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**Moving Beyond Comparative Constitutional Law - The Politics of Transnational Constitutionalism**

It is now widely recognised and accepted that domestic courts, in their reasoning, refer increasingly to foreign norms as well as judgements. In particular, with regard to the latter, the cross-citation process involves, horizontally, decisions of courts of other states and, vertically, rulings of regional or international judicial bodies. This phenomenon has been labelled ‘dialogue between courts’ and conceptualised as an impact of globalisation (Slaughter 2003).

Although domestic constitutional and supreme courts are fully part of this process, comparative constitutional lawyers seem to struggle in recognising the effect that a transnational dialogue produces in domestic decisions. They rather focus on courts as institutions or, at the very best, examine the procedural functioning of courts.

This paper will argue for the need to move beyond the mere analysis of institutional and procedural aspects of constitutional decision-making and take, instead, a closer look at the substance of decisions as well as at the context in which they are delivered. As a matter of fact, constitutional courts’ judgements are often loaded with – more or less implicit – political considerations, which fade when adopting a pure comparative methodology. On the contrary, those very political considerations are crucial for highlighting the role that constitutional courts play today, in the wider web of judicial dialogue. It is only through a proper attention to those political considerations, it
will be argued, that a burning question – which are, at present, the most proactive sites for the protection of fundamental rights – has some chance to be answered adequately.

Reference

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A former official of the International Labour Office in Geneva, Professor Blackett has been an ILO expert on international standard setting on decent work for domestic workers (2008-2011) leading to the adoption of ILO Convention No. 189 and Recommendation No. 201; and in a labour law reform process in Haiti (2011-2014). In 2009, she was unanimously appointed by the National Assembly of Quebec to the province’s Human rights and youth rights Commission, where she served as a commissioner for seven (7) years. A member of the Law Society of Upper Canada and the Barreau du Québec, she was awarded the latter’s Christine Tourigny Award of Merit and the status of advocate emeritus in 2014, in recognition of her social commitment and her contributions to the advancement of women. She received a Queen Elizabeth II Diamond Jubilee Medal in 2012. In 2015, the Canadian Association of Black Lawyers awarded her its Pathfinder Award for her significant contributions to the legal community and the community at large. Email: Adelle.blackett@mcgill.ca.

Emancipation in the Idea of Transnational Labour Law

We cannot understand transnational law in the age of anger without taking seriously the proposition that the three-century long transatlantic slave trade was a global institution, that also enabled colonialism. Slavery is often framed as a “peculiar” institution, despite the fact that the legal liberal order emerged through it, rather than despite it. Slavery was a transnational system of labour regulation, a relation of domination in the Marxian sense in which violence and unfreedom were central to the development of capitalism and its institutions, including the law.

Slavery’s legacy, paradoxically, is its own historical “social death”. Western liberal democracies are empowered to engage in ongoing othering in their “protectionist” avoidance of deeply redistributive claims at precisely the moment when transnational capital at once entangles itself in the mechanisms of political representation while disentangling itself from the control of any particular state, and therefore, of all.

It may well be a tragic mistake for those concerned to build a counterhegemonic transnational labour law to speak to the text of far right embrace of the morality of working class legitimacy claims, without acknowledging the unmistakeable subtext: neoconservatives and white supremacists “emancipate hatred” as they name and reframe white working class rage in ways that perpetuate the inability of poor white citizens to imagine common cause with anyone other than white billionaires. They reinforce the racialized hierarchies that were at the heart of maintaining slave society and a colonial world order. Indeed, neo-fascism needs and relies upon a demonized,
dehumanized other (or many of them – the enemy within) to enable its militarized quest for de-territorialized (re-territorialized?) power.

In this critical moment, emancipatory social justice claims must avoid easy denials that “identity” matters, just as they must insist on painstaking engagements with transnational labour law as emerging from – rather than despite – its others.

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Place and the Politics of Knowledge Production: Africa in a Time of Aid Funded Research

My paper will reflect on the place of place in the work of scholars of the Global South based in the North. At a time when Britain is redirecting its aid budget to fund development research (‘Global Challenges’) (Manji and Mandler forthcoming), I reread the writing of Paulin Hountondji to consider centre and periphery in knowledge production. Using available Global Challenges material as my sources, I explore perceptions of the continent as a source of data and the testing of theories generated elsewhere (Abrahamsen 2017; Mama 2007). I consider the significance and contemporary manifestations of what Hountondji (2002) called Africa’s theoretical and intellectual ‘extraversion’.

