

## **Panel 2: Eurolegalism at the EU level?**

### **Panel description**

The processes of EU integration are central to Kelemen's argument. While others have focused on the ECJ's (and to a lesser extent, the ECtHR's) key role in fuelling EU integration, Kelemen – though sympathetic to this literature – does not single out judges and judicial decision making as central to the growth of Eurolegalism. For him, the strength of the ECJ is an indicator but not necessarily a cause of Eurolegalism. He argues that EU policy makers - ranging from EU legal scholars of the 1980s to the EU Commission & Parliament as well as supportive member states – long considered strengthening access to justice for EU citizens along with the building a “European judicial space” a necessary element for deeper political and economic integration. This long-term policy objective eventually had a ‘trickle-down effect’ on national legal systems, in the form of efforts to substantially harmonize numerous aspects of the civil justice arena, including legal aid provisions, conditional (or contingency) fee arrangement and growing legal insurance regimes – to name but a few discussed in the book. These reforms and trends, he states, are all products as well as catalysts of Eurolegalism.

As Kelemen acknowledges in the book, crafting his argument requires ascribing a unique regulatory policy making style to all European members states, while simultaneously acknowledging their entrenched cultural and institutional differences. Although he explicitly chose a “most different systems” design for his three policy case studies, he draws primarily on France, the UK, Germany and the Netherlands in his analysis. Ultimately, Kelemen's core concern is highlighting the common trend towards Eurolegalism.

Although van Waarden acknowledges that European legal and regulatory styles have changed over the years, he has prominently warned against “lumping [them] together.” Instead, he – similar to Kagan - positioned the U.S. and some EU member states (notably Germany and the Netherlands) on a two-dimensional graph, highlighting changes to key dimensions of adversarial legalism. Van Waarden also puts another driving factor for changes in Europe on the table: social liberalization. Overall, he worries about an effect of Eurolegalism not discussed by Kelemen – the increasing limits to democratic policymaking in the classic political realm.

Out of her wide-ranging work, Volcansek has chosen to focus on the ECtHR for this workshop. Given that Kelemen emphasizes that the EU is characterized by weak institutions but strong courts, she intends to present a rival hypothesis to Kelemen's. After all, what would the EU be without strong courts? This contribution will ask us to carefully examine the theoretical and causal factors that may (or may not) cause Eurolegalism.

For Kelemen, justice-related policies introduced at the European level are critical for achieving change at the national level. Ultimately, he notes, they “prepare the terrain for Eurolegalism to take root.” Both Gehring and Evans Case are interested in the evolution of anti-discrimination legislation in a range of EU countries and in assessing the influence of the EU’s Racial Equality Directive, together with the ‘uptake’ by NGOs. While Gehring probes the influence of American legal traditions and lawyers, Evans Case advocates a closer look at the role of agents driving/steering the policy changes observed by Kelemen.

**Rhonda Evans Case**, Assistant Professor, Department of Political Science, East Carolina University, NC; J.D., University of Pittsburgh, PA; PhD, University of Texas at Austin, TX.

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Professor Evans Case research focuses in law and society, constitutional law and politics, and international human rights. She is interested in the judicialization of public policy from a comparative perspective, and how the domestic is impacted by transnational human rights.

In 2010, she contributed “Spreading the Word: Australia’s Human Rights and Equal Opportunity Commission as Transnational Legal Entrepreneur” to *Globalizing Justice: Critical Perspectives on Transnational Law and the Cross-Border Migration of Legal Norms* (Albany: SUNY Press; Donald W. Jackson, Michael C. Tolley, and Mary L. Volcansek, Editors). She also published “Friends or Foes? The Commonwealth and the Human Rights and Equal Opportunity Commission in the Courts” in the *Australian Journal of Political Science* in 2009.

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Professor Gehring has been researching the development and implementation of rights for the Roma in Europe, particularly at the EU level. In 2009, she contributed “Hidden Connections: Citizenship and anti-discrimination policy in Europe” to *Citizenship policies in the age of diversity: Europe at the crossroads* (edited by Ricard Zapata-Barrero). She has also published a chapter on French racial policy making, “Riots and Rights? Examining racial anti-discrimination policy in France in light of the American experience,” in the forthcoming *Migrants and Minorities: the European Response*, Adam Luedtke ed., Cambridge University Press, 2010. Currently, Professor Gehring is working on a paper entitled, “A Civil Rights Movement for Europe: the Importance of European Spaces in the Construction, Empowerment and Achievements of the Roma

Rights Movement". She teaches courses on European Politics, as well as comparative courses examining legal rights, racism, and sport.

**Frans van Waarden**, Professor, Social Sciences, University of Utrecht, PhD, University of Leyden, Netherlands .is professor of policy and organization studies at Utrecht University, and Fellow of its English language honors University College.

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Frans van Waarden studied liberal arts and sciences at the University of Toronto, and subsequently sociology at the University of Leyden, where he defended his PhD on business interest associations. His interests are in phenomena at the boundaries of politics, economics, law and history, seen through the eyes of a sociologist, i.e. political sociology, economic sociology, and sociology of law. Currently the main focus is on the governance of markets, regulation and political institutions. Among others he is interested in the intended and unintended effects of market liberalization on market governance institutions, in particular more indirect consequences, such as increases in the importance of other governance mechanisms as litigation and case law, private certification and associational self-regulation, and internal bureaucracy in both public and private organizations. In 2009 he edited a special edition of the journal *Regulation and Governance* on 'The Americanization of European Law', in which he published two articles on that subject.

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Professor Volcansek specializes in judicial politics, comparative judicial politics, American constitutional law, and West European, Italian and EU politics. She has published five monographs and edited or co-edited six collections. *Globalizing Justice: Critical Perspectives on Transnational Law and the Cross-Border Migration of Legal Norms* (co-edited with Donald W. Jackson and Michael Tolley) that SUNY Press published in Spring, 2010 includes her chapter, "Blurring Sovereignty: The Human Rights Act of 1998 and British Law." She and John Stack also edited *Courts and Terrorism: Nine States Balance Rights and Security*, that Cambridge University Press published in 2011.

**Nikolai Kovalev**, Assistant Professor, Criminology/Law and Society, Wilfrid Laurier University; LLB, West Kazakhstan State University, Kazakhstan; LLM,

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Professor Kovalev's research is focused on comparative criminal justice, criminal law, criminal procedure and human rights. He is particularly interested in the evolution of jury trials and reforms in the criminal justice systems of post-Communist transitional countries. Other research projects include study of jury bias in neo-Nazi skinhead trials, lay adjudication in military justice and fair trial in the context of counter-terrorism. His current research project concerns practice of manipulation of juries in Canada and other countries.

Professor Kovalev's book *Criminal Justice Reform in Russia, Ukraine and the Former Republics of the Soviet Union: Trial by Jury and Mixed Courts* was published in 2010 (Lewiston, N.Y.: The Edwin Mellen Press). Together with Gulnara Suleymenova, he contributed "New Kazakhstani Quasi-Jury System: Challenges, Trends and Reforms" to the *International Journal of Law, Crime and Justice* in 2010.