

Legal Values, Political Virtues, Ethical Feelings

The Sovereignty of states is widely considered to be the very founding principle of a normative order of international law, as was unequivocally attested to by the *Westphalian Peace* treaty from 1648 that ended the *Thirty Years War* in Europe. From a normative perspective, the sovereignty of states is grounded in the claim of collectives to freely determine the politico-legal, economic and socio-cultural constitution of their respective society without external intervention. In its most precise form so far, this foundational claim of Peoples was cast into international law in the *International Covenant on Civil and Political Rights* and its complement, the *International Covenant on Economic, Social and Cultural Rights*, from 1966. The tension, in which the principles of state sovereignty and self-determination of peoples have ever been argued to stand, was, however, not thereby resolved. For the main part, this tension results from an ongoing academic disagreement – as well as persistent ideological struggles – regarding the appropriate definition of “state”, “nation” and “people”, and the latter’s (legally, politically and philosophically) adequate justificatory relationship with one another. In their attempts at resolving the tension, academics as well as politicians often deploy references to legal values, political virtues and ethical feelings. The contributions to the workshop will, thus, cover the relationship between the sovereignty of states and self-determination of peoples *sensu strictu* from the perspective of international law, philosophy of law, real politics and ethics as well as underlying issues regarding legal values, political virtues and ethical feelings and their proper relationship.

30.11. 2019

09:15-09:30

Welcome: Prof. Dr. Carola Freiin von Villiez

09:30-10:45

Prof. Dr. Tatiana Vargas Maia (History and International Relations, La Salle University, Brazil)

“The Hollow Core of the Contemporary International System: Sovereignty, Nationality and Self-Determination”

10:45-11:00 *Coffee break*

11:00-12:15

Prof. Dr. Carola Freiin von Villiez (Department of Philosophy, University of Bergen)

“National Sovereignty and the Peoples’ Right to Self-Determination: Kant and International Law”

12:15-13:30

Dr. André Santos Campos (Nova School of Social Sciences and Humanities, Portugal)

“Sovereignty and Legitimate Authority: What Lies Beneath Content-Independence”

13:30-14:30 *Lunch*

14:30-15:45

Prof. Dr. Thomas Mertens (Faculty of Law, Radboud University of Nijmegen, Netherlands)

“Legal values in Radbruch's idea of law”

15:45-16:00 *Coffee break*

16:00-17:15

Prof. Dr. Jean-Christophe Merle (Department of Humanities and Cultural Sciences, University of Vechta, Germany)

“Is there anything unforgivable? On forgiveness in morals and politics”

01.12. 2019

09:45-11:00

Prof. Dr. Dag Erik Berg (Faculty of Business Administration and Social Sciences, Molde University College, Norway)

“Dynamics of Caste and Law: Dalits, Oppression and Constitutional Democracy in India”

11:00-11:15 *Coffee break*

11:15-12:00

Mr. Fei Feng (School of Government, Nanjing University, China)

“The Paradigm of Dignity in Antiquity and Modernity: An Investigation in Conceptual History”

12:00-12:45

Mr. César Akim Erives Chaparro (Metropolitan Autonomous University; Mexico)

“The Rawlsian idea of the person: analysis and critique of a concept”

12:45-13:45 *Lunch*

13:45-14:30

Dr. Johannes Servan (Department of Philosophy, University of Bergen, Norway)

“CLIMRES - What responsibility do states have toward climate refugees?”

