

“A Review of Current Trends in Foreign Relations Law”

Workshop, 9 and 10 May 2019

Convenors: Helmut Philipp Aust and Thomas Kleinlein

Keynote Lecture: Campbell McLachlan, QC

Call for Papers

The workshop aims to bring together scholars working in the field of international law, constitutional law and public law in order to survey recent trends in an emerging field whose contours are still subject to debate. In particular, we will assess whether there are comparable trends across jurisdictions – in legislation, case law and the academic discourse.

Current debates in foreign relations law in various jurisdictions are concerned with assessing the relationship between this field and central constitutional notions such as democracy and the rule of law. Increasingly, it is questioned whether foreign relations law is indeed different in nature from other fields of public law. In particular, the question is raised whether state conduct with an external or international dimension is subject to the same constitutional standards as conduct which has merely internal repercussions. Moreover, it is obvious for most jurisdictions that the line between the ‘external’ and the ‘internal’ dimension (the ‘international’ and the ‘domestic’ spheres) is being blurred. The very notion of ‘foreign affairs’ has become misleading since a significant part of a state’s international relations takes place in international or supra-national organizations.

Comparative Foreign Relations Law is currently emerging as a field of research. Together with Comparative International Law, it represents a new trend in comparative law. The workshop will proceed on the assumption that, if any ‘exceptional’ status of foreign relations law is becoming less and less plausible, ‘context’ matters even more for the comparative study of foreign relations law. While this may even further complicate comparative work, it is reason enough to combine the more sociological interest of Comparative International Law with a focus on institutions, actors, procedures and substantive law. In particular, we are interested in the question of how the sociological dimension of comparison impacts upon the doctrinal and normative questions that scholars of foreign relations law typically deal with.

The legal developments that will be analysed in our workshop raise questions pertaining to the very delimitation of the field of ‘foreign relations law’. Not in all jurisdictions has such a distinct field emerged. Yet, almost all constitutional systems need to grapple with similar questions typically asked in foreign relations law and raised by a nation’s interaction with other nations. We are especially interested in jurisdictions which have so far not been the focus of attention in Comparative Foreign Relations Law.

The workshop will be held in an informal setting with a group of 15-20 participants, enabling open and mutually stimulating discussions.

The following questions are of particular interest:

- Allocation of authority: To what extent is the conduct of foreign relations seen as belonging primarily to the executive branch or rather as a shared competence of all branches of government?
- Democratic legitimacy: How do different dimensions of democratic legitimacy interact and contradict each other in the field of foreign relations law?
- Modes of control of the executive: How is control in the area of foreign relations law organized in a temporal dimension? What is the relationship between forms of an ex-ante and ex-post control? Does parliament have any instrument to demand positive action from the executive? Or does it only have a veto power?
- Dynamic of Procedures: Is there a change with respect to the procedures in foreign relations law (reflecting the developments sketched in our invitation letter)? Is there, for instance, a trend towards earlier information of parliaments about imminent foreign policy decisions?
- Hybridity of Foreign Relations Law: If foreign relations law is of a hybrid character, combining elements of both international law and domestic law, does this strengthen or rather dilute the normativity of international law? Are there similar concerns about a dilution of normativity of constitutional law? To what extent is the field of foreign relations law shaped by the normative expectations and structures of international law? Conversely, in how far is international law a product of the combined processes governed by foreign relations law and construed in the light of domestic law?
- Role of Courts: What is the role of courts in foreign relations law? Are there emerging trends, for instance towards a greater role of courts in controlling the executive? Or does that depend on individual subject matters and jurisdictions?
- Overarching Narratives: What are the overarching narratives about the development of the field? 'Normalization'? Democratisation? Should they be reassessed?
- History of the Field: What is the history of the field in scholarship? And what role does history play in the practice of foreign relations law?

Submissions:

Interested scholars should submit an abstract of no more than 500 words by 15 November 2018. Abstracts should contain the title of the paper, as well as the name, title and affiliation of the author(s). Please send abstracts and a CV including a list of publications to susanne.prater@uni-jena.de. If you wish to discuss topics or ideas informally, please contact helmut.aust@fu-berlin.de and/or thomas.kleinlein@uni-jena.de.

Speakers will be informed by 30 November 2018 whether or not their paper has been accepted, and will be expected to submit a draft paper of 6.000 to 8.000 words (including footnotes) by 5 April 2019. Presentations should be no longer than 20 minutes in duration.

Venue:

The workshop will be held in the Old Castle in Dornburg/Thuringia (Altes Schloss von Dornburg, 25 min from Jena) on 9 and 10 May 2019. Travel and accommodation expenses will be covered on the basis of the Thuringia public-sector regulations governing travel expenses.

Timeline:

Abstract submission by: 15 November 2018
Selection of papers by: 30 November 2018
Submission of papers by: 5 April 2019