Programme

The Political Imagination of Law
Exploring the Making of Normative Futures

26 & 27 March 2020

Department of Management, Politics and Philosophy
Copenhagen Business School

Theme and purpose:

At a time of rapid and increasingly uncharted historical change, there is hardly any social domain whose ‘foundations’ are not eroding under our own feet and where the future, to the extent that we are brave enough to talk about it, looks less rather than more like the present.

From social movements to the legitimacy of democratic institutions, from technological devices to the development (and disappearance) of scientific fields, from ordinary practices to complex legal cases, to say nothing about climate change itself, our ability to imagine futures that are both possible – or, at the very least, not impossible – as well as desirable is being challenged. In fact, it may well be the case that the very legitimacy of our disciplines may come to depend on their ability to elicit this kind of societal conversation about the intended and unintended consequences of our social orders, practices, and institutions.

It is against this background that the workshop aims to bring together a group of scholars from different disciplines and approaches to explore the question of how contemporary society depicts “normative futures”.

Indeed, while the notion of normative futures may trigger images of legalistic and formalist approaches to law and morality, in this workshop we seek to understand it, more sociologically, as the ways in which society itself is able to reflect on, and venture, future scenarios.

The workshop is jointly organised by the Copenhagen Business School, Universidad Diego Portales, Universidad Adolfo Ibáñez and Centro de Estudios Públicos, Chile.

Organisers: Poul F. Kjaer, Professor, Copenhagen Business School
Daniel Chernilo, Professor, Universidad Adolfo Ibáñez
Rodrigo Cordero, Associate Professor, Universidad Diego Portales
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Programme

Day 1: Thursday 26 March

8.45 – 9.00  Arrival and coffee

9.00 – 9.15  Welcome

Session I: Normative Futures of the Economic Order
Chair: Daniel Chernilo

9.15 – 10.15: Rodrigo Cordero (Universidad Diego Portales, Chile): “Undoing the Market: Social Critique and the Making of Normative Futures”.


11.15 – 11.30 Coffee break

Session II: Normative Futures of the Law
Chair: Siniša Malešević


13.30 – 14.30 Lunch break

Session III: Normative Futures of Democracy
Chair: Suvi Alt


15.30 – 16.30: Daniel Chernilo (School of Government, Universidad Adolfo Ibáñez): “Between Nationalism and Cosmopolitanism: Re-imagining Political Democracy”.

16.30 End of the first day

Conference Dinner

19.30: Restaurant Radio. Julius Thomsens Gade 12, 1654 Copenhagen V. Phone.: +45 25 10 27 33. Website: https://restaurantradio.dk/.

Day 2: Friday 27 March

9.45 – 10.00 Arrival and coffee

Session I: Environmental Normative Futures
Chair: Rodrigo Cordero


11.00 – 12.00: Des Fitzgerald (University of Exeter): “Making Green Urban Futures”.

12.00 – 13.00: Lunch break

Session II: Normative Futures Beyond the Apocalyptic Narrative
Chair: Poul F. Kjaer

13.00 – 14.00: Siniša Malešević (University College, Dublin): “Violence, Norms and the Future: Beyond the Hobbesian Vision”.

14.00 – 15.00: Suvi Alt (University of Groningen): “The Lost Dimension of the End of the World: Spatializing the Environmental Apocalypse”.

15.00 – 16.00: Coffee and Concluding remarks

16.00 End of workshop
Abstracts

Day 1: Thursday 26 March

Session I: Normative Futures of the Economic Order

Rodrigo Cordero (Universidad Diego Portales, Chile): “Undoing the Market: Social Critique and the Making of Normative Futures”

In the months of August and September of 2011, Chile became notorious worldwide due to the sudden emergence of massive protests of students demanding “free public education”. The movement confronted the newly elected right-wing government of the billionaire president, Sebastián Piñera, with the largest protests since the end of Pinochet’s dictatorship in 1989. As students paralyzed university campuses and secondary schools for more than seven months, and gathered hundreds of thousands of ordinary citizens and families in demonstrations across the country’s main cities, they articulated a powerful critique that made evident the deep crisis of an educational system imposed by the dictatorship and then consolidated by the neoliberal policies of social-democratic governments.

In this paper, I explore one of the most salient but less discussed aspects that emerges out of this struggle: the students’ critical engagement with legal rationality and the complex socio-legal framework that recasts education in an economic register as an asset rather than a right. My argument is that their struggle for free public education is not simply a moral protest against neoliberalism and market forces, but it entails a broader political problematization of the role of law and normativity in the economization of society. The inquiry thus explores the ways in which the critique of marketized education –deployed on the streets as well as in formal institutional settings (such as parliamentary commissions, Constitutional court and the like)– questions the monopoly of what may be called, to use the vocabulary of Foucault, the “economic rule of law”. In doing so, I contend, it is a critical response that also leads to a re-signification of the political meanings of law to empower other possible normative futures.

