P09 / Constitutional Economics for Public Policy

Topic : INEQUALITIES AND PUBLIC POLICY

Chair : Sony Pellissery (National Law School of India University)

Second Chair : Sattwick Dey Biswas (Young Scholars Initiative, Institute for New Economic Thinking)

GENERAL OBJECTIVES, RESEARCH QUESTIONS AND SCIENTIFIC RELEVANCE

With increasing economic inequality, there is an intense search among policymakers as to how the market logic could be constrained. Traditionally, constitutional values were the guiding light to advance the public interest. Yet, there is a criticism that constitutional forms were created in liberal societies to limit democratic control over economic policies. Contemporary scholar Katharina Pistor (2019) showed that laws are rigged to maintain the hegemony of one economic class over the rest, whereas Brown (2015) argues that such neo-liberal policies eventually undermine democracy. These articulations force us to search for the reasons for the disjunction between constitutional promises and policy outcomes.

James Tully (2016) attempted to answer this divergence by showing the distinction between constituent power and constitutive power. First, constituent power reflects the particularistic identities within a society that often shape legal structures to their benefit, which can potentially undermine constitutional solidarity. Second, in many Global South nations, constitutive power has been influenced by the legacies of imperialism, embedding these post-colonial states into neoliberal economic orders. According to Tully, these entanglements limit the ability of constitutional frameworks to deal with economic forces and, thus, perpetuate inequality.

During ICPP3 in Singapore, three panels were organised on the interface of Law and Public Policy. Selected papers presented in those panels were published as a book, Transformative Law and Public Policy (Routledge, 2019). We are very keen on how this genre of scholarship is expanding by examining the relevance of Constitutional Economics for Public Policy. We adopt a political economy framework to understand how the constitutionality of both democracy and economic decisions are intertwined. These constitutionality questions can’t be understood without an examination of how the judiciary has given verdicts on the conflicts brought in front of it. Therefore, an interdisciplinary examination of law, politics and economics comes to the centre stage of these policy analyses.

In advancing justice, both philosophers and economists have examined the interface of law and economic decisions. Friedrich Hayek, Robert Nozick, and John Rawls have all expressed the centrality of law to protect property owners and to limit the power of the State, which harms individual liberty. Yet, a clear articulation of Constitutional Economics was achieved only by James Buchanan (1986) as the need to study the processes of rule-making that constrains the actors of policy making. The success of Western Capitalism is largely credited to the legal institutionalism that protects the liberty of individuals and firms, as well as the State's role in maintaining peace and order in society. This legal institutionalism has been promoted as ‘good governance’ across the world today. However, the rise of inequality has prompted a challenge to the basis of constitutional economics.

Key References

Brown, W. (2015) Undoing the Demos: Neoliberalism’s Stealth Revolution, MIT Press.

Buchanan, J. (1986) The Constitution of Economic Policy (Nobel Prize Lecture).

Pistor, K. (2019) The Code of Capital: How the Law Creates Wealth and Inequality, Princeton University Press.

Tully, J. (1995) Constitutionalism in an Age of Diversity, Cambridge University Press.

CALL FOR PAPERS

Building on the momentum of the panels at ICPP3 in Singapore and the subsequent publication Transformative Law and Public Policy (Routledge, 2019), we seek to expand this scholarship by exploring the relevance of constitutional economics in addressing contemporary public policy challenges.

Traditionally, constitutional values have played a critical role in guiding the public interest and maintaining

checks and balances on economic policies threatening democratic integrity. Modern critiques suggest that constitutions, often shaped in democracies and constitutions written by the propertied class, may not adequately challenge the forces driving economic inequality. This panel seeks to engage this tension, particularly in contexts marked by political and social inequalities. Many older democracies' constitutions were written when not all sections of the population were constituents (e.g., the USA) or during times of emergency or dictatorship (e.g., Chile), making equality for all sections of the population a distant consideration. In many Global South nation-states, the constitutive power has been influenced by the legacies of imperialism and social stratification, embedding these post-colonial states into neoliberal economic orders. This entanglement limits the ability of constitutional frameworks to assert democratic control over economic forces, therefore perpetuating inequality.

We are looking for papers that attempt to answer questions in three tracks:

1) What kind of clash or convergence of ideas do we see in economic and legal institutional logic while addressing questions of inequality and diversity in policies?

2) How successfully have constitutional courts tested public interest questions in proposed legislation and policies? We seek in-depth analysis of success/failure stories from country contexts and comparative constitutional cases.

3) Both in the project of constitutional democracy and constitutional economics, the conflicts are between different types of rights. How do actors and institutions prioritise and mediate the conflicts between rights?

P09 / Constitutional Economics for Public Policy

Chair : Sony Pellissery (National Law School of India University)

Second Chair : Sattwick Dey Biswas (Young Scholars Initiative, Institute for New Economic Thinking)

Session 1

Thursday, July 3rd 10:15 to 12:15 (D2)

Public Interest Litigation as a Tool for Social Change: The Role of Constitutional Courts in India, South Africa and Kenya

Jayasuriya J (Central European University - GmbH)

Committed Judiciary and Transitioning Economic Regimes: Policy Challenges to Economic Democracy in India

Manish . (National Law School of India University)

Anubhav Bishen (National Law School of India University)

UNDERSTANDING THE CONSTITUTIONAL OUTLOOK TOWARDS DEVELOPMENTAL AID

Poulami Ghosh (Just Transition Research Centre, Indian Institute of Technology, Kanpur (India))

Economic negative constitutionalism in the Israeli Supreme Court

Lilach Litor (Open University of Israel)

(Virtual) Contested Spaces: Civil Society Organisations, Neoliberalism, and Rights Mediation in India

Abishek Nippani (International Initiative for Impact Evaluation)

Srishti Rongpipi (Centre for Effective Governance of Indian States)

Navya Poonia (National Law School of India University)