

Between the Law, Power and Principle

Self-Determination, Constitution Making and the Crisis in Ukraine

Friday, February 13, 2015
 132 Boalt Hall, School of Law
 University of California, Berkeley



the center for
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 transitions

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 UNIVERSITY OF CALIFORNIA

The Honorable G. William
 and Ariadna Miller Institute for
 Global Challenges and the Law

GERMAN LAW JOURNAL

PROGRAM

8:30 am - 9:15 am	Continental breakfast 132 Boalt Hall
9:15 am - 9:30 am	GREETINGS AND INTRODUCTION Kate Jastram , Executive Director, Miller Institute for Global Challenges and the Law, and Lecturer in Residence, Berkeley Law Zoran Oklopčic , Carleton University, Department of Law and Legal Studies
9:30 am - 11:15 am	THE CRISIS IN UKRAINE AND THE LESSONS OF INTERNATIONAL LAW <i>Chair: Zoran Oklopčic, Carleton University</i> Brad Roth , Wayne State University Law School “Self-Determination, Sovereign Equality, and External Intervention” Mikulas Fabry , Georgia Tech, Ivan Allen College of Liberal Arts “Upholding Territorial Integrity of Ukraine” Jure Vidmar , University of Oxford Faculty of Law “The Use of Force, Annexations and Friendly Populations”
11:15 am - 11:30 am	Break
11:30 am - 1:15 pm	CRISIS IN UKRAINE: TROUBLING THE ROLE OF INTERNATIONAL LAW <i>Chair: Saira Mohamed, Berkeley Law</i> Outi Korhonen , University of Turku Faculty of Law “Constituting Control in Ukraine: A Crisis and a Challenge for International Law” Umut Özsu , University of Manitoba Faculty of Law “Ukraine, International Law, and the Political Economy of Self-Determination” Boris Mamlyuk , University of Memphis, Cecil C. Humphreys School of Law “International Law and the Political Economy of Cold War II”

1:15 pm - 2:45 pm	Lunch
2:45 pm - 4:30 pm	<p>THE CRISIS IN UKRAINE: THE PERSPECTIVE OF CONSTITUTIONAL LAW AND POLITICAL THEORY <i>Chair: Sujit Choudhry, Dean, Berkeley Law</i></p> <p>Yaniv Roznai, University of Haifa, Minerva Center for the Rule of Law under Extreme Conditions “Eternal Territory? On Ukraine’s Unamendable Provision and Territorial Integrity”</p> <p>Zoran Oklopčic, Carleton University, Department of Law and Legal Studies “Arguing Incursions: From the Vocabulary of Right to the Constitutional Re-imagination of the Conflict in Ukraine”</p> <p>Amandine Catala, Université du Québec à Montréal, Department of Philosophy “Secession and Annexation: The Case of Crimea”</p>

BIOGRAPHIES

Amandine Catala (UQAM): Amandine Catala is Professor in the Department of Philosophy at the University of Quebec in Montreal. She received her PhD in Philosophy from the University of Colorado at Boulder. Before joining the Department of Philosophy at UQAM, she was a postdoctoral and visiting fellow at the London School of Economics (Philosophy), the Australian National University (Philosophy) and the University of Louvain (Hoover Chair of Economic Ethics and Social). Her research interests include social and political philosophy (territorial rights, secession, annexation, colonialism, self-determination, sovereignty, indigenous peoples, immigration, nationalism, pluralism, non-political domination, associative duties, democracy and the constitution of the demos), feminist philosophy, normative and applied ethics and history of moral and political philosophy.

Sujit Choudhry (Berkeley Law): Sujit Choudhry is Dean and I. Michael Heyman Professor of Law and Interim Faculty Director, Miller Institute for Global Challenges and the Law at Berkeley Law. He is an internationally recognized authority on comparative constitutional law and comparative constitutional development. His work addresses basic methodological questions in comparative constitutional law. He has also written on constitutional design as a tool to manage the transition from violent conflict to peaceful democratic politics, especially in ethnically divided societies, and is currently studying constitutional design in the context of transitions from authoritarian to democratic rule. He has published over seventy articles, book chapters, working papers and reports. Dean Choudhry is the Founding Director of the Center for Constitutional Transitions, the world’s first university-based center that generates and mobilizes knowledge in support of constitutional building. The Center for Constitutional Transitions assembles and leads international networks of experts to complete thematic research projects that offer evidence-based policy options to practitioners. Prior to coming to Berkeley Law, Dean Choudhry was Cecelia Goetz Professor of Law at the NYU School of Law, and Scholl Chair at the Faculty of Law, University of Toronto. In 2010, he was one of four Canadians to receive the Trudeau Fellowship, the Canadian equivalent of the MacArthur awards.