Drawing from this case, I place attention to three moments of critical engagement of the student movement with the law. First, the questioning of “debt” as the principle that defines student experience, insomuch as the concept enacts, through the juridical interplay of private loan contracts, a regime of valuation that credits and discredits students on their capacity to pay. Second, the questioning of the vocabulary of economic “freedom” as the normative bedrock upon which the educational system is supposed to operate, but also of the constitutional protection of such conception as it sustains an economic-juridical framework that guarantees profit-making rather than rights realization. Third, the questioning of the disempowerment of “democracy” produced by the self-insulation of the political system from those unofficial, subaltern, and nonspecialized forms of knowledge in the process of the constitution of norms (law-making), which narrows down the space of normative reflection to a domain of definitions coded in the language of legislators and legal experts.

Each of these moments of critique, as I wish to show, brings into focus the historicity of some key categories and devices that have facilitated the dissemination of market laws in Chilean society and in other places of the Global South too. The student revolt against neoliberal common sense not only raises claims that disturb the fictio iuris of the economic rule of law but also contributes to expand dominant understandings of juridical concepts and the normative imagination of society.


Some 80% of global trade unfolds within Global Value Chains (GVCs) making them a vital infrastructure of global society and a central institutional framework for the creation and distribution of norms, power, and wealth. GVCs can be defined as contract-based networks stretching from suppliers to customers engaged in the extraction, transmission, and incorporation of condensed social components, i.e., capital, commodities, knowledge, persons, and products from one legally-defined
societal context to another, as part of the production of economic value and the re-production of societal conditions enabling the perpetuation of economic value creation. GVCs are given form, i.e. come into existence, through chains of contracts and are constantly reproduced through the recursive emergence of new contracts out of previous contracts. While GVCs have a long history, the law struggles with the implications of the creation of value in multi-contextual and multi-jurisdictional networks. Theoretical attempts of constitutionalising the economy has to date been largely nation oriented. That is the case for ordo-liberalist as well as social-democratic labour constitutions ala Hugo Sinzheimer. On the basis of a distinction between coherency, possibility and connectivity norms possible constitutional futures of GVCs are outlined.

**Session II: Normative Futures of the Law**

**Lyana Francot (VU Amsterdam): “Law without Qualities? Normative Scenarios and the Future of the Legal System”**

This contribution explores the possibility of using scenarios as a method to keep the legal system up-to-date in a fast changing society with a future that is all but certain. Scenarios enable the design of alternative normative futures, either by forecasting or by backcasting. Essentially, scenarios are thought-experiments that seek to offer guidance for present decisions and actions in view of a future. Being thought-experiments, scenarios show some kinship to the grand theories of modernity. There is at least one noteworthy difference though: scenarios, as the plural of the notion already suggests, do not focus on one desirable future, in terms of progress. Instead, their design takes multiple futures into account – ranging from favorable to worst case ones. It is this difference that renders scenarios far more suitable for the contemporary stage of modernity than a grand narrative. Scenarios are used by for example policy-makers but maybe they could also be a useful method for future-proofing the law.

**Niels Åkerstrøm Andersen (CBS) and Paul Stenner (The Open University): “How the Welfare State Tries to Protect Itself Against the Law: Luhmann and New Forms of Social Immune Mechanism”**

Luhmann argued that the law functions as the immune system of society by inviting and regulating conflicts that would otherwise threaten stability by dissolving expectation security. We will argue that law itself has become a target of new social immune mechanisms. Since the beginning of the 1980s welfare states have come to see their own structures as a threat for their future. First competition was introduced as an immune mechanism within the public sector through tools such as benchmarking and internal contracts. Since around 2000 the critique of structures has been radicalised. The ideal today is a public sector consisting of organizations that "build the road as they are driving on it", emerging anew everyday by selecting structures fit for the moment, the case, the citizen, etc. Potentialisation is introduced as a new social immune mechanism protecting the organization against structures through a constant search for new openings and new possibilities. The critique of structures includes a critique of legal structures and legal rights. Looking at the Danish law of early retirement as our case, this paper analyses how the conflict between law and potentialisation is built into the law itself. On the one side the law gives the citizen certain rights to early retirement. On the other side law protects potentialising citizens against the exact same citizen rights. Where legal decisions on early retirement follow a temporality that is ordered by present-past (externalising the future), potentialising citizens is all about the future and indeed the future of the future. Potentialisation here become a mechanism for protecting the operations of a system against its own legal structures by ‘un-relating’ those operations from its structures. When citizens articulate their
right to pensions, the social workers can deny them this right on the grounds of a right to a future that is not foreclosed and ‘parked’ on a pension. Potentialisation works here by dissolving the certainty of the expectations connected to legality.