I link this with current debates in African Studies and more widely on the nature of a decolonised curriculum. To do this I reach back within by own discipline of law to the Dar es Salaam debates on legal education (Shivji 1993; Hirji 2010) and to what Twining has called the imperative to ‘de-parochalize[.] our juristic canon’ (Twining 2009). I ask: How might we reorient our scholarship to address our own ‘paradox of location’ (Mudimbe 1988) as Africa is once again ‘re-invented’ (see Mazrui 2005)?

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Daniel Drache is Professor Emeritus of Political Science at York University and former Director of the Robarts Centre for Canadian Studies. His work focuses on understanding the changing character of the globalisation narrative in its economic, social and cultural dimensions. His 2008 book, Defiant Publics: The Unprecedented Reach of the Global Citizen (London: Polity) looks at the evolving responses from states, social movements and private sector actors to global governance and the increasing role of microactivists and social movements in public policy formation. He has worked extensively on the WTO's failed Doha Round with particular focus on TRIPS and public health, food security and nutrition, and poverty eradication. He is also lectured most recently on the “Canada European Free Trade Agreement: Ought We To Be Worried?”
**Systemic Challenges to Global Trade Governance – No Way Out?**

In an age of rising anger it is important to isolate the trigger points for so much frustration and scapegoating post-Brexit, the upset election of Trump and the vitriolic resurgence populist nationalism. What role and standing, if any, does the idea of “we the people” have in the WTO’s model of trade governance? The answer for of this presentation is the systemic asymmetry between agency, actor and structure is casting its long shadow over the present crisis leading to more deadlock and acrimony. The paper sets out to interrogate the major hydra-headed challenges the world trading order faces from within and without including institutionalized protectionism within the WTO rules and the rise anti-dumping filing by the global South, the decline in the use of the WTO’s dispute resolution, the interface between law and governance; the incipient world ambition of China’s global infrastructural project – The New Silk Road and Belt to remake the world order in its image and the latest threat from the United States to ignore any unfavorable ruling by the WTO. The paper will attempt to address these issues – is there a way forward? Not likely for the time being the multilateral trading system is being reconfigured in often backward ways.

David Nelken PHD, LLD (Cambridge) is Professor of Comparative and Transnational Law (and from 2013-2016, Head of Research and Associate Dean) at the Dickson Poon School of Law, King’s College London. He taught at Cambridge, Edinburgh and University College, London, before moving to Italy in 1989 as Distinguished Professor of Legal Institutions and Social Change at the University of Macerata. From 1995 to 2013 he was Distinguished Research Professor of Law at Cardiff University, and since 2010 he has been the Visiting Professor of Criminology at Oxford University. His work, covering both theoretical enquiry and empirical investigation, is in the areas of comparative sociology of law, criminology, and legal and social theory. Email: david.nelken@kcl.ac.uk.

**Alternative Truths and Global Social Comparisons**

I do not have experience of research in/on ‘the south’ and have not followed TWAIL debates. But I have in both sociology of law and criminology strongly argued against the applicability of Anglo-American criminology to Southern Europe using the example of Italy. I have written about efforts to combat transnational social problems such as corruption and human trafficking, seeking to show how a perspective sensitive to differences in legal cultures may help understand the ‘effects’ of such efforts.

More recently I have been working on global social indicators and their legitimacy. These are typically made in the north’ for application in ‘the south. They are criticised inter alia for their knowledge and governance effects. I am currently trying to focus on the knowledge effects by relating
them to the use of algorms in social life. What is the relationships and tensions between expert shaped truths and the ‘alternative truths’ that are being embraced by populists?

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Economy, Society and the Continued Salience of the Transnational: Labour Regulation in an Era of Regulatory Nationalism
Against the backdrop of a political turn to the national as the only ‘legitimate’ site of regulation, this paper examines whether, from the perspective of labour regulation, economic activity which crosses national borders can (any longer) be contained within or constrained by state regulation, and the role of regulation on the regional or transnational plane. Historically, liberal market economies, such as those of many of the states of the EU, were able to establish social cohesion, solidarity and to ‘govern’ capitalism (e.g. in order to enact labour standards). This state capacity was considerably bolstered by being part of a regional integration project namely the European Union. In contrast, postcolonial states have never enjoyed such protective capacities. Through a study of the EU and the African Union, the paper examines whether regulatory capacity lost – or never exercised – at national level due to globalisation and the removal of barriers to trade may, in part, be countered by importing a social dimension into regional economic integration.