14:30-15:00

Prof. Dr. Paola De Cuzzani (Department of Philosophy, University of Bergen, Norway)

“The Reason of Passions”

15:00 -15:15 *Coffee break*

15:15-16:00 “The Reason of Passions: discussion of proposal, format, methodology,”

Abstracts:

Prof. Dr. Tatiana Vargas Maia (History and International Relations, La Salle University, Brazil)

“The Hollow Core of the Contemporary International System: Sovereignty, Self-Determination and Nationality”

Popular sovereignty and self-determination are commonly accepted as the core assumptions that ground the legal and political architecture of the contemporary international system. Together, they form a principle of legitimacy upon which the existence of states is predicated, and that determines how the relationships within and between these polities must occur. Despite the fact that the link between these principles seems straightforward at first, neither the concept of popular sovereignty nor the idea of self-determination are freestanding categories - both require a definition of the people, that is, of the group of individuals who can collectively claim autonomy and exercise political authority. Although frequently defined as “the population of a country”, and often used without further concern for theoretical and political explanations, definitions of who the people are, generally, ambiguous and disputed, involving the unsettled debates on the nature of nations and of nationality. In this article, I will explore the triangular relationship articulated among the concepts of popular sovereignty, self-determination and nationality, highlighting its inherent tensions and contradictions. My hypothesis is that because both the principles of popular sovereignty and self-determination depend upon an idea of nation, the lack of a clear definition of what is a nation renders them hollow. The absence of an external objective criteria for the definition of nationality may foment both uncertainty and instability within the contemporary international system. By mapping these issues and internal contradictions of the legal and political structure that underlines contemporary international relations, I will attempt to highlight that such contradictions are particularly relevant in contemporary frameworks that insist on the centrality of the nation as the main political actor in politics, and will suggest that it is necessary to first point at such contradictions to then overcome such centrality in order to deal with the complexities and challenges of the contemporary framework of international law and politics.

Prof. Dr. Carola Freiin von Villiez (Department of Philosophy, University of Bergen)

“National Sovereignty and the Peoples’ Right to Self-Determination: Kant International Law”

According to Kant, states are subject to the same imperative of reason as persons. Their outward acts have to comply with the law or universal rule of right as formulated in the *Doctrine of Right* (RL 6.230f.; cf. RL 6:229f., 350.); they all have to organize their mutual relations by way of law and to establish all institutions necessary for this purpose. Even though the most effective juridification of the international domain on par with the national domain would be a world republic, Kant discards the latter in favour of the idea of a mere defence alliance. An analysis of the general functions of the state in Kant’s writings will lay an adequate basis for identifying the rationale behind his decision against the world republic and sketching a theory-compatible way out of “Kant’s Dilemma” – the establishing of effective international institutions and the simultaneous preservation of national sovereignty. This escape route is grounded in a normative interpretation of national sovereignty in the light of the peoples’ right of self-determination, as two constitutive principles of positive international law, and on the claim that this interpretation is compatible with Kant’s theory of law.

Dr. André Santos Campos (Nova School of Social Sciences and Humanities, Portugal)

“Sovereignty and Legitimate Authority: What Lies Beneath Content-Independence”

There seems to be a common thread connecting the different ways of conceiving of authority. On the one hand, authority involves a relation between someone who provides reasons for action or belief and someone who is supposed to adhere to them because they were issued by that specific author. The relation is therefore unequal insofar as it involves a superior standing on the part of the author. On the other hand, the justification for adherence is the superior standing, that is, authority is a kind of second-order content-independent reason for accepting first-order content-based reasons. This traditional idea of authority as involving a supreme standing has played a pivotal role in framing the issue especially in terms of political authority, where it is understood mainly as a right to rule distinguished from crude violence and from argumentative persuasion. Such a ‘right-to-rule’ interpretation of authority is not really concerned with the nature of authority per se as it is with the grounds supporting a claim-right to obedience. This has led discussions about authority from mere descriptive analyses to normative theories, where authority is approached mainly in terms of its legitimacy. However, if debates about authority tend to become debates about legitimate authority, that is, about what makes a claim to authority morally rightful, this entails that the concept of authority depends upon a sort of third-order content-dependent reason about the second-order content-independent reason. Whether one looks at consent theories, service conceptions, community-based justifications, moral obligations to obey political directives, or at fair cooperation and gratitude theses, the emphasis is no longer on what authority is but on what authority should be. In this talk, I maintain that the third-order reason is sovereignty as a foundational, epistemic and normative concept. This entails a reconfiguration of the available and more widespread conceptions of sovereignty in order to make sense of its characteristics as a third-order reason for a right to rule, especially in the context of global legal pluralism.