Session III: Normative Futures of Democracy

Robin Celikates, FU Berlin: “Against Populism. Radical Democracy and the Prefiguration of Community”

My paper will address the different and indeed opposing configurations and prefigurations of community behind political tendencies and movements often lumped together under the label of populism. Moving away from discussions focused on the substantial political disagreements between left and right varieties of populism, I argue that the assumption that populist movements on the left and the right share a form – one in which ‘the people’ is invoked and activated against ‘the elite(s)’ in a politicizing manner – is mistaken. While on the surface both left-wing movements such as Occupy and more recent right-wing movements in Europe and the US seem to respond to the neoliberal evacuation of the political by employing strategies of hyper-politicization, I will argue that – by bringing Wendy Brown’s work into conversation with recent analyses by Eric Fassin and older ones by the first generation of Frankfurt School authors – we can see that right-wing populism not just in virtue of its “content” but also of its “form” is better understood as mobilizing a dynamic of pseudo-politicization that is ultimately anti-political and undermines any viable normative future for democracy. It therefore ends up contributing to the further “undoing of the demos” in the name of a homogeneous people rather than to its “remaking.” After saying a bit more about the dialectic of de- and repoliticization and how one might diagnose the traps of pseudopoliticization without relying on a perfectionist or essentialist notion of politics no longer tenable today, I will argue that the notion of “left populism” is ultimately self-contradictory and that a radical-democratic remaking of the demos needs to start from those political struggles – most importantly for my argument: struggles by refugees and indigenous communities – that call for a radical revision, pluralization and deterritorialization of the demos, of peoplehood and of its internal and external borders – all in ways that deeply unsettle the existing terms of the struggle for hegemony rather than making a move within its narrowly national-populist confines. For democracy to have a normative future at all, its imagination has to turn against and move beyond populist capture.

Daniel Chernilo (School of Government, Universidad Adolfo Ibáñez, Chile): “Between Nationalism and Cosmopolitanism: Re-imagining Political Democracy”

In public and academic debates alike, there is the long-standing view that nationalism and cosmopolitanism are the two poles of a continuum. Where nationalism underscores our collective sense of particularity and difference, cosmopolitanism emphasises ideas of universal human rights that we all share as human beings. My starting point in this paper is that, rather than treating them as mutually opposed to each other, it is better that we look at their interconnections.

In order to do this, I will explore two normative tension of the modern political imaginary that, to my mind, are very much intertwined with nationalism and cosmopolitanism. First, there is the tension between the open-ended nature of democratic decision-making, on the one hand, and a commitment to universal human rights that ought to be upheld for anyone and everywhere, on the other. The democratic deficit of cosmopolitan institutions without a clearly defined demos, and the normative deficit of national self-determination without pre-political moral commitments, seem to mirror each other in that they presuppose a one-sided view about the sources of legitimacy of modern political orders. A second tension is found in what we may term as the duality of modernity’s constitutive ‘we’: much of the modern political vocabulary is underpinned by two different yet partly overlapping meanings of who is
the collective subject of modern political democracy: the particular ‘we’ of a people that is organised
as a national community around its own state and the universal ‘we’ of moral agents that recognise each
other as bearers of unconditional human rights.

In both cases, the implicit idea has been that they would self-correct and balance each other out. Yet
this has failed to materialise: more often than not, national sovereignty and international jurisdictions,
democratic origins and moral legitimacy, continue to clash. Re-imagining nationalism and
cosmopolitanism for our own times requires us to reconsider what these normative tensions tell us about
the possibilities and prospects of modern democracy.

Day 2: Friday 27 March

Session I: Environmental Normative Futures

Mauricio Berger (CONICET IIIFAP FCS UNC): “Towards a Critical Theory of
Governance. Observations on the Normative Orders of Bio and Nanotechnologies in
Latin America”

This paper has a general purpose, which is to deepen a critical theory of governance, based on
our analysis of the systemic functions of what we call the “agro-biotechnological governance”
in Latin America. We seek to provide conceptual tools to make observations on the plurality
of normative orders in tension (organized consensuses and disagreements, compatibilities and
stabilizations, irritations) in a context of the agribusiness “development model” in the region,
and its dispossession of rights to health, environment which affects several communities and
individuals.

Firstly, from a sociology of public problems, the reflections will be situated in empirical cases
of struggles for rights and transformations of law in Argentina, Brazil and Mexico, regarding
national and international legal regulations for the liberation and/or restriction/moratoriums of
transgenics and nanotechnologies. Then, from a critical political theory on corporate/neo-
corporate governance and their intermediary institutions, follows a description of the
epistemic political-normative and normative networks in collision. This refers mainly to highly
complex institutional networks, in which political practices are tensioned between the
promotion of the model of global commodification of seeds technologies, on one side; and that
in which the priority is the defence of life in all its forms, health and biodiversity above and
beyond profit, on the other side. While this latter mainly invokes the validity of the
Precautionary Principle against the techno-scientific development of transgenics and
nanotechnologies, the first one communicates a policy of "science-based regulation", for risk
assessment and management based on experts comitology.

