Editorial

Guest editorial: Liberal constitutionalism and postcolonialism in the South and beyond: On liberalism as an open source and the insights of decolonial critiques; On my way out—Advice to young scholars VII: Taking exams seriously (part 1); In this issue

We invited Philipp Dann, Professor of Public and Comparative Law at Humboldt University, Berlin, to contribute a Guest Editorial.

Liberal constitutionalism and postcolonialism in the South and beyond: On liberalism as an open source and the insights of decolonial critiques[1]

It is probably fair to say that these are not the best days for liberal constitutionalism. I don't need to mention the Russian aggression, which is nothing less than a direct assault on liberal constitutionalism. There are enough other places in the East and West, North and South, where authoritarians contest the basic structures of liberal constitutions and societies. And not only authoritarians; from the progressive side too, contestations of liberal ideas are very popular these days.

But what does the debate look like, when analyzed through the lens of postcolonial theories or from the perspective of the South? Is there a basic incompatibility of liberal constitutionalism and postcolonialism, as some claim? Or is it rather the other way around: can postcolonial or Southern perspectives highlight problems and potentials of liberal constitutionalism in especially productive ways?

In this Editorial, I want to make three observations and arguments: I will first contend that given the breadth of the terms in use here, we should not seek precise definitions but rather be mindful of contexts and distinctions. Considering a few examples of how liberalism has played out in the South, we realize that there are various forms of liberal constitutionalism and that there is no Western ownership of

[1] This is a slightly modified version of a lecture given at the Bonavero Institute of Human Rights at Oxford University, UK, in March 2022. I am grateful for comments by Tarunabh Khaitan, Theunis Roux, Gautam Bhatia, Maxim Bönnemann Kate O'Regan and Renata Uitz.

them. While liberalism has been and can still be a foil for hegemony, it is ultimately an open source, used by actors all over the world.

Secondly, I will highlight two major critiques that post- and de-colonial authors, but also other critical authors, have made about liberalism and liberal constitutionalism and ask whether these critiques result in a conceptual incompatibility between liberal constitutionalism and these decolonial or progressive positions. I reject the assumption of incompatibility. Instead, I argue that constitutionalists should take seriously the challenges posed by decolonial critiques and use them to create fairer constitutional systems.

This leads to my third and last observation, which describes a path forward for legal scholarship. I will argue for a Southern turn in comparative legal scholarship and for slow comparison. We need a much more foundational engagement and theorizing of the Southern experiences of constitutionalism. This can make visible the problematic promises of liberal constitutionalism and address their political and economic foundations in constitutional law. A central path to do so can be a slowed-down, multilingual, and decentered approach to constitutional scholarship and law.

All in all, in this Editorial I suggest that studying the contestations of liberalism from a Southern perspective is especially productive. As matters are actually quite entangled, what looks like a Southern or postcolonial critique might be equally relevant in Europe and elsewhere too.

1. Varieties of using liberal constitutionalism

Given the breadth of the topic, it might be tempting, and it would in many ways be useful, to define these broad terms, such as liberalism, first. But then again, definitions often only raise further questions. Instead, I would rather give a few examples to point out the complex relationship between liberal constitutionalism, postcolonial thinking, and the South.

We could first think about the role of liberal ideas in the British colonization and emerging constitutionalism of India. Surely, a distorted understanding of liberalism was used by the British as a pretext and foil to justify colonial subjugation. But then again, Indian intellectuals as much as politicians from the nineteenth century onwards used liberal ideas of civil rights and collective autonomy to combat British subjugation (C. Bayly, Recovering Liberties, 2011). Also, liberal ideas had a profound impact on the Indian Constitution. Its rights chapter, but also its system of parliamentary democracy and separation of powers, are straight out of the playbook of political liberalism (R. De, A People's Constitution, 2018; T. Khaitan, *Directive Principles and the Expressive Accommodation of Ideological Dissenters*, 16 Int. J. Const. L. 389 (2018)).

