Australian and New Zealand
Society of International Law

ANZSIL Postgraduate Workshop

Wednesday, 4 July 2018

Victoria University of Wellington
New Zealand

WORKSHOP PROCEDURE

The organisers of the PG Workshop this year have adopted an innovative structure and procedure for the workshop, to allow the postgraduate participants to gain experience in both presenting and providing comments/feedback in a scholarly setting. We encourage all participants to engage actively in the discussions in every session. We are hopeful that some senior academics will also attend the workshop to provide comments and feedback.

Each session of the workshop is divided into two panels. The workshop organisers have tried to pair papers in each panel that will speak to each other in one way or another. Each presenter at the workshop has been assigned to comment on a pair of papers presented in another panel. Due to the diverse nature of the papers in the workshop, it is not possible to assign every participant to comment on papers within their sub-field. The workshop will therefore give participants an opportunity to act as commentators outside their "comfort zone" or expertise; in these cases, we encourage commentators to address more general issues of question-framing, methodology, and theory that are common to all research projects.

Each panel will last one hour, beginning with a 10-12 minute presentation by each presenter, followed by 3-5 minutes of comments by each participant-commentator, addressing both papers in the panel. (Presenter-commentators in the same panel may decide between themselves in advance to divide their comments between the papers.) The remaining time in each panel – approximately half an hour – will be left to responses by the presenters and general discussion of both papers by all participants in the workshop.

Guidelines for the workshop presentations and giving feedback follow at the end of the Programme.

ANZSIL Postgraduate Workshop 2018 Agenda

Location – Moot Room, Room 340, Level 3, Government Buildings, Victoria University of Wellington, New Zealand

Time	Session	
9.00am	**Registration**	
9.30am	**Opening Session**	
	Registration, Welcome and Introductions	
10.00am – 11.00am	**Session 1 – Panel 1A**	
	Institutionalising Imperialism: Enemy States and the United Nations Charter	**Anna Saunders** *Melbourne*
	Evolution of Donor\Recipient Partnership in Aid History	**Elena Pesina** *Auckland*
	Participant Commentators: Valeria Coscini & Sheikh Mohammad Towhidul Karim	
11am – 12.00pm	**Session 1 – Panel 1B**	
	The Application of Fiduciary Theory in Responding to Corporate Lobbying to Secure Favourable Rules in Trade and Investment Agreements that Conflict with Broad Constitutional Obligations	**Auxentius Yudhianto** *Auckland*
	The Effect of EU State Aid Law in the Future of EU Investment Policy	**Pamela Finckenberg-Broman** *Griffith*
	Participant Commentators: Badiul Alam & Emma Dunlop	
12.00pm	**Lunch**	
1.00pm – 2.00pm	**Session 2 – Panel 2A**	
	The Problem with Exclusion: A Critical Analysis of Article 1F(a) of the Refugee Convention	**Claire McGeorge** *Auckland*
	States' Obligations to Ensure Refugees' Access to Courts under International Law	**Emma Dunlop** *UNSW*
	Participant Commentators: Anna Saunders & Muhammad Ibnu Khaldun Sitompul	

2.00pm – 3.00pm	**Session 2 – Panel 2B**	
	Regulating Speech in Pakistan: An Analysis of Article 19 of the ICCPR	**Shamreeza Riaz** *QUT*
	Judicial Adherence to the Minimum Core Obligation of a Right to Health in Bangladesh: A Critical Review	**Sheikh Mohammad Towhidul Karim** *Macquarie*
	Participant Commentators: Elena Pesina & Sophie Henderson	
3.00pm	**Afternoon Tea**	
3.30pm – 4.30pm	**Session 3 – Panel 3A**	
	Why has the 2002 ASEAN Agreement on Transboundary Haze Pollution Failed to Effectively Respond to Forest Fires and Transboundary Pollution in Indonesia and Southeast Asia?	**Muhammad Ibnu Khaldun Sitompul** *Canterbury*
	Least Developed Countries Fund (LDCF) for Climate Change-Adaptation Programs: How Far LDCs have Participation in Disbursement and Decision-Making	**Badiul Alum** *Macquarie*
	Participant Commentators: Auxentius Yudhianto & Pamela Finckenberg-Broman	
4.30pm – 5.30pm	**Session 3 – Panel 3B**	
	Somewhere Beyond the Rainbow: Sexuality, Gender-Identity and the Concept of Fluidity in International Human Rights Law	**Valeria Coscini** *ANU*
	The Legal Protection of Female Migrant Domestic Workers from the Philippines and Sri Lanka: A Gender-Informed Rights Based Approach	**Sophie Henderson** *Auckland*
	Participant Commentators: Claire McGeorge & Shamreeza Riaz	
5.30pm	**Close**	