Mikulas Fabry (Georgia Tech): Professor Mikulas Fabry received his BA in international relations from the University of Toronto and his MA and PhD in political science from the University of British Columbia in Vancouver. Dr. Fabry’s research and teaching interests revolve around moral and legal dimensions of inter-national politics, especially those pertaining to sovereignty, self-determination, democracy, and territory. His major research focus has been on questions of state, governmental and territorial legitimacy in international relations. He is the author of *Recognizing States: International Society* and the *Establishment of New States since 1776* (Oxford University Press, 2010), several chapters in edited volumes, and articles in *International Theory*, *Nationalities Papers*, *Diplomacy & Statecraft*, *Millennium*, and *Global Society*. His current book project is on the idea and historical practice of the norm of territorial integrity in international relations. In the academic year 2011-2012, Dr. Fabry was a Fellow at the Woodrow Wilson International Center for Scholars. Before coming to Georgia Tech, he was

Andrew W. Mellon Postdoctoral Fellow and Lecturer at Smith College. He also taught courses at Colorado College and the University of British Columbia.

Outi Korhonen (Turku): Professor Korhonen, MSc, LL.M, LicPhil, SJD, obtained her doctorate at Harvard Law School. Her main area of expertise is international law. Professor Korhonen has worked in academia and in government. She is Docent at the Universities of Helsinki and Eastern Finland (Finland). She has taught at Boston University (Brussels), Universite Libre de Bruxelles, and American University (Cairo). Her teaching spans over a variety of international and law subjects including general international law, human rights, international and EU environmental regulation, foreign relations regulation, crisis and post-conflict governance and jurisprudence. Professor Korhonen has advised on EU-compatible law-drafting in Eastern Europe, prepared human rights and civics manuals in Kosovo, and participated in a joint Scandinavian project to support the rehabilitation of former combatants. Her research interests are global law and policy, critical theory and philosophy including methodology, and law and culture. Korhonen's publications include six books and she is author of more than 40 scholarly articles and book chapters. She participates in many professional networks including the Erik Castren Institute of International Law and Human Rights and the Institute of Global Law and Policy (Harvard), the Regulation Network (ANU) and the Clarke Initiative for Law and Development in the Middle East (Cornell). She has administrative experience from the Finnish government and the EU having held appointments as Legal Adviser to the Government Financial Controller General and Research Counsellor with the EU.

Boris Mamlyuk (Memphis): Professor Mamlyuk holds a JD from the University of California (Hastings) and the JSD from the University of Turin. He was visiting scholar at Columbia University's Harriman Institute for Russian, Eurasian and Eastern European Studies, and as a visiting scholar at Cornell Law School. In 2008-2009, Professor Mamlyuk served as a Fulbright Fellow, studying Russian law and transition at the Institute of State and Law in Moscow. While in Russia, he taught courses on Civil Society and Russian Law and Politics at Moscow's Higher School of Economics. Professor Mamlyuk's research interests include international legal theory, law and development, and issues of legal transition and Rule of Law reforms in developing and post-socialist states. His current research project focuses on Russia's attempts to harmonize domestic legal structures in light of WTO accession. Professor Mamlyuk has delivered numerous conference presentations on these topics in more than five countries. His work has been selected for presentation at the Yale Comparative Law Works-in-Progress Workshop and he has served as a participant at the annual Institute for Global Law and Policy workshop, hosted by Harvard Law School.

Saira Mohamed (Berkeley Law): Professor Saira Mohamed's primary interests are in the areas of criminal law and human rights, with her research focused on responses to mass atrocity. Examining the roles of criminal law and armed force in preventing and stopping widespread violence, her work considers the meaning of responsibility in mass atrocity crimes and seeks to unsettle conventional conceptions of choice and participation in this context. Her article "Deviance, Aspiration, and the Stories We Tell: Reconciling Mass Atrocity and the Criminal Law," 124 *Yale Law Journal* (forthcoming 2015), won the Junior Scholars Paper Award from the Association of American Law Schools Section on Criminal Justice. Professor Mohamed previously served as Senior Advisor in the Office of the US Special Envoy for Sudan, where she counseled government officials on legal and policy issues regarding the work of the International Criminal Court in Darfur and the resolution of the civil war in Sudan. She also was an Attorney-Adviser for human rights and refugees in the State Department's Office of the Legal Adviser, where her portfolio included asylum cases and human rights litigation in US courts. Professor Mohamed represented the United States in negotiations of the Third Committee of the UN General Assembly and received the State Department's Superior Honor Award for her participation in drafting a UN resolution condemning the use of rape as an instrument to achieve political objectives. Immediately prior to joining Berkeley Law, she was the James Milligan Fellow at Columbia Law School.