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Local Spaces, International Ideas – Discrepancies in Perception between International Actors and Local Communities’
The ‘international’ and the ‘local’ have been experiencing increasing interaction as a result of the globalisation of the past decades. International actors, whether in form of international organisations, foreign states, or multinational corporations, are influencing life on the ground in countries around the world in a number of areas, ranging from post-conflict peacebuilding to international investment arbitration. International actors have gained considerable influence on various aspects of life on the ground in their country of operation. However, this influence has not always been to the benefit of local communities despite the fact that improving the quality of life of locals is often used as a justification for the international presence in the country in the first place. In fact, in many instances these interactions have resulted in a number of challenges and tensions; particularly where the ‘local’ dimension is within a developing country.
This article argues that some of these tensions are the result of a discrepancy in perception which exists between foreign international actors operating in the country and the local communities on the ground. By discrepancy in perception the article refers to the gap which exists between local communities’ actual interests, needs and priorities and the perception of the international community as to what their priorities and interests are or even ought to be. With reference to peacebuilding processes in post-war Afghanistan, particularly the international community’s role in establishing the Afghan Local Police (ALP) force, the article attempts to demonstrate this gap and how such differences in perception can have far-reaching repercussions. While international actors involved in the development of the ALP hailed their success and praised them, amongst other things, for their work in protecting the local population, these local communities have not only found the ALP to be a key driver of conflict, but Afghan women specifically have suffered from severe violations committed by ALP officers, including sexual violence. The article considers this discrepancy in perception of the ALP by the international community and the reality for local communities on the ground and proposes that the lack of engagement by international actors with local communities is a driving factor regarding the inadequacy of international operations in developing countries.

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Welfare States and Corporate Citizens are not the same - Concepts and Categories in Transnational Law
As part of concession agreements between states and international investors, large multinational commodity companies frequently commit to providing welfare services to local communities that live in the territory of their mines. These services include the building of hospitals and schools, as well as the implementation of economic development and health programmes. At first glance, it appears that the relational dynamics between corporations and local communities resemble the ones between states and citizens. Therefore, concepts and categories – such as rights and duties, control and separation of powers, accountability and legitimacy – which have been developed when analysing and describing democratic nation-states, are used as heuristics to study corporate-community relations.

This paper argues that adopting the vocabulary of ‘democratic government’, whilst also referring to research on the anthropology and operating modes of the state, obfuscates the norms, representation and power dynamics of and within regional private-public governance regimes. Presenting existing empirical studies on the relationships between communities and corporations, which are headquartered in the Western hemisphere but operate in the Global South, this article demonstrates that the analogy ‘state within a state’ conveys a misleading image. For example, regional private-public governance regimes, unlike governmental public governance regimes, are time limited (corporations do leave, states are territorially bound), originate in the political economy (corporations are present because of economic agreements, not because of elections), and are controlled by economic rather than democratic public forces.

Liliane Mouan joined the Transnational Law Institute as a Postdoctoral Research Fellow in September 2016. She obtained her LL.B at the University of Buea in Cameroon and holds an LL.M in International Law and Human Rights and a PhD in International Studies and Social Science, both from Coventry University. Prior to joining King’s, she worked as Research Assistant at the British Institute of International and Comparative Law (BIICL); Research and Teaching Assistant at Coventry University; Guest Lecturer at the University of
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Liliane’s primary research interests lie at the intersection of transnational law and global governance. She is currently assisting in the development of a comprehensive research project that focuses on the interdisciplinary field of global supply chain governance in the extractive, garment, electronics and agri-food sectors. A second project explores the potential and limits of transparency in transnational regulatory governance. Email: liliane.mouan@kcl.ac.uk.

**In the Name of the People and for the People? The Politics and Paradoxes of Transparency in Transnational Business Regulation**

In the past two decades, transparency regulation has emerged as the preferred approach to address contemporary challenges associated with transnational business activities, from natural resource-related conflicts and corruption to modern-day slavery, child labour and environmental degradation. Transparency is said to improve governance and trust, reduce litigation and reputational risks, enhance corporate social responsibility, and empower societal actors – citizens, workers and consumers - to hold governments and firms accountable. Yet, further analysis reveals significant gaps between the stated aims of transparency initiatives and their actual effects.

