



2018 INDIANA JOURNAL OF GLOBAL LEGAL STUDIES SYMPOSIUM Panelist Abstracts

What is Really Happening with Global Inequality?

Arthur Alderson

We use the latest available data from World Income Inequality Database 3.4 and the Penn World Tables 9.0 to examine some of the core issues and concerns that have animated research on global inequality. We begin by reviewing the evidence on trends in within-country inequality, drawing out some of the implications of this for our thinking about inequality and economic development. We examine between-country inequality, computing updated estimates of trends in both unweighted and population-weighted between-country inequality.

The data reveal that inequality between countries increased across the latter half of the 20th century, then turned to decline measurably thereafter. We show that this decline is robust to a range of methodological and measurement decisions identified as important in previous research. We then examine estimates of true global inequality, situating these in relation to lower- and upper-bound estimates of global inequality. Finally, we conclude by noting the critical and contested role of globalization in inequality reduction.

Rethinking Social Resistance through the Consolidating Politics of Humanitarian Populism in Mytilene, Greece

Othon Alexandrakis

During the spring of 2015 thousands of migrants began to arrive daily on the shores of Lesbos from nearby Turkey. As the Greek government and EU initially opted to monitor the unfolding situation rather than mount a direct response, diverse informal humanitarian projects flourished on the island. These projects enacted a field of doing and being grounded in intersecting affects of concern and values of care. This essay considers the challenges these projects posed to local, national and transnational bodies that eventually moved in and tried to regulate their collective actions. Drawing on recent work in anthropology on sense and critical agency, I discuss these challenges in terms of a mode of social resistance that evokes a populist expression of the political. Two specific examples are discussed drawing on my recent ethnographic fieldwork in Mytilene, the capital city of Lesbos.

The Resistance, and the Stubborn, but Unsurprising Persistence of Hate and Extremism in the United States

Jeannine Bell

Though the far right has a long history in the United States, the presidential campaign and then election of Donald Trump brought the movement out of the shadows. This article will analyze the rise in white supremacist activity in the United States—from well-publicized mass actions like the white supremacist march in Charlottesville in August 2017 to individual acts of violence happening since November, 2016. The article focuses on contextualizing such incidents within this contemporary period, arguing that overt expressions of racism and racist violence are nothing new. The article closes with a call to strengthen the legal remedies use to address bias-motivated violence.

The Politics of Law and Food

Susan Bragdon

TBD

Trump, Trade, and Trabajo: Re-negotiating NAFTA's Labor Agreement in a Fraught Political Climate

Lance Compa

Among the first actions of the new U.S. administration were quitting the Trans-Pacific Partnership (TPP) and demanding re-negotiation of the North American Free Trade Agreement (NAFTA), including its supplemental labor pact, the North American Agreement on Labor Cooperation (NAALC). Those re-negotiations are now underway with controversial proposals on the table containing important implications for employment, labor rights, and labor standards in North America. This paper reviews the status of negotiations, the risks of losing the first-ever international instrument linking trade and labor standards (despite its flaws), and options for preserving and strengthening trade-labor linkage in a new agreement.

Fourth World Approaches to International Law (FWAIL): The Decoupling of the Nation and the State, and the Quest for Recognition of the Nation and Indigenous Rights under International Law

Hiroshi Fukurai

The notion of Fourth World Approaches to International law (FWAIL) is proposed to challenge prevailing international legal discourse predicated on the presumed congruence between nation and state, which allows little imagination of the indigenous nation as a culturally and ideologically cohesive community of native populations that have been forcefully captured within, and/or partitioned across, the state system.

The term, the Fourth World, was first coined by George Manuel, Chief of the National Indian Brotherhood of Canada, in his 1974 work, *The Fourth World: An Indian Reality*. He states, "the Fourth World is a vision of the future history of North America and of the Indian people." Fourth World scholar Anthony Hall also indicates, "the idea of the Fourth World provides the seeds of a viable philosophy and strategy of resistance to the dominant models of globalization; it pointed towards the need for the replacement of neo-liberal geo-economics with forms of globalization more attuned to the natural ecology of inter-human and cross-species relationships." American indigenous scholar and activist Winona LaDuke defines the Fourth World as "the Host [and Original] World upon which the First, Second, and Third Worlds all sit at the present time." According to the three-world model, the First World consists of a country that has assigned to itself an identity of state-capitalist development, while the Second World embodies politics that have pursued socialist or communist development, and the Third World, which refers to the "undeveloped and underdeveloped" countries located mostly in the Global South, has been largely created by European imperial ventures and maintained as client states by both the First and Second World countries.

FWAIL scholarship posits that all state systems from the First to Third World have been engaging in ongoing colonial occupation and exploitation of original Fourth World people, their land, and resources; the denial of indigenous government and political rights to independence; the conscious devaluation of indigenous tradition, language, and ideologies, in contrast to the conscious elevation of the "civilized" culture of external imposition; and the usurpation of indigenous knowledge and natural resources, resulting in detriment to the welfare of aboriginal communities and inter-human and cross-species relationships in indigenous lands, and to the natural environment and future survival of the Fourth World. By centering the indigenous nation in approaches to the struggles for the right to self-determination, FWAIL seeks to create a socio-legal framework that recognizes the political rights and legal equality of the nation, in order that it may participate in the formulation of national and international policies that affect the indigenous community.