SESSION 1A 10.00 – 11.00 am

Anna Saunders

Melbourne Law School

Institutionalising Imperialism: Enemy States and the United Nations Charter

State-building, as both a practice and an object of scholarship, has become an accepted part of the modern international legal landscape. Whether, which, and how, international actors can or should be involved in the construction of political and legal institutions following conflict — these questions are the subject of debates that have resurfaced since the end of the Cold War and, along with ongoing military intervention in civil wars, show few signs of abating. These debates can largely be divided along two lines: those that justify state-building and reconstruction carried out by powerful states, and those that turn to international institutions as supervisors of reconstruction in order to guard against new forms of imperialism.

My project intervenes in these debates through examining the legal and political history of the enemy states clauses in the United Nations Charter. These clauses, drafted during the Second World War, are generally accepted to have created an exception to the principle of non-intervention otherwise envisaged by the Charter. They recognised that the Allied powers would have responsibility for the reconstruction of Germany and Japan and for the terms of their eventual return to the international community. The drafting of the enemy states clauses, as well as the detachment of the territory and removal of the mandates of those countries, therefore signalled the end of these rival forms of imperialism. At the same time, they created new struggles and tensions over the question of the scope of the authority given to the Allied powers, and the supervisory jurisdiction of the different institutions of the newly United Nations. These struggles were all the more pressing given the increasing militarisation of the United States and of the Soviet Union. Through examining both the origins of these clauses, and debates over the legality of the projects of reconstruction they enabled, this project aims to deepen our understanding of the formative years of the United Nations and unsettle the persistent distinction between imperialism and institutionalism.

Anne Orford, 'International Territorial Administration and the Management of Decolonisation' (2010) 59 International and Comparative Law Quarterly 227

Bruno Simma et al, The Charter of the United Nations: A Commentary (Oxford University Press, 3rd edn, 2012) 2183.

SESSION 1A 10.00 – 11.00 am

Elena Pesina

Auckland University

Evolution of Donor\Recipient Partnership in Aid History

How did "partnership" become the "buzz word" of official development assistance (aid) relations and what does it mean?

Starting from the 1990s, and increasingly so in the last decade, we see the rise in the OECD's Development Assistance Committee (DAC) rhetoric on aid partnership. Many donor countries, including Australia and New Zealand, refer to the recipient countries as partners in their aid programmes and emphasize the importance of aid partnership in official speeches. The DAC, along with the World Bank, assert that in aid partnership, partners work together towards the common goals of sustainable development and poverty eradication.

I consider this to be a positive trend. However, the term "partnership" in aid relations is not clearly defined. Nor is there any binding multinational agreement about donors' and recipients' obligations in the framework of aid partnership. Consequently, and unfortunately, the rhetoric does not match the reality.

The presentation explores how the nature of aid relations has evolved from World War II until today and whether these relations have embodied a partnership in reality. The paper traces the roots of the conception of the donor-recipient relations as partnership and identifies the factors that drove the articulation of this concept of aid relationships. It examines both the perspective of the North and the South on aid relationships. It also analyses how the international soft rules and domestic statutes conceived of aid, and looks at their impact on the aid relationships. This presentation is part of my PhD research into legal rules governing the obligations of the donors and beneficiaries of aid once they enter the aid relationship.

