The public uses of coercion and force: from constitutionalism to war

1-2 February 2018
Seminar room A3.01, UvA REC-A Building, Nieuwe Achtergracht 166, 1018 WV Amsterdam

Organized by the VU Centre for European Legal Studies, the UvA Programme Group ‘Challenges to Democratic Representation’, and the Amsterdam Centre for Political Thought. Kindly hosted at Paul Scholten Centre for Jurisprudence, University of Amsterdam.

The Kantian project of achieving perpetual peace among states seems (at best) an unfulfilled hope. The wider category of global justice may not fare much better. Modern states’ authority claims and their exercise of power and sovereignty span a spectrum from the most stringently and explicitly codified—the constitutional level—to the most fluid and turbulent—acts of war. However, the nexus between internal and external security—be it pursued through war or law enforcement—is still undertheorised. Inter alia, that suggests a specific connection between constitutionalism and just war theory, as both concern the justifiability of state action vis-à-vis individuals as well as states. This conference aims to explore that connection through the lens of the relationship between law and just war theory. Arthur Ripstein’s new book manuscript on those themes will provide a focal point for the discussion, and we are honoured to be able to share it among our participants.

Some of the questions to be considered by the speakers are the following: what, if any, are the normatively salient differences between states’ internal coercion and external use of force? Is it possible to isolate the constitutional level from other aspects of the political? How could that be done while at the same time guaranteeing a robust conception of human rights and adherence to the rule of law? Likewise, is war an extension of political practice or an alternative to it? New forms and technologies of warfare raise further fundamental questions about due process, individual responsibility, fairness and broader questions pertaining to justice and the responsibility to protect. From a constitutional perspective, questions may concern the justification for state action, the human rights framework, and the question of judicial review and proportionality reasoning in “emergency” contexts.
Draft programme

1 February

11 am
1. Kant and war
Chair: Enzo Rossi
Theme paper: Arthur Ripstein, *Perpetual War or Perpetual Peace? (title TBC)*
Comments: Thomas Mertens, Johan Olsthoorn, Jonathan Yovel

1pm
Lunch

1:45pm
2. Just war theory and global constitutionalism
Chair: Wolfgang Wagner
Mattias Kumm, *The global constitutional moment after WWII: The use of force after the end of war*
Malcolm Thorburn, *Justifying the legal equality of combatants in IHL on grounds of state authority*
Comments: Alon Harel

3:45pm
Coffee

4pm
3. The limits of just war
Chair: Ester Herlin-Karnell
Johan Olsthoorn, *Pacifism and Duties not to Exercise Rights to Wage War*
Massimo Renzo, *Why Colonialism is Wrong*
Daniel Statman, *Unreliable Protection: Proportionality Judgments in War*
Comments: Enzo Rossi

7:30pm
Conference dinner (Restaurant TBC)

2 February

9 am
4. War, Justice and Constitutionalism
Chair: Roland Pierik
Alon Harel, *Why I am not a Revisionist*
Katja Ziegler, *War and the Rule of Law*
Comments: Malcolm Thorburn and Jonathan Yovel

11:00am
Coffee

11:15am
5. Cosmopolitan right(s)
Chair: Enzo Rossi
Luigi Corrias & Bertjan Wolthuis, *Humanity and Human Rights: Phenomenological, Not Political*
Aravind Ganesh, *Wirtbarkeit: Cosmopolitan Right and Innkeeping*
Comments: Mattias Kumm

13:15
**Lunch**

2pm
6. Reform and justification
Chair: Mattias Kumm
Kai Moller, *Justifying the culture of justification*
Hadassa Noorda, *Law Reform as a Response to Terrorist Threats*
Comments: Ester Herlin-Karnell

4pm
**Coffee**

4:30pm
**Roundtable**
Chair: Arthur Ripstein

From 6pm: Informal drinks, dinner