

# Forum Transregionale Studien



Terrace Field in Yunnan, China. Photo: Jialiang Gao, peace-on-earth.org under GFDL/CC-BY-SA-2.5, wikimedia commons.

Transregional Academy  
21—30 Aug 2017  
Berlin

# Redistribution and the Law in an Antagonistic World

Program and Abstracts

# Concept Note

## Redistribution and the Law in an Antagonistic World

Transregional Academy  
21–30 August 2017, Berlin

Many pressing societal challenges of our time – environmental destruction, military violence, mass migration, financial crises – can be described as global conflicts of distribution. They raise questions not only as to how a more equitable distribution – of prosperity, capabilities, participation rights – may be achieved, but also as to how current distribution patterns have been produced and are being reproduced.

Law plays a crucial role in addressing such conflicts: It shall provide procedures for equitable distribution, enforce distributive decisions and embody normative guidance for what is to count as just or equitable distribution – or it is mobilized for resistance against allegedly unjust distributions. Yet, law is not only instrumental in processes of re-distribution.

Law and legal institutions have always already distributed even before conflicts about distribution emerge. Law is constitutive of institutions which fundamentally shape and determine distributions of entitlements and liabilities between individuals, states, regions – think only of the market, money or state sovereignty.

As discontent with societal distribution patterns is rising globally, it is high time that humanities and social sciences – including lawyers – engage in rigorous analysis of the ways in which legal institutions produce winners and losers and the potential for alternative distributions through institutional redesign.

The Transregional Academy is chaired by **Jochen von Bernstorff** (Eberhard Karls University Tübingen), **Philipp Dann** (Humboldt University Berlin), **Isabel Feichtner** (Julius Maximilians University Würzburg), **Arnulf Becker Lorca** (Amherst College), **Surabhi Ranganathan** (University of Cambridge), and **Celine Tan** (University of Warwick).



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# Program Overview

TIME	MON, 21	TUE, 22	WED, 23	THU, 24	FRI, 25	SAT, 26	SUN, 27	MON, 28	TUE, 29	
9:30	A R R I V A L	Introduction	Thematic Discussion Plenary	Thematic Discussion Plenary	Thematic Session 3 Working Spaces	F R E E	S O C I A L  A C T I V I T Y	Thematic Session 4 Working Spaces	Panel Discussion »Urban Spaces«	
11:00		Coffee Break	Coffee Break	Thematic Session 2 Working Spaces	Panel Discussion »Institutional Design«			Coffee Break	Thematic Session 5 Working Spaces	Conference Concluding Plenary
11:30	Thematic Discussion Plenary	Thematic Session 1 Working Spaces	Thematic Session 2 Working Spaces	Panel Discussion »Institutional Design«	Lunch			Lunch	Project Presentations Working Spaces	Farewell Lunch
13:00	Project Presentations Working Spaces	Project Presentations Working Spaces	Project Presentations Working Spaces	Project Presentations Working Spaces				Project Presentations Working Spaces		
14:00	Project Presentations Working Spaces	Project Presentations Working Spaces	Project Presentations Working Spaces	Project Presentations Working Spaces	Project Presentations Working Spaces			Project Presentations Working Spaces	Project Presentations Working Spaces	Project Presentations Working Spaces
16.00					Guided Tour					
19:00	Welcome Dinner		Panel Discussion »Strategic Litigation«		Dinner					

# Program

## Monday, AUG 21

19:00 Welcome Dinner

Venue: Restaurant "Restauration 1840",  
Am Zwirngraben 8, 10178 Berlin

Meeting Point: **18:15** in the lobby of the Hotel  
Motel One - Hackescher Markt, Dircksenstraße 36

## Tuesday, AUG 22

Main Venue: Humboldt University Berlin,  
Faculty of Law, Bebelplatz 2, 10117 Berlin

### 9:30-11:00 Introduction (Room UL9E25)

Jochen von Bernstorff

Philipp Dann

Isabel Feichtner

Arnulf Becker Lorca

Surabhi Ranganathan

Celine Tan

### 11:30-13:00 Thematic Discussion

(in plenary / Room UL9E25)

#### The Mess we are in

Readings: Saskia Sassen, *Expulsions* / Shiv  
Visvanathan, *A Carnival for Science* / Nadine El-  
Enany, Srah Keenan, *Be Careful When You Fight  
Liberals*

Introduction: Céline Tan

13:00-14:00 Lunch

## 14:00-16:00 Project Presentations

Working Space I (Room UL9E25)

#### Siobáhn Airey

(University of Ottawa)

*The Jurisdiction of Development Aid*

Discussant: Anna Matthiesen

#### Necdet Sevimli

(Middle East Technical University Ankara)

*Before the Law: International Organizations, Dis-  
course and the Remaking of State Society Relations  
within Transnationalizations*

Discussant: Dimitri van den Meerssche

Working Space II (Room BE2139a)

#### Robi Rado

(Melbourne Law School)

*Trading in People and Trading in Services: The  
Political Economy of Indians' International Labour  
Mobility, the Development Project and Interna-  
tional Law*

Discussant: Anna Aseeva

#### Ye Zhang

(Harvard University)

*Multi-dimensional Legitimacy: Popular Perceptions  
of the Judicial System in an Era of Inequality*

Discussant: Nafay Choudhury

Working Space III (Room BE2326)

#### Lys Kulamadayil

(Graduate Institute Geneva)

*Welfare Interventions and Rentier States: What  
Role for the Law?*

Discussant: Sebastian Spitra

#### Piotr Uhma

(Krakowska Akademia Andrzeja Frycza  
Modrzewskiego)

*The Principle of Non-intervention in Contemporary  
International Law*

Discussant: Jason Parry

Wednesday, AUG 23

### 9:30-11:00 Thematic Discussion

(in plenary / Room UL9E25)

#### Method in Examining Law's Distributive Effects

Readings: Roberto Mangabeira Unger, *The Critical Legal Studies Movement* / Duncan Kennedy, "The Stakes of Law: Hale and Foucault" / Kate Raworth, *Doughnut Economic*

Introduction: Arnulf Becker Lorca

11:00-11:30 Coffee Break

### 11:30-13:00 Thematic Sessions

Working Space I (Room UL9E25)

#### Conceptualising Development Aid and Development Cooperation

Readings: James Ferguson, *Give A Man A Fish* / Ingrid Kvangraven, *Philanthropy in Development*

Introduction: Philipp Dann, Céline Tan / Comment: Siobhán Airey, Gabriele Wadlig

Working Space II (Room BE2139a)

#### Framing Distributive Utopia in the 1960s

Readings: Arvid Pardo, *Speech to the First Committee of the UN General Assembly* / Garrett Hardin, 'Lifeboat Ethics' / Garrett Hardin, "Living on a Lifeboat"

Introduction: Isabel Feichtner, Surabhi Ranganathan / Comment: Claire Debucquois, Johan Horst

Working Space III (Room BE2326)

#### Empire and International Law

Readings: Carl Schmitt, *Forms of Modern Imperialism* / Michel Senellart, Francois Ewald, Alessandro Fontana (eds.), *Michel Foucault, Security, Territory, Population* / Martti Koskeniemi, "Empire and international law"

Introduction: Jochen von Bernstorff, Arnulf Becker-Lorca / Comment: Elena Cirkovic, Oluwole Coker

13:00-14:00 Lunch

### 14:00-16:00 Project Presentations

Working Space I (Room UL9E25)

#### Johanna del Pilar Cortes-Nieto

(University of Warwick)

*Taming Social and Economic Rights: Austerity in Colombia*

Discussant: Gabriele Wadlig

#### Dimitri van den Meerssche

(EUI Florence)

*The World Bank as an Autonomous Normative Order: Legal Processes of Constitutional Growth*

Discussant: Tugba Karagöz

Working Space II (Room BE2139a)

#### Anna Aseeva

(University of Copenhagen)

*The Role of Transnational Economic Law in the Crisis of the Global Commons*

Discussant: Kaylan Shankar

#### Johan Horst

(Universität Bremen)

*Distributional Effects in the Law of Transnational Financial Markets. The Case of Close-out Netting*

Discussant: Claire Debucquois

Working Space III (Room BE2326)

#### Ximena Sierra-Camargo

(Universidad del Rosario)

*Reshaping the Constitutional State under the Hegemonic Idea of Development as a Form of Intervention, in a Context of 'Global Coloniality': The Case of the Large-scale Gold Mining Law in Colombia*

Discussant: Piotr Uhma



### **Oluwole Coker**

(Obafemi Awolowo University, Nigeria)