I argue that, even though the term "partnership" only appeared in the official DAC documents in the 1990s, we can find evidence of the rhetoric of aid relationships as partnership much earlier. Aid started in the spirit of partnership, as a mutually beneficial relationship, which aimed to solve global challenges of the future. The structures for aid, created after the World War II, continued into the second half of the 20th century. However, the concept of partnership, which had been embedded in them, slipped into the background and was not emphasized or implemented until the 1990s. It took half a century to bring the rhetoric of the aid partnership concept back into the focus of the development agenda. Now there is a universal acceptance of partnership concept in the aid rhetoric. However, a better understanding is needed, and the gap between rhetoric and reality remains to be bridged.

SESSION 1B 11.00am – 12.00 pm

Auxentius Yudhianto

Auckland University

The Application of Fiduciary Theory in Responding to Corporate Lobbying to Secure Favourable Rules in Trade and Investment Agreements that Conflict with Broad Constitutional Obligations

In recent years, there have been increasing movements to apply fiduciary theory in the public law and international law areas. This includes application of certain private law concepts of trust or agency in the public law and international law areas. For example, courts in Canada have recognised this adoption of fiduciary theory in the public law area when they held the Crown to owe fiduciary duty to native indigenous people.

This application of private law concepts in the public and international law areas is heavily debated. Some scholars argue that the fiduciary theory is incompatible with the public or international law. They argue that the fiduciary theory requires the fiduciary to be loyal to one or a discrete number of beneficiaries. Despite these doubts, the proponents of fiduciary theory's expansion into the public and international law consider that the fiduciary theory could answer problems that are not sufficiently answered by public and international law theories.

The paper explores whether the fiduciary theory could provide a theoretical framework to answer the question whether a state has dual fiduciary roles in the public and international law in responding to the corporate lobbying to secure favourable rules in trade and investment agreements that conflict with broad constitutional obligations, as in access to affordable medicines. A mechanism called 'the fiduciary scale of interests' will be used to answer this question.

SESSION 1B 11.00am – 12.00 pm

Pamela Finckenberg-Broman

Griffith University

The Effect of EU State Aid Law in the Future of EU Investment Policy

In July 2017 the Commission of the European Union (EU) announced Investor-State dispute settlements (ISDS) as dead. Seven months later, to preserve the specific characteristics and the autonomy of the EU legal order, the Court of Justice of the European Union (CJEU) declared ISDS provisions vis-à-vis intra-EU BITs incompatible with EU law in Achmea. Concurrently with the revamping of Trade and Investment Partnership agreements, an overall revamp of EU investment policy is taking place, with EU being persistent in a global reform of ISDS.

Besides the fundamental distrust by the public of ISDS, its rejection of by the EU is a symptom of several underlying reasons. Above all, is the need to protect the autonomy and the legitimacy of the EU legal order and its right to regulate on public policy objectives, as well as to avoid jurisdictional conflicts. With this backdrop EU State aid law, which enjoys public policy status, has emerged as a major example of the cross-fire between investor protection and the right to regulate. As State aid law imposes measures on EU Member States which conflict with these States' international obligations to foreign investors under BITs, they have become subject to claims and substantial liabilities. This situation can arise in any setting which involves EU or one or more of its Member States, including relations with non-EU countries as the web of IIAs in different forms operate on an international scale.

By studying and understanding the impact of EU State aid law on the EU Member State's BITs and EU Free Trade Agreements (FTAs) in the current situation, when it comes to the regulation of global trade in general, an understanding can be provided for the future of international treaties involving the EU. More specifically, a glint at a conceivable future of EU investment policy in a global context, incorporating fair competition and State aid policy in international trade, the EU experience of intra-EU BITs can provide some lessons to learn.

Specifically, into how the policy of EU State aid practice collaborates with the EU investment regime within the internal market and from there reflect on the external trade relations, of the Member States and the EU both, through this practice.

[1] *A new EU trade agreement with Japan* (EC, 2017c) p.6. See also the Commissions press release on the 6th July 2017 on the importance of JEEPA. (EC, 6.7.2017).