Zoran Oklopčic (Carleton): Professor Zoran Oklopčic teaches at the Department of Law and Legal Studies, and focuses on the vocabulary of peoplehood in the context of state-formation at the intersection of three disciplines: constitutional theory, normative political theory, and international law. He has published on the metamorphosis of self-determination in the post-Cold War context; the concept of territorial rights in the context of theories of secession; and the inadequacy of the concept of *pouvoir constituant* as means to justify the creation of new constitutional orders in the (semi-)periphery. He is currently working on three parallel projects: exploring the legal imaginary of Catalan sovereigntists; questioning the salience of territorial rights in the context of the secession of Crimea from Ukraine; and, conceptualizing the idea of 'provincialized' constitutional pluralism.

In the past, he was MacCormick Visiting Fellow at the University of Edinburgh School of Law (2013), and a Docent (Comparative Law Stream) at Harvard Law School's Institute for Global Law and Policy in Doha, Qatar, a Visiting Researcher at the Department of Political Sciences Universitat de Pompeu Fabra, Barcelona and a Global Research Fellow at the NYU School of Law.

Umut Özsu (Robson Hall, Manitoba): Umut Özsu is an assistant professor of law at the University of Manitoba. He is also a docent of Harvard Law School's Institute for Global Law and Policy, and an elected member of the coordinating committee of the European Society of International Law's International Legal Theory Interest Group. Professor Özsu's research interests lie principally in public international law, the history and theory of international law, law and development, and socio-legal studies. His current research, which draws from historical sociology, economic history, and critical social theory in addition to positive international law, involves the legal implications of decolonization, nation-building, and humanitarian intervention. His work has appeared in such leading journals as the *European Journal of International Law*, the *Harvard International Law Journal*, *Humanity*, the *International Journal of Law in Context*, the *Leiden Journal of International Law*, and the *London Review of International Law*. His first book, *Formalizing Displacement: International Law and Population Transfers* (Oxford University Press, 2014), situates population transfer within the broader history of international law by examining its emergence as a legally formalized mechanism of nation-building in the early 20th century.

Brad Roth (Wayne State): Professor Roth holds a joint appointment with the School of Law and the Department of Political Science. He specializes in international law, comparative public law, and political and legal theory. His courses include International Law, International Protection of Human Rights, International Prosecution of State Actors, US Foreign Relations Law, and Political Theory of Public Law. Before entering academia, he practiced law and served as law clerk to the chief justice of the New Jersey Supreme Court. He is the author of *Sovereign Equality and Moral Disagreement* (Oxford University Press, 2011), *Governmental Illegitimacy in International Law* (Oxford University Press, 1999), contributing co-editor (with Gregory H. Fox) of *Democratic Governance and International Law* (Cambridge University Press, 2000), and author of roughly 30 book chapters, journal articles and commentaries dealing with questions of sovereignty, constitutionalism, human rights and democracy.

Yaniv Roznai (Haifa, NYU): Dr. Yaniv Roznai is a director of research—natural disasters at the Minerva Center for the Rule of Law under Extreme Conditions. He holds a PhD in Law from the London School of Economics and Political Science (LSE), an LLM from LSE (Distinction) in international law and LLB and BA degrees in Law and Government from the Interdisciplinary Center (IDC) Herzliya (Magna cum Laude). In 2013, he was a visiting student research collaborator at the Program in Law and Public Affairs (LAPA), Princeton University. Prior to joining the Minerva Center, Dr. Roznai served as a lecturer of comparative legal systems at Bar-Ilan University and of constitutional law at Carmel Academic Center, and a teaching and research assistant in the areas of constitutional and international law. His scholarship focuses on constitutional and international law. His publications appeared in journals such as the *American Journal of Comparative Law*, *International & Comparative Law Quarterly*, *International Journal of Constitutional Law*, *Vienna Journal on International Constitutional Law*, *Wisconsin International Law Journal*, *Southern California Interdisciplinary Law Journal*, *Human Rights & Globalization Law Review*, *The California International Law Journal*, and *Stanford Law & Policy Review*.

Jure Vidmar (Oxford): Dr. Jure Vidmar is a Leverhulme Early Career Fellow in the Faculty of Law and Research Fellow of St John's College, Oxford. He is also an Extraordinary Lecturer at the Centre for Human Rights, Faculty of Law, University of Pretoria, and a Visiting Fellow at Harvard Law School. Previously, he was an Anglo-German Fellow at the Institute of European and Comparative Law, University of Oxford, and prior to that a post-doctoral researcher at the Amsterdam Center for International Law, University of Amsterdam. Dr. Jure's main research and teaching interests lie within international law, human rights, European law, and legal and political theory. Jure is the author of a monograph entitled *Democratic Statehood in International Law: The Emergence of New States in Post-Cold War Practice* (Oxford, Hart, 2013, Joint Runner Up for the Society of Legal Scholars Birks Prize for Outstanding Legal Scholarship 2014) and co-editor (with Erika de Wet) of *Hierarchy in International Law: The Place of Human Rights* (Oxford, OUP, 2012). He is also an editor of the *Hague Yearbook of International Law*.