
Nobuaki Yamamoto · WG.186 1378
Bei Yang · WG.248 1348
Kaiyuan Yang · WG.212 1384

Eda Yıldız · SW73 943
Muhammed Emin Yıldız · SW73 941
Elaine Yim · WG.107 1477
Hyunkyung Yim · WG.298 1322
Ye Yizhou · SW86 1091
Tatsuya Yokohama · SW75 969
Masato Yoshihara · WG.110 1261
Andy Yu · SW15 251
Ülker Yükselbaba · SW85 1082
Jin-Sook Yun · SW24 388
Tarek Yusari · WG.288 1284

Z

Dominik Zając · WG.260 1283
Monika Zalewska · SW21 330
Wojciech Załuski · SW60 808
Wojciech Załuski · SW66 879
Przemysław Zawadzki · SW83 1060
Yquem Zberg · SW65 869
Tadeusz Zbiegień · SW58 785
Ana Zdravković · SW101 1201
Ana Zdravković & Bojan Spaić · SW61 820
Mateusz Zeifert · SW18 297
Nicola Zetti · WG.208 1278
Matija Žgur · SW30 466
Matija Žgur · SW69 900
Xiaobo Zhai · SW43 630
Fengming Zhang · SW43 632
Tu Zhang · SW43 633
Waner Zhang · WG.48 1356
Bing Zhao · WG.66 1386
Yu Zhou · SW46 675
Yu Zhou · WG.185 1365
Yueli Zhu · WG.222 1507
David Martínez Zorrilla · SW37 529
Silvia Zorzetto · SW37 538
Sabrina Zucca-Soest · SW40 586

Hans de Zwart · WG.300 1329
Kamil Zyzik-Dobielski · SW16 272
Kamil Zyzik-Dobielski · SW78 996

IVR 32. World Congress 2026

KADIR HAS UNIVERSITY · ISTANBUL · 28 JUNE – 3 JULY 2026

Main Hall / Plenary · Special Workshops (SW) · Working Groups (WG · Chair)

Sunday 28 June

13:00 MAIN **Registration** KADIR HAS UNIVERSITY

Monday 29 June

08:00 MAIN **Registration** KADIR HAS UNIVERSITY

09:30 MAIN **Opening Ceremony** MAIN HALL

10:00 SW

SW87 Invisible Decision-Maker in the Crisis of Legal Practice: Courts and ADR in the Age of Information Society · B211

10:10 MAIN **Opening Plenary Session: How Capitalism Undermines Freedom** *Moderator: Matthias Mahlmann · Speaker: Lea Ypi* MAIN HALL

11:45 MAIN **Plenary Session: Silencing, Counter-Communities, and Kinds of Activism** *Moderator: Harun Tepe · Speaker: José Maria Medina* MAIN HALL

14:00 MAIN **Round Table — Law and War** *Dimitrios Kyritsis · Isabel Trujillo · Konstantinos Papageorgiou · Stephan Kirste* MAIN HALL

SW **SW01** Legal Theory Education: Building Bridges into the Future · B522

SW02 The Right to Dialogue as a Human Right of the Digital Age. Consequences for Freedom of Expression, IP, and AI&IT Law, and Political Dialogue · B311

SW03 Natural Law Tradition: The Normative Force of Nature · B212

SW08 Who is Heard, Believed, and Understood? Epistemic Injustices in Legal Adjudication · B302

SW10 Current Challenges for Fundamental Rights and Public Policies · B501

SW14 Argumentación Jurídica, Razonamiento Probatorio y Administración de Justicia en el contexto chileno · B516

SW18 Categories of Norms · B202 **SW21** The Validity of Law Normativity, Effectiveness, and Legitimacy · B312

SW22 First Freedoms Under Fire · B409

SW24 On Mahlmann's Mind and Rights: Critical Reflections and Considerations · B401

SW28 Proportionality in Human Rights Adjudication. Challenges in the Changing Legal Landscape · B202.1