[1] On basis of a joint reading of Articles 267 and 344 TFEU ("*Achmea C-284/16* ", 2018) paras 31, 59 and 60.

SESSION 2A 1.00 – 2.00 pm

Claire McGeorge

Auckland University

The Problem with Exclusion: A Critical Analysis of Article 1F(a) of the Refugee Convention

The Refugee Convention recognises the right to seek asylum from persecution. The Convention, however, does not apply to all persons who meet its definition of a "refugee". Where there are "serious reasons for considering" that they have committed (inter alia) an international crime, a person who otherwise meets the Convention's definition of a refugee must be excluded from its protection and consequently may be returned to their country of origin.

Article 1F, the "exclusion clause", was included in the Convention to protect its integrity and ensure that perpetrators of the most egregious crimes could not exploit the right to asylum to evade prosecution. However, as a growing body of literature identifies, modern exclusion practice bears a series of critical deficiencies such that exclusion is arguably undermining, not upholding, the system's credibility. Commentators have voiced concern over diverging approaches to Article 1F(a), as well as a practice of excluding individuals who had only an extremely remote connection to an international crime, and have called for a reform of the tests applied in exclusion determinations.

Procedural fairness issues in exclusion practice also need to be explored. Article 1F(a) determinations are 'quasi-criminal' in nature. Because they are also inquisitorial and administrative, this raises procedural fairness concerns; namely that the procedural rights and protections guaranteed to a person facing criminal charges (e.g. the presumption of innocence, the right to silence) may not necessarily be available. Using a New Zealand exclusion decision as an example, my paper will argue that the privilege against self-incrimination should apply in exclusion hearings.

SESSION 2A 1.00 – 2.00 pm

Emma Dunlop

University of New South Wales

'States' Obligations to Ensure Refugees' Access to Courts under International Law

What is the scope of States' obligations to provide refugees with access to courts under article 16 of the Convention relating to the Status of Refugees (1951 Convention) and international human rights law? The paper will focus on one element of this animating question – the principles that guide the interpretation of the 1951 Convention. The paper will first examine the application of the 'general rule' in Article 31 of the Vienna Convention on the Law of Treaties to multilateral conventions, and the evidentiary weight that can be attributed to domestic cases, UNHCR guidance, and Executive Committee Conclusions in the interpretative process. Secondly, it will address the extent to which developments in international human rights law since the adoption of the 1951 Convention are relevant to its interpretation. Finally, the paper will analyse different interpretative approaches taken by refugee scholars to the Convention. The paper will argue for an evolutionary approach to interpretation that recognises the inherent difficulties of determining 'subsequent practice' in relation to a treaty with no authoritative interpreter and 145 States Parties. It nonetheless remains alive to the risks of conflating a normatively preferable interpretation with a legally defensible one.

SESSION 2B 2.00 – 3.00 pm

Shamreeza Riaz

Queensland University of Technology

Regulating Speech in Pakistan: An Analysis of Article 19 of the ICCPR

At national and international level, freedom of speech and expression is essential for the development of an individual and democratic society. State could regulate the right to free expression and speech when it came in conflict with the rights of other individuals or other societal interests. However, there is a worrying trend in all over the world including Pakistan where government restricts political, religious and sometimes civil societies expression and speech. Last year, 2017, was a black year for social media users and journalists in Pakistan as they were victim of numerous untoward incidents. These incidents include Mishal Khan Case, who was murdered by the mob of university students for his religious views shared on social media. Another sad incident is of Qandeel Baloch, who was murdered by her brother for sharing photos and bold statements on social media. Lastly, many bloggers were abducted and tortured for speaking against the current Government and for having their political views on social media. This paper will explore what it is reasonable to regulate on social media in Pakistan? and what obligations Pakistan have under article 19 of the International Covenant on Civil and Political Rights (ICCPR).

*Author is Lecturer Law at International Islamic University Islamabad Pakistan and PhD Law student and Research Assistant at Queensland University of Technology (QUT). She is in her third year of PhD at QUT Faculty of Law. She is associate member of ANZSIL since 2016.