In a very different context, to look at a second example, neo-liberal economic ideas were used by the World Bank and the International Monetary Fund in the context of Washington Consensus policies in the 1980s and 1990s. Here, international organizations dominated by Western powers used liberal ideas to drive economic policies

in many Latin American and African countries, for example by entrenching private property rights and hence changing the economic constitution of countries. But then again, social movements all over Latin America started to use the language of rights to fight back and claim, for example, the rights of indigenous peoples (B. Rajagopal, International Law from Below, 2009; S. Engle Merry, Human Rights and Gender Violence, 2006).

A bit closer to home, for a third example, we can think about scholarship on comparative constitutionalism in the past thirty years. This line of research emerged as a thriving field of scholarship during this period, but there was actually precious little attention given to any variety in thinking about constitutionalism beyond *liberal* constitutionalism. The scholarship was (and often still is) driven by Anglo-American authors and their themes, especially a focus on rights and courts. There was little plurality and a quick disparagement of other approaches, such as authoritarian constitutionalism, constellations of limited statehood, and so on.

When we look at these examples, we see that a distorted understanding of liberalism was, and still is, used in some contexts as a foil for colonial or hegemonic projects; but in other contexts, it was also a source of mobilization, emancipation, and combating hegemony. My point is that one has to be precise about the actual place and the time, about the various actors and the different forms of liberalism that were used.

Against this background, I think it would be foolish to argue that there is a genuine incompatibility between liberal ideas and the interests of the South or Southern constitutionalism—nor even between postcolonial thinkers and liberalism. Liberalism is too broad, and the 'South' is too diverse to claim incompatibility.

Instead, we can rather turn this around and say: there is no Western ownership of liberalism and liberal ideas. As little as Marxism is a Western concept, liberalism is not a Western concept. It is an open source, which has been used all over the world—by political, economic, and intellectual actors.

2. Taking decolonial critiques seriously

My second point highlights two central critiques that postcolonial thinkers have made with regard to liberal constitutionalism in the context of the Global South. I focus here on scholarly debates with special reference to the law. I will hence *not* address questions of current or historical political situations or activism in the South, but rather talk about legal scholarship with regard to the role of liberal constitutionalism in many places, including the South.

Generally, one can say that postcolonial theory has not made great strides in legal research beyond the public international law area. There, Third World Approaches to International Law (TWAIL) have become central in the past twenty to twenty-five years, but this is not the case in constitutional law or the broader comparative law scholarship. Especially in comparison with other fields of the humanities and social sciences, decolonial literature has not been very prominent in these areas. And yet,

one can transpose the general critique of postcolonial authors into our area. Doing so, two main points of critique regarding liberalism and liberal constitutionalism stand out.

The first is an epistemological critique: postcolonial authors point out that Western liberals developed a technique of othering, in which non-Western concepts were juxtaposed to Western concepts ("othered") and deemed merely particular, whereas Western concepts were considered universal and superior. With regard to political theory and constitutional thinking, one can observe that originally Western notions, such as statehood or individual rights, still provide the grammar of constitutional thinking. Another important element of this epistemological critique is that the structures of knowledge production remain dominated by Western actors, Western fora, Western themes (D. Bonilla, Constitutionalism of the Global South, 2014; B. De Sousa Santos, Epistemologies of the South, 2014).

While this critique has many facets, one could say that it is in essence a critique of the intellectual and conceptual ignorance and parochialism of mainstream scholarship, especially now in the twenty-first century, where access to other ideas is easy. It is also a critique of the persisting asymmetries in knowledge production in legal academia and legal practice.

The second critique is an economic or material one, or one of political economy more broadly. It is inspired by postcolonial theory, but equally so by the larger critical theory. The starting points of this critique are two problematic promises of liberal constitutionalism. The first is that individual rights (especially the individual right to private property) organized in a free-market economy will lead to economic growth and that this will trickle down to the benefit of society as a whole. The other promise is that the individual right to vote and other political rights in a democratic system will address the needs of all, not least the poor majority.