FWAIL further investigates the role of the state system acting as an intermediary agency seeking the predatory objectives of international institutions that the First World helped create and control, and it offers an active voice to indigenous people in order to build a culture of collective resistance and opposition across the Fourth World and to fight against both domestic and international oppression imposed by hegemonic Western domination. Lastly, FWAIL scholarship offers a prescient approach to the preservation of biodiversity and the natural environment necessary for the survival of human race in coming generations.

Understanding the Politics of Resentment. Of the Principles, Institutions, Counter-Strategies and ... the Habits of Heart

Tomasz Tadeusz Koncewicz

The paper asks when is a constitutional design of any (domestic, international, supranational) polity in error? On the most general level such critical juncture obtains when polity's founding document (treaty, convention, constitution) protects against the dangers that no longer exist or does not protect against the dangers that were not contemplated by the Founders. Constitutions not only constitute but should also protect against deconstitution.

When analyzed together, the cases of Hungary and Poland, South America and more recently United States suggest a new worrying pattern of the erosion of constitutional democracies. One may even speak of a recipe for constitutional capture in one state after another that travels in space and in time. The new autocrats know that the law might be used to kill off the law and institutions and engage in a different form of "repression by stealth" or the deconstruction of democracy itself by using the legal means ("autocratic legalism"). This process tends to result in a systemic undermining of the key components of the rule of law such as human rights, independent and impartial courts, and free media. It follows a well-organized script and tends to begin with disgruntled citizens voting to break the system by electing a leader who promises radical change, often referring to the "will of the people" while trashing the pre-existing constitutional framework with cleverly crafted legalistic blueprints borrowed from other "successful" autocrats.

Examples of Poland, Hungary and other "legalistic counter revolutions" (Venezuela, Turkey) are not the sort of mass human rights violations that merit close scrutiny from international level. The world has already (and luckily so) developed a framework to deal with these. The paper instead asks the question whether the capture of state institutions in Poland (and Hungary before it) is an outlying case, or if it portends the future of Europe more generally. Whatever the case, Poland matters, and more than for just the Poles. The case illuminates salient features and fissures in the bases for democratic government, the rule of law, and constitutionalism when confronted with the sweeping politics of resentment.

Populism: Between Resentment and Resistance: Populism in and of the European Union

Brigid Laffan

This presentation will begin by taking the emphasis off populism to explore what will be defined as the EU's 'politics trap'. It will argue that multi-level governance in the EU has outstripped multi-level politics. Both the nature of the Union's policy mix and the dynamic of EU and domestic politics have implications for the interaction and intersection between the dynamic of European integration and populist politics. Turning to populism, the presentation will offer three lenses for addressing that interaction and intersection:

- the EU as the other to populism and thus a target for populists;
- the EU as an arena for populists by providing populist parties with 'windows of opportunity';
- the challenge to core EU values and norms from populist governments.

The presentation will end by reflecting on the impact of populism on the future of the Union.

Behind the Screen: The Creation of a Vetting Mechanism for Foreign Direct Investment in the European Union

Sophie Meunier

European Commission Jean-Claude Juncker declared in his 2017 State of the Union address that creating a framework for screening inbound Foreign Direct Investment (FDI) was now a key strategic priority for the European Union (EU). Unlike the United States, Canada, Australia, and most other advanced economies, the EU so far has no rules or committee tasked with vetting incoming FDI on national security or economic grounds. Why has a proposal for a European FDI screening mechanism happened for the first time in 2017? This paper considers three complementary explanations: the rise of backlash against globalization; the new EU competence over FDI enshrined in the 2009 Lisbon Treaty; and the dramatic rise of Chinese direct investment in Europe over the past decade.

An Alternative Path to Rule of Law? Thailand's 21st Century Administrative Courts

Frank Munger

New courts in Asia's rapidly developing states offer an opportunity to understand how a court system takes root. In this article, we present a case study of the development of Asia's newest system of administrative courts, in politically volatile Thailand. Our principle argument is that courts, and administrative courts in particular, must be understood in context. We evaluate theories of development and judicialization, comparing the origins, structure and authority of the Thai administrative courts, and we suggest how our understanding might be improved by further statistical and ethnographic research on the everyday workings of courts. To create a portrait of the courts' accessibility and impact, we examine the courts' caseload between 2001 and 2016.

The heart of our analysis is a case study of the mutual construction of environmental litigation by courts, legal advocates and communities of ordinary citizens. Our analysis of the support for litigation in the changing political climate reveals three themes: the declining (but not vanishing) importance of international funders, politics influences law practice, but in different ways depending on the cause and the military government's perception of motives and identity of the practitioner, and growing commitment to legal professionalism—to values of practice that separate legal practitioners from the ranks of social movement leaders—assuring that legal advocates are no longer revolutionaries. Administrative courts are quintessentially suited to all three transitions – a source of income, politically safe, and ideologically moderate—and administrative court litigation remains quite comfortably within the boundaries of the political space permitted by the Thailand's military government.