*Redistribution as a Metaphor for the Quest for Justice in African Cultural Production*

Discussant: Lys Kulamadayil

## **19:00-20:30 Panel Discussion**

### **Redistribution Through Strategic Litigation**

Miriam Saage Maaß

(Vice Legal Director, ECCHR Berlin)

Ulf Buermeyer

(President of the Society for Civil Rights)

Introduction: Jochen von Bernstorff

## **Thursday, AUG 24**

### **9:30-11:00 Thematic Discussion**

(in plenary / Room UL9E25)

#### **The Role of Law and Lawyers in Distribution and Redistribution**

Readings: David Kennedy, *A World of Struggle* / Robert Knox, *“Strategy and Tactics”* / Patricia Williams, *“Alchemical Notes”*

Introduction: Surabhi Ranganathan

11:00-11:30 Coffee Break

### **11:30-13:00 Thematic Sessions**

Working Space I (Room UL9E25)

#### **Contextualising Aid: The Politics, Law and Economics of Development Cooperation**

Readings: Arturo Escobar, *Encountering Development* / Hans Morgenthau, *“A Political Theory of Foreign Aid”* / Sundhya Pahuja, *Decolonising International Law*

Introduction: Philipp Dann, Céline Tan /

Comment: Siobhán Airey, Anna Matthiesen

Working Space II (Room BE2139a)

#### **A Utopian Project and its Outcome**

Readings: *Declaration of Principles Governing the Sea-Bed and the Ocean Floor* / Surabhi Ranganathan, *Manganese Nodules*

Introduction: Isabel Feichtner, Surabhi Ranganathan / Comment: Mizanur Rahaman, Robi Rado

Working Space III (Room BE2326)

#### **Violence in 19th-Century International Law**

Readings: Carl Schmitt, *“The Turn to the Discriminating Concept of War (1937)”* / Arnulf Becker Lorca, *Mestizo International Law* / Jochen von Bernstorff, *“Violence and International Law before World War I”*

Introduction: Jochen von Bernstorff, Arnulf Becker-Lorca / Comment: Lys Kulamadayil, Jason Parry

13:00 Lunch

### **14:00-16:00 Project Presentations**

Working Space I (Room UL9E25)

#### **Tugba Karagöz**

(Julius Maximilians Universität Würzburg)

*Political Risk as a Developed Country Phenomenon and Foreign Investment Insurance*

Discussant: Necdet Sevimli

#### **Gabriele Wadlig**

(New York University)

*The Formalization of Land Tenure Systems and the Land Rush: A Handmaid's Tale?*

Discussant: Johanna del Pilar Cortes-Nieto

## Working Space II (Room BE2139a)

### **Kaylan Shankar**

(University of Pune, India)

*Can Informal Waste Pickers Have a Legal Right to Waste?*

Discussant: Ye Zhang

### **Nafay Choudhury**

(King's College, UK)

*Law, Development, and Economic Regulation: An Empirical Study of the Operation of Kabul's Premier Money Bazaar*

Discussant: Mizanur Rahaman

## Working Space III (Room BE2326)

### **Elena Cirkovic**

(Boğaziçi Üniversitesi, Istanbul)

*Land Grabs, Liberum Commercium, and Dominium in International Law Today*

Discussant: Ximena Sierra-Camargo

### **Sebastian Spitra**

(Universität Wien)

*Administering Culture in International Law: The Colonial Pedigree of World Cultural Heritage*

Discussant: Oluwole Coker

## Friday, AUG 25

### **9:30-11:00 Thematic Sessions**

## Working Space I (Room UL9E25)

### **Intersections of Law and Development Cooperation**

Readings: Philipp Dann, *The Global Administrative Law* / David Trubek and Alvaro Santos, *Introduction: The Third Moment in Law and Development* / World Bank, World Development Report: *Governance and the Law*

Introduction: Philipp Dann, Céline Tan / Comment: Tugba Karagöz, Johanna del Pilar Cortes-Nieto

## Working Space II (Room BE2139a)

### **Resisting Disenchantment**

Readings: Victor McFarland, *"The New International Economic Order"* / Susan Marks, *"Human Rights and Root Causes"* / B.S. Chimni, *"Third World Approaches"* / Eyal Benvenisti, *"Sovereigns as Trustees"*

Introduction: Isabel Feichtner, Surabhi Ranganathan / Comment: Ye Zhang, Nafay Choudhury

## Working Space III (Room BE2326)

### **Use of Force in Cold War International Law**

Readings: Thomas Franck, *"Who Killed Article 2 (4)?"* / Louis Henkin, *"The reports of the death of Article 2 (4) are greatly exaggerated"*

Introduction: Jochen von Bernstorff, Arnulf Becker-Lorca / Comment: Ximena Sierra-Camargo, Sebastian Spitra

11:00-11:30 Coffee Break

### **11:30-13:00 Panel Discussion**

#### **Redistribution Through Institutional Design**

Brigitte Young

(Prof. em. for Political Sciences and Comparative Economics, Universität Münster)

Yuefen Li

(Special Advisor, Economics and Development Finance, The South Centre, Geneva)

Introduction: Isabel Feichtner and Celine Tan

13:00 Lunch

### **16:00-18:00 Guided Tour**

19:00 Dinner

## Saturday, AUG 26

Free Day

## Sunday, AUG 27

Social Activity

## Monday, AUG 28

### 9:30-11:00 Thematic Sessions

Working Space I (Room UL9E25)

#### **International Development and the (Re) Distribution of Economic and Epistemic Resources**

Readings: Arne Ruckert, *"The Forgotten Dimension of Social Reproduction"* / Susanne Soederberg, *"The Politics of Debt and Development"* / Celine Tan, *Shifting Sands*

Introduction: Philipp Dann, Céline Tan / Comment: Necdet Sevimli, Dimitri van den Meerssche

Working Space II (Room BE2139a)

#### **Theorizing (Re)Distribution**

Readings: Susan Strange, *"What Theory?"* / Roberto Unger, *The Really New Bretton Woods* / Christine Desan, *"Decoding the Design of Money"* / Thomas Piketty, *What Would a Democratic Euro Zone Assembly Look Like?* / Anthea Roberts, *Being Charged by an Elephant*

Introduction: Isabel Feichtner, Surabhi Rangathan / Comment: Anna Aseeva, Kaylan Shankar

Working Space III (Room BE2326)

#### **Empire and International Law Today**

Readings: David Kennedy, *A world of struggle* / Bhupinder S. Chimni, *"International institutions today"*

Introduction: Jochen von Bernstorff, Arnulf Becker-Lorca / Comment: Piotr Uhma, Elena Circovic

11:00-11:30 Coffee Break

### 11:30-13:00 Thematic Sessions

Working Space I (Room UL9E25)

#### **Changing Landscape of Development Cooperation and Emerging Protagonists in Global (Re) Distribution**

Readings: Kathryn Hochstetler, *"Development Banks"* / Lisa Ann Richley and Stefano Ponte, *"New Actors and Alliances in Development"* / Xiaohui Wu, *"Friendly Competition"*

Introduction: Philipp Dann, Céline Tan / Comment: tba

Working Space II (Room BE2139a)

#### **New Techno-Utopian Experiments – or are they?**

Readings: UN Global Pulse, *Big Data for Development* / Vanita Yadav, *Unique Identification Project* / Daniel Soar, *'It knows'* / Fleur Johns, *"The Deluge"*

Introduction: Isabel Feichtner, Surabhi Rangathan / Comment: tba

Working Space III (Room BE2326)

#### **Empire and International Law Today (II)**

Readings: U. Linderfalk, *"The Post-9/11 Discourse Revisited"* / M. Koskenniemi, *"The normative Force of Habit"*

Introduction: Jochen von Bernstorff, Arnulf Becker-Lorca / Comment: tba

13:00-14:00 Lunch

## 14:00-15:00 Project Presentations

### Working Space I (Room UL9E25)

**Anna Matthiesen**

(The New School for Social Research, New York)

*Forging Philanthropic Citizenship: Domestic NGOs and Donors in Serbia*

Discussant: Siobhán Airey

### Working Space II (Room BE2139a)

**Claire Debucquois**

(Columbia Law School)

*Law and Natural Resource Allocation: A Brazilian Perspective*

Discussant: Robi Rado

**Mizanur Rahaman**

(Wolaita Sodo University, Ethiopia)

*Mapping the Spatial Distribution of Power: TRIPs, Mediated Relationality and Resistance*

Discussant: Johan Horst

### Working Space III (Room BE2326)

**Jason Parry**

(Binghamton University)