Prof. Dr. Thomas Mertens (Faculty of Law, Radboud University of Nijmegen, Netherlands)

“Legal values in Radbruch's idea of law”

In 1946, the German legal philosopher Gustav Radbruch published an article which is now regarded as one of the most important texts in 20th century legal philosophy. It is often said that Radbruch ‘converted’ in this 1946 text from the legal positivism he supposedly defended in his pre-war writings to natural law and that he recommended that the legal profession in Germany should follow him in this because a new, decent, post-war German society could only be built on the acceptance of supra-statutory legal values. It will turn out, however, that things are not as easy as is often defended. Radbruch's article cannot be properly understood without taking the historical context in consideration and without unwrapping his ‘idea of law’.

Prof. Dr. Jean-Christophe Merle (Department of Humanities and Cultural Sciences, University of Vechta, Germany)

“Is there anything unforgivable? On forgiveness in morals and politics”

T.b.a.

Prof. Dr. Dag Erik Berg (Faculty of Business Administration and Social Sciences, Molde University College, Norway)

“Dynamics of Caste and Law: Dalits, Oppression and Constitutional Democracy in India”

Dynamics of Caste and Law breaks new ground in understanding how caste and law relate in India's democratic order. Caste has become a visible phenomenon often associated with discrimination, inequality and politics in India and globally. India's constitutional democracy has had a remarkable goal of creating equality in a context of caste. Despite constitutional promises with equal opportunities for the lower castes and outlawing of untouchability at the time of independence, recurring atrocities and inadequate implementation of law have called for rethinking and legal change. This book sheds new light on why caste oppression persists by using new theoretical perspectives as well as Bhimrao Ambedkar's concepts of the caste system. Focusing on struggles among India's Dalits, the castes formerly known as untouchables, the book draws on a rich material and explains, among other things, mechanisms of oppression and how powerful actors may gain influence in institutions of law and state.

Mr. Fei Feng (School of Government, Nanjing University, China)

“The Paradigm of Dignity in Antiquity and Modernity: An Investigation in Conceptual History”

First, the project is dedicated to explicating the traditional paradigm of dignity from antiquity: here, the concept of dignity encompasses competitive and obligatory features. This form of dignity is ascribed only to a few people and is not principally inherent. Thus, it can be lost, defended, redeemed. Secondly, the project is dedicated to explicating the modern paradigm of dignity: here, dignity figures as an attribute of unearned and inherent intrinsic value. How is this paradigm shift in dignity possible? The author believes that the modern version of dignity subverts the traditional hierarchical dignity structure by introducing Bourgeois-unique dignity qualities, for which Kant supplies the final proof on the philosophical level. Finally, the project is dedicated to the attempt of constructing a theory of value in accordance with the idea of intersubjectivity from phenomenology as a foundation for the modern version of dignity as an intrinsic value.

Mr. César Akim Erives Chaparro (Metropolitan Autonomous University; Mexico)

“The Rawlsian idea of the person: analysis and critique of a concept”

In this paper I aim to review thoroughly the concept of ‘person’ in the philosophy of John Rawls; especially in his early works and particularly in *A theory of justice*. With this effort I expect to bring together a view of the Rawlsian person that I think has been unjustly left out: The second “moment” of the person. By this, I imply all the work that Rawls put into constructing an idea of the person that would be compatible with his theory of justice and with a plausible conception of human nature, once the original position has finished and the principles of justice have been established. In order to do this, Rawls gathered some empirical work from the developmental psychology and constructed a person aware of her own identity and of the fact of her living in a society founded in a system of social cooperation.

