



CALL FOR PAPERS

(DEADLINE: 15TH MARCH 2024)

“THINKING THE CONSTITUTION OUT OF THE STATE: ON THE USE OF CONSTITUTIONAL LAW BY NON-STATE ACTORS”

IACL ROUND TABLE ORGANISED IN FRANCE

UNDER THE AUSPICES OF

THE FRENCH ASSOCIATION OF CONSTITUTIONAL LAW

THE UNIVERSITY JEAN MOULIN LYON III

THE UNIVERSITY OF PARIS I PANTHÉON-SORBONNE

Project Leaders

Xavier Philippe, Professor of public law, member of the executive committee of the International Association of Constitutional Law, xavier.philippe@univ-paris1.fr, 06.72.94.56.46

Philippe Blachère, Professor of public law, member of the Board of Directors of the French Association of Constitutional Law, Jean Moulin Lyon III University

Project Duration

2 days (1.5) (Wednesday June 19 and Thursday June 20, 2024) Project carried out by the University of Paris I Panthéon-Sorbonne in partnership with the Jean Moulin University - Lyon III, public law team and the constitutional law center of the faculty of law (Professor Philippe Blachère)

Project Location

Jean Moulin Lyon III University, 15 quai Claude Bernard 69007 LYON

Project Description

The constitution has long been thought of and still remains largely thought of as the text organizing the State, its powers, their skills and their mutual relations and with national citizens. This classic “state-national” conception of the constitution is today supplemented by a double movement going beyond this strict framework.

Firstly, a “post-national” movement is taking shape using the concept of constitution in order to capture political spaces and institutions outside the Nation-State which use a similar form of organization. This is the case for European or South American spaces for example, international organizations or even the global space, which all seek to represent themselves in a “constitutional mirror”. We must understand the reasons but also the issues and also the dangers.

Secondly, another post-state movement emerges leading to the diffusion of the principles of constitutionalism – separation of powers, guarantee of rights, settlement of disputes – in businesses and the various institutions of society. Why do private individuals use the mechanisms and institutions of constitutional law? Is this movement, which particularly affects multinational companies (such as GAFAM) or transnational civil society organizations (NGOs), indicative of a transformation of the role of the State but also of the borrowing of state organization by legal entities under private law? It can also serve more questionable causes: certain non-state armed groups have also adopted operating rules close to those of a State, generating a form of constitutional right for organizations considered illegitimate, or even terrorist. What does this borrowing from state constitutionalism reveal? Does it constitute a form of competition with the constitutional orders of States?

For each of these movements, it is appropriate to draw inspiration from examples allowing us to discuss the relevance, meaning, and scope of the concept of constitution which would no longer only encompass the State but Society in its entirety. With a session on using the concept of constitution to capture post national spaces and another session to capture social spaces.

A third session will then be devoted to a reflection on the transition from state constitutionalism to societal constitutionalism.

Provisional program

Date: June 19 & 20, 2024

Duration: 1 day and a half

Location: Lyon - Faculty of Law of the University of Lyon III

Organizing institutions:

University of Paris I Panthéon-Sorbonne

Wednesday 19 of June 2024 (afternoon)

Allocutions d'ouverture & Présentation de la thématique

1st Session: The dissemination of constitutional principles in postnational spaces

Presentation: this first session will be intended to explore the processes constituting supranational organizations having made their founding treaties into constitutive acts intended for the functioning of their institutions and the derived rules that they can issue with regard to their members or sometimes even to people. The idea will consist of starting from the most integrated organizations (European Union, MERCOSUR, etc.) to then examine the situation of international organizations with a universal vocation - among which we can also sometimes detect a movement towards constitutionalisation - before questioning the conditions necessary for a world constitution. This session would thus be part of a perspective going from the most certain borrowing of constitutionalism to questioning the capacities of diffusion of constitutionalism to spheres where its use remains under construction or even virtual.

The goal of this session would be to question the possible disconnect between state constitutionalism and the use of constituent and constitutional mechanisms outside the state. The underlying idea would be based on a possible questioning of the link between "state sovereignty" and "constitution" of which the latter is often presented as the emblem.

- 1. The constituent processes of integrated international organizations: The European constituent process (or MERCOSUR)**
- 2. The constitutionalisation of international organizations (UN, ILO, WTO, ITU)**
- 3. The conditions for a world constitution**

Thursday 20 of June 2024 (morning & afternoon)

2nd Session: The dissemination of constitutional principles in businesses and civil society organizations

Presentation: this second session will go a little further in questioning the link between the State and the constitution since it will question the use of constitutionalism within non-state private entities. The idea will consist of questioning the use of the methods and means of constitutional law to found and manage, on the one hand, the governance of companies – especially the most powerful with an international dimension – but also, on the other hand, corporate organizations. civil society which, through their activities,

tends to reproduce the management and administration methods of the State (often called governance). In the first register of companies, we find entities which sometimes have greater power than those of States (and which sometimes deal with States, or even subcontract certain of their activities), such as GAFAM (Google, Amazon, Facebook ...). In the register of civil society organizations, we find organizations with a societal or even charitable vocation whose mode of operation requires support by structured institutions developing a strategy or policy (OXFAM, Amnesty International, HRW). In the case of these latter organizations, the hypotheses in which these organizations pursue illegal activities and goals will also be integrated, such as non-state armed groups (Taliban in Afghanistan, DAESH in Syria, for example) which develop supervision techniques of their activities which strongly resemble those of constitutional law. While condemning with the greatest firmness the goals, activities and methods of these organizations, the fact remains that they succeed in establishing themselves using the methods of organization of the State

- 1. The use of state organizational methods in businesses and civil society organizations the social and environmental responsibility of businesses and civil society organizations in the face of international challenges**
- 2. The organization of the guarantee of fundamental rights in businesses and civil society organizations**
- 3. Governance and fundamental rights in the digital world: GAFAM and the constitutionalization of digital society**
- 4. The perverted use of constitutional law by non-state armed groups: the use of constitutionalism by terrorist groups**

3rd Session: From state constitutionalism to societal constitutionalism

Presentation: this third and final session will examine in a more conceptual way the issues of transformations generated by constitutional law as soon as it is used outside the State. Does the idea of transposing state constitutionalism to societal constitutionalism make sense? If conclusive evidence demonstrates that constitutional law reveals a certain form of porosity with regard to non-state spheres which adopt its means and methods, does this mean that its functions are identical? Is this not an “apparent constitutionalism” whose limits can quickly appear when we examine the conditions of implementation of this constitutionalism “outside the State”. What would be the conditions for considering a relevant comparison?

Round table discussing the following questions:

1. What institutions for societal constitutionalism?
2. From state sovereignty to the “governance” of societal entities: identical foundations and operating rules?
3. What representation(s) for societal constitutionalism?

4. Who will monitor compliance with societal constitutional rules?

Conclusion

Is the transposition of constitutionalism outside the State possible and relevant?