SW37 Conflicts Between Norms: Identification, Typology and Resolution · B502

SW40 Aktuelle Probleme juristischer Argumentationstheorie und -praxis · B410

SW46 Sex between Law and Morality · B303 **SW47** Democratic Authority and Its Boundaries · B302.1

SW57 Inferentialism in the Legal Domain · B503

SW58 Experimental Jurisprudence of Legal Interpretation: Empirical and Theoretical Perspectives on Understanding and Applying Legal Rules · B301

SW60 Egalitarianism and Its Discontents: Exploring Ambivalent Outcomes of Equaiity-Oriented Policies · B218

SW62 Emerging Political Rights: From Theoretical Foundations to Judicial Recognition · B210

SW64 Human Dignity: Concept and Conceptions · B402

SW65 Artificial Intelligence and Challenges to the Rule of Law · B223

SW74 Freedom of Expression of Academics under Conditions of Culture Wars · B203

SW75 Normative Address and Legal Subjectivity:Who Are Legal Norms For? · B201.1

SW88 Intergenerational Justice and the Right to the Future: Reflections from the Legal-Philosophical Thought of Jesús Ballesteros · B211

SW91 Justice, Community and Freedom in Artificial Intelligence Era · B518

14:00 – 18:00

WG **International Law & Gender · B201 Chair: Isabel Lifante** **Rule of Law I · D103 Chair: Joan McGregor**

AI & Digital Governance I · D104 Chair: Yılmaz Şahin · Moderator: Selvi Müleyke Şen

Classical & Historical I · D107 Chair: Berfin Kart Tepe **Human Rights · D112 Chair: Hülya Şimga**

Criminal Justice I · D113 Chair: Emre Şimşek **Legal Reasoning I · D119 Chair: Özge Yücel Dericiler**

16:00

MAIN **Guided Tour** REZAN HAS MUSEUM

16:15

MAIN **IVR Book Prize · Alexander Green: Statehood as Political Community: International Law and the Emergence of New States** *Moderator: Mortimer Sellers* MAIN HALL

16:30

SW **SW01** Legal Theory Education: Building Bridges into the Future · B522

SW03 Natural Law Tradition: The Normative Force of Nature · B212

SW06 Multidimensionality, Intersectionality and Internormativity · B202.1

SW10 Current Challenges for Fundamental Rights and Public Policies · B501 **SW18** Categories of Norms · B202

SW21 The Validity of Law Normativity, Effectiveness, and Legitimacy · B312

SW22 First Freedoms Under Fire · B409 **SW26** Collective Intentions in Law and Legal Reasoning · B210

SW29 Care and Relational Autonomy at the Intersection of Vulnerability and Law · B402

SW34 The Values of Legal Testimony. Epistemology and Morality of Testimonial Evidence · B302.1 / B501

SW37 Conflicts Between Norms: Identification, Typology and Resolution · B502

SW40 Aktuelle Probleme juristischer Argumentationstheorie und -praxis · B410

SW46 Sex between Law and Morality · B303 **SW50** Philosophical Pragmatism in Legal Theory · B503

SW58 Experimental Jurisprudence of Legal Interpretation: Empirical and Theoretical Perspectives on Understanding and Applying Legal Rules · B301

SW60 Egalitarianism and Its Discontents: Exploring Ambivalent Outcomes of Equaiity-Oriented Policies · B218

SW61 Contemporary Challenges to Authority · B311

SW63 Getting it Wrong: On Fallacies, Errors & Mistakes in Law and Legal Theories · B223 / B518

SW65 Artificial Intelligence and Challenges to the Rule of Law · B223

SW67 Third International Workshop on Gender Issues in Philosophy of Law and Legal Reasoning (GePhiL2026) · B516

SW68 Argumentation, Constitutionalism, and Rights: Concepts, Foundations, and Practice · B302

