

Call for Papers

Younger Scholars Forum in Comparative Law

XXth International Congress 2018

International Academy of Comparative Law

Fukuoka, Japan

July 25, 2018

We invite younger scholars to participate in the first-ever *Younger Scholars Forum in Comparative Law*, to be held in Fukuoka, Japan on Wednesday, July 25, 2018, from 9:00am to 12:00pm as part of the larger quadrennial Congress of Comparative Law organized by the International Academy of Comparative Law (IACL).

Abstracts are invited for **eight (8) Workshops and one (1) TED-style Speakers' Corner**. All nine sessions will be held concurrently from 9:00am to 12:00pm on the day of the Forum. More details follow below on the subject-matter of each Workshop and on the format of the Speakers' Corner.

Abstracts may be submitted in either English or French, the two official languages of the IACL.

The Congress

The IACL hosts a general Congress of Comparative Law every four years. It is the premiere gathering for scholars of comparative law. It is a "general" Congress because scholars of all fields attend and participate in Workshops on specific subjects that span the broad range of private and public law. To learn more about the IACL, here is its website: <http://iuscomparatum.info>. And here is a description of the IACL itself: <http://iuscomparatum.info/general-presentation>.

The Younger Scholars Forum in Comparative Law

For the first time in its history (the first general Congress was held at The Hague in 1932), the IACL will host a program for **younger scholars, defined as those scholars with no more than ten years of tenure-track faculty experience**. This includes graduate students as well as post-doctoral fellows, lecturers and visiting affiliates who have yet to secure a continuing faculty appointment.

The Younger Scholars Forum in Comparative Law is chaired and convened by Richard Albert (Canada/USA) along with vice-chairs Luisa Fernanda García López (Colombia) and Maxime St-Hilaire (Canada). The chair is supported by a Program Committee and a Senior Advisory Committee. The Program Committee is composed of three subcommittees: the Planning & Priorities subcommittee, co-chaired by Cora Chan (China) and Yaniv Roznai (Israel); the Information & Recruitment subcommittee, co-chaired by Cristina Fasone (Italy) and Daniel

Wunder Hachem (Brazil); and the Communications & Technology subcommittee, chaired by John Haskell (United Kingdom).

Workshops

Each Workshop will be conducted as a discussion group structured around accepted papers. Each Workshop will feature **two Moderators and a Distinguished Provocateur-Discussant**. The moderators will select **up to 25 participants for a wide-ranging discussion** that will run for the duration of the three-hour session. The Distinguished Provocateur-Discussant will comment on remarks made by participants, draw connections among the points made by the participants, seed the discussion with new points and questions, as well as challenge, reinforce and/or complicate the comments made by the participants. Discussions will be conducted in both English and French. Each of the Workshops follows below with an abstract identifying the Moderators and Distinguished Provocateur-Discussants.

Speakers' Corner

The Speakers' Corner will feature **15 to 18 TED-style 9-minute oral presentations** on a scholarly subject related to a topic of the speaker's choice in comparative law. All presentations will be recorded live in front of an audience at the Forum and uploaded on YouTube for larger dissemination with the global community of comparative law.

How to Participate

By September 15, 2017, younger scholars **should email an abstract** between 150 and 500 words **to the Corresponding Moderator** of the Workshop in which they would like to participate. All Corresponding Moderators are identified below in connection with each Workshop. For those interested in participating in the Speakers' Corner, younger scholars should email an abstract between 150 and 500 words to the Director of the Speakers' Corner, also identified further below.

Applicants will be notified by October 15, 2017.

The IACL does not cover expenses for any participant, including Moderators and Distinguished Provocateur-Discussants. But we believe that applicants' home institutions will support participation in this event given the prestige and history of the IACL along with the special opportunity to exchange ideas and interact with younger scholars, Moderators and Distinguished Provocateur-Discussants from around the world.

All successful participants will have to register with the IACL. No other affiliation is required to participate in this program.

Questions

For questions about the Workshops, please contact Program Committee vice-chairs Luisa Fernanda García López (Colombia) at luisa.garcia@urosario.edu.co or Maxime St-Hilaire (Canada) at Maxime.St-Hilaire@usherbrooke.ca.

For questions about the Speakers' Corner, please contact the Director John Haskell (United Kingdom) at johndhaskell@gmail.com.

For questions about the IACL, please contact Program Committee Chair Richard Albert at Richard.Albert@bc.edu.