To put into discussion, the paper will present some reflections about a central flow of policies,
conflicts and politics around the juridification of both (Precautionary Principle and the science-
based regulatory policy). Also, some insights on how the struggles for rights in Latin America
inform the generation of (future?) normative orders at the national, regional/international/
transnational scale, while promoting denunciation/dissent on the current normative orders for
the development of bio and nanotechnologies.
Des Fitzgerald (University of Exeter): “Making Green Urban Futures”

In recent decades, two related anxieties have come to the fore within the technical practices that produce, legislate and govern urban futures in a range of countries: (1) That “the city” is a space that is fundamentally bad for the wellbeing of city residents, and especially for their neurobiological wellbeing; that there is something inherent to city life that is psychologically problematic for a significant amount of people. (2) That this effect is in large part mediated by the material and sensory structures that compose urban experience, and that it is in large part the absence of “green” or “natural” spaces – environments, in other words, more suited to the human body’s evolutionary inheritance – that makes the city so psychologically unbearable for so many.

In this paper, I sketch the production of the green city, as a normative and psychological object, in a range of countries today. Drawing on early-stage empirical work among architects and designers, as well as neuroscientists and health practitioners, I show how a green future for the city is being brought into being through a range of political, bureaucratic and scientific practices. And I ask how we should think about the normative visions that underpin such starkly pastoral visions of the city, in terms of a much longer tail of urban imaginaries in the twentieth century, and the speculative futures that these have conjured.

Session II: Normative Futures Beyond the Apocalyptic Narrative

Siniša Malešević (University College, Dublin): “Violence, Norms and the Future: Beyond the Hobbesian Vision”

The overwhelming majority of popular science fiction tv shows, films and novels tend to depict the future world in very similar, mostly post-apocalyptic, ways: with the collapse of governance structures human beings automatically turn to violence. The central assumption that underpins these depictions of future is that the disintegration of law and order would inevitably lead to vicious and bloody struggle for survival. In many respects these fictional narratives draw upon and reproduce the ideas that have dominated political and military thought for centuries. From Machiavelli and Hobbes to the contemporary neo-realisitcs and cognitive evolutionary psychologists, violence and war are perceived to be the natural state of individuals, societies and states. In this paper I challenge these Hobbesian visions of violent futures and argue that the dynamics of violence is context dependent and highly variable. By focusing on the organisational, ideological and micro-interactional processes that make violence possible I envisage different possibilities and trajectories of violence in the future.

Suvi Alt (University of Groningen): “The Lost Dimension of the End of the World: Spatializing the Environmental Apocalypse”

Environmental politics in the Anthropocene is habitually conveyed to publics through apocalyptic discourse. The widespread portrayal of environmental issues through the apocalyptic frame has led to a debate between those who perceive this depiction as alarmist and counter-productive and those who see it as having the ability to mobilise people to political action. Yet, whether arguing for or against such a framing, existing research in International Relations on the so-called ‘environmental apocalypse’ remains wedded to a particular modern, Western interpretation of the Judeo-Christian eschatological tradition that conceives of the apocalypse in decidedly temporal terms, largely disregarding its spatial dimension. The purpose of this paper is to problematise this privileging of temporality in the debates on the
environmental apocalypse and to establish the contribution of postcolonial theology to debates on the Anthropocene in IR. Firstly, the paper interrogates the meaning of the end of the world in contemporary mainstream environmentalism, showing that the environmental apocalypse is conceived in primarily futural and planetary terms that disregard spatial differentiation, marginality, and present inequality. Secondly, the paper problematises contemporary post-ecological approaches that reject such apocalyptic narratives in favour of the claim that the end of the world has already happened. While unsettling the temporality of apocalyptic environmentalism, the human/nature divide, and modern notions of progress, these approaches nevertheless reproduce apocalyptic environmentalism’s inadequate attention to spatial differentiation. Thus, thirdly, the paper engages with an alternative, latitudinal reading of the eschatological tradition. Here, the end of the world is not located at a future point in time, but is variably distributed across geographical, social, and material divides in the present. Recovering space as the lost dimension of the end of the world challenges both received notions of the environmental apocalypse and the predominance of Western interpretations of the Judeo-Christian tradition within the post-secular turn in IR.

**Keywords:** Anthropocene, environmental apocalypse, eschatology, spatiality, temporality, post-secular IR