SESSION 2B 2.00 – 3.00 pm

Sheikh Mohammad Towhidul Karim

Macquarie University

Judicial Adherence to the Minimum Core Obligation of a Right to Health in Bangladesh: A Critical Review

This paper examines how a right to health, expressed as a minimum core obligation under international law, can be advanced within the constitutional framework of Bangladesh. Reinforcing this right is important within the post-2015 Development Agenda under the UN Sustainable Development Goals. Drawing upon examples of other jurisdictions to develop minimum core obligations of a right to health, it is argued that courts have a key role to play in actively enforcing a right to health to benefit poor, vulnerable and marginalised people. This paper proposes that judicial adherence, through interpretation of domestic and international law, may provide the best mechanism to promote a right to health as a minimum core obligation in Bangladesh.

SESSION 3A 3.30 – 4.30 pm

Muhammad Ibnu Khaldun Sitmopul

University of Canterbury

Why has the 2002 ASEAN Agreement on Transboundary Haze Pollution Failed to Effectively Respond to Forest Fires and Transboundary Pollution in Indonesia and Southeast Asia?

Since its adoption in 2002, the ASEAN Agreement on Transboundary Haze Pollution seems to have a minimal impact on reducing forest fires and transboundary haze pollution in south-east Asia. Forest fires in Indonesia have had significant environmental and economic impact over the last 20 years in Southeast Asia. The 2015 forest fires in Indonesia tops the economic damage amongst other disasters in the Asia-Pacific region with an estimated cost of US$ 16.1 billion (followed by the earthquake in Nepal (US$ 5.2 billion)). It contributed to a significant loss of biodiversity and 1,750 million metric tons of CO_2 equivalent (MtCO2e) to global emission in 2015. Haze pollution resulting from this forest fire also affected neighbouring countries such as Malaysia and Singapore across various sectors including economic, environment, health, transportation, and tourism. Major contributors to these annual forest fire disasters include slash and burn activities, illegal logging, and land expansion by palm oil plantation companies. A particularly long dry season has aggravated the situation further. This paper will provide a critical analysis of the effectiveness of the Haze Agreement by identifying key issues impeding its success such as the absence of effective sanctions and dispute resolution. This paper will also analyse different concepts of effectiveness of law which might be suitable for the region and will examine the influence the "ASEAN way" has on member-states in implementing the Haze Agreement.

SESSION 3A 3.30 – 4.30 pm

Badiul Alam

Macquarie University

Least Developed Countries Fund (LDCF) for Climate Change-Adaptation Programs: How Far LDCs have Participation in Disbursement and Decision-Making

Least Developed Countries (LDCs) are the most vulnerable countries to the adverse impacts of climate change because of their less resilient power and poor economic condition. The UNFCCC, the Kyoto Protocol and the recent Paris Agreement have acknowledged the vulnerability of these LDCs and have given responsibility to the developed countries for providing financial resources for the implementation of adaptation activities in these countries. A dedicated fund, named as Least Developed Countries Fund (LDCF) has been established for meeting the special needs and circumstances of the Least Developed Countries although the recipient countries have complaint about their representation, disbursement-process and the funding-mechanism of this international Climate Fund. In the Adaptation-finance architecture, a central challenge is to design institution that can channel funding effectively for the implementation of adaptation activities in the fund-receiving countries. The question as to how far the LDCF is meeting the adaptation-needs of the LDCs and promoting the idea of country-ownership of the recipient countries in the governance of the Fund has become central in the climate change and adaptation-finance nexus from the perspective of the LDCs. In that context, this paper investigates the challenges of decision-making, disbursement process and overall governance of the LDCF from the adaptation-perspective of the Least Developed Countries. As outcome, this paper will contribute to law and policy reform in the overall management of the Least Developed Countries Fund.