Workshops

Workshop 1: The Separation of Powers and its Challenges in Comparative Perspectives

Abstract: The modern vanguard of constitutional design has proven that separating powers alone according to parliamentary or presidential forms is not sufficient to create a structure of checks and balances that leads to good governance, an efficient and equitable delivery services, as well as democratic outcomes. In order to achieve these and other public goods, modern constitutional design must also account for higher social values, the reality of political parties, the relationship among the administrative state and the traditional branches of government, and it must also contemplate and in turn concretize a direct or mediated role for the people. Has the traditional understanding of the separation of powers outlived its usefulness in the present day or is it more important today than ever before? What are the current and future challenges to traditional understandings of the separation of powers? Are there models around the world that show promise as potential models for adoption elsewhere? This Discussion Group invites paper submissions on these and other related question on the separation of powers.

Distinguished Provocateur-Discussant
Mortimer Sellers (USA)

Moderators
Daniel Wunder Hachem (Brazil)
Ren Yatsunami (Japan)

Corresponding Moderator
Ren Yatsunami
ren.yatsunami@gmail.com

Workshop 2: Populism and Comparative Approaches to Democratic Theory

Abstract: Democracy seeks to reconcile discordant elements of self-interest and common weal; wealth and poverty; class and community; liberty and equality. Theories of democracy thus pair opposites such as realistic/idealistic democracy; elitist/participatory democracy; liberal/republican democracy; input-oriented/output-oriented democracy; and weak/strong democracy revolving around the question of the relation between the individual and the political body. Constitutional arrangements based on the concept include direct democracy, representative democracy, and deliberative democracy. Comparative approaches to democratic theory can be analyzed from a number of methodological approaches (historical; normative; contextual; functional) and a plethora of theoretical/institutional choices. Moreover, democracy theories

have to grapple with endogenously and exogenously induced problems (populism; tyrannical majorities; political extremism; states of emergency and forms of militant democracy; loss of confidence in elected representatives; low public participation; secessionist impulses), as well as factor in continuing and often inconsistent forms of democratic experimentalism and external challenges of fragile/unstable polities transitioning to democracy. The Discussion Group invites paper submissions that undertake analysis of such issues.

Distinguished Provocateur-Discussant
Oran Doyle (Ireland)

Moderators
Cristina Fasone (Italy)
Yaniv Roznai (Israel)

Corresponding Moderator
Cristina Fasone
cristinafasone@gmail.com

Workshop 3: Comparative Public and Private Law Responses to Religious Diversity

Abstract: The accommodation of religious diversity raises important questions for public and private law, many of which entail a breakdown of boundaries between the two. For instance, accommodation of religious freedom may entail ceding religious autonomy to certain groups and by incorporating systems of religious personal laws into the legal system. Conflicts between personal laws and general law or among different personal laws, however, require an enquiry into the scope of religious autonomy. Existing constitutional settlements face challenges in the face of increased claims from “new” religious groups and changing social conditions. In this regard, an emerging area of conflict is in non-discrimination statutes, where its horizontal applicability to private conduct may require religious entities to modify religious practices or face criminal or civil liabilities. Indeed, where religious claims conflict with other constitutional values such as freedom of speech and equality, new constitutional settlements are needed to ensure peaceful coexistence. This Discussion Group invites papers reflecting on these multifarious issues from comparative, public, and private law perspectives.

Distinguished Provocateur-Discussant
Michel Rosenfeld (USA)

Moderators
Jaclyn Neo (Singapore)
Ioanna Tourkochoriti (Ireland)

Corresponding Moderator
Ioanna Tourkochoriti
Ioanna.tourkochoriti@nuigalway.ie

Workshop 4: Defences to Liability: Philosophy and Doctrine

Abstract: Defences to liability are recognized in various areas of law. For instance, in tort law, illegality and necessity might be raised as defences; in contract law, duress and illegality; in criminal law, duress and necessity; in restitution, change of position. This Discussion Group explores the similarities and differences in the defences available in various areas of law and the philosophy underlying them, as well as compares how the scope of these defences are defined

and the prospects of convergence across areas of law and jurisdictions. Paper submissions that discuss any aspect of defences to liability in one or more areas of law are welcome. Analyses can be either jurisdiction-specific or cross-jurisdictional.

Distinguished Provocateur-Discussant
C.M.D.S. Pavillon (Netherlands)

Moderators
Cora Chan (China)
Eduardo Ferreira Jordão (Brazil)

Corresponding Moderator
Cora Chan
corachan@hku.hk

Workshop 5: Technology and Innovation: Challenges for Traditional Legal Boundaries

Abstract: Technology has challenged longstanding legal paradigms, changing the way lawyers regulate tourist accommodation (e.g. with Airbnb), labor (e.g. Uber), public decision-making (e.g. use of big data by tax authorities), liability (e.g. robots' actions), intellectual property (e.g. platforms like Spotify or Pandora), and even war (e.g. use of killing drones). How should law respond to these technology-mediated challenges? Technological evolutions also challenge the paradigm of territoriality of law and have led towards the emergence of a new paradigm, that of transnational law. In data protection, for instance, European authorities have attempted to enforce EU law outside EU, leading to serious conflict of laws with countries like the US that do not maintain similar standards. Can the clash of values reflected by such clash of standards be transcended? What would be the appropriate solutions? We invite paper submissions on law and technology, including (i) comparative intellectual property law; (ii) artificial intelligence; (iii) regulation of the platform economy; (iv) data science and law; (v) privacy and cybersecurity; (vi) technology and human rights.