In this paper, I review decades-long efforts to bring greater transparency in the extractives (oil, mining) sector to show how transparency may, in fact, be (re)producing exclusion and the same inequalities that it is intended to tackle. In particular, I focus on the politics of knowledge creation and dissemination which allow powerful norm-setters to advance their interests and position themselves as the main “experts” on and providers of transparency, while ignoring and/or undermining local knowledge, interests and agency. I conclude with reflections on the implications of these dynamics for the legitimacy of transparency as a mechanism of transnational regulatory governance, particularly in this new “age of anger” and distrust. While scholars warn that transparency itself may be rendered ever more illegitimate by those objectives and strategies that contribute to tame its effects, I argue that this new moment offers a unique opportunity to interrogate, scrutinise, reconsider or tear down all the assumptions that led to transparency being the regulatory response par excellence, and proposes ways to “democratise” transparency so as to render it more responsive particularly to the needs and interests of those users and beneficiaries with less resources and power.

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**Politics of Trans-Local Law: A Post-Foundational Search for the Commonality?**

The chapter discusses assumptions behind and political stakes of one particular socio-legal approach under the rubric of transnational law. The approach is what this paper calls trans-local approach, characterized by three basic pillars: its focus on local struggles and a perspective to bridge locality and globality (Darian-Smith 2013); its scepticism toward methodological nationalism (Michaels 2013) and epistemological euro-centrism (Chakrabarty 2000); its sensitivity toward new geographies of power (Sassen 2008). The purpose of this chapter is to explore the political stakes of this trans-local approach against the background of (still) lasting economic globalization and the New Nationalism of politics. (As such, it mainly concerns with questions 1. and 4. in the Invitation Letter.) It first discusses that there are three basic normative and methodological assumptions the trans-local approach holds: first, it assumes that there are legality claims observed locally under the influence of new geographies of power, and second, it assumes that we can empirically observe such
local and subjective claims of legality, and third, lastly, it does not take a priori proposition of any types of transnational legality, and consequently, it means emergent transnational legality cannot be observed and is fundamentally contingent. With such assumptions in mind, the chapter poses a crucial question: what are the political stakes of committing to subjectivities of locality in this way? An answer to this question is yet to be elaborated, but it tentatively claims as follows. We have to first recognize that the current approach is fundamentally political already at the moment when it picks up one local struggle. Then, with such an admission, the trans-local approach, although departed without a priori propositions of any types of transnational legality, may well be required to come back with some types of transnational legality. Otherwise, it seems it inevitably ends up with merely another fully political contestation that is, with current upsurge of political unrest, apparently not promising. Such legalities are always temporal and spatially limited, and as such characterized as a post-foundational transnational legality. To pursue such a research program, it requires, on the one hand, strength of political tolerance and of putting subjective normativities into scrutiny, and on the other, an institutionalization of the process of the conversation of transnational legalities as soon as possible. In consequence, it discusses that the trans-local approach is fundamentally characterized as a post-foundational search for the commonality. With continuous efforts to objectively discuss subjective claims of legality, the trans-local law approach needs to be committed to unfold dynamic power relations in a contextualized and objective manner. Then, ironically, the current approach does not mean to fully commit subjectivities of the local, but rather it inevitably is an activity to critically evaluate legality and legitimacy of each local struggle, maybe in a comparative and collaborative way.

Naveen Thayyil is a member of the Faculty of Humanities and Social Sciences at the Indian Institute of Technology, focusing more closely on issues of Law, Techno-science and Democracy. Prior to this, he was teaching at the National Law School of India, Bangalore. He holds a Ph. D from the Tilburg Institute of Law Technology and Society at the University of Tilburg, the Netherlands. He was a Felix scholar between 2006-2007, when he pursued his Masters (LLM) from the University of London – jointly at SOAS, University College and Kings College London. Subsequent to his graduation from the National Law School of India, Bangalore in 2002 he practised public law in the Supreme Court and the High Court at Delhi. Naveen’s research interests lie at the intersection of three fields: legal and political theory, environmental law and technology regulation. His interests lie not only at the level of public policy viz., issues of regulation of technology for the protection of public health, environment and related rights that seek to democratise society, but also in theorising and understanding how categories of law, technology and society shape each other. His publications include the 2014 book Law Technology and Public Contestations in Europe: Biotechnology regulation and GMOs (Edward Elgar, Cheltenham, U.K.), ‘Claiming the Social: Beyond Law as Technology’, (2015) Socio-Legal Review 11 (2) and ‘Judicial Fiats and Contemporary Enclosures’, Conservation and Society 7 (4) 2009. Email: tk.naveen@gmail.com.

