

# Constitutionalism, Religious Freedom and Human Rights: Constitutional Migration and Transjudicialism beyond the North Atlantic

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Christian-Albrechts-Universität zu Kiel

Institut für Sozialwissenschaften

Symposium  
June 3 – 6, 2015  
Schloss Herrenhausen,  
Hannover, Germany  
Funded by the  
Volkswagen  
Foundation



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Constitutionalism,  
Religious Freedom and Human Rights:

Constitutional Migration and Trans-  
judicialism beyond the North Atlantic

**Organizers:**

Mirjam Künkler (Princeton University),  
Shylashri Shankar (Centre for Policy Research, New Delhi)  
Tine Stein (University of Kiel)

**Fotos**

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- Mirjam Künkler (Princeton University): Constitutional choices in Religion-State Relations: Do Muslim countries really emulate each other?

**1pm – 2pm** Lunch in Schloss Herrenhausen

**2pm – 4pm** **Panel 5 – Balancing Religious Freedom with other Human Rights: The Promise and Perils of Transjudicialism. A debate**

**Moderator:**

Alexandra Kemmerer (Max Planck Institute for Comparative Public Law and International Law, Heidelberg)

**Panelists:**

Robert C. Blitt (University of Tennessee),  
Christopher McCrudden (Queen's University Belfast/ University of Michigan), David S. Law (Washington University in St. Louis), Ute Sacksofsky (Goethe University Frankfurt)

**4pm – 4.30pm** Coffee break

**4.30pm – 6.30pm** **Panel 6 – Transjudicialism: Does Peril Trump Promise?**

**Chair:** Gary Jacobsohn (University of Texas at Austin)

**Discussants:** Vlad Perju (Boston College Law School), Tine Stein (University of Kiel)

- Ejima Akiko (Meiji University, Tokyo): Double Constitutional Migration of the Religious Freedom and Judicial Review: Comparative Constitutional Dialogue at the Supreme Court of Japan
- Kristin Henrard (Erasmus University of Rotterdam): How the European Court of Human Rights' concern with European consensus tempers the effective protection of the freedom of religion
- Christa Rautenbach (North-West University, Potchefstroom, South Africa): The South African constitutional court's use of foreign precedent in matters of religion: Without fear of favour?

**6.30pm** Dinner in Schloss Herrenhausen

## Saturday - June 6, 2015

**9.15am – 11.15am** **Panel 7 – Do globalization and international agreements produce convergence in the emphasis on ensuring that other human rights trump religious freedom?**

**Chair:**

Michael Meyer-Resende (Democracy Reporting International, Berlin)

**Discussants:** Christopher McCrudden (Queen's University Belfast/ University of Michigan), Matthias Koenig (Georg-August-University Göttingen)

- Ralf Michaels (Duke University): Legal Transplants in Comparative Law - A Primer
- Ali El-Haj (Humboldt University, Berlin): International law and Convergence in Arab Constitutions
- Tom Ginsburg (University of Chicago): Innovation and Diffusion of Constitutional Rights
- Mirjam Künkler (Princeton University)/Yüksel Sezgin (Syracuse University): The Diffusion of Legal Monism and its Limits

**11.15am – 11.30am** Coffee break

**11.30am – 1.15pm** **Panel 8 – Is there a fundamental divide between those constitutions that recognize non-Western sources of law and those that do not, or are constitutions and their interpretations increasingly converging in substance and form? A debate**

**Moderator:** Mark Tushnet (Harvard University)

**Panelists:** Nathan J. Brown (George Washington University), Yash Ghai (University of Hong Kong), David Law (Washington University in St. Louis), Vlad Perju (Boston College Law School), Patricia Springborg (Humboldt University, Berlin)

**1.15pm** Lunch in Schloss Herrenhausen

**Tour in the Herrenhäuser Gärten and Museum Schloss Herrenhausen.**



## Aim of the conference

Tensions over religion-state relations have gained increasing salience in contemporary processes of constitution-writing and constitutional jurisprudence. How does the concept of religious freedom when adopted by different constitutions translate across borders, and how do these translations in turn impact other human rights in those countries? What meaning(s) does religious freedom acquire in new settings and who reframes their content? Through a comparative methodology deployed on a wide array of cases, the symposium explores how constitution-makers, judges, administrators, politicians, and religious and secular elites attempt to resolve disputes over religious freedom by drawing on foreign constitutions and jurisprudence, and how such migration of ideas affects the protection of other human rights. The interdisciplinary conference brings together scholars from law, history, political science, religious studies and sociology to compare cases from Asia, Africa, Europe, Latin America, and the Middle East.