Distinguished Provocateur-Discussant
Sofia Ranchordás (Netherlands)

Moderators
Catalina Goanta (Maastricht)
András Koltay (Hungary)

Corresponding Moderator
András Koltay (Hungary)
koltay.andras@gmail.com

Workshop 6: Migration and Asylum: Comparative Approaches and the Need for Harmonizing Regimes

Abstract: The recent migration “crisis” that Europe has experienced raises concerns about the effectiveness of existing legal tools in addressing the problem of large-scale irregular movement. This panel will evaluate existing international, regional and domestic legal tools on migration and asylum. It will attempt to explore a number of questions that emerge from the recent attempts to handle the crisis. Is the crisis in Europe really a crisis at all, compared to that experienced by countries in the Middle East and Africa, which host much larger refugee populations? Is the crisis in Europe the result of deficiencies in the EU's immigration and asylum

policy and practice? How do some retrogressive measures, such as the closing of borders and mandatory immigration detention, fit with international human rights standards? Do such policies have a disproportionate effect on certain “vulnerable” groups such as children, families, victims of torture and trauma etc. Are the policies of countries like Canada, which have advanced systems of refugee resettlement and sponsorship, more effective? How can Europe return to the humanitarian values that underpinned the 1951 Convention relating to the Status of Refugees?

Distinguished Provocateur-Moderator

Adelle Blackett (Canada)

Moderators

Asha Kaushal (Canada)

Dimitry Kochenov (Netherlands)

Corresponding Moderator

Asha Kaushal (Canada)

kaushal@allard.ubc.ca

Workshop 7: Misuses of Power in Both Private and Public Law: Dual Perspectives on Corruption

Abstract: The efficiency of the fight against corruption is generally considered as quality factor of the Rule of Law. This efficiency relies, among other things, on the unity of action. In turn, this unity depends upon our capacity to coordinate legal effects across those two major categories of legal literature that are public law and private law. It is not only the level, but also the content of such a coordination that varies with the legal systems, both national and supranational ones. Beyond the search for functional equivalents across countries within the same category, such as the fiduciary duty at common law and the duty of loyalty and fidelity under the French Commercial Code, it is thus worth examining the ways in which real or apparent equivalents may differently relate to public or private law according to the jurisdiction. At another level, whether it is stated to be private or public, the law may well distinguish between private and public factual spheres, just the way the French Penal Code does between public and private corruption. Faced with the scale of the threat corruption poses to the Rule of Law around the world, we should adopt a comparative perspective in order to test the relevance of the public/private divide in anti-corruption law.

Distinguished Provocateur-Discussant

Geneviève Cartier (Canada)

Moderators

Sebastián Paredes (Argentina)

Maxime St-Hilaire (Canada)

Corresponding Moderator

Maxime St-Hilaire

Maxime.St-Hilaire@usherbrooke.ca

Workshop 8: Methodological Approaches to Comparative Constitutional Law: Evolutions and Revolutions

Abstract: Traditional methodological approaches to comparative constitutional scholarship have evolved through the classificatory, historical, normative, contextual or functional approaches. Challenges in comparative public law methodology include: limitations of language and contextual understanding; complexity and interdependence of constitutional provisions; tendency to conflate normative with positive claims on constitutionality; the need to establish the transposability of foreign norms; lack of theory building; difficulties in achieving controlled comparison and proper case selection. Scholars must also address questions of constitutional design against a backdrop of transformation of statehood (e.g. rise of transnational organizations), state sovereignty from above (e.g. can human rights treaties be seen as constitutional documents) and emergence of other sources of norm creation/implementation (e.g. the market). This Discussion Group invites paper submissions that analyse the development of and challenges facing methodological approaches to comparative public law.

Distinguished Provocateur-Discussant
Guillaume Tusseau (France)

Moderators
Luisa Fernanda García López (Colombia)
Tomasz Koncewicz (Poland)

Corresponding Moderator
Luisa Fernanda García López
luisa.garcia@urosario.edu.co

Speakers' Corner

Abstracts from younger scholars to participate in the TED-style Speakers' Corner (see description above) should be sent by email to the Director of the Speakers' Corner John Haskell (United Kingdom) at johndhaskell@gmail.com.

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