The (Legal) Lives of Techno-Scientific Rationality
I want to focus on the relation between the politics of techno-science - the attendant rationalities, discourses and institutions - and 'law's politics', through a specific attention on how global standard-making at the Codex Alimentarius Commission (Codex) and transnational rules in the WTO framework have mutually shaped each other. Codex functions as an important site through which global rules for the health-environment-agriculture-trade complex have been forged at the WTO arena. Codex Commission pre-dates the WTO agreements by more than three decades as a joint endeavour of the Food Agriculture Organization and the World Health Organization earlier charged with the formulation of international food codes as a voluntary standard setting process. However, the role and functions of the Commission have considerably transformed since the incorporation of its work within the ambit of the SPS, as an international standards body whose standards could legitimate expectations of either compliance. This reliance on an international body, which was till then relatively obscure, provided the WTO architecture with a universalizing normative authority of scientific expertise in its goal of rationalizing food safety regulation throughout the globe;
notwithstanding possibilities of significantly divergent risk constructions among Members. The inclusion of Codex within SPS facilitated a scientific universalism through risk analysis for the WTO regime, since there is a default obligation that Members will rely on the standards set by Codex in their SPS measures. Building on the notion of interpenetration of the categories of law, society and technology, the paper seeks to focus on approaches to describe the politics of law while taking the political lives of techno-scientific rationality in law seriously.

**Peer Zumbansen** joined The Dickson Poon School of Law, King’s College London in July 2014 as the inaugural Professor of Transnational Law and founding director of the Dickson Poon Transnational Law Institute. Prior to joining King’s Peer was based at Osgoode Hall Law School at York University where, among other things, he held the prestigious Canada Research Chair and served as Associate Dean Research, Graduate Studies and International Relations. He was also the founder of the interdisciplinary Critical Research Laboratory in Law and Society. Peer studied philosophy and law in Germany and France before receiving an LLM from Harvard Law School, followed by a doctorate and the postdoctoral, Habilitation from Frankfurt’s Goethe University. His research is focused on private law theory, comparative and transnational law. One of his longstanding interests has been in legal education and legal curriculum reform, with a particular emphasis on the enhancement of a more foundational as well as practice-oriented law training. **Email**: Peer.zumbansen@kcl.ac.uk.

**Law’s Negotiation of Centres and Peripheries**

Abstract

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**Normativity in Transnational Law: The Opacity of Democracy and the Transitivity of Constitutionalism.**

My reflection piece will explore possible sources of normativity for phenomena captured by ‘transnational law’. At present there are more questions than answers. What reasons should count as normative in governing transnational relationships? Do they have any unity? Though normative reasons would be justificatory reasons applicable to each substantive case at hand, some overarching values claim to control legal responses to social phenomena. My piece will particularly focus on two such values: democracy and constitutionalism. The choice is motivated by the resurfacing rift, both in the global south and the north, between democracy and constitutionalism. What bearing does this rift have on transnational relationships? Can justifications for democratic legitimacy trump reasons that might apply to transnational relationships when thinking of law in a global context? At the other end of the spectrum, can principles captured by constitutionalism smoothly find their way into reasons that should govern transnational activity, especially in light of the rising rift with democracy? Can the opacity of electoral democracy be dissolved, and how can one argue for the transitivity of reasons from constitutionalism and other sources to constitute normative reasons in transnational contexts?

**Ratna Kapur** is currently a Visiting Professor of Law at Queen Mary University of London. She is a Senior Faculty member at the Institute of Global Law and Policy, Harvard Law School. She has written and
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Conversations with Law’s Others
Law has increasingly been recognized as a governance project as opposed to one that produces freedom and emancipation for the human subject. Its gender racial and cultural norms have been exported globally through the transnational legal mechanisms of Empire slavery and neoliberal market economics. Given this understanding that has emerged from critical, postcolonial and feminist legal thinking, I would like to explore why there continues to be a faith in this project as an emancipatory one in social justice movements, locally and globally. What is the politics of this faith? Does it rest in a Northern/western/liberal conceit that there are no alternatives? What does this reluctance to let go of law as an emancipatory pursuit tell us about the limits of social justice movements/imaginations? transnational law?
The paper examines these questions through a pressing need for conversations with ‘Law’s Others’ and how these expose the limited historical, cultural and political universe in which the law functions where justice, freedom and emancipation continue to be understood as external pursuits and the subject as embedded in liberal individualism. If this is the case then how does the law take account of the veiled woman whose understanding of freedom and subjectivity cannot be captured within the right to gender equality and in fact through her encounters with this right, she exposes the gender and cultural norms on which it is based; or the subject who seeks liberation through the renunciation of the body through fasting, and whose encounters with the law on suicide and the right to die expose the Christian/religious underpinnings of the law as well as its preoccupation with the corpus; or the queer subject who turns away from assimilative pursuits such as same-sex marriage and whose cultural, sexual and spiritual desires cannot be accounted for in the construction of a global gay or gay international in LGBT rights advocacy. In each instance the subject exposes the political and normative architecture of law and what is missing from the analysis in the transnational legal project. These deeper and more grounded conversations can I hope compel us to think beyond the connections between the law and the transnational and expose the political and normative dimensions of the transnational legal project as well as how it might be remade through these encounters with law’s others.