The closeness of the Rawlsian theory with the psychological theories of moral development gives us a very interesting framework in which we could continue working with the normative implications that Rawls puts on the table with the descriptive characteristics brought by the psychological studies of human development. Both combined could become a rich topic of

interest for Moral Psychology, in which the normative and the descriptive are equally important in the studies of human behavior.

One of the possible critiques that one could have about the Rawlsian idea of the person is its individualistic viewpoint. Nonetheless, there is some interest and awareness in the moral development of the person in the fact of one being emotionally and morally attached to the society in which one has been brought up in. Regardless, I think there is room for more work to be done in this matter.

In the conclusion, two ways could be opened in order to continue with this research topic: one in which the inquisition would be directed towards the continuation of a theoretical reflection, trying to balance this new view of the person with the challenges that come with it (one of them proposed by Robert Nozick and the stability of the justice as fairness if the original position was to be made again with the parts fully aware of their particular condition). The second one, on the other hand, and quite different, would be an attempt to bring these findings about the ideal moral development of a person into the empirical world, trying to contrast what it *is* with what it *ought to be*. Either way, I think, would be an interesting application of what has been learned through this research topic.

Dr. Johannes Servan (Department of Philosophy, University of Bergen, Norway)

“CLIMRES - What responsibility do states have toward climate refugees?”

Faced with the damaging consequences of climate change, humanity need to rethink and renegotiate its conception of global responsibility. As Greta Thunberg timely put it: we ought to panic. Although fear is not always a good companion of careful thinking, this project will make a contribution to this daunting task of rethinking global responsibility in relation to climate refugees. More specifically it aims to bring the literature on climate justice and ethics of migration into dialogue through a philosophical study of the applied concepts of responsibility. Although the topic of climate-induced displacement has been put on the public agenda, there has been less dialogue between these philosophical debates than one could expect.

This project aims to initiate such a dialogue through three main steps and objectives:

- To map out and scrutinize the extensive debates on responsibility and models of responsibility-sharing in the literature on climate justice and ethics of migration
- To develop a set of theoretically promising concepts adapted to the issue of climate refugees
- To assess and improve the policy-relevance of these concepts in the international negotiations on state-to-state responsibility-sharing

Given that there is practically no legal protection in international law for the climate-induced displaced, improved concepts of global responsibility that are able to account for the case of climate refugees could yield valuable guidelines to the implementation of more just international responses. More specifically, in light of the current knowledge on climate changes, clarified concepts of responsibility could help us seek realistic agreements on responsibility-sharing and to implement incentives for risk-avoiding behavior of civic and public agents.

Prof. Dr. Paola De Cuzzani (Department of Philosophy, University of Bergen, Norway)

“The Reason of Passions”

The purpose of this project is to study the normative and empirical relationship between rationality and emotions, with regard to the part it actually plays in politics. In many ways, politics is the art of persuasion, and too often reasonable arguments can only persuade people to a limited extent. Within the political landscape, past and present, one can in fact find a complex mixture of rational arguments and emotional discourses, while various models of rationality and emotions are confronted with each other in the theoretical realm. In his scholarly work *The Passions and the Interests* (1977), Albert Hirschman described how the process of modernization transformed the “passions” motivating social and political behaviour into modern “interests”, assigning them the role of containing the socially and politically destructive passions.

Until recently, theorists had described both political movements and political belonging as based on beliefs, ethics, and sentiment. Exploring the changing ways in which thought and feeling, rationality and passion, reason and sentiments have been understood in politics from the perspective of both the history of ideas and contemporary normative theory (moral, legal and political), the project seeks to answer questions such as: Do emotions, of any kind, pose a dangerous threat to rationality and political life? What becomes of democracy when a rigorous and rational language is replaced by one focused on emotions, hope or fear in political debates? Is it possible to construct a democratic society without political passions, mutual trust and a belief in the right of every individual to participate in the social and political debates? If so what kind of emotions are positive and what kind of emotions hinder this development?