

Call for Papers

Constituting Transformation? Ethnographic Insights into the Potentials and Pitfalls of Constitutional Law in Action

Workshop at the Hamburg Institute for Social Research (21-22 November 2024)

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“[W]e live today in a constitutional age” in the sense that “the claim that constitutions constitute the authoritative ground rules of politics is today more widely acceted than at any other point in modern political history”, Martin Loughlin writes, claiming this to be a relatively new phenomenon (2015: 2). Similarly, in their edited volume on “Comparative Constitution Making”, Hanna Lerner and David Landau maintain that constitution-making has come to play a major role in “world politics in recent decades” (2019: 4). Cautioning against too strongly universalising constitutional trends, as constitution-making projects may have various objectives not all of which, for instance, having “a democratic endpoint in mind” (ibid.: 5), they nevertheless point towards some global convergences, one of them being the increased inclusion of rights (ibid.: 15). In a similar vein, Chris Thornhill observes that “contemporary constitutions are marked, almost generically, by a rise in judicial power, and, closely linked to this, by the intensified penetration of international law into domestic legal systems” (2016: 208). This workshop explores the shaping of politics through constitutional law/rights from a “bottom-up”, ethnographic perspective by focussing on law-based struggles over social justice. The increased inclusion of rights – in several countries these include extensive socioeconomic, cultural, collective, minority and environmental rights – coupled with the weight given to international law, particularly human rights, and the increase of judicial power have led to widespread perception that constitutional rights/law constitute an important means for social and political transformation.

At the same time, such hope of social transformation through “law” has, at least in some places, given way to growing disillusion, leading to a move away from law-based forms of political action. As Mark Goodale and Olaf Zenker, as well as contributing authors, demonstrate

(forthcoming), in many contexts there seems to be a “dialectics of juristocratic reckoning” at work, in which phases of hope and optimism investing the law with unusual weight and responsibility for transformation give way to phases of disappointment and disillusion with law’s capacity to actually deliver more social justice. Building on these debates, this workshop specifically focuses on the potentials and pitfalls of constitutional law in action. It engages the hopes and disappointments connected to the possibilities and limitations that actually existing constitutional law entails in different places, divergent contexts and specific historical moments. The workshop brings together scholars working ethnographically on everyday practices of mobilising, applying and implementing constitutional rights/law, be it by individual or collective litigants, social movements, lawyers, courts, or government administrations, and practitioners involved in struggles over social justice (including public interest litigation).

Well-known critiques by legal scholars denounce the involvement of constitutional courts in political matters as, in principle, ineffective (Rosenberg 2008), anti-democratic (Loughlin 2022) and mainly serving political elites (Hirschl 2004). Others have warned against backlashes or criticised the transformative potential of many new constitutions as limited because of their main focus on including more rights while leaving the “engine room of the Constitution” (Gargarella 2016), the organisation of powers, untouched. We invite workshop contributors to also critically engage with these critiques – not because we believe that they don’t have any merit. However, we postulate that in order to truly understand wider effects and implications of constitutional law for social and political transformation or non-transformation, it is crucial to look beyond the immediate outcomes of constitutional court/law cases and to include the everyday experiences of those (creatively) engaging with constitutional law. We particularly encourage contributors to reflect on what it means methodologically to grasp moments of social and political (non-)transformation, the material and symbolic effects (see Rodríguez-Garavito 2016) of constitutional-law mobilisation, and to carefully think about how to conceptualise “politicization” and “depolicization” through their own work. Contributions may furthermore wish to engage with the following questions but can also go beyond them:

- What constitutional rights are mobilised, by whom and for what ends?
- How do the people we engage in our research understand constitutional law and its purpose, and how do such legal understandings connect to ideas of social justice?

- Which forms of injustice can be addressed by mobilising constitutional rights/law? Which forms of injustice remain beyond the grasp of such law/rights?
- Which actors are successful in making their voices and concerns heard through constitutional rights/law mobilisation, and how do they achieve this? Who is silenced, and how? What does this mean in terms of “democratic participation” and how do we thereby conceptualise “democracy”?
- How are constitutional provisions challenged, ignored or actively resisted and by whom?
- In what ways are seemingly “progressive” constitutions mobilised and abused for “non-progressive” or authoritarian ends?
- In what moments and settings can we observe “constitutional faith” (Beyer 2015)? What legal cultures give rise to hope and trust in constitutions?
- How and why do certain actors become disillusioned with constitutions and how does this influence their struggles for social justice? What backlashes are experienced in constitutional law/rights mobilisation?
- What roles do law’s temporalities, especially its tardiness, play for the rise and fall of popular support for specific constitutions?
- What alternative means are mobilised beyond constitutional law, and how do they fare in comparison?

Abstracts (max. 500 words) should be submitted by **5th April 2024** to: laura.affolter@his-online.de. Decisions regarding the selection of abstracts will be communicated on 30th April 2024 at the latest.

The two-day workshop will take place on 21st and 22nd November 2024 at the Hamburg Institute for Social Research (Mittelweg 36, 20148 Hamburg). Travel and accommodation costs will be covered by the Hamburg Institute for Social Research. Childcare is also available, if required.

Bibliography:

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