

Panel 4: Adversarial Legalism: Portable Beyond Western Europe?

Panel description

Kelemen's work, and that of others interested in the spread of adversarial legalism, has thus far been largely restricted to Western Europe. Indeed, 'Europe' and 'western Europe' are often used interchangeably in much of the literature on adversarial legalism. Yet with the enlargement of the European Union from 2004 onwards, 'Europe' now encompasses other nations - chiefly among them a large number with a Soviet legacy, for instance Hungary, Romania and Bulgaria. Their presence has further increased the variety of legal and regulatory styles present in the EU.

Other neighbouring countries not formally part of the EU (chiefly among them Russia and the Ukraine) have taken numerous lessons in law and judicial reform from Western European and North American countries over the years. Popova, in her recent work, has been critical of the wholesale exporting of "best practices based on Western and North American ideas. Although these reforms have not lead to a stable transition to democracy, Russia was admitted to the Council of Europe in 1996, and - as Trochev's recent work shows - subsequently recognized the ECtHR's jurisdiction. Russians – judges and ordinary citizens alike - he demonstrates further, like the ECtHR because it is surprisingly effective in enforcing what Russian courts do not – rectifying rights violations. This raises the question to what extent adversarial legalism (or Eurolegalism) is making inroads into Russia.

Despite these recent adversarial trends, "law reform lessons" in Russia also instituted a strong inquisitorial system, chiefly found in European criminal justice proceedings but also in administrative courts. Although Kelemen does not address criminal justice in his book, many of the EU's civil justice reforms discussed by him could have repercussions for criminal law. For instance, anti-terrorist legislation with its quasi-criminal elements has come under close judicial scrutiny at both the national and EU level since Sept 11, 2001. Peter Solomon's long-standing interest in inquisitorial systems thus brings us right back to the beginning. Can we really still draw such sharp distinctions between countries dominated by adversarial vs. inquisitorial systems? If no, what are the factors driving the transformation? Given the increasing global cross-fertilization of judicial and legal ideas not to mention the growing role of the International Court of Justice, how can we isolate distinctly "European" variations?

Soren Frederiksen, Assistant Professor, School of Public Policy and Administration & Department of Social Science (Law & Society Program), York University; LLB, University of British Columbia; PhD, Osgoode Hall, York University (*panel chair*).

sdfred@yorku.ca

<http://www.yorku.ca/sdfred/sdf%20at%20yorku/sdf-homepage.html>

Courts are often asked to make determinations as to the validity of scientific evidence, yet they lack the specialized expertise and general scientific knowledge possessed by scientists, making it difficult for them to make appropriate admissibility decisions about scientific evidence. Prof. Frederiksen's work has focused on this problem and in particular on the difficulties involved in making admissibility decisions about science and forensic science in criminal trials.

He is currently preparing the essay "Will 'Brain Fingerprinting' be Admissible in Canada? Revisiting the Canadian Polygraph Jurisprudence after Mohan" for publication.

Maria Popova, Assistant Professor, Department of Political Science, McGill University; PhD, Harvard University.

maria.popova@mcgill.ca

<http://www.mcgill.ca/politicalscience/faculty/popova/>

Professor Popova's research focuses on comparative judicial politics in post-Communist Europe. She is particularly interested in judicial (in)dependence, the politicization of justice, judicial reform. Her current project examines the role of Eastern European courts in curbing political corruption. Her book, *Politicized Justice: A Study of Russian and Ukrainian Courts* will be published by Cambridge University Press in 2012. In 2010, she published "Political Competition as an Obstacle to Judicial Independence: Evidence from Russia and Ukraine," in *Comparative Political Studies* and "Be Careful What You Wish For: A Cautionary Tale of Post-Communist Judicial Empowerment" in *Demokratizatsiya*.

Peter Solomon, Professor (Emeritus), Political Science, Law and Criminology; University of Toronto; PhD, Columbia University.

peter.solomon@utoronto.ca

<http://politics.utoronto.ca/faculty/profile/?id=85>

Professor Solomon is interested in reform of criminal law and justice in post communist states, including Russia and Ukraine. He also researches legal transition in comparative perspective.

In 2011, Professor Solomon contributed the essay "The Accountability of Judges in Post-Soviet States: From Bureaucratic to Professional Autonomy" to *Judicial Independence in Transition: Strengthening the Rule of Law in the OSCE Region* (edited by Anja Seibert-Fohr). He also contributed "Criminalisation, Decriminalisation and Post Communist Transition: The Case of the Russian

Federation" to *Building Justice in European Transitions: Processes of Criminalisation within Newly Emerging Democratic Societies* (edited by Bill Munro and Margaret Malloch, New York: Routledge, 2011).

Alexei Trochev, Lecturer, Law School, University of Wisconsin-Madison, MI; PhD, University of Toronto. □□

trochev@wisc.edu

<http://law.wisc.edu/profiles/trochev@wisc.edu>

Dr. Trochev is interested in the interplay between formal and informal legal institutions in post-authoritarian contexts. His current projects explore: 1) how political competition simultaneously helps and hurts judicial independence in post-communist countries, in particular Georgia, Ukraine, and Kyrgyzstan; 2) how and why the Russian government loses thousands of cases and billions of rubles each year in domestic courts. His book *Judging Russia* (Cambridge University Press) is now available in paperback. His most recent articles are "Meddling with Justice: Competitive Politics, Impunity, and Distrusted Courts in Post-Orange Ukraine" and "All Appeals Lead to Strasbourg? Unpacking the Impact of the European Court of Human Rights in Russia," both appearing in *Demokratizatsiya: The Journal of Post-Soviet Democratization* in 2010 and 2009, respectively.

Mihaela Serban, Assistant Professor, Law & Society, Ramapo College of New Jersey, SJD, Comparative Constitutional Law, Central European University, Hungary; PhD, Law and Society, New York University (*discussant*).

mserban@ramapo.edu

<http://ww2.ramapo.edu/sshs/faculty/Serban.aspx>

Professor Serban's teaching and research interests include law and society in Eastern Europe, law and culture, human rights and constitutional law. She has previously worked as a Program Associate and consultant for the Ford Foundation, and as a Fellow with the Global Public Service Law Project at NYU School of Law.

Her most recent publications are "Surviving Property: Resistance against Urban Housing Nationalization during the Transition to Communism (Romania, 1950-1965)," published in *Special Issue: Interdisciplinary Legal Studies: The Next Generation, Studies in Law, Politics, and Society*, (edited by Austin Sarat, 2010); and "Law from Below: Women's Human Rights and Social Movements in New York City" □ *Law & Society Review* (with Peggy Levitt, Sally Merry and Diana H. Yoon). □