Editorial

The International Society for Public Law – Call for Papers and Panels

On June 26–28, 2014, in Florence, the European University Institute and NYU–La Pietra will host the Inaugural Conference of the newly established International Society of Public Law (ICON•S).

We invite all our readers to submit proposals for either individual papers, or even more ambitiously, proposals for panels which, if selected, will be presented at the Inaugural Conference. Full details, modules for submitting proposals and for registering for the conference may be found at [http://icon-society.org/](http://icon-society.org/). Registration for the Inaugural Conference includes the first annual membership fee in ICON•S and a free one-year online subscription to ICON.

The initiative to create an International Society of Public Law emerged from the Editorial Board of ICON. As our readers will be aware, for several years now, ICON has been, both by choice and pursuant to the cartographic reality of the field, much more than a journal of comparative constitutional Law. ICON has expanded its interests, range of authors, readers, Editorial Board members and, above all, issues covered, to include not only discrete articles in fields such as Administrative Law, Global Constitutional Law, Global Administrative Law and the like, but also – and increasingly so – scholarship that reflects both legal reality and academic perception; scholarship which, in dealing with the challenges of public life and governance, combines elements from all of the above with a good dose of political theory and social science.

True, in our classrooms we still teach “con. law”, “ad. law” and “int’l law” separately – with some justification: they retain their reality and heuristically, one has to start somewhere. But in litigation and jurisprudence, lawmaking, and academic reflection, the boundaries between these disciplines and the borders between the national and the transnational – and even global – have become porous, indeed so porous that at times one is actually dealing with an AltNeuland of public law.

I would say that about 20 per cent of the articles submitted to either ICON or EJIL could be published in both. The boundaries between ICON and EJIL are, unsurprisingly, equally porous.

We are certainly not announcing the death of, say, constitutional law or administrative law and the comparative variants of such. But, at a minimum, a full explication and understanding of today’s “constitutional” cannot take place in isolation from other branches of public law or in a context that is exclusively national. The same is true for these other branches too, not least international law. Public law, as a field of knowledge that transcends these dichotomies, thus deserves our renewed intellectual
attention. Our German colleagues, who have always had a more holistic approach to public law, may smile with some self-satisfaction.

In the same vein, the divide between law and political science has become porous too. Some of the finest insights on public law come from social scientists deeply cognizant of law; also, is there any legal scholarship that does not make at least some use of the theoretical and empirical understandings and methodologies external to the legal discipline, *stricto sensu*?

What then of “comparative law”? Are we announcing the death of the field? Perhaps not of the field, but of the word. The field is flourishing. It is possible to think of the field of public law in Chomskyan terms: there is a surface language, which differs from jurisdiction to jurisdiction, but there is also a deeper structure that is common to the phenomenon of public law. It is difficult to find a public law scholar whose work is not “comparative” in some respects: informed by the theoretical discussion of X or Y in another jurisdiction; referring – often by way of contrast, sometimes by way of similarity – to a foreign leading case somewhere else, as in “this is the *Marbury v. Madison* of our legal system”; addressing universal themes of constitutional theory or design; or simply searching for a constitutional “best practice” overseas. Like Monsieur Jourdain who discovered to his astonishment that he was speaking prose, we in the field of public law should not be surprised to discover that in one way or another, we are all comparativists. To limit our new Society to those scholars whose work is explicitly “comparative” would be hugely constricting and would limit many valuable conversations that go well beyond the formally comparative.

The best example of this new cartography may be found in this very issue in our Symposium on the 50th Anniversary of *Van Gend en Loos*, some articles of which are published in *I•CON* and others in *EJIL* (see below).

Learned societies have often been founded to validate the emergence, autonomy, or breakaway of an intellectual endeavor. By contrast, international learned societies are often driven by the realization of intellectual cross-fertilization that can stem from disciplinary ecumenism. ICON∙S is both! We believe that there is a compelling case for the establishment of an International Society of Public Law predicated on these sensibilities – a new breakaway field, the content of which respects traditional categories yet rejects an excessive division of intellectual labor that no longer mirrors reality.

As mentioned, the Society will be officially launched at an Inaugural Conference which will take place in Florence, Italy, in June 2014. The European University Institute and NYU School of Law will sponsor this important event – so that we can spread our wings for the first time in the historic Villa Salviati, Villa La Pietra, Villa Schifanoia, the Badia Fiesolana, and the like.

An organizing Committee of both the Society and Conference, presided by Sabino Cassese, is in charge of the Programme and of the Society’s first steps, as is the usual practice with such “births”. Once it has taken off, the general membership will elect the officers of the Society who will take charge of its future direction.

The Conference will combine the best practices of the genre. There will be several plenary sessions with invited speakers, commentators and floor discussions on themes that define and reflect the scope of the new Society. But the heart of the event, we
sincerely hope, will be the response to this “Call for Panels and Papers”. We are expecting a plethora of proposals for individual papers, panels and workshops. Please do not delay in submitting your own proposals.

Van Gend en Loos – 50th Anniversary

Fifty years have passed since the European Court of Justice gave what is arguably its most consequential decision: Van Gend en Loos. The UMR de droit comparé de Paris, the International Journal of Constitutional Law (I•CON) and the European Journal of International Law (EJIL) decided to mark this anniversary with a workshop on the case and the myriad of issues surrounding it. In orientation our purpose was not to “celebrate” Van Gend en Loos, but to revisit the case critically; to problematize it; to look at its distinct bright side but also at the dark side of the moon; to examine its underlying assumptions and implications and to place it in a comparative context, using it as a yardstick to explore developments in other regions in the world. The result is a set of papers which both individually and as a whole demonstrate the legacy and the ongoing relevance of this landmark decision.

This symposium illustrates, if an illustration were needed, the rationale that underlies the creation of the new International Society for Public Law. It also marks a publishing innovation for us: there is a single Table of Contents of the Symposium in I•CON and EJIL. But the articles are split between the two journals. It was not always easy to decide which should be published in either journal but this joint venture enabled us to bring to print a larger than usual symposium.

In this Issue

Three very different articles flesh out our article section in this first issue of our twelfth volume. First is a piece by Ruth Rubio-Marín, who explores the historical development of women’s suffrage in different European countries and reflects on this development in the light of the construction of a European citizenship. We next introduce an article by Günter Frankenberg, who offers an in-depth and thought-provoking analysis of the human rights discourse. The following piece by Aoife Nolan discusses mechanisms by which non-state actors who violate constitutional economic and social rights may be held directly accountable by holders of such rights. She employs a comparative analysis of the constitutional systems of Ireland and South Africa.

Following the Van Gend en Loos symposium, we proceed with two different kinds of I•CON: Debates! The first revolves around an article by Kai Möller on the proportionality test, which appeared in our 10:3 issue. In his Reply to that article, Francisco Urbina argues that Möller’s account of proportionality would leave judges undirected by the law. Möller continues the conversation in his Rejoinder. The second I•CON: Debate! centers on Michael Perry’s approach to religious freedom. In the exchange, Michael J. Perry and Rafael Domingo defend opposing views on whether religious and moral freedom can be protected by the same legal paradigm.

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