The reality, as we all know, often looks very different. Private property can privilege some, and the right to vote has a limited impact on power structures. This has a domestic dimension in the South (as much as in the North), but also a global, entangled multilevel dimension. The economic as well as the political structure of center and periphery that emerged under colonialism in many forms still persists. Liberalism is here linked to capitalism, which becomes exploitative, not least when looked at from a Southern perspective (U. Baxi, Human Rights in a Posthuman World, 2009; M. Sornaraja, Resistance and Change in the International Law on Foreign Investment, 2015; R. Gargarella, Latin American Constitutionalism, 2013).

While these might be pertinent points of critique, the central question is whether they address inherent, essential, and hence unchangeable features of liberal constitutionalism—or whether they might rather be integrated and addressed in it. I would argue for the latter. I think that both critiques can be integrated into and in fact have been integrated into liberal constitutionalism in various places.

In response to the economic critique, one can point to the embedded liberalism of welfare states and its constitutional expressions, for example in Mexico, Germany, India, or South Korea. These are states and constitutions that did create larger constitutional frameworks to provide for socio-economic balances (even though often in

imperfect ways). At the same time, these remain at their core liberal constitutions. In Germany, we call them social-liberal. There is clearly no conceptual incompatibility between a liberal constitutional structure and a caring material constitution.

In a way, more fundamental is the epistemological critique, i.e. the reproach of intellectual ignorance and persistence of asymmetries in knowledge production and attention. I would argue, however, that this is less of a problem as long as liberals are less hypocritical about liberalism's past and more mindful of its limitations. In fact, one of the particular features of liberalism is its intellectual and epistemological flexibility, its ability to take on and integrate ideas—such as ordo-liberalism or welfare ideas. In a way, liberal constitutionalism is an inherently experimentalist, pragmatic tradition.

Besides, global historians and postcolonial authors have argued in recent years that it is not very productive or even accurate to juxtapose North/South in terms of political theory and constitutionalism, and that it is way more convincing to see their entanglements and mutual constitution. This reciprocal perspective would then also mean that liberalism is not static, but rather evolves.

Ultimately, I would argue that epistemological ignorance and arrogance is less a defining characteristic of liberalism per se than a challenge to reform liberal thought and address structures of knowledge production.

3. The path forward: For a Southern turn in constitutional scholarship and slow comparison

I come to my third and last point—the path forward. I think it is high time for a Southern turn in constitutional scholarship! Three aspects are central to such a turn (P. Dann, M. Riegner, and M. Bönnemann, The Southern Turn in Comparative Constitutional Law, 2021).

First, a Southern turn means taking constitutional experiences seriously in such a way that Southern jurisdictions are not simply added to the roster of comparative cases, but the distinct experiences in the South are more broadly reflected and theorized. What we have seen in the past years is indeed a growing addition of (mostly English language) jurisdictions and scholarly communities to the worldwide discourse. But we have seen very little serious reflection on what explains their experience from the perspective of their being former colonies or otherwise affected by colonialism or other forms of external domination. I think that this has in many cases been a major element of a constitutional experience and we should include the influence of external and international actors more broadly in the analysis.

Following from this, the second aspect addresses the epistemological critique just described: in order to study and reflect the constitutional experiences in the South, constitutional scholarship has to work with greater methodological pluralism than it has so far. While constitutional scholarship often includes historical analysis and some reflection on political ideas, it should also make more use of the tools of political economy and anthropology.

At least equally important in our context is that constitutional scholarship should be much more ambitious and reflective of Northern biases when it actually does *comparative* analysis. This would include a stronger reflection of positionality—and more use of what I would call the tools of slow comparison. We should diversify our places of engagement, include work in different languages, and give scholarship more time to reflect and digest the ideas from other places. Perhaps it is helpful to resist the output expectations of the academic market from time to time—in order to be open to challenge Western notions, contextualize them, rethink them. In a way, this is a task of such intellectual and habitual magnitude that we should allow us some time. The idea of slow comparison might give us a frame to do so (P. Dann and A. Thiruvengadam, Comparing Constitutional Democracy in the EU and India, 2021, at 5–8).