World Trade, Imperial Fantasies and Protectionism: Can You Have Your Cake and Eat It?

Csongor István Nagy

It is no exaggeration to say that trade liberalization became one of the hottest issue of globalization, generating significant opposition in the advent of an age that was claimed to be hallmarked by free trade. Fueled by imperial fantasies and nostalgia for the long gone era of protectionism, the tectonic movements of world trade have generated a good deal of populist resistance based on the self-delusion that the Gordian knot of world trade needs not to be disentangled but can be simply cut. Although the secession of the United Kingdom may be traced back to various factors (such as migration), the wishful thinking that control can be really taken back without considerable economic losses did play a major role.

Today it is clear that the sudden change of the US foreign trade policy – which manifested itself in calling off the EU-US Free Trade Agreement (Transatlantic Trade and Investment Partnership, TTIP), canceling the Trans-Pacific Partnership Agreement (TPP) and renegotiating the North American Free Trade Agreement (NAFTA) – did not halt the internationalization of free trade: the TPP was renamed to Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and concluded without the US and the EU is negotiating or has concluded free trade agreements with various major economies such as Canada, Japan and Singapore.

The paper analyzes the interplay between free trade, national interests and international governance through the central issues of world trade.

Evidence Struggles: Judicializing Politics and Social Mobilizations

Susana Narotzky

Different kinds of evidence are put forward to make an argument and justify political action by agents situated in diverse social, cultural and power positions. The Catalan political conflict is a case in point. While the central Spanish government's moves are mostly of a juridical nature, based on the alleged anti-constitutional actions of members of the Catalan government and other civil society organizations (Òmnium, ANC), the Catalan supporters of independence arguments' are based on historical interpretations of grievances referring to national institutions and identity. The latter, under the politically inspired actions of major civil society associations, have mobilized hundreds of thousands Catalans in massive demonstrations, and have used media in a very efficient manner. The judicial responses to the secessionist process have used legality to allow repression (police, prison), while the repeated anti-constitutional actions of the Catalan government have been justified as legitimated by popular support, and a historical accumulation of grievances.

However, repeated elections show that Catalan citizens are divided, having very different positions in regard to their support for independence. This differentiation can be mapped according to social and economic criteria, and almost literally projected in spatial coordinates. This other group of Catalans has also tried to mobilize so as to publicly show their disagreement to the secessionist project. Yet their arguments appear as reactive rather than based on any alternative evidence. Hence they are co-opted by the central Spanish governments' juridical position, which supports a discourse of a unified, Spanish, national identity, couched in the Constitution of 1978.

This paper argues that an important aspect of the political confrontation, is being played as an evidence struggle, where de various social actors produce different kinds of evidence to justify their actions in the political arena and mobilize support.

Populism, Patriotism, and Law: Reconfiguring National and Global through the U.S.A. P.A.T.R.I.O.T. Act

Jothie Rajah

Populism is conventionally understood as the counter-hegemonic antagonist of elitism, while legislation is conventionally understood as hegemonic text; written by, and epistemologically accessible to, legal and political elites. The 2001 U.S.A. P.A.T.R.I.O.T. Act simultaneously challenges and reinforces these entrenched expectations. The Act is 170 pages long, and its text is mostly complex and difficult to read. At the same time, the name by which the Act is popularly known – Patriot Act – is an acronym for the Act's full name, "Uniting and Strengthening America by Providing Tools Required to Intercept and Obstruct Terrorism"

The deliberate crafting and clever wordplay informing the acronym "Patriot Act" seems at one with the logic of branding and marketing. When populist marketing shapes the naming of legislation, are citizens constituted as consumers? And how does the seeming nationalist containment of 'patriotism' work to reconfigure the global via this law?

Even as the Patriot Act invokes nation-state sovereignty, asserting the need to urgently unite and strengthen America, the Act undoes the sovereignty of other nation-states by expanding the jurisdictional terrain of the US. The extraterritorial ambit of the Act is declared in its statement of purpose, "To deter and punish terrorist acts in the United States and around the world". The naming and conjunction of two territories – the United States and an undifferentiated rest of the world – renders the Patriot Act simultaneously national and supra-national. Contextually, the spectacularly traumatic events of 11 September 2001, followed rapidly by the Authorization for Use of Military Force on 14 September 2001, frame and condition the 26 Oct 2001 passing of the Patriot Act. By the end of October 2001, the US had commenced military action in Afghanistan. The terms and actions affiliated with the Patriot Act are

thus inextricably enmeshed with the binary patriot/terrorist, and the reconfigurations of national/global unfolding in our contemporary perpetual war.

Through an analysis of the Patriot Act, with particular attention to resonances for the global, my paper explores the role played by populism in scripting authority and legitimacy for the co-constitution of national law and global war.