*Claiming, Reclaiming, Excising Islands: On the Redistribution of Sovereign Territory as Legal and Military Intervention*

Discussant: Elena Cirkovic

Tuesday, AUG 29

## 9:30-11:00 Panel Discussion

(Room UL9E25)

### Political Economy of Urban Spaces

Shalini Randeria

(Prof. for Anthropology and Sociology, Graduate Institute Geneva)

Second Speaker (tba)

Introduction: Philipp Dann

13:00-14:00 Lunch

## 11:30-13:30 Concluding Discussion

(Room UL9E25)

### Utopian Ambitions

Readings: Naomi Klein, *No is not Enough* / Invisible Committee, *To our friends* / Maurizio Lazzarato, *Governing by Debt*

13:30 Farewell Lunch



# Participants and Projects

## Siobhán Airey

From Ireland, Siobhán is completing her PhD in law at the University of Ottawa and will shortly commence an Irish Research Council Marie Skłodowska-Curie Actions Postdoctoral Fellowship (Oct 2017 - Sept 2020), with University College Dublin, Ireland and the Transnational Institute, Amsterdam focusing on the international governance of the financing of the UN's Sustainable Development Goals. Her research engages ideas from law, critical theory, political economy and development theory to examine the evolving role of law and the legal form in modes of global governance of transnational 'projects'. Her research interests include legal theory, law and global governance, law and colonialism, and issues related to financialisation, feminism, the anthropocene and cultural studies. She has been a visiting researcher at the European University Institute, Florence; the School of Regulation and Global Governance, Australia National University, Canberra, the School of Law, University of Dar es Salaam, Dar es Salaam and the College of Business, University College Dublin. She is also an alumni of Harvard Law School's Institute for Global Law and Policy. She is very appreciative of the various fellowships and scholarships awarded in recognition of her research endeavours, and of the community of scholars, friends and her parents that motivate her work. She has an MA in Equality Studies, and an LLM in International Human Rights Law.

## The Jurisdiction of Development Aid

The governance of influential international activities not currently formalised through an international treaty or agreement has been the focus of intense debate in international legal scholarship in recent years.

Motivated by a desire for greater accountability of more powerful actors, attention has focused on how these activities are, and should be governed, and the potential role for law and legal process therein. Drawing from thinking on juridification and on jurisdiction, this project sketches a proposal for an analytical lens that has potential to describe and analyse such international activities in sharper legal terms, thereby making more explicit the legal quality of their existing governance in ways that are currently overlooked by more formalist approaches. The proposal draws together insights from thinking on global governance, on juridification, and on the concept of jurisdiction to analyse the governance of Official Development Assistance (ODA). The transfer of ODA is an influential and sensitive area of international relations that is currently not governed by an international treaty. Its governance has recently been the focus of dedicated scholarly attention from legal, international relations and development studies scholars. This approach seeks to foreground the relationship between power and the legal form, an issue of key concern to critical legal scholars. It aims to deepen our understanding of the relationship between the legal nature of governance instruments, and the politics of the projects that are pursued at the international level through diverse governance instruments and frameworks.

# Anna Aseeva

is currently working at the Centre d'Etudes Juridiques et Politiques (CEJEP), University La Rochelle, and HEC Paris, France. In spring semester 2017, Anna was a visiting researcher at the Centre of Excellence for International Courts, Faculty of Law of the University of Copenhagen, Denmark with a grant of the Danish National Research Foundation, where she has worked on the research topic 'Interface of sustainable development and transnational investment law and arbitration'. Anna holds a degree in International Relations from the Geneva Graduate Institute of International and Development Studies; an MA in European Law and Institutions from the University of Geneva; a Russian Law Degree (J.D. equivalent); and a PhD in Law from the Law School of the Institute of Political Studies, Paris. After the completion of her legal clerkship in Brussels and Russia and obtaining the barrister qualification, Anna continued to work in the fields of European and international economic law, specialising in WTO law and policy, and foreign investment law and policy, with a particular focus on non-economic issues and exceptions. She has worked and consulted for the Swiss and French governments, UNECE, and the Economic, Social and Environmental Council, French Constitutional Consultative Assembly. She is also an alumna of, and regularly presenting at the Institute for Global Law and Policy, Harvard Law School. Anna's most immediate research focus is presently at the interface of transnational trade and investment law and regulation and sustainable development, and the (re)conceptualisation of the commons.

## The Interface of Transnational Investment Law and Arbitration, and Local Participation in Foreign Investment Decisions: Consent of Local Communities as a Potential Game Changer

This project delves into studies and practice of transnational investment law and arbitration ('TILA') relating to local participation.

The bulk of the existing research and most of the jurisprudence of TILA concentrates on the post-establishment phase of an investment, balancing the State's hosting the investment ('host States') right to regulate and foreign investors' property rights. Here, the emphasis is on the doctrinal need and actual cases where the investment tribunals have looked, or otherwise should have looked, at the events leading to the investment and the resulting scope of both state and investor's obligations with regard to local participation. Drawing on numerous 'old-generation' investment arbitration decisions, as well as some recent relevant awards, two crucial and interlinked issues in the perspective of societal costs of an investment are analysed in the project: (i) the situation of local communities; and (ii) the pre-establishment phase of foreign investment. Based on this, a framework of principles and actions should be drawn up to mitigate risks related to inadequate or totally absent local participation. These should comprise generally adequate investor-community negotiations, including for adequate compensation; broader, more open and transparent community engagement among all project parties; the implementation of Free, Prior and Informed Consent ('FPIC') or at least a proper consultation for any foreign investment with a large social impact, and not only for projects related to indigenous land rights; possible involvement and a somewhat adversarial use of 'experts', in the sense of legal and political public consultants and/or NGOs to inform communities participating (or willing or preparing to participate) in investment agreements: i.e. on pros and cons of this agreement for their local welfare, on their rights, etc. Notably, the environmental, social and other impact assessments should not be carried out (or ordered from 'independent' experts) by the same companies that are going to invest, but by mixed committees inclusive of all stakeholders – that is, representatives from the concerned local communities, the investors, the host State, and civil society.

## Arnulf Becker Lorca

is a Visiting Lecturer at the International Relations Program at Brown University. He was a Lecturer at King's College London, a Visiting Assistant Professor of Law, Jurisprudence and Social Thought at Amherst College, and has worked as a consultant in different areas of public international law practice. He received his doctoral degree in law from Harvard Law School. His areas of expertise include public international law, international legal theory, the laws of war and the history of international law. His research examines the global intellectual history of international law, focusing on the role non-Western international lawyers have played in the construction of the international legal order. He has published in various international law journals like, *NYU Journal of International Law & Politics*, the *Oxford Encyclopedia of the History of International Law*, *Journal of the History of International Law*, *Harvard International Law Journal* and the *European Journal of International Law*. His book, *Mestizo International Law: A Global Intellectual History, 1842-1933*, published in 2015 by Cambridge University Press was the winner of the 2016 Book Prize of the European Society of International Law.

## Jochen von Bernstorff

(Prof. Dr. iur.) holds the chair for constitutional law, international law and human rights at the Eberhard Karls University Tübingen (since 2011) and taught international law as a visiting professor at the German Federal Foreign Office Academy Berlin, Université Aix-Marseille and National Taiwan University Taipei. He has acted as a consultant for the German Government and various UN institutions on human rights, development and international environmental law issues. Jochen von Bernstorff studied law at Philipps University Marburg and University of Poitiers, received his PhD from the University of Mannheim in 2000 and holds an LLM from the European University Institute in Florence (2001). He was employed at the German

Federal Foreign Office (diplomatic service 2002-2007) in the Multilateral Human Rights Policy Task Force of the UN Department, a member of the German delegation at the UN Commission on Human Rights in 2004 and 2005 and the UN Human Rights Council in 2006, and a member of the German delegation at the UN General Assembly in 2003-2005. Furthermore, he served as chief negotiator of the German delegation at negotiations over the UN Convention on the Rights of Persons with Disabilities, New York (2003-2007). From 2007 to 2011 he was a senior research fellow and spokesperson at the Max-Planck-Institute for Comparative Public Law and Public International Law in Heidelberg. In 2009 he was visiting fellow at the Lauterpacht Centre for International Law of Cambridge University. Main fields of research are general international law, theory and history of international law and its institutions, the prohibition of the use of force and human rights law.

