



## Seminarankündigung

### The People vs. International Courts – Populism, Democracy and International Adjudication

It is hard to dispute that we are witnessing a “populist moment” (*Chantal Mouffe*) in international politics. Some of the largest, most populous, most powerful countries in the world, at the moment, are under populist leadership: Brazil, India, Mexico, the Philippines, Turkey and, most notably, the United States. However, populism has not stopped at the gates of the EU: Think of Brexit, the Hungarian and Polish governments’ policies undermining the independence of the judiciary or vilifying migrants, the traction that populist parties have gained in Germany or France or the recent prominence of grassroots movements, such as the French *gilets jaunes*. While they differ greatly in political views and form of organization, they arguably all share a disdain of “elites”, the focus on popular will and a normative notion that emphasizes the “will of the people” as the primary, or only, source of legitimacy.

The rise of populism domestically influences how governments view and conduct politics and policy internationally. Populism affects international affairs and thus affects international law. International legal rules and principles that constrain states in their actions both on the international plane as well as regarding their domestic politics sit uneasily with populist politics, which claim to restore power to “the people.” Populists hence are skeptical, if not to say hostile, vis-à-vis international limits on the exercise of domestic popular will. Populism – whether of a left or a right denomination – thus challenges international law.

In hardly any other field of international law these challenges seem greater than with respect to international adjudication. The very idea of international judicial dispute settlement is to deprive states of the power to manipulate their obligations after the fact. They can change the rules and principles that bind them internationally afterwards. But this does not change the finding of international liability by an international court or tribunal for their behavior prior to the institution of proceedings. Also, international courts or tribunals may engage in ascertaining contested international norms or even in creating new rules and principles of international law, without states’ formal consent to such law-making in the specific instance, based merely on the states’ overall consent to refer a particular dispute or a certain group of disputes to international adjudication. Populist backlash against international courts and tribunals, such as the Trump administration’s blocking of WTO Appellate Body member appointments, has voiced criticism targeted exactly at these features of international adjudication.

In this seminar, we will seek to better understand populism and its relationship to international adjudication, what characterizes populist politics and policies vis-à-vis issues of international judicial dispute settlement and how international courts and tribunals respond to populist backlash. Part I of the seminar will inquire into populism and international adjudication in political and legal theory. In Part II, we will examine case studies of populism in international legal politics. Finally, Part III investigates populist backlashes against select international judicial dispute settlement regimes, including the International Court of Justice, WTO dispute settlement, international arbitration and regional human rights courts.

- Eignung:** Studierende der Rechtswissenschaft einschl. Nebenfach ab dem 5. Fachsemester. Der vorherige oder gleichzeitige Besuch der Vorlesungen im Staatsrecht sowie „Völkerrecht I“, „Menschenrechte“ und „Rechtsvergleichung“ wird empfohlen.
- Leistungsnachweise:** Studien- oder Seminararbeit sowie vorbereitende Arbeiten i. R. d. Schwerpunktbereiche I und V; Sprachschein.
- Ablauf:** Die Ausgabe der Themen der schriftlichen Arbeiten erfolgt voraussichtlich am **14. Februar 2020**. Weitere Ausgabetermine nach Absprache möglich. Die Bearbeitungszeit beträgt sechs Wochen.
- Das Blockseminar mit Vortrag zum Thema der Arbeit findet voraussichtlich **Mitte Juli 2020** statt.
- Vorbesprechung:** **Dienstag, den 04.02.2020**, um 14.00 Uhr im Seminarraum Völkerrechtsbibliothek (Zugang über MZG (Blauer Turm), 12. OG). Gegebenenfalls erfolgt ein weiterer Termin Mitte April 2020.
- Besondere Hinweise** Das Seminar wird in englischer Sprache abgehalten.

gez. PD Dr. Andreas Kulick