This brings me to the third aspect: a Southern turn in constitutional law scholarship will ultimately address the empirical and normative varieties of constitutionalism in the whole world, not just the South. In order to do so, we have to get a better, more theorized understanding of the notion of 'Global South.' It is true that using this notion poses difficulties, since it is vague and seems over-inclusive. Many people argue that taking into account regional experiences is more important and productive (i.e. Latin American constitutionalism, East Asian constitutionalism, etc.). And to some extent, I agree. The geopolitical constellations of a region profoundly influence the constitutional experiences there and one has to be mindful of that.

But I don't think that doing one excludes the other. Using the lens of the South points to an important element of constitutional experiences all over the world—namely, the encounter between South and North, the role of the North as an external force, and the consequences of living with structures of center and periphery in epistemological, philosophical, and economic terms over a longer time.

Ultimately, the notion of the Global South then is not geographical. There is North in the South and South in the North. The notion rather signals a constitutional sensibility for legal and constitutional, but also epistemological and economic, marginalization. Developing and valuing such a sensibility might go a long way in constitutional scholarship and practice (for a place trying to cultivate such sensibility, see the journal World Comparative Law).

4. Conclusion

At a time when the basic structures of free societies are threatened, it is a good time to be introspective in order to guard those freedoms. One way to do so is to take seriously critiques. This must not necessarily lead to further alienation or even confrontation, but can—as the relationship between liberal constitutionalism and postcolonial critiques demonstrates—rather be a chance for a more serious and potentially very productive line of engagement. Such an engagement we have termed a Southern turn. At the end of the day, such a turn is not only one towards the South, but is actually a double turn. It starts with a more serious theoretical engagement with constitutional experiences in

the South—but this includes a reflection on their entanglements with the North and leads to a renewed study of Northern constitutionalism and their mutual constitution. Being mindful of these influences and entanglements is also a way to address why and how the economic and political promises of liberalism have failed in the South as well as in the North. Critique and contestations of liberal constitutionalism are not only a phenomenon of the South. Understanding the epistemological and material failings of liberal constitutionalism might help us substantially to defend a liberal model that is fair in an epistemological sense and just in an economic sense everywhere.

Philipp Dann
Professor of Public and Comparative Law
Humboldt University, Berlin, Germany

On my way out—Advice to young scholars VII: Taking exams seriously (part 1)

I have, as is increasingly evident, reached the final phases of my academic and professional career, and as I look back I want to offer, for what it is worth, some dos and don'ts on different topics for scholars in the early phases of theirs. This is the seventh instalment, and it is dedicated to that central feature of teaching—exams.

I take exams seriously because I take teaching very seriously. My vocation as a scholar comes second to my vocation as an educator and teacher. Though in certain jurisdictions and certain universities some attention is given to the training of young academics as teachers (as if the old geezers are perfect and could not well do with a refresher here and there), and though in certain jurisdictions and certain universities attention is given (often no more than lip service) to the quality of teaching in the progress of an academic career, I am unaware (and would be pleased to be corrected) of any serious and systematic attention to exams.

As a result, one of the most stable, if not the most stable, university institution is the exam. In many cases—I am sure there are exceptions—the kind of exam one had as a student, assuming one remains in the same system, is the kind of exam one will administer to students. If one moves, as many do today, from one system to another, one is simply told 'this is how we do it here' and one falls into line.

There is huge variation in the manner in which exams are conceived and administered at different universities. You might adopt a Darwinian approach—natural selection in different environments has resulted in the best possible form for any given environment. Do not kid yourself! It is the victory of inertia over reflection.