SW74 Freedom of Expression of Academics under Conditions of Culture Wars · B203

SW75 Normative Address and Legal Subjectivity:Who Are Legal Norms For? · B201.1

Tuesday 30 June

08:00

MAIN **Registration** KADIR HAS UNIVERSITY

09:30 MAIN **Plenary Session: Reclaiming Subjectivity in Legal Argumentation** *Moderator: Amalia Amaya Navarro · Speaker: Claudio Michelon* MAIN HALL

11:00 MAIN **Plenary Session: Law as Mediation+** *Moderator: Konstantinos Papageorgiou · Speaker: Dietmar von der Pfordten* MAIN HALL

MAIN **Guided Tour** REZAN HAS MUSEUM

12:30 MAIN **IVR Encyclopedia** CINEMA HALL B

13:00 MAIN **Special Lecture: Covid as State of Exception: How Our Institutions Failed Us** *Moderator: Imer Flores · Speaker: Stephen Macedo* MAIN HALL

14:00 MAIN **Round Table on Analytical Legal Philosophy** *Moderator: Tomasz Gizbert-Studnicki · Speakers: Brian Bix, Veronica Rodriguez-Blanco* MAIN HALL

SW **SW03** Natural Law Tradition: The Normative Force of Nature · B212

SW05 A Rightful Condition for Legalities · B522

SW11 Democracy, Free Speech, Disinformation and Digital Literacy · B312

SW15 Conceptualising the Demise of Law · B202.1 **SW18** Categories of Norms · B202

SW21 The Validity of Law Normativity, Effectiveness, and Legitimacy · B312

SW22 First Freedoms Under Fire · B409

SW24 On Mahlmann's Mind and Rights: Critical Reflections and Considerations · B401

SW29 Care and Relational Autonomy at the Intersection of Vulnerability and Law · B402

SW31 Finality and Normative Order: Apocalyptic Imaginaries in Law, Politics and Ethics · B302

SW38 Vulnerability, Autonomy, and the Ecological Crisis: Debates on Rights and Legal Subjects · B302.1

SW40 Aktuelle Probleme juristischer Argumentationstheorie und -praxis · B410

SW45 Normativity, Normalcy, and Law: Critical Legal Perspectives on the Production of the 'Normal' · B210

SW48 Legality, Legitimacy and the Moral Purpose of the Constitution · B516

SW52 From Leibniz to the Digital Age: Logic, Law, and the Future of Legal Thought · B501

SW54 Understanding Law in a Changing World: Continuing William Twining's Project · B201.1

SW61 Contemporary Challenges to Authority · B311

SW66 Positive Freedom, Democracy, Republic and the Law · B503

SW70 IVR Central Asia Regional Branch Special Workshop – Nature of Law and Legal Reality · B303

SW78 Narrative Rationality, Identity and Law · B518

SW79 Non-ideal Approaches in Migration Ethics: Movement, Membership, and Asylum in the Contemporary World · B211 / B203

SW81 Law and Colonialism: Epistemology, In/justice, Oppression and Emancipation · B502

14:00 18:00 WG **International Law · B201 Chair: Berfin Kart Tepe** **Rule of Law II · D103 Chair: Fatma Süzgün Şahin** **AI & Digital Governance II · D104 Chair: Olcay Karacan** **Classical & Historical II · D107 Chair: Damla Alver** **Gender & Climate · D112 Chair: Harun Bodur** **Legal Subjectivity · D113 Chair: Harun Tepe** **Legal Reasoning II · D119 Chair: Serdar Ünver**

16:00 MAIN **Guided Tour** REZAN HAS MUSEUM

16:15 MAIN **Round Table on Legal Philosophy in Türkiye** *Sevtap Metin · Altan Heper · Oktay Uygun · Kasım Akbaş* MAIN HALL

16:30

SW **SW03** Natural Law Tradition: The Normative Force of Nature · B212

SW09 The Expressive Function of Law · B201.1

SW11 Democracy, Free Speech, Disinformation and Digital Literacy · B312

SW15 Conceptualising the Demise of Law · B202.1 **SW18** Categories of Norms · B202