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Double or Nothing? The Politics of Transnationalism in Inter-American Human Rights Law
Following the end of dictatorships in Latin America, the Inter-American Court of Human Rights (IACtHR) has implemented an ever-more ambitious agenda of “transnationalization” -- that is, moving away from an inter-state model of adjudication, instead emphasizing advancement along three axis: (a) direct effect in domestic decision-making of Inter-American laws and orders; (b) expanded orders for structural transformations of domestic governance; and (c) detailed supervision of the implementation of its decisions.
There is, however, some evidence of a backlash to this trajectory of transnationalism. Three states have withdrawn from the Court’s jurisdiction, and the Commission’s work almost came to complete halt in 2016, as states proved unwilling to fund it. Moreover, some domestic courts have grown resistant to follow the Court’s guidelines. And, on top of that, the most influential nation in the region (and the main financial backer of the Commission) elected Donald Trump as President, on an “America First” platform that seems hostile to both human rights and international governance.
Facing these challenges, activist and progressive legal scholars are keen on doubling down on the efforts, and insist on a deepening of the Court’s transnationalism. This paper, though, suggests some caution. The way Court has advanced its agenda features distinctive blind spots that makes the Inter-American Human Rights System an easy target for populism and nationalism. Doubling down on transnationalism may, in fact, prevent us from protecting the System’s achievements from the attack of a disturbing new kind of political opponent.

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Complex Legalities of Transitional Justice
This presentation is a product of my work at the research group in Social Justice at the Jesuit University in Bogotá, Colombia. The group works on legal and political theory. In the search for methodologies that enrich pure theoretical analysis with more contextual information, we established a legal clinic that has been dealing with a case of land rights and corporate accountability in a central region of Colombia in the Magdalena river valley. We work together with an experimented NGO that has worked on peace and development for more than 10 years. Together with this NGO we selected a case among 300 legal suits in the region. In this presentation I want to propose some theoretical conclusions departing from empirical observation of the case.

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The changing forms, content and sites of the regulation of work, workers' activism and 'transnational labour law
Labour law developed and perhaps only persists nationally and sub-nationally, but in response to globalization of production and other transformation of work and labour markets, a labour lawyer's activities have expanded beyond traditional forms and content of labour law. More recently, questions raised about the distributions of the benefits of globalization have included the future of work. In both cases, we are invited to re-think the role and content of labour law or more broadly, the regulation of work. When viewed through a transnational lens, we can reconceptualise 'labour law' in new forms, content and sites and invite us to speculate on the future regulation of work.

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Globalisation and Governability
Transnational law has played a central role for over half a century in managing the tensions generated by a world economy that has become both increasingly globalised and dominated by large corporations. Although relatively successful for quite a long period, its flaws and limitations have become increasingly evident, especially in the great financial crisis of 2007-9 and its aftermath. The continuing political failures of transnational global governance have been starkly exposed by the resurgence of nationalism and populism. The calls among many even in the intellectual elite for a return to the nation state seem to reflect an inability to understand or come to terms with the profound transformations wrought by transnational corporate capitalism and the challenges it poses. Yet the very magnitude and complexity of many of the governance issues puts them beyond rationalist and technicist debate, further contributing to the political backlash. This presentation will attempt to address these broad questions through reflections on recent practical engagement with some key global governance issues, especially international corporate taxation.

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The Morning After: Crisis, Law, and Politics
On Wednesday 9 November 2016, the day after the 58th quadrennial American presidential election, the world awoke to find that Donald Trump had been chosen as the country’s 45th commander-in-chief. The following days were marked with emotional devastation from liberal and even left-leaning conservative constituencies not only in the U.S.A., but the world over, for fear and sadness over the premise of this newly authorized demagogue and the voters that vested him with such power. Trump’s unexpected win caused an affective tsunami for smug spectators, who presumed Hillary Clinton would clench the throne, and this, approximately five months after another fateful night whereby voters in the United Kingdom, much to the surprise of observers, chose to exit the European Union in a historic national referendum. Both events gave a large subset of the global population a brief, collective interest in a legal-political equivalent to “Plan B: The Morning After Pill”.