The form and format of exams are typically not the result of serious reflection, collective or individual. You may put an awful lot of effort and creativity, year to year, course to course, into the questions you will include in your exams, that yes. But the framework—the form, the format (the two are not the same), the underlying concept and philosophy of the exam—tends to remain the same and is frequently unarticulated. The questions might change, as the law changes, but it is the same persons,

just wearing different clothes. How else, other than inertia, might one explain the attachment of, say, my Italian colleagues to their 20-minute oral exam, one of the most deficient forms of examination—a charade merged with farce where arbitrariness of result combines with unfairness (I speak from experience).

And yet, I am always struck by the fact that, despite this victory of inertia over reflection, my interlocutors over the years, when attempting to question university practice of exams, become fiercely—fiercely—locale patriotic. A matter of constitutional identity: 'Change our exams?' … imperialism, neo-colonialism, changing civilization as we know it today.

My purpose in this reflection is not to offer a blueprint for the 'best' form of exam – though I will not hide my preferences. Instead, I will walk through some of the choices that have to be made in reaching a reasoned result. Thus, not 'what is the best form and format of an exam,' but 'how to think about this'—indeed, taking exams seriously. I will start with some conceptual issues and in further instalments move to the practical.

The "philosophy" of exams

The most fundamental point I want to make—more important than the list of choices available—goes to an issue which I think is so obvious that it is often forgotten. You may call it 'the underlying philosophy of exams.'

Thinking seriously about exam design must, should, force us to think seriously about course design. Yes, I want to teach constitutional law or international law, etc. But what are the educational objectives I want to impart to my students in the course of teaching them these subjects? Which skill sets? What type of understandings of the subject matter, especially given the obvious constraint that in a course of, say, forty-four classroom hours I can hardly make them proficient in all doctrinal aspects of the subject? So, what are these educational objectives in a very concrete way? Surely there are more than one.

It is only if I articulate these objectives to myself and design my course accordingly that I can begin to think seriously about the exam design, since, as day follows night (or from a student point of view, as night follows day), the exam should test the extent to which the students have mastered the different facets of the skill set and knowledge that constitute my educational objectives.

I will now illustrate this by reference to my choices as regards educational objectives and how these translate into the format of an exam—with the caveat mentioned above that there can be different choices, but I do insist on a nexus between the educational objectives and skill set and the exam.

Here then are my choices for course design and the consequences for exam design:

1. Doctrinal coverage—knowledge of the positive law. This of course begs, as you all know, two questions. The first question: What is the correct balance between breadth and depth, between widening and deepening? The more I try to cover, the more superficial will their knowledge be. We all are habituated in making these choices; my own preference is depth at the expense of breadth. The second question

is trickier, and I can explain it in two ways: a student can learn and understand the textbook, the manual, perfectly, but that is like giving fish without teaching them how to fish. What skill set did the author of the textbook have to have in order to look at the raw materials of the law (legislation, cases, etc.) in order to synthesize it into positive law. And/or how does it help me and my students if I teach them, as I must, the law as it stands at the time of teaching (say, second semester of first year) if three years later when they graduate, it has, as always happens, changed significantly?

2. Teaching students, then, 'how to fish'—how to read analytically and synthetically the raw materials of the law and translate such into positive doctrinal law. I regard this skill as important—and possibly even more important—than the first objective of doctrinal coverage.
3. Hermeneutics—interpretation is at the heart of legal discourse as a consequence of the inbuilt indeterminacy of large swathes of the law. Since most of my students will be practicing lawyers, and not law professors, my approach to hermeneutics is heavily dressed with large doses of legal realism—structures of argumentation, the art of persuasion relevant both in litigation as well as negotiation.
4. All three dimensions mentioned so far come to a head together in the fourth objective—serious experience (if not mastery) in applying the law to complex factual situations. Such situations invite the students to come up with equally complex and creative analyses as well as sorting out from their doctrinal toolkit the relevant and meaningful parts of 'the law.'
5. A systemic, conceptual, and normative understanding of the entire subject matter—the equivalent in medical school to anatomy and the public health aspects of medicine. We are, after all, at a university—not a bar exam course. And I will mention here something that is often forgotten in our law faculties—that justice is the underlying telos of the law. So how does one weave justice into the material we are learning?
6. Finally, oral and written articulateness—law, after all, to a much greater degree than, say, mathematics, is a communicative discipline.