SW21 The Validity of Law Normativity, Effectiveness, and Legitimacy · B312

SW22 First Freedoms Under Fire · B409

SW24 On Mahlmann's Mind and Rights: Critical Reflections and Considerations · B401

SW25 What Fits Inside My Father's Suitcase: Memory and Oblivion in the Work of Orhan Pamuk · B301

SW31 Finality and Normative Order: Apocalyptic Imaginaries in Law, Politics and Ethics · B302

SW36 Prospects for Legal Realism · B302.1 **SW39** Law as Communication · B311

SW40 Aktuelle Probleme juristischer Argumentationstheorie und -praxis · B410

SW45 Normativity, Normalcy, and Law: Critical Legal Perspectives on the Production of the 'Normal' · B210

SW48 Legality, Legitimacy and the Moral Purpose of the Constitution · B516

SW52 From Leibniz to the Digital Age: Logic, Law, and the Future of Legal Thought · B501

SW59 Justice and Mobility: Access, Rights, and Barriers · B402

SW71 Visual Regimes, Evidentiary Seeing, and Post-Textual Legal Practices · B223

SW72 Interdisciplinary Approaches on Toleration as a Border Concept in Law · B301

SW79 Non-ideal Approaches in Migration Ethics: Movement, Membership, and Asylum in the Contemporary World · B211 / B203

SW81 Law and Colonialism: Epistemology, In/justice, Oppression and Emancipation · B502

SW93 Crisis of Normativity and Experience of Law · B303

SW94 Revisiting the Normative Foundations of Liberal Democracy: A Legal and Constitutional Perspective · B218

SW99 Jurisprudencia Deliberativa e Inteligencia Artificial: Precedentes y IA Pública - Deliberative Jurisprudence and Artificial Intelligence: Precedents and Public AI · B522

Wednesday 1 July

All day

SW **SW92** The 25th Anniversary of Publication of Zenon Bankowski's Living Lawfully

10:00

MAIN **Excursion: Pearls of the Bosphorus** BOSPHORUS

Thursday 2 July

09:00

SW

SW79 Non-ideal Approaches in Migration Ethics: Movement, Membership, and Asylum in the Contemporary World · B211 / B203

09:30

MAIN **Plenary Session: Rule of Law Sensibility** *Moderator: Martin Krygier · Speaker: Sanne Taekema* MAIN HALL

11:00

MAIN **Plenary Session: Must the Human be Displaced in Legal Thought** *Moderator: George Pavlakos · Speaker: Roger Cotterrell* MAIN HALL

MAIN **Guided Tour** REZAN HAS MUSEUM

13:00 MAIN **Book Presentation · Jon Penney: Chilling Effects: Repression, Conformity, and Power in the Digital Age** CINEMA HALL A

14:00 MAIN **Presidency Panel on AI and Law** *Jin-Sook Yun · Klaus Günther · Matthias Mahlmann · Ahmet Ulvi Türkbağ* MAIN HALL

SW **SW03** Natural Law Tradition: The Normative Force of Nature · B212

SW04 Crisis or End? The Uncertain Future of Law in the Age of Artificial Intelligence · B409

SW05 A Rightful Condition for Legalities · B522 **SW09** The Expressive Function of Law · B201.1

SW13 The Performative Dimension of Legal Reasoning · B401

SW16 Legal Discourse and the Notion of Crisis · B203 **SW18** Categories of Norms · B202

SW23 Aristotle and Law in the Face of the Changing Problems of the World (Practical Reason, Justice, and Law in Times of Crisis) · B502

SW27 Institutions and Virtues Necessary for Democracy · B518 **SW30** Soft Law: At the Limits of Law · B312

SW38 Vulnerability, Autonomy, and the Ecological Crisis: Debates on Rights and Legal Subjects · B302.1

SW39 Law as Communication · B311

SW41 Divergent Paths : Navigating Methodological Specificities in Modern Jurisprudence (CEENJ Work in Progress) · B202.1