SESSION 3B 4.30 – 5.30 pm

Valeria Coscini

Australian National University

Somewhere Beyond the Rainbow: Sexuality, Gender-Identity and the Concept of Fluidity in International Human Rights Law

This thesis will examine the jurisprudence of international and regional human rights courts, committees and tribunals on sexuality and gender-identity rights, with a particular focus on the concept of fluidity. The development of sexuality and gender jurisprudence will be analysed to determine to what extent the concept of fluidity, which encourages openness and non-binary thinking, can help interpret sexuality and gender-identity rights. This presentation will examine one aspect of my research, being the early development of the jurisprudence. Sexuality and gender-identity rights have been considered by several regional and international courts and decision-making bodies, including the European Court of Human Rights, the UN Human Rights Committee and the Inter-American Court of Human Rights, among others. Human rights cases on sexuality and gender-identity rights have been the subject of fairly recent decisions, with the main body of jurisprudence developing from the 1980s onward. Examining the development of human rights jurisprudence in these areas is an interesting case study. Early cases were often declared inadmissible, and when decided on their merits, strict interpretations of privacy rights applied. More recent cases have adopted a broader approach, mainly based on equality and non-discrimination rights. Human rights jurisprudence in this field has much further to develop. Analysing the development of the early jurisprudence at the regional and international level manifests the gradual progress of and strict interpretations applied to the sexual and gender-identity minority rights in the regional and international arena.

SESSION 3B 4.30 – 5.30 pm

Sophie Henderson

University of Auckland

The Legal Protection of Female Migrant Domestic Workers from the Philippines and Sri Lanka: A Gender-Informed Rights Based Approach

State sponsorship of overseas employment has long been a key feature of national development policy in the Philippines and Sri Lanka, as two of the leading sending countries of legally contracted female migrant domestic workers (MDWs) in Asia. Such workers provide one of the largest sources of foreign exchange through their remittances sent home. However, women MDWs are often the target of abuse and gendered forms of oppression overseas. Thus, both states are accused of sacrificing the welfare and rights of their MDWs in order to maximise remittances and advance economic growth.

The objective of my doctoral research is to use case studies of the Philippines and Sri Lanka to assess the adequacy of the domestic legal frameworks that govern the protection of MDWs from rights violations. In order to assess the adequacy of legal protection governing such workers, this paper presents a comprehensive theoretical framework comprising four different elements: political economy, structural violence, gender, and rights. The paper draws on political economy and structural violence theory to contend that the regulations governing migrant workers in both sending states are currently driven by the promotion of labour export and market-centred values, resulting in the commodification of women MDWs.

This framework will be relied on to suggest that the two sending governments ought to adopt a gender-informed rights-based approach, which effectively safeguards MDWs against rights violations and abuse throughout the entire migration cycle. The paper will also refer to the emergence of international law norms and standards of protection for MDWs – namely the ILO's Domestic Workers Convention C189, the Convention on the Elimination of All Forms of Discrimination Against Women and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which will be used as the basis of the rights framework and the benchmark for assessing the adequacy of the two governments' responses.

GUIDELINES FOR PARTICIPATION

These guidelines are adapted from guidelines created by the Harvard Law School Institute for Global Law and Policy.1 Please read these guidelines and use them to frame your presentations and the feedback you give on other participants' work during the Workshop.

Making panel presentations

All of us present our work in a variety of settings. Although we all say we want to contribute to a discussion and look forward to feedback, all too often we fail to present our work in a way that encourages discussion or even leaves time for feedback.

At the ANZSIL PG Workshop we hope to encourage an engaged and collegial conversation. Each participant is limited to **10-12 minutes** for a preliminary presentation of his or her paper. How can you make best use of your time? Here are some tips:

