

## KELSEN SCHMITT ARENDT



and the possibilities of (international) law

### The Project

Hans Kelsen, Carl Schmitt and Hannah Arendt hold an important place in 20<sup>th</sup> century intellectual history for each developing a unique and influential approach to scholarly analysis and critique. Their role in modern thought continues to be the subject of countless explorations in the history of ideas. Yet, besides their historical relevance, each has also inspired contemporary debates on the nature and purpose of (international) law. Hence, what if their respective theoretical frameworks were used as a spectral glass through which to throw new light on the practical questions that inform contemporary debates?

Kelsen, Schmitt and Arendt's oeuvres contain an enormous intellectual potential for reassessing the relationship between law and politics from an international perspective. Their unending quest for an answer to the question of the potential and limits of international legalism in an antagonistic political environment is at the heart of their individual projects. All three of them are radically modernist thinkers, consciously and unconsciously revealing the inherent limits of legal modernity. If it is true that international law and its practice are at a crucial juncture and uncritical pragmatism has taken hold of scholarship to form a culture of 'muddling through', then we are in dire need for critical self-reflexion of our professional practices. The writings of these three 'giants' are themselves multi-faceted and ambivalent; they provide as much the tools as a catalytic surface for a critical re-assessment of the language of international law. Thus, a host of stimulating projects emerges from their cross-cutting reflections, exploiting the tension between modern and post-modern,







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universalist and relativist, de(con)structive and (re)constructive approaches. The workshops and conference in this series will try to broach new ground in legal theoretical scholarship. They aim to forgo the usual dichotomisation, such as pitting Kelsen against Schmitt, and instead strive to analyse and compare how theories actually work in different fields of (international) law and to continuously self-reflect on this effort. The project takes the unique form of several small-group workshops which focus on one particular topic through short papers and intensive discussion, and a larger final conference which allows participants to gain critical distance and analyse the venture as a whole.

### The Workshops

The following events are planned for 2009 and early 2010:

-  **Constitutionalisation**  
Simon Dubnow Institute, Leipzig, June 12, 2009
-  **Sovereignty**  
Bohemian Chancellery, Vienna – September 11, 2009
-  **International Humanitarianism**  
London School of Economics and Political Science, March 5, 2010
-  **Poverty and/of International Law**  
**Tilburg University, September 7, 2010**

Coordination Committee: Louise Arimatsu - Jason Beckett - Jochen von Bernstorff - Morag Goodwin - Florian Hoffmann - Jörg Kammerhofer - Alexandra Kemmerer - Michael Wilkinson

## Workshop IV

The existence of endemic poverty in the world is arguably a reflection of the poverty of international law. While the short-comings of international law are frequently discussed, analysed and lamented, these discourses take place in a reality of devastating poverty - a poverty that is not merely intellectual but is a feature of the empirical reality that (international) law is intended to help us to understand, to judge, to regulate and perhaps even to ameliorate. Poverty can thus be seen to form an important context in which debates about (international) law take place. However, the conscious or unconscious denial of poverty also forms an umbrella which shields these disparate debates. Poverty forms the limit or the blind spot of thinking about international law; it forms their often undisclosed communal horizon. Questions concerning the relationship between law and politics, justice and violence, war and peace are thus incomplete without an appreciation of the injustice, the violence, the negation of human life, that extreme poverty represents. This question of silent, structural violence frames our thinking about international law and yet is often ignored or overlooked. Despite writing in the heyday of colonialism, and for Schmitt and Arendt, post-colonialism, neither Schmitt nor Kelsen nor Arendt offer any sustained engagement with it. Nonetheless, each of their writings indirectly offers important insights into economic hegemony, the juridification and de-politicisation of this hegemony, and the structures of neo-colonialism it manifests and entrenches.

The workshop will take the form of two main sessions provisionally entitled 'The Poverty of International Law' (Panel I) and 'Can international law escape its history?' (Panel II).

Panel I: The stock response to crises in the PIL and HR world(s) is to demand more and better: more and better law; more and better rights; more and better enforcement; more and better interpretation; more and better institutionalisation; more and better implementation. But neither more law, nor more rights can be eaten – neither can feed nor nourish (at least not beyond the lawyer's soul) – and anyway, poverty has co-existed with law and legal rights for decades. In this sense, the standard response is, itself, impoverished! This panel shall engage questions of why PIL turns so habitually to such impoverished stock responses; and to what might be done, or offered, instead.

Panel II: Recent scholarship has pulled back the layers of self-serving rhetoric and indisputably located the origins of international law in the colonialism, violence and oppression of empire. In so doing, such works have given lie to the accepted image of international law (at least among international lawyers) as a benevolent force for good in the world. Yet despite this knowledge, international lawyers continue to see international law as the best available tool to achieve their hopes for a better world. What are we to do with the knowledge that the structure and foundational doctrines of international law are tainted? More fundamentally, is it possible to cleanse international law of its original sins: can international law escape its history?

We would welcome papers on any aspect of the relationship between (international) law and poverty from the perspectives of any of these three "giants" of (international) legal thinking, however understood; and whether or not further mediated through reflection on constitutionalisation, sovereignty, or humanitarianism.

**Tilburg University (NL) – September 7, 2010 – 9:30-18:00**

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