SW42 Law Observed: Sociological Methods and Empirical Research on Law · B302

SW43 Special Workshop on Martin Krygier's Tempering Power: Beyond the Rule of Law · B303

SW55 Human Rights and Legal Culture: The Dialectic of Value, Norm, and Praxis · B501

SW56 Normative Pragmatism and Rule-following in Law · B516

SW63 Getting it Wrong: On Fallacies, Errors & Mistakes in Law and Legal Theories · B223 / B518

SW73 Courts, Law and Politics:Conflict, Drift, and Institutional Change · B410

SW76 Liability: Problem of Attributing Responsibility · B301 **SW83** Punishment Beyond the State · B218

SW84 Conceptual Engineering and Legal Discourse: New Methods of Concept Evaluation · B211

SW100 In Memoriam Fred Schauer · B503

14:00 – **18:00** WG **Private and Economic Law · B201 Chair: Nathalia Satokhina**

Rule of Law III · D103 Chair: Eylem Ümit Atılgan **AI & Digital Governance III · D104 Chair: Berfin Kart Tepe**

Democracy & Public Power · D107 Chair: Zeynep İspir **Climate · D112 Chair: Harun Tepe**

Ethics Religion & Criminal Justice · D113 Chair: Reyda Ergün

Legal Reasoning III · D119 Chair: Gökçe Çataloluk

16:00 MAIN **Guided Tour** REZAN HAS MUSEUM

16:15 MAIN **Round Table on Luigi Ferrajoli's Project for a Constitution of the Earth** *Luigi Ferrajoli · Pierluigi Chiassoni · Javier Miranda · Lova Randriatavy · Hajime Yamamoto · Flavia Carbonell* MAIN HALL

16:30 SW **SW03** Natural Law Tradition: The Normative Force of Nature · B212

SW04 Crisis or End? The Uncertain Future of Law in the Age of Artificial Intelligence · B409

SW05 A Rightful Condition for Legalities · B522

SW07 God's Sovereignty, Territorial Disputes and Multidimensionality · B302.1

SW13 The Performative Dimension of Legal Reasoning · B401

SW16 Legal Discourse and the Notion of Crisis · B203

SW17 New Issues on Law and Philosophy of Affirmative Action · B402 **SW18** Categories of Norms · B202

SW19 Should the Law Save Us from Ourselves? The Role of Law in the Face of New and Old Vulnerabilities Elicited by AI Technology · B210

SW23 Aristotle and Law in the Face of the Changing Problems of the World (Practical Reason, Justice, and Law in Times of Crisis) · B502

SW27 Institutions and Virtues Necessary for Democracy · B518 SW30 Soft Law: At the Limits of Law · B312

SW34 The Values of Legal Testimony. Epistemology and Morality of Testimonial Evidence · B302.1 / B501

SW39 Law as Communication · B311

SW44 Posthuman Jurisprudence : From Neoplatonic Ascent to Posthuman Entanglement · B201.1

SW53 Law's Ideal Dimension. Robert Alexy's Philosophy of Law · B302

SW56 Normative Pragmatism and Rule-following in Law · B516

SW71 Visual Regimes, Evidentiary Seeing, and Post-Textual Legal Practices · B223

SW80 The Politicisation of the Rule of Law: Between Resilience and Adaptation. Philosophical and Sociological Perspectives · B301

SW82 Constitutional Interpretation in Times of Crisis - On the Relationship between Methods of Interpretation and Constitutional Theory · B211

SW83 Punishment Beyond the State · B218 SW104 Ethics, AI, and Criminal Justice · B202.1

18:00 MAIN **Gender and Law Meeting** KADIR HAS UNIVERSITY RESEARCH CENTERS BUILDING

Friday 3 July

09:30 MAIN **Plenary Session: Constitutional Democracies Under Pressure: Autocracy, Populism and Unlimited Government** *Moderator: Ozan Ergüden · Speaker: Imer Flores* MAIN HALL