## Nafay Choudhury

(BA McGill, MA Queen's, LLB/BCL McGill) is currently a PhD candidate at King's College London, where his research theorizes on the relationship between legal and nonlegal norms in developing societies, based on empirical research methods. His research was awarded the Simon Roberts Award by the *Modern Law Review* for the best thesis topic on legal ethnography and legal anthropology. Nafay was previously Assistant Professor of Law at the American University of Afghanistan (AUAF), where he taught courses and researched in the areas of comparative law, contract law, torts, legal pluralism, customary law, private international law, and legal education. He joined AUAF as part of the Afghanistan Legal Education Project at Stanford Law School, helping to establish the country's first English-medium law program. He has published articles on the topics of comparative law and legal pluralism in variety of peer-reviewed journals. He served as a Shari'ah Advisor for the Afghanistan International Bank.



He has been a Visiting Research Scholar at the Max Planck Institute for Comparative and International Private Law in Hamburg and was also a Researcher for the Center for Islamic Legislation and Ethics in Doha, working under Professor Tariq Ramadan. Outside of academia, he volunteers alongside an international consortium of lawyers supporting refugees in Europe.

### Law and Trust in Self-Regulating Orders: An Empirical Study of Kabul's Premier Money Bazaar

Nafay's research involves an empirical study of trust within a money exchange bazaar located in Kabul. The money bazaar plays a central role in regulating banking and business activities throughout the country, even though it is a self-regulating private order i.e. an extralegal forum capable of processing disputes and regulating parties' behaviour. Money exchangers in the bazaar provide a variety of services beyond money exchanging. They facilitate domestic and international money transfers; they store the money of lay citizens for safekeeping; they provide credit services to individuals and businesses; and they assist the central bank in controlling the money supply. The prominence of the bazaar overshadows banking institutions in the country, which remain largely out of the reach of lay citizens. Crucially, the operation of the bazaar is sustained through trust relationships between a wide number of actors with different roles and interests. Nafay's research focuses on the trust relationships and normative ordering within the bazaar. The money bazaar presents an opportunity to study trust within the legal context, given its central role—as opposed to law—in maintaining order. Furthermore, it presents an opportunity to study the unintended consequences of legal development, since reforms to the banking sector have paradoxically created greater reliance on the informal bazaar.

## Elena Cirkovic

is an Assistant Professor at Bogazici University (Department of Political Science and International Relations). She is currently a resident researcher at the Higher School of Economics St. Petersburg. Dr. Cirkovic completed her PhD in Osgoode Hall Law School of York University, and she holds an MA in Political Science from the University of Toronto.

Dr. Cirkovic's research interests delve into the dynamics of legislative and regulatory change (e.g. in response to the new phenomena or emergencies) and assess the role of global governance institutions as mechanisms that facilitate legitimacy. She takes a transdisciplinary approach to argue that different spheres of study and regulation are not as cognitively and culturally distinct but are engaged in a constant process of exchange and mutual constitution. Dr. Cirkovic has published in areas of international public and private law, transnational law, global constitutionalism, political theory, and citizenship.

### Land Grabs and the Laws of War: *Liberum Commercium*, and *Dominium* in International Law Today

This research addresses the relationship between International Investment Law (IIL), military conflict (non-international and international), and current global reconfigurations of land and property rights through 'land grabs' by large agricultural users. The objective of this analysis is to provide a critique of doctrinal issues in specific cases of contemporary strategies of investor and host States, and public and private actors, as a starting point for a more general examination of the theoretical and practical underpinnings of international law. The project will narrow its empirical focus on the large agribusinesses and financial entities originating in the Western European States and their role in 'land grabbing' in Eastern Europe and outside of the EU.

This study counterpoises the phenomenon of land grabs and the changing nature of land and property rights 'at home and abroad', with other forms of expropriation and displacement due to armed conflict. Namely, while displacement due to war can constitute a violation of international human rights law (IHRL) or international humanitarian law (IHL), displacement due to large scale development projects, such as agricultural investment, has more ambiguous legal status. This is because of the way in which IIL views the rights of investors that are obtained through agreements with host states and the impact this has on any pre-existing land ownership.

## Oluwole Coker

is a Senior Lecturer in Literature-in-English at the Department of English, Obafemi Awolowo University, Ile-Ife, Nigeria. His interests lie in postcolonial African fiction, orature and interdisciplinary studies. He has published in these areas in local and international outlets. Dr. Coker is a Postdoctoral Fellow of the American Council of Learned Societies/African Humanities Program (2014); Laureate of Council for Development of Social Science Research in Africa and the Child and Youth Institute (2015); Fellow of the Summer Program in Social Sciences, Institute of Advanced Studies, Princeton (2015-2017) and Fellow of the Brown International Advanced Research Institute, Brown University (2017).

### Redistribution as a Metaphor for the Quest for Justice in African Cultural Production

The notion of justice as a major thrust in African cultural productions is premised on the near absence of mechanisms that assure the same in the three major diversities poetic justice, natural justice and legal justice.

The quest for justice, for example, as an essential driving force in law is also synonymous with literary endeavours especially in under-developed societies like Nigeria, whose citizens have been victims of misrule and despotic leadership. As such, the notion of justice and the ceaseless clamour for the same in postcolonial societies speak to the problematic construct of redistribution. As a matter of fact, from the theoretical standpoint of socialist realism, especially Marxism, the imbalance in wealth distribution by economic forces is at the heart of social inequalities. In this paper therefore, Coker subjects two postcolonial texts, Ola Rotimi's *The Gods are Not To Blame* and Oladejo Okediji's *Rere Run*, to close readings. This is with a view to demonstrating that the interdisciplinary aesthetics of law and literature is appropriated in African cultural productions to engage socio-economic and political issues which bother about the quest for justice in the Nigerian society. The paper is premised on the theory of Marxism, and it wants to explore the state of the public justice system in Nigeria. The texts underscore the obvious laxities of the Nigerian system and how these provoke agitations for human rights. The paper shows that the immediate conflict in the universe of the plays is a fall-out of the challenge of redistribution of the commonwealth. African cultural productions are thus shown as templates of engaging the imperative of redistribution thereby averting the tragic turn. The paper suggests the centrality of the place of redistribution as a metaphor for attaining natural and poetic justice that guarantee socio-economic advancement.

## Johanna del Pilar Cortés-Nieto

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She has worked for the Constitutional Court of Colombia and has taught modules on Constitutional Law and Human Rights at Universidad del Rosario in Bogotá. Her research interests lie in social and economic justice, critical approaches to development and the management of poverty, neoliberal legality, and transnational law. Her doctoral thesis examines the administration of poverty in neoliberal times, specifically the technologies implicated in taming and neutralising marginal populations.

### Taming Social and Economic Rights: Austerity in Colombia

Johanna del Pilar Cortés Nieto's doctoral research focuses on the technologies and techniques deployed in recent decades to govern the poor. She is looking in particular at how resistant and opposition to neoliberal reforms are neutralised and domesticated. Her inquiry also involves questions such as how poverty is represented and problematized, how both representations of poverty and technologies to govern the poor emerge and travel across jurisdictions, and what effect they have on the life of marginalised populations. The part of the research that she will discuss during the transregional academy focuses on how social and economic rights in Colombia have been rewritten from inside, appealing to discourses of austerity and macroeconomic stability. Since the late 1990s, social and economic rights have become a counterweight to neoliberal reforms, placing Colombia at the centre of debates about the transformative potential of rights. The executive has attempted to tame the jurisprudence on social and economic rights in different ways, being the latest a constitutional amendment which made austerity rules binding on the judiciary and other public authorities. Even though austerity rules were categorised as guiding criteria, the amendment has been successful in preventing structural remedies and other types of decisions which favour marginalised and impoverished groups.

She argues that the reform follows the international consensus on austerity as the ultimate solution to stagflation and other macroeconomic problems that emerged in the aftermath of 2008 crisis. It also draws on a transnational trend that pictures austerity rules as good constitutional practices, and which aims to “lock in” neoliberal capitalism by reshaping political subjects and state forms in line with market logic.

## Philipp Dann

is professor at Humboldt University Berlin, where he holds the Chair for Public and Comparative Law. He has taught German, European and public international law and constitutional theory in Germany, France, India, Kenya, the Sudan and the US, was a Research Fellow at New York University and Georgetown University, Washington DC, and a Senior Research Fellow at the Max Planck Institute for Public International and Comparative Public Law in Heidelberg, Germany. Professor Dann has written widely on the institutional law of development cooperation (see e.g. ‘The Law of Development Cooperation’ CUP 2013), on comparative constitutional as well as on EU constitutional law. He was also regularly involved in advising governments and other interested parties on constitutional matters. He is the editor-in-chief of the quarterly journal *Verfassung und Recht in Übersee / Law and Politics in Africa, Asia and Latin America* that focuses on issues of public law in the Global South as well as development law.