This short paper explores the temporal narrative – waking up one day to a world “turned upside down” – that bolsters such strong, and incredulous reactions to these events. My inclination is that this trope evinces deeply liberal mythologies of the social contract that turn on an underlying fantasy of law’s violence as otherwise – in the “regular world” – occasional, measured, and well-deserved; in other words, it propagates an imagined past under U.S. President Barack Obama as desirable to return to. But, drawing on the work of Bonnie Honig, I ultimately argue that the affective experience of disjuncture between liberal-capitalist-imperial democracy with a human face, and liberal-capitalist-imperial democracy with a “Make America Great Again” hat (or the pre- and post-Brexit vote), offers timely reflection for both legal theorists’ and their investment in law’s saving power, as well as cynical activists and their presumption of law’s inescapable harm.

Stephen Minas is a doctoral candidate and visiting lecturer in the Dickson Poon School of Law, a member of the IUCN World Commission on Environmental Law and an honorary fellow in the School of Population and Global Health, University of Melbourne. Stephen previously worked as an advisor to the Premier of the Australian state of Victoria and for members of the Australian Parliament. Stephen is admitted to practice as an Australian lawyer and holds Honours degrees in Law and History from the University of Melbourne, an MSc in International Relations from the LSE and a Graduate Diploma of Legal Practice. Email: stephen.minas@kcl.ac.uk.

The Politics of International Dispute Resolution in East Asia
Like the waters and features of the South and East China Seas, the political frontiers of international dispute resolution in this volatile region are increasingly contested. The settled dynamic of the past decade was that China pressed its claims through novel legal formulations and the deployment of hard power assets to create facts on the ground and in the water, only to be opposed by the United States and such allies and partners as had territorial claims which overlapped with China’s, principally Japan and the Philippines. These latter states based their positions on public international law, principally the United Nations Convention on the Law of the Sea (UNCLOS), while the United States’ position was backed up by the US Navy and its ‘freedom of navigation operations’. With the elections of Donald Trump in the United States and Rodrigo Duterte in the Philippines, this dynamic seems to have been ruptured. The Philippines under Duterte has at times resembled a ‘runaway plaintiff’, disowning its victorious judgment, while the nascent Trump administration has sent mixed signals on international law and the regional maritime disputes. In consequence, the uncertainty surrounding the landmark 2016 Philippines-China arbitral award and observance of UNCLOS more generally in East Asia has deepened. The ‘rules-based order’ represented by UNCLOS is, for the moment, without a champion in this context. But if the current situation evokes what Simon Chesterman has dubbed ‘Asia’s ambivalence about international law and institutions’, the longer-term trajectory remains unclear. This paper will examine how transnational legal research can contribute to enhanced understanding of this complicated and rapidly changing situation. It will be argued that transnational legal research can shed additional light on both the contours and stakes of dispute, through close attention to the interplay between public international law and geopolitical, political and normative contestation.

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The Transnational Law of Land Grabbing—A Marxian Approach

Political economist Mark Neocleous once observed that the recent wave of critical international law scholarship, while impressive in scope and ambition, has been marked by a certain peculiarity—the near-total absence of Marxism. As Neocleous pointed out, despite the explosion of interest in the history and theory of international law over the past two decades, very few scholars have examined international law’s complicity with imperialism, colonialism, and neo-colonialism from a specifically Marxian perspective. Fewer still, he noted, have attempted to develop a theory of international law’s historical evolution on the basis of the account of “primitive accumulation” provided in the first volume of Marx’s Capital.

There is arguably no better evidence of this tendency to elide the Marxian tradition than the nascent literature on “land grabbing”—the large-scale acquisition of land and land resources in developing countries by wealthy states and corporate investors. While many political economists, political theorists, and rural sociologists have argued for and against the applicability of Marx’s theory of “primitive accumulation” (and related models of “accumulation by dispossession”) to “land grabbing”, no international lawyers have proposed—or even grappled with—a specifically Marxian approach to the phenomenon. This paper has two objectives. First, it demonstrates that a suitably revised version of Marx’s theory of “primitive accumulation” does much to illuminate the legal rules, instruments, and institutional arrangements that facilitate “land grabbing”. Second, and more broadly, it uses this application of “primitive accumulation” theory to “land grabbing” to lay the groundwork for a systematic historical-materialist explanation of neo-colonialism.