This is my list—other lists are obviously possible. The main point is that whatever the list, the exam should test all these aspects of the course; in other words, there should be a consonance between the course design and objectives and the exam design.

Finally, here is another important truism that is oft forgotten: *the exam is also an exam of us as teachers.* If a large number of students perform poorly in relation to one or more of these elements, it is a wake-up call for me that it was my failure as a teacher and that I need to introduce corrections in the design and execution of my course next time I teach it.

So how does one translate these elements into the exam design? How do they reflect on the choice of form—e.g. oral or written, in class or take home, open or closed books, and so on?

To be continued.

JHHW

In this issue

This issue of the *International Journal of Constitutional Law* opens with a new rubric titled Editorial Reflections. This section is intended to host short think pieces aimed at spurring academic reflection and debate on topical issues. The article inaugurating the rubric is by *Gráinne de Búrca*, who investigates why the membership of Poland and Hungary in the European Union remains largely unaffected by the widespread, serious, and documented infringements of rule of law, democracy, and human rights by the governments of these two countries.

The following section features the Afterwords to Karen J. Alter's Foreword which appeared in volume 19:3. The Foreword explored the shift from colonial to multilateral international law. The Afterwords develop different aspects of Alter's Foreword. *Doreen Lustig* expands upon Alter's argument and provides a view on the contemporary legal arrangements beyond multilateralism: she analyses the role of the sovereign veil, the corporate veil, and the contract veil in constituting the contemporary global economic order. *Sergio Puig* shows how international law is a cultural product, and not only the result of capitalistic dynamics. Thus, the current transformation of international law is not caused solely by changing power imbalances and geopolitics, but also by cultural change. *Gregory Shaffer*'s Afterword makes several points that integrate Alter's main arguments with considerations on capitalism, international law, race, and China's rise. In her Afterword, *Ntina Tzouvala* argues that, within the multilayered relationship between law and capitalism explored by Alter in her Foreword, the juridical and bureaucratic underpinnings of capitalism should not lead to reducing the latter to the former. *Antoine Vauchez* describes global economic law as an inextricable multilayering of national and international, but also public and private, legal regimes—something akin to the Möbius strip. He questions, however, the role of sociology and discusses the political and democratic costs and the possible ways out of this conundrum. The section concludes with *Karen J. Alter*'s rejoinder. She focuses on two issues that recur throughout the various commentaries: how can lawyers, scholars, and legal processes contribute to solving the systemic problems of the current global capitalistic system?; and why she expects (or hopes) that multilateralism will be the key element of any solution.

The Articles section features seven articles. *Udit Bhatia* investigates the use of indirect elections as a constitutional device of epistocracy. Taking as a starting point the crisis of democratic politics, he explores epistocracy, or rule by the competent, as a possible alternative and the use of indirect elections for the legislature as an epistocratic constitutional device.

Miles Jackson's article deals with the strategy that the European Court of Human Rights has adopted to respond to pressure from states. Indeed, the Court has undertaken a 'procedural turn', which consists of a renewed deference to national authorities. The article sets out a functional critique of this turn by drawing attention to certain limitations in its assumptions and application.

The article by *Adam Chilton* and *Mila Versteeg* focuses on small-c constitutional rights. It shows that although the large-C constitution is the primary source of

constitutional rights in a majority of countries, the small-c constitution also plays a significant role, especially in older constitutional systems—whether they are civil law or common law systems.

Thana C. de Campos-Rudinsky and *Mariana Canales* write on global health governance and the principle of subsidiarity. They argue that the problems of global health governance that have been reanimated with the Covid-19 pandemic should be addressed through a robust decentralization reform, based on the principle of subsidiarity, rather than through centralization and strengthening of the World Health Organization.