## Claire Debucquois

is writing her dissertation on the legal and institutional architecture of the marketplace, drawing upon the case of land allocation and transnational land deals in Brazil. Claire holds a BA, an MA, and advanced master degrees in law, philosophy, and economics from several universities in Belgium and the Netherlands.

She specialized in comparative and international law, and development economics. She has been a visiting scholar at Pantheon-Sorbonne University and the Max Planck/Sciences Po Center in Paris, and at McGill University in Montreal. Claire volunteered in the education and asylum aid sectors in Ecuador, the UK, and Italy, worked in the fields of public policy evaluation and migration law in Berlin, and interned with the United Nations Food and Agriculture Organization in Rome. She was a researcher under the Belgian science policy program on foreign direct investment and supported the work of the UN Special Rapporteur. Her teaching experience includes a teaching assistantship at the University of Louvain for first-year law students, a guest lecture at the Paris Institute of Political Studies, and language tutorials at Columbia University. Claire's work has been published in several journals and presented at workshops and conferences in different European countries, as well as in India, Brazil, Canada, and the United States. She is the recipient of various grants and awards, including the Jacques Falys prize for the best master thesis at Louvain Law School, research grants from the Belgian Academy in Rome, the Camille Liégeois and Françoise-Marie Peemans grants from the Royal Academy of Science, Letters and Fine Arts of Belgium, and the Juan Celaya grant on globalization and law from the International Institute for the Sociology of Law.

### Law and Natural Resource Allocation: A Brazilian Perspective

The paper builds upon Braudel's image of the historical alliance between the merchant and the prince, regarded as a key mainstay for capitalist development. It argues that the lawmaking and institutional entrenchment at stake in the market construction keep reflecting the relationship of mutual dependence systematically at play between the merchants—that is, the biggest players in the market, in quest for monopoly situations—and the state, or successive governments.

Animated by varying, partly aligned and partly divergent interests and objectives, yet relying on each other for law-shaping and policy-carrying purposes, those actors engage in complex and continuous processes of cooperation and competition ('coopetition') that are constantly renegotiated through an array of strategies, and of which law is at once a product and a platform. Their power relations are constrained by previous institutional stratification yet also structure the legal and institutional architecture of the marketplace—and by the same token impact distributional patterns, hence inequality. Debucquois' research sets out to test those hypotheses through an analysis of the determinants of land concentration in Brazil, which has been—and remains to a large extent—a paradigm of unequal resource distribution assorted with sweeping societal implications. To illustrate the coopetition relationship between the state and the merchants and the quest for monopoly that is arguably at its heart, the paper develops a specific and critical account of the legal interventions framing land allocation and investment in the country, as well as the key institutions gravitating around them.

## Isabel Feichtner

is professor for Public Law and International Economic Law at the University of Würzburg. Previously she was Associate Professor at Goethe University Frankfurt where she taught and supervised doctoral students in the graduate program "Law and Economics of Money and Finance". She holds an LLM from Cardozo Law School and in 2010 completed her doctoral dissertation "The Law and Politics of WTO Waivers - Stability and Flexibility in Public International Law". Isabel Feichtner is book review editor of the *European Journal of International Law* and associated member of the cluster of excellence "Normative Orders" at Goethe University Frankfurt. Her research focuses on law in the political economy of money and natural resources.

# Johan Horst

is a Research Fellow in the project “Transnational Force of Law”, where he directs the subproject “Lex Financiarum”. Before, he was a Research Fellow at the Collaborative Research Center (SFB 597) “Transformation of the State” at Universität Bremen. In 2017 Johan Horst finished his PhD in law with summa cum laude for his dissertation on transnational financial markets law, under the supervision of Andreas Fischer-Lescano and Gunther Teubner. He studied law as well as philosophy and history in Freiburg, Berlin, Paris, and at Georgetown University, Washington DC. During his legal clerkship he worked at the KG Berlin (Court of Appeals of the State of Berlin), in the Federal Foreign Office at the United Nations Desk and at Hengeler Mueller. Johan has published inter alia on international and transnational economic law and legal theory and is interested in critical legal studies, postcolonial studies, critical systems theory, and law and heterodox economics.

## Distributional Effects in the Law of Transnational Financial Markets: The Case of Close-out Netting

Johan Horst’s research project examines distributional effects of legal rules in the OTC derivatives markets. Using insights of heterodox theories such as Hyman Minsky and Katharina Pistor’s legal theory of finance, his project evaluates how markets for OTC derivatives redistribute wealth via redistribution of financial risk. His case study is the evolution of close-out netting-clauses. As a basic element of the legal infrastructure of the OTC derivatives markets, close-netting relocates financial risk (credit risk) from the market participants to creditors outside the OTC derivatives markets. Yet, despite its massive distributional consequences, close-out netting was mostly discussed as a mere technical regulation necessary for the proper functioning of these markets.

Emphasizing the distributional effects of such clauses is a first and necessary step towards repoliticizing the rules for transnational financial markets.

# Tuğba Karagöz

is a doctoral candidate at Goethe University Frankfurt and research assistant at Julius Maximilians University of Würzburg, where she also teaches Turkish Constitutional Law. She holds an LL.M. from the University of Lausanne in the field of international and European economic and commercial law. Tuğba Karagöz’s field of interest is international investment law. She engages disputes over the protection of foreign investment and its impacts on domestic as well as international law- and policy-making. Her recent research explores how foreign investment insurance works and how political risks are conceptualized by investment insurers. She focuses on the intersection of international and domestic legal systems in the operation of foreign investment insurance arrangements. Her analysis of foreign investment insurance is recently published in the *Journal of World Investment and Trade*.

## A Universal Regime of Investment Protection and Foreign Investment Insurance

This paper analyses the operation of foreign investment insurance with reference to the debates over a universal regime of investment protection. Foreign investment insurance offers protection against political and social instabilities, violence in different forms, direct or indirect expropriation that are traditionally associated with developing countries. Most public insurers, notably the US government agency Overseas Private Investment Corporation (OPIC) and the Multilateral Investment Guarantee Agency (MIGA) do not provide insurance to countries that are classified as “developed”.

This paper opens to question the hypothetical operation of foreign investment insurance among developed countries by focusing on two aspects of the investment protection regime. The first of these aspects is the notion of political risk, i.e. the extent of investment protection. Political risk has been so far perceived largely as a phenomenon of developing countries that suffer from political instability and lack of rule of law. Nevertheless, recent developments have demonstrated that political risk—as it is generally understood—may as well be relevant to developed countries that adhere to the rule of law and strong protection of property rights. The second aspect concerns the debates over the alternative forms of investment dispute resolution. Foreign investment insurance has long been compared to international arbitration as an alternative means of investor-state dispute settlement. Similar debates have been raised in the context of investment agreement negotiations between developed countries. By disclosing the legal relationships and power dynamics embedded in the investment insurance arrangements, this paper argues that the current legal regime in which public investment insurers operate would be challenged if foreign investment insurance becomes applicable in developed and developing countries alike.

## Lys Kulamadayil

is a PhD candidate at the Graduate Institute of International and Development Studies in Geneva and a Visiting Scholar at Harvard Law School. Her doctoral research examines the implications of international law in natural resource governance in postcolonial export-based economies. Her research interests include legal theory, law and politics, economic, environmental and global governance and socio-economic justice. Lys has taught in the international law and international affairs graduate programs of the Graduate Institute and is also the Co-founder and Co-convener of the International Law Literature Forum.

## Welfare Interventions and Rentier States – What Role for Law?

International economic institutions incentivized a liberal-economic outlook of domestic institutions through welfare interventions. Welfare interventions describe stimulations to pursue prosperity and economic growth in developing countries through integrating into the global economy. While economic and social incentives used in this process are well-known, the role of law remains obscure. This paper seeks to shed some light on this by studying how international law has been used by international economic institutions to integrate postcolonial countries into the global political economy. In the tension between incentive and cohesion, this paper will examine law's potential to direct the behavior of domestic institutions. Furthermore, it will seek to understand law's role in creating an image of welfare that development policies of international economic institutions carry. Focusing in particular on Rentier states, this paper demonstrates an evolution in the use of international law by international economic institutions over time. By paving the avenue to inclusion through emancipation, law promised the freedom from want. Emancipation however, meant embracing the imposition of domestic institutional reform and policies. Good law was then used to deflect any critique from the hegemonic agenda pursued through welfare interventions. This paper finds that international economic institutions used law for both, to enable and seduce. Recent IMF and World Bank policies demonstrate an operational turn in the use of law. Law has been demystified, through the embrace of informal normative frameworks that are often based on market mechanisms and include a broad range of transnational and domestic actors. Through these legal frameworks, international economic institutions seek to promote good governance at the domestic level, in the pursuit of a new form of welfare.