Mirjam Künkler (Princeton University), Shylashri Shankar (Centre for Policy Research, New Delhi), Tine Stein (University of Kiel) as organizers of the conference

## The conference takes place at

Schloss Herrenhausen  
Herrenhäuser Straße 5, 30419 Hannover  
and is funded by the Volkswagen Foundation.

Administrative assistance is provided by  
Isabelle Süßmann ([isuessmann@politik.uni-kiel.de](mailto:isuessmann@politik.uni-kiel.de))

## Wednesday – June 3, 2015

- 3.30pm – 4.30pm** Registration
- 4.30pm – 5.30pm** Introductory Remarks –  
Mirjam Künkler, Shylashri Shankar  
and Tine Stein
- 5.30pm – 7pm** Opening Lecture – Ulrich K. Preuß  
(Free University of Berlin/Hertie  
School of Governance, Berlin):  
Migration of Religious Freedom  
and its Contextual Conditions
- 7pm – 9pm** Dinner Buffet in  
Schloss Herrenhausen

## Thursday – June 4, 2015

- 9.30am – 12pm** **Panel 1 – What, if anything, can  
conceptual history teach the disci-  
pline of comparative law? A debate**

### Moderator:

Christoph Schönberger (University of Konstanz)

**Panelists:** Janet Coleman (The London School of  
Economics and Political Science), Ran Hirschl  
(University of Toronto), Patricia Springborg (Hum-  
boldt University, Berlin), Mark Tushnet (Harvard  
University)

- 11am – 11.15am** Coffee break
- 11.15am – 12pm** Continuation of the debate
- 12pm – 2pm** Lunch in Schloss Herrenhausen
- 2pm – 4pm** **Panel 2 – Conceptual History and  
Law: The incommensurability of  
Concepts?**

### Chair:

Matthew Nelson (SOAS, University of London)

### Discussant:

Christian Polke (University of Hamburg)

- Gary Jacobsohn (University of Texas at  
Austin): Takeover: Religion, Republicanism  
and Emergency Power

- Shylashri Shankar (Centre for Policy Research,  
New Delhi): The Concept of Justice – Islamic,  
Influential, Equal – in 19th Century Hyderaba-  
di Courts
- Dieter Gosewinkel (Free University of Berlin/  
Center for Social Research, Berlin): Citizen-  
ship as Political Membership. A Fundamental  
Strand of Twentieth Century European consti-  
tutionalism

**4pm – 4.15pm** Coffee break

- 4.15pm – 6pm** **Panel 3 – Agents of Migration:  
Who are they? What did they  
accomplish? What were their moti-  
vations?**

### Chair:

Aaron Glasserman (Columbia University)

### Discussants:

Thomas Behme (Free University of Berlin),  
Ralf Michaels (Duke University)

- Adriana Luna-Fabritius (Centre for Economic  
Research and Education, Mexico): Readings of  
Modern Natural Law During the First Consti-  
tutional Moment in Mexico: Mier's Reading of  
Pufendorf's Concept of Sociability
- Mara Malagodi (The London School of Econo-  
mics and Political Science):  
The 'Oriental Jennings': Constitutional  
Migration and the Cold War in South Asia
- Yash Ghai (University of Hong Kong):  
Migration or home grown?: Religion and  
Constitution Making

**6pm** Dinner in Schloss Herrenhausen

## Friday – June 5, 2015

- 9.30am – 11.15am** **Panel 4 (I) – Why do some models  
of religion-state relations travel  
better than others?**

### Chair:

David Mednicoff (University of Massachusetts  
Amherst)

### Discussants:

Otto Kallscheuer (University of Sassari, Italy/  
Center for Global Cooperation Research,  
Duisburg), Bill Kissane (The London School of  
Economics and Political Science)

- Manuel Eduardo Góngora-Mera (Free Univer-  
sity of Berlin): The Inter-American Migration  
of Constitutional Standards on Religious Free-  
dom: Convergences and the Challenge of Reli-  
gious Equality
- John Madeley (The London School of Econo-  
mics and Political Science): 'Had model but  
didn't travel well': Marxism-Leninism and the  
failed attempts to eradicate religion
- Amjad Mahmood Khan (University of Califor-  
nia Los Angeles): Rethinking Religious Free-  
dom in the Islamic World: Why Muslim-Majo-  
rity Nations Should Import the 'Establishment  
Clause' of the U.S. Constitution

**11.15am – 11.30am** Coffee break

- 11.30am – 1pm** **Panel 4 (II) – Why do some models  
of religion-state relations travel  
better than others?**

### Chair:

Ulrich K. Preuß (Free University of Berlin/Hertie  
School of Governance, Berlin)

### Discussants:

Tom Ginsburg (University of Chicago), Hanna  
Lerner (Tel Aviv University)

- Nimer Sultany (SOAS, University of London):  
Religion and Constitutionalism in the Age of  
Arab Revolutions