William Twining was Quain Professor of Jurisprudence from 1983 until 1996; after a period as Research Professor he became Emeritus in 2004. He has held chairs in Belfast and Warwick and numerous visiting appointments. At the start of his career William taught for seven years in Sudan and Tanzania. He has maintained an interest in Eastern Africa, and more broadly the Commonwealth, ever since. He has studied
and taught in several leading UK and American law schools. A prominent member of the Law in Context movement, he has contributed especially to jurisprudence, evidence and proof, legal method, legal education, intellectual history and legal archives.

His recent work explores the implications of globalisation for legal scholarship and legal theory. Central themes include the variety and complexity of legal phenomena; that many so-called global processes and patterns are sub-global, linked to empires, diasporas, alliances and legal traditions; that diffusion, legal pluralism, and surface law are important topics for both analytical and empirical jurisprudence; that, in a world characterised by profound diversity of beliefs and radical poverty, the discipline of law needs to engage with problems of constructing just and workable supra-national institutions and practices; and that adopting a global perspective challenges some of the main working assumptions of Western traditions of academic law.

His main current research is for the Legal Records at Risk project (LRAR) which is concerned with the preservation of records of private sector institutions specialised to law in England and Wales. William Twining was awarded the 2016 Halsbury Legal Award for Academic Achievement. Email: wtwining@gmail.com.

**Law’s Cultures**

*Abstract*

Yoriko Otomo (Law Lecturer, SOAS) is a Lecturer in Law at SOAS, and recently a Visiting Fellow at the Oxford Centre for Global History, University of Oxford and the University of New South Wales. She received her doctorate (as well as a BA and Honours degree in Law) from the University of Melbourne. Her research examines cross-cultural histories of global governance, looking in particular at the ways in which emerging patterns of economic interdependence changed representations of women and animals. She is working on a project, ‘White Revolutions’ that examines the development of the dairy industries in colonial Britain, and has co-edited two books, ‘Law and the Question of the Animal: A Critical Jurisprudence’ (Routledge, 2012) and ‘Making Milk: The Past, Present and Future of Our Primary Food’ (Bloomsbury, forthcoming). Yoriko’s recent book, 'Unconditional Life: The International Law Settlement' was published by OUP (2016) and she has written various articles on environmental law history and animal law, including contributions to blogs: http://criticallegalthinking.com/2016/12/06/end-city-last-man-urban-animals-law/. Email: Yo4@soas.ac.uk.

**The Gender Politics of Global Law**

Over the past decade I have been looking at how our imagination of what it means to be masculine and feminine has shaped the production, distribution and consumption of international law. My book, ‘Unconditional Life: The Postwar International Law Settlement’ examined the public language employed by international lawyers when they talk about technological risk in war and in trade. I discovered that what is at stake is the question of who gets to determine what human life is, in the ontological sense. And particularly since the Second World War, this struggle – a struggle for the human that historically played out between Church and State – is a struggle that has relied upon a gender binary that conflates ideas of masculinity with ontological wholeness and superiority.

The research I am currently undertaking for my monograph ‘White Revolutions: Imperial Policy and the Making of the Global Milk Industry’ shows how this gendered political economy is created not only through discourse, but also through the physical, technological, visual control of our most powerful primary symbol: milk. I track how Britain and France have established milk industries in their colonies and postcolonies to use milk feeding as a governance technique; how an international milk grid was created during the postwar period, and how the U.S. created milk aid programmes during the Cold War in order to justify military expansion. I argue that the post-imperial powers have created ‘sovereign’s milk’ (as opposed to the Virgin Mary’s, or mothers’ milk) out of milk that is actually made by human and non-human animals. This establishes a global humanized political economy that facilitates the raison d’etre of modern states.
Gender thus plays a central part in the material, symbolic, narrative construction of international law. It plays a central part too in ‘global law’ or ‘transnational law’, in so far as those terms describe both a post-Imperial configuration of actors and institutions, and the growing reach of postwar phraseology to legal regimes and cultures around the world. The challenge, I think, is to describe how exactly heteronormative and masculinist ideologies structure the logic of our global (political, financial, and legal) economies, by looking at the discursive, imaginative and visual phenomena of international law. And then, of course, our task would be to reimagine global law or transnational law as an ethos that supports fragmentation; slowing down; being still, and letting be.