# Anna Matthiesen

is a PhD candidate in Sociology at The New School for Social Research, N.Y. City. She holds an MA in Eastern European Studies from the University of Bologna. Using in-depth interviews, participant observation and textual and visual analysis, her dissertation project investigates the movement of ideas about philanthropy from neoliberal West to post-socialist East. She is interested in exploring the political consequences of engaging in philanthropy, the role that untaxed private wealth institutions play in privatizing aid, and how altruism and morality can be employed to fortify structural inequalities.

## Forging Philanthropic Citizenship: Domestic NGOs and Donors in Serbia

Anna Matthiesen's project investigates how the Western culture of philanthropy is being inculcated in post-socialist Serbia. She draws on a ten-month period of ethnographic research in Belgrade NGOs involved in constructing standards for philanthropic giving and lobbying the government to change tax law. Using historical and ethnographic research including participant observation, semi-structured interviews and discourse analysis, she argues that in performing this work, these groups are attempting to legitimize a significant shift in redistribution patterns. Philanthropy has long been criticized as a palliative for unequal societies, distributing just enough surplus wealth to maintain equilibrium. Theorists today critique a particular American brand of 'philanthrocapitalism', arguing that tax-subsidized foundations undermine democratic practices by reinforcing the wealth power of groups not subject to political controls. I hope to illustrate how different ideas of public and private, the role of government, corporation and non-profit, social welfare and civic duty that are bound up in Western fundraising practices are transformed, communicated and practiced in a post-socialist context.

These ideas are particularly highlighted in attempts to create best practices for civil society organizations and lobby for government policy on taxation and fundraising. The project also explores how the newly wealthy in Serbia are persuaded to give, and changes in organizational political and cultural values required to court them. Through interrogating the rhetoric of social responsibility, charity and philanthropy and by understanding all parties, funders, organizations and donors, as participating in an effort to reconfigure what it means to be a citizen and take part in civil society—through donation and active cultivation of a 'culture of philanthropy'—the project will hopefully provide an insight into how larger debates over forms of civic participation, social welfare and wealth redistribution in countries still 'in transition' are varyingly conducted, accepted and contested.

# Jason Rhys Parry

is a PhD candidate in the Department of Comparative Literature at Binghamton University in New York. His research and teaching interests are in design, geopolitics, and ecology. His writing, inspired by fieldwork undertaken in both Taiwan and the Arctic, focuses on the entanglement of buildings, laws, bodies, and landscapes in contemporary conflict zones.

## Island Interventions: Strategies of Territorial and Legal Redistribution

In this paper, Parry claims that Rockall, Johnson South Reef, and Christmas Island are three contested spaces that embody distinct techniques of legal and territorial redistribution: incorporation, reclamation, and excision. In each case, the territorial status of the island has been changed in order to reshape the legal landscape and facilitate the pursuit of military and security objectives. He argues that these three cases are representative of more general strategies for redistributing national sovereignty through the acquisition, abandonment, and creation of territory.

The changes in the legal status of these islands not only serve as an index of larger geopolitical conflicts (the Cold War, the global migrant crisis, and control of the South China Sea, respectively) but also have effects on the materiality of the islands themselves: Rockall has had a brass plaque attached and is occasionally home to demonstrators and explorers, Christmas Island now features a detention center, and Johnson South Reef has had military facilities, a concrete runway, and a missile-defense system installed. Moreover, each of these examples raises the question of “what or when is an island?” and exposes glaring limitations in existing legal instruments to adjudicate such seemingly simple queries.

## Robi Rado

is a PhD candidate and Teaching Fellow at Melbourne Law School. His current research interests are in the areas of law and development, international law and political economy (especially in relation to the global South), international trade law and international migration law. Robi holds Bachelor of Commerce, Bachelor of Laws (Honours) and Master of Laws degrees from the University of Melbourne. He previously worked as a corporate lawyer at Mallesons Stephen Jaques (now King & Wood Mallesons) in Melbourne and at Freshfields (now Freshfields Bruckhaus Deringer) in London.

### Trading in People and Trading in Services: The Political Economy of Indians’ International Labour Mobility, the Development Project and International Law

International law increasingly governs whether, and the manner in which, people may move to other countries to work. This governance is often justified using claims about development in workers’ states of origin.

In his doctoral thesis, Robi is seeking to develop a better understanding of the international legal regimes that govern Indians’ international labour mobility, and of the relationship between those regimes and the development project. The thesis aims to elaborate the political economy of those regimes, and to unpack the assumptions underpinning the expansion of international law and governance in this area. It argues that international law and the development project are both playing crucial roles in shaping Indians’ international labour mobility, and that these roles are more important than, and of a different nature to, those commonly recognised by scholars and policymakers. This paper forms part of Robi’s doctoral thesis. It considers how the Indian state approaches the connection between Indians’ international labour mobility and the development project in India, by analysing the discourse that emerges from a key Indian government report. The paper argues that the discourse emerging from the report connects Indians’ international labour mobility and the development project in a manner that is considerably more complex than is commonly appreciated.

## Mizanur Rahaman

is Assistant Professor of law, based at Wolaita Sodo University, Ethiopia since October 2016,. Originally from India, he studied human rights, and law and development at the University of Warwick. His PhD, which he completed at the University of Kent, explored how the bioeconomy operates as a ‘desiring-machine’, and how law mediates such operation in a global/postcolonial context. He has worked as a Graduate Teaching Assistant and later, as Associate Lecturer at Kent Law School, University of Kent. In 2015, Mizanur was a Summer School Fellow at the Transnational Law Institute, King’s College London. Besides presenting his research at a number of conferences, he has written for *Social Studies of Science* and *Science as Culture*.



Currently, his research examines and evaluates the 'global/spatial turn' in contemporary 'law and globalisation/postcolonial' legal scholarship. More recently, his research shifted to 'law and time', which investigates how time connects and assembles heterogeneous elements in dispute settlement processes in a small village community in Southern Ethiopia.

### Mapping the Spatial Distribution of Power: TRIPs, Mediated Relationality and Resistance

To Foucault, economic, juridico-political and scientific institutions assure the infinitesimal distribution of power. Hence, he suggests, we need to unmask and trace how power moves through legal norms, is taken over by specialised institutions, and more importantly, how institutions bring the effects of power to the most distant elements. Keeping these observations in mind, the paper investigates the spatial distribution of power in the bioeconomy. Accordingly, the paper looks into the global intellectual property regime (specifically the WTO-TRIPs Agreement) which, according to some scholars, has become a vehicle of power and domination. Put differently, the TRIPs Agreement has expanded the power and domination of developed countries and their corporations to dispersed locations. While this insight is illuminating, an important slippage persists because these scholars situate their analyses within a centre/periphery framework, and by doing so, leave out the 'mediated relationality' of power. That is, their analyses provide little understanding of how power becomes distributed through interactions, connections and mediation between heterogeneous elements. Since distribution is not effortless and straightforward, the paper suggests that instead of a spatially-centred or unidirectional view of power, we need to analyse distribution by focusing on a topological mix of distanced and proximate actions.

To substantiate this argument, the paper, first, discusses how two juridico-scientific institutions (DST and DBT) have integrated, mediated and accommodated the TRIPs regime in India and then, narrates how this regime is resisted or contested through the discourse of bio-piracy in the Bt. Brinjal controversy.

## Surabhi Ranganathan

is a University Lecturer in International Law, a Fellow of the Lauterpacht Centre for International Law, and a Fellow and Director of Studies in Law at King's College, University of Cambridge. She is also a fellow of the Cambridge Centre for Environment, Energy and Natural Resource Governance (C-EENRG). Her research explores histories and politics of international law, with a current focus on the designation, representations and regulation of global commons, especially the deep seabed. Surabhi is the author of *Strategically Created Treaty Conflicts and the Politics of International Law* (CUP 2014) and assistant editor of *The Cambridge Companion to International Law* (CUP 2012). Currently co-editor of the International Legal Theory Section of the *Leiden Journal of International Law*, Surabhi has also served as assistant editor of the *British Yearbook of International Law* (2012-2016) and editor-in-chief of the *Cambridge Student Law Review* (2009-2010). Her work has appeared in numerous journals, including the *British Yearbook of International Law*, *American Journal of International Law* and *European Journal of International Law*. Her research has been selected for presentation at the peer-reviewed NYU/Nottingham/Melbourne Junior Faculty Forum for International Law and Stanford International Junior Faculty Forum. She received her BA, LL.B. (Hons.) from the National Law School of India University, her LL.M. from NYU School of Law, where she was a Vanderbilt Scholar, and her PhD from Cambridge University.