11:00 MAIN **Plenary Session: Close to Savage Thought: The Future of Human Rights** *Moderator: Stephan Kirste · Speaker: Juliana Neuenschwander Magalhães* MAIN HALL

14:00 MAIN **Round Table on the Work of Professor Jerzy Wróblewski on the 100th Anniversary of his Birth and the Influence of his Thought on European Legal Theory** *Moderator: Zenon Bańkowski · Speakers: Marek Zirk-Sadowski, Bartosz Wojciechowski, José Manuel Aroso Linhares* MAIN HALL

MAIN **: Universal Human Rights in a Culturally Pluralistic World** CINEMA HALL B

SW SW03 Natural Law Tradition: The Normative Force of Nature · B212

SW05 A Rightful Condition for Legalities · B522

SW12 Law and Ethics of Neuroscience and Emerging Neurotechnologies · B312

SW13 The Performative Dimension of Legal Reasoning · B401 SW18 Categories of Norms · B202

SW32 Social Epistemology and Law · B501 SW39 Law as Communication · B311

SW43 Special Workshop on Martin Krygier's Tempering Power: Beyond the Rule of Law · B303

SW49 Fictions in Legal Theory and Practice · B409

SW53 Law's Ideal Dimension. Robert Alexy's Philosophy of Law · B302

SW57 Inferentialism in the Legal Domain · B503

SW69 Legality, Decision-Making Contexts, and Institutional Design · B302.1

SW85 Technology and Law: The Changing Nature of Law and Legal Institutions Shaped by Technology · B211

SW89 Individuality and Collectivism in Law · B301

SW90 Multilingual Workshop: La enseñanza de la filosofía del derecho en Iberoamérica · B516

SW95 Controlling Bodies, Rights, Labor, and Life: Gender in the Age of War and Authoritarianism · B518

SW97 Issues in the Theory of Justice and Human Rights · B410

	SW101 Gender Perspectives in Law – Springer Book Series Presentation · B202.1 **SW102** New perspectives on Human Rights in the face of new social realities · B402 **SW103** Delegating the Future: Soft Law, Democratic Legitimacy, and the Governance of Artificial Intelligence · B210 **SW105** The Right to Food and Nutrition As a Matter of Justice · B201.1
14:00 18:00	WG **Int. Law and Human Rights · B201 Chair: Şule Şahin Ceylan** **Rule of Law IV · D103 Chair: Wibren van der Burg** **AI & Digital Governance IV · D104 Chair: Stephan Kirste** **Democracy & Public Power · D107 Chair: İrem Akı** **Law & Culture · D112 Chair: Nadire Özdemir** **Criminal Justice II · D113 Chair: Nergis Canefe** **Legal Reasoning IV · D119 Chair: Olcay Karacan**
16:15	MAIN **ARSP Policy, IVR Young Scholar Prize and Closing Ceremony: The Publication Policy of The ARSP** *Annette Brockmöller* MAIN HALL
16:30	SW **SW32** Social Epistemology and Law · B501 **SW39** Law as Communication · B311 **SW43** Special Workshop on Martin Krygier's Tempering Power: Beyond the Rule of Law · B303 **SW86** Proportionality in Challenge · B218
20:00	MAIN **Gala Dinner** HALAT BY DIVAN, RAHMI KOÇ MUSEUM

IVR 2026 ISTANBUL

XXXII WORLD CONGRESS

28 JUNE – 3 JULY 2026
ISTANBUL, TÜRKİYE

IVR 2026 Istanbul, the 32nd World Congress of the International Association for the Philosophy of Law and Social Philosophy, brought together legal and social philosophers from around the world to Kadir Has University from 28 June to 3 July 2026, under the theme *Law in the Face of the Changing Problems of the World*. Shifting international dynamics, wars and hostile borders, persistent inequalities, a deepening ecological crisis and the rapid evolution of artificial intelligence pressed law to rethink its own foundations.



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