William Partlett's article theorizes a previously unidentified type of constitutional design that he labels as "crown-presidentialism." According to Partlett, crown-presidential design has given presidents a tool in building and maintaining authoritarianism while claiming to have a democratic constitutional design.

Constitutional civil-military dynamics in Southeast Asia is the subject matter of *Marcus Teo*'s article. The article explores the relationship between militaries, legitimate rulers, and constitutions in Southeast Asia. It finds that constitutions are adopted to formalize political bargains between militaries and legitimate rulers, and that those constitutions then shape the militaries' role in politics.

The Symposium in this issue, convened by *Michele Krech* and *Joseph H. H. Weiler*, explores football feminism as a unique and relatively understudied intersection of global law and governance, on the one hand, and gender and feminist theory, on the other. It is built on the argument that football occupies a place in the global space and its regulation gives rise to a distinctive form of global governance that entails issues of legality, legitimacy, democracy, transparency, and accountability. In addition to the opening article by *Michele Krech* and *Joseph H. H. Weiler* which frames the collection, contributors to the Symposium include *Antoine Duval*, who conceptualizes the Fédération Internationale de Football Association (FIFA) as a "transnational battleground" for feminist legal critique; *Daniela Heerdt* and *Nadia Bernaz*, who identify the elements for FIFA's feminist transformation; *Claire Poppelwell-Scevak*,who deals with gender pay gap issues and explores the role of FIFA in addressing these; *María Ximena Dávila*, *Nina Chaparro*, and *Nelson Camilo Sánchez*, who focus on rights-based constitutionalism and gender justice in Colombian women's soccer; and, finally, *Amée Bryan*, who takes the UK case and provides a view on gender inequality in English football.

The Critical Review of Governance section features an article by *Oran Doyle* and *Rachael Walsh* on the use of deliberative innovations to enhance constitutional amendment processes. The article assesses the potential of deliberative mini-publics as a tool for consensus democracy. Taking Ireland as a case study, it argues that citizens' assemblies have a significant role in the process of public will formation.

Two articles are included in the Critical Review of Jurisprudence section. The first is by *Simon Butt* and *Prayekti Murharjanti*, who examine how the Indonesian government has responded to decisions of the Constitutional Court. The authors show that if the Constitutional Court's decisions are at all implemented, they are reflected in regulatory instruments that are eventually inconsistent with the Court's decisions. The second article in this section, by *Stefano Osella*, analyzes the reasons that led the Italian Constitutional Court to require trans people to transform their physical, psychological,

and behavioral characteristics in order to obtain legal recognition of their gender identity. The article argues that these requirements are motivated by interest in the preservation of the "certainty of legal relations," which is in turn connected with the preservation of the heterosexual matrix of family law in the Italian context.

The ICON: Debate! is built around an article by *Nico Krisch* on "entangled legalities" in the postnational space. To capture the essence of transnational and international norms, the article proposes to frame law in terms of entanglement rather than system. It, hence, develops a notion of entanglement, a typology of entanglements, and analyzes the varying underlying dynamics and consequences of entangled legalities. *Jan Klabbers* and *Sanne Taekema* offer Replies to the article. Klabbers points out that the notion of entangled legalities, as put forward by Krisch, assumes a specific actorial perspective, i.e. Krisch's interest resides mainly with the regulator. He then explores the consequences that this perspective may have. Taekema's reply elaborates on Krisch's critique and argues that entanglement implies a concept of law which is practice-based: combining entanglement and law as practice should help to make sense of postnational legal practices.

In this issue, we publish four book reviews that examine four important monographs and edited volumes published in 2020, a year when the entire world was plagued by the Covid-19 pandemic and democratic backsliding. These books elaborate and analyze how a democracy may (or may not) survive under disadvantagous conditions, such as a pandemic, corruption, and poverty. Attempting to further enrich and spur more debate and reflection in these areas, the four reviewers critically examine the theses, arguments, and evidence advanced in the books. Readers will certainly benefit from the dialogue between the authors and the reviewers.

GdeB and JHHW