# Necdet Sevimli

is a PhD candidate in Political Science at Middle East Technical University. His current research interests are in international political economy and, having a background in communication and cultural studies, he strives to approach the field with an interdisciplinary outlook. He is paying particular attention in his dissertation work to the interaction between the discourses and the practices of transnationalization including the laws and regulations that enable and frame transnational relations. Other current research projects include a chapter in a forthcoming edited volume which looks at the changing nature of political protest by focusing on questions of identity and cultural economy, and a study on the history of the 'making of' the 'economy of Turkey.'

## Before the Law: International Organizations, Discourse and the Remaking of State-Society Relations within Transnationalization

This study is part of a larger research project which looks at contemporary transformations in the nature of the work of International Organizations (IOs) and which aims to demonstrate that IOs' discursive emphasis on 'governance' has served to mobilize a specific normative-legal framework with which transnationalization is to be associated. Towards that end, the present paper will offer a discussion of the OECD's (Organization for Economic Cooperation and Development) recent efforts to reposition itself as an institution whose mandate within global governance goes beyond measuring and reviewing economic activity and that amounts to redefining the proper form state-society relations ought to take. The OECD and various other IOs have sought to shape the space of transnational economic regulation by reordering the pattern of interactions between not only the actors, but also the spheres of societal relation that have been embedded in transnationalization.

The embrace of 'governance' as an organizational paradigm has therefore had significant consequences for the way in which the boundary between 'the political' and 'the economic' is to be reset as well as for the perceived legitimacy of both actors and actions within transnationalization. Yet the 'governance turn' has not involved the positing of a clear role for supranational judiciary action in regulating political-economic relations, and courts with international authority have delivered verdicts that are at odds with IOs' contemporary conceptualization of what constitutes the transnational economy. The CJEU's (Court of Justice of the European Union) recent ruling that "the freedom to conduct a business may be subject to a broad range of interventions on the part of public authorities that may limit the exercise of economic activity in the public interest," for instance, represents a significant challenge in this regard. Taken together, these developments render it timely to ask how and by whom the meaning of 'public intervention' is to be determined within the post-Washington Consensus, post-crisis era of transnational 'governance,' and to enquire whether the contemporary international political-economic framework would enable the emergence of 'protective social responses on a global scale' as theorized by liberal governance scholarship. This paper proposes to raise such questions from a critical perspective, focusing in particular on the role of IOs' scientific and policy discourses in framing the future of transnationalization.

## V. Kalyan Shankar

completed his PhD at the Department of Economics, University of Pune (India). He was a Fulbright-Nehru Postdoctoral Fellow (2015-16) at the India China Institute, The New School. He co-edited the volume *Prostitution and Beyond* published by SAGE (2008) and his research work has been published in *Economic and Political Weekly*, *Higher Education* and the *IDS Working Paper* series. He is currently associated as a researcher with Kagad Kach Patra Kashtakari Panchayat (KKPKP), a trade union of waste pickers based in Pune (India).

### Can Informal Waste Pickers have a Legal Right to Waste? The Limits of Policy and Law in Social Justice

Across the multiple stakeholders in urban household waste in India, how does a 'right to waste' get carried forward? Waste belongs to households and then to the Municipal body once it enters the public system of collection/disposal. What does this mean for large populations of informal waste pickers, operating in the interstices and carving their livelihoods by retrieving recyclables? Despite their numbers and importance in waste recycling, waste pickers lack a 'right to waste' making them vulnerable to abuse and harassment. Several policy documents in India have envisaged a role for waste pickers in urban waste management. However, they fail to provide for precise mechanisms of integrating them. In this project, Shankar is documenting the counter-narrative of SWaCH, India's first wholly owned co-operative of self-employed waste pickers. In October 2008, SWaCH entered into a Memorandum of Understanding (MoU) with Pune Municipal Corporation (PMC) for door-to-door collection of household waste. The arrangement legitimised a 'right to waste' for waste pickers by allowing them to access waste directly from households instead of public bins/landfills. The SWaCH case can provide for a practical understanding of the challenges in contractually integrating waste pickers into urban solid waste management.

## Ximena Sierra-Camargo

is a PhD Candidate at Rosario University in Colombia. She has been a Visiting Fellow at the Centre for Critical International Law CeCIL - University of Kent (2015 - 2016) and a Visiting Fellow at the Transnational Law Institute TLI - The Dickson Poon School of Law - King's College London (2016). Ximena is a Doctoral Fellow from Colciencias (Departamento Administrativo de Ciencia, Tecnología e Innovación de la República de Colombia). Her dissertation examines how the Colombian Constitutional State as a producer of raw mining products reveals the (neo)colonial character of the global economic and political order. Her project aims to show the global historicity of current development practices, and how mining policies have incessantly shaped the nature and operation of the rule of law in Colombia. She holds an MA in Socio-Legal Studies at La Plata National University in Argentina and she graduated as a Bachelor of Law at Externado de Colombia University. She has taught International Law, Human Rights, IHL, Law and Development, Environmental Law, Legal Hermeneutics and Cinema and Human Rights. In her own work as a legal practitioner, Ximena has had the opportunity to gain direct experience on the monitoring of human rights and the performance of official development policies, working as an attorney at the Office of the Ombudsman in Colombia and at various recognized human rights NGOs like the Colombian Commission of Jurists.

## Reshaping the Constitutional State under the Hegemonic Idea of Development as a Form of Intervention, in a Context of Global Coloniality: The Case of the Large-scale Gold Mining Law in Colombia

Ximena's research explores how transnational agents (from the gold mining sector operating in Colombia) regulate through the constitutional state domestic realities, and in doing so end up establishing a particular global economic and political order at the national level. This research discloses the colonial character of the rule of law and how such discourse is reshaping classic ideas about the legal and political character of sovereignty. These questions arise in a context of a (neo)extractivism model, which has been reintroduced in the last twenty years in several countries of the global south, and which has caused a growing presence of transnational mining companies, that in turn have exercised traditional sovereign functions of the global south states, with the key collaboration of local governments. The Colombian Constitutional State under the support of key global economic actors has enacted a strong mining regulation, which establishes a hegemonic discourse of development that is mainly oriented to 'economic growth'. From a critical perspective this regulation constitutes a 'territorial trap' due to even in those cases, where states are able to exploit directly the mineral resources, that depend from the capital of the 'developed' countries. Thus, the 'developing' countries only are allowed to exercise their sovereignty over natural resources, if they demonstrate their capability to exploit them according to the main global extractive model. In this context, the role of the World Bank has been crucial for consolidating a legal order in the framework of a 'mining boom' linked to a 'constitutionalism boom'. This financial institution has played a key role in promoting from 'above' a 'subordinated development', where the Colombian State, under its national law, is permanently reinserting itself into a peripheral position within the global economic order, and updating (neo)colonial discourses and practices.

## Sebastian M. Spitra

obtained his academic degrees in Law (Magister) and Philosophy (BA) from the University of Vienna. Currently, he is a Research Fellow and PhD candidate at the Institute for Legal and Constitutional History at the Vienna law faculty. He teaches constitutional history and history of international law and he is a Fellow of the Vienna Doctoral Academy "Communicating the Law" since 2016. His research focus lies in the history and theory of international law, particularly on the intersection point of cultural heritage, identity, and international law. He writes regularly on legal topics for the Austrian newspaper *Die Presse*.

### Administering Culture in International Law, 1789-1972

This is a study of the coming into being of a new regulatory field in 19th and 20th century's international law. The PhD project critically analyzes the formation of the international legal norms for the administration of cultural heritage. It is a conceptual, terminological-semantic, and interdisciplinary legal history that focuses both on state practice and doctrinal works. The traditional narratives of the history of cultural heritage protection suggest that the development of legal rules were fundamentally driven by codification efforts of the laws of war and customary international law. The first debates in international law grew out of the topic of restitution of artworks after the Congress of Vienna.

Different to this norm centered approach to the history of international law, the main argument of this project is that the concept of "civilization" in international law played a key role which is often being overlooked in the evolving of cultural heritage protection. Additionally, changing cultural, civilizational, moral, and aesthetical understandings in the 19th and 20th century effected the legal developments on the domestic and international level.

Not only European scholars but also lawyers from the so-called “semi-peripheries” contributed to the juridification of that field. A postcolonial perspective shows that exclusionary ideas of the international community and international administrative law were the intellectual framework of the first doctrinal writings and codification drafts on that topic. This is essential for the understanding of cultural heritage as public common good as it is seen today.

## Celine Tan

is Associate Professor of Law at Warwick University, UK. She is also the Director of the Centre for Law, Regulation and Governance of the Global Economy (GLOBE) based at the School of Law, University of Warwick. She joined Warwick Law School in September 2011 from the University of Birmingham, where she was Lecturer in Law from 2008-2011. She completed her PhD at the University of Warwick where she held a Postgraduate Research Fellowship from 2002-2005. Prior to Birmingham, Celine taught law at Warwick and was also a consultant researcher with the Third World Network, a research and advocacy organisation based in Malaysia and Switzerland. She has also worked with international organisations and other non-governmental organisations in Europe, Africa and Asia on issues relating to social and economic development and human rights. Her research centers on exploring aspects of international economic law and regulation with a focus on international development financing law, policy and governance. She is also interested in the intersections between law and development, gender, human rights and the environment. Celine has published on issues relating to the law and governance of the international financial architecture, sovereign debt, climate change and sustainable development, the role of international financial institutions and human rights.

## Piotr Uhma

is a postdoctoral researcher and lecturer in international law at the Andrzej Frycz Modrzewski Krakow University. He received his PhD in law from the Faculty of Law of the Jagiellonian University in Kraków, Poland in 2013. His dissertation on “Law creating resolutions of the UN Security Council” examines the differences between the UNSC resolutions through their law-creating effects. He holds a Postgraduate Diploma of Company Law from the Law School of Warsaw University (2006) and a Masters of Law from the Jagiellonian University in Kraków (2004). From 2014-2015 he was a Senior Good Governance Advisor in the Organization for Security and Co-operation in Europe (OSCE) Mission to Skopje. From 2012-2014 he served as a Senior Human Rights Officer in the OSCE, Mission in Kosovo. Previously he worked as Director of the Legal and Corporate Communications Office of the Polish Electric Power Grid company, PSE Operator S.A. and performed various consultancy and public speaking assignments in places such as Prague, Sydney, Jakarta, Strasbourg, Vienna, Amman, Nairobi, Denver, Seoul and Pamplona. He is the co-founder and President of the European Institute Pro Futuro Europae. His academic interests revolve around the theory of international law, the concept of sovereignty, interventionism and international organizations.

### The Principle of Non-Intervention in Contemporary International Law

Piotr Uhma’s project focuses on conceptual issues of the evolution in the application of the “non-intervention” principle by states and international organizations since 1945, through the years of the Cold War to contemporary international relations. Placing his research in a broader context of international relations the project refers to the differences between pre-modern, modern and postmodern states, which to a certain extent mirror the debate about unity and fragmentation of international law.

It also explores international law counter-types, which exclude the illegality of interventionism. Eventually, the project discusses a growing omnipotence of international organizations, which together with the doctrine of implied powers, pose a question about the content of a general clause of authorization to intervene that such organizations claim to enjoy.

## Dimitri Van Den Meerssche

is a PhD researcher, originally from Bruges, at the European University Institute in Florence under the supervision of Nehal Bhuta. In his dissertation project, Dimitri provides a socio-legal account of how legality is produced and operates within the World Bank, specifically through the lens of the latter's engagement with governance reform. He holds degrees from New York University (LLM in international legal studies) and Ghent University (Master of Laws, *summa cum laude*). Dimitri has published in the fields of law and development studies, constitutional theory and the law of international organizations.

### The World Bank as an Autonomous Normative Order: Legal Processes of Constitutional Growth

This research maps out how legality—understood as an assemblage of legal actors, heuristics and vocabularies—has been implicated in the operational growth of the World Bank's development program, and specifically its turn to 'governance' and the 'rule of law'. The focus is not on the Bank's concrete financial projects, but rather on the epistemic and legal practices that translate this agenda of state reform into a purportedly objective and technical vernacular of economic efficiency and expertise. There are several components to this academic endeavor.

First of all, a Bourdieusian light is shed on the force of law in the World Bank, highlighting both the specific legal consciousness and institutional embeddedness of the Office of the General Counsel. This reconstruction of law's pedigree, substance and salience contrasts with both the functionalist and (meta)constitutionalist approaches to the law of IOs. Secondly, the thesis maps out how the turn to 'governance' and the 'rule of law' was marked by a translation of the Bank's program of liberal state reform into the language of economic expertise—claiming both neutrality and objectivity under the cloak of modernization. Specific attention is hereby paid to the Foucauldian practices of measurement and diagnosis that underlie the Bank's program of governance reform. Finally, the dissertation reflects on the nexus between the World Bank and the normativity of international law more broadly, and specifically on the translation of the latter into Bank-specific standards and safeguards. Drawing on a critical socio-legal methodology, the project aims to ameliorate our understanding of how law operates in this specific venue of global governance, and to map out the epistemic and normative rationalities implicated in its agenda of global development.

## Gabriele Wadlig

is a first-year JSD student at NYU School of Law, where she is working under the supervision of Benedict Kingsbury. She earned her first law degree (*Magistra iuris*) at the University of Graz, Austria. Upon graduation, Gabriele joined the International Legal Studies LLM program at NYU School of Law as a Fulbright Scholar, where she worked as a research assistant for Professor Frank K. Upham. After completing her LLM studies she worked on land reform, property rights and development in Cambodia and Namibia. She holds degrees in law, economics and sustainable development from the Universities of Graz, Utrecht and the Vienna School of Business and Economics.

## The Formalization of Land Tenure Systems and the Land Rush: A Handmaid's Tale?

As a first-year JSD student at NYU School of Law Gabriele Wadlig is currently working on her dissertation on the link between the formalization of land tenure/property systems in developing countries and the recent boom in large-scale land acquisitions (aka the 'Global Land Rush' or 'Global Land Grab'). The 'Global Land Rush' is commonly used to denote the dramatic increase in large-scale acquisitions of land in developing countries over the past 15 years, often accompanied by the large-scale dispossession and displacement of the previous inhabitants of the acquired land. In her dissertation, she will explore the various ways in which the formalization of land tenure systems including systematic land titling impacts the processes and outcomes of such large-scale land acquisitions and dispossessions. In particular, in the context of the recent land rush, international financial institutions, development organizations and experts alike proposed to "strengthen land governance" as a (or the) solution to dispossessions frequently going hand in hand with large-scale land acquisitions. While this consensus is a shallow one—as "strengthening land governance" can mean various different things—many proposed different forms of formalization of land tenure systems as a crucial method of strengthening tenure security. Formalization of land tenure systems, such as land titling reforms, however, can have very diverse impacts on the processes and outcomes of large-scale land acquisitions and dispossessions. In the worst of cases, it can weaken tenure security and access to land because such reforms can act as a veneer of propriety for dispossessions. A better understanding of the specifics of formalization of land rights in the context of large-scale land acquisitions and dispossessions is indispensable in order to improve policy development. The aim of this dissertation is not to analyze general pitfalls of formalization processes but rather very specifically to ask how formalization reforms impact large-scale land acquisitions and dispossessions—their processes and their outcomes.

## Ye Zhang

(who goes by Helen) recently finished her first year as a PhD student in Harvard's Government department. She previously received her JD from Harvard Law School, where she was an active member of a wide range of student public interest organizations and worked on development and human rights projects from around the world. She has received several fellowships for public service and legal research, and traveled to work with NGOs in China and South Africa. She was also an editor of *Harvard International Law Journal*, and read submissions for *Harvard Journal of Law and Gender*. Her present research explores the intersection of political attitude formation, long-term institutional change and social inequality.

### Multi-dimensional Legitimacy: Popular Perceptions of the Judicial System in an Era of Inequality

This project explores how the distributive role of the judicial system is understood by those who take part in and are affected by the legal process. During the last decades of the 19th century and the first decades of the 20th century, the U.S. judicial system played a significant role in curbing labor demands for economic redistribution, especially by dampening labor's ability to strike. Despite labor leaders' repeated effort to delegitimize the judicial process, they were more successful in mobilizing workers for acts of civil disobedience (actively disobeying court orders), but much less successful in undermining the institutional legitimacy of the judicial system. Often, rational self-interest, including perceptions of judicial unfairness based on self-interest, could not weaken the judicial system's well-established institutional legitimacy. On the other hand, personal experiences with labor litigation and socialization within working communities frequently had more fundamental effects. Significant differences between community cultures accounted for different mechanisms by which judicial legitimacy came to be established and challenged. These findings emphasize the intricateness of the interactions between economic interest, fairness and institutional legitimacy.







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# Notes

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# Transregional Academy

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