- **You can't 'present' your paper**. No one can present an entire paper it has taken months to research and write in ten – or fifteen, or twenty, or thirty — minutes. You must be selective. That means you need a strategy. In light of your research and all the thinking you have done, what would you like to say to this group today?
- **Describing your paper is rarely useful.** Tempting as it is, describing in general terms 'what I did in part one' and then 'what I do in part two' rarely works. Few people can get a sense for HOW you do what you do and what is interesting about it from this kind of 30,000 foot table-of-contents description. State your ideas, your arguments, your findings: '**BE the paper'**– don't describe the paper. The paper can take care of itself.
- **Retracing the logic of discovery is rarely a good presentation strategy**. When you think back on your work as a whole, it can be fascinating–for you — to remember how you came to the topic, how you did the research, what you thought half-way through and how you developed your ideas. This kind of *bildungsroman* is rarely fascinating for other people. They want to know what you think about something they are also interested in *now*. How should they '*now*' change their ideas and why?
- **Try to focus on answering the following four questions.** Doing this often opens up productive possibilities for your own thinking and for feedback from the audience.
    - **Identify the terrain**. In what field and what debate are you intervening?
    - **Identify your intervention**. What did you discover that others have not seen? What did you reinterpret that we ought now to understand differently? How has your work changed the debate? What did who misunderstand that you have set straight?
    - **Identify the stakes.** Why does this matter? Who would or might do what differently? What lines of inquiry have you opened which were closed? What tools have you developed that might be used? Here, you might wish to preempt opposition. How would those with whom you disagree – against whom you have written, who stand to lose given the stakes you have identified – respond?

[1] The IGLP guides are available at http://iglp.law.harvard.edu/the-iglp-approach/.

- **Start a conversation.** Presenting academic work is more like tennis than moot court. The goal is not to prove that you are right. It is to start a conversation. What remains puzzling for you? How would you frame the methodological, political, doctrinal or institutional choices opened up by your analysis?

One model for your presentation is to prepare it using the following guiding questions:

1. **Describe the project and identify its central questions(s)/contribution(s).**
   a. What is the central issue/puzzle that your project seeks to address?
   b. How do you propose to develop the argument? (Offer a brief summary of the method.)
   c. In what debates/discussions does your project seek to intervene? Who are you writing against? Or for?
   d. How would you, at the end of your project, complete the sentence: "Until now, every one has thought _____ but now we should think _____."

2. **Identify the types and modes of scholarly intervention, and useful feedback areas.**
   a. What evidence/methods do you propose to use to support your claims?
   b. Why does your project matter? What gap or shortcoming in the literature is this project addressing?
   c. How would you classify your type and mode of intervention?
   d. What types of feedback would be helpful to you?

Modes of scholarly intervention and argument

Scholarly works 'intervene' in ongoing scholarly or policy discussions in various ways. They do so with arguments of many different types. It is often helpful to try to specify just what kind of intervention is being made, into what ongoing discussion, using what mode of argumentation. These lists are helpful both in thinking about your own work and in giving feedback on the work of others.

Here are some possible types of intervention and modes of argumentation.

An Incomplete List of Types of Scholarly Intervention:

1. Proposing a new take on a well-established empirical claim, line of reasoning, or doctrine
2. Reorganizing or reinterpreting a doctrinal field
3. Critically mapping the consciousness of the establishment
4. Demonstrating unintended consequences of well-meaning law reform projects or of a jurisprudential line of reasoning
5. Intervening in a theoretical, jurisprudential, or political debate on the basis of new evidence or a new approach
6. Interdisciplinary: advocating a new or renewed interdisciplinary project or intervening in two disciplines simultaneously in an original way
7. Comparison: intervening in two different national political or legal debates at the same time; using comparison to intervene in a policy or jurisprudential debate; using comparison to challenge accepted empirical claims

8. Retelling or unsettling a settled historical narrative: recovering possibilities that have been overlooked
9. Using historical retelling to challenge a discipline's basic assumptions
10. Critiquing a scholar with whom you are generally sympathetic – or more hostile – through a book or literature review

An Incomplete List of Modes of Argumentation

Intervening has a positive side, of course – how you think things should be understood. There is also a critical component – how has the prevailing discussion run off track? Arguing against other points of view can be done in many ways. Here are some examples:

1. Uncovering problematic assumptions underlying particular theories, doctrines, and policies with which you disagree
2. Highlighting unresolved gaps, conflicts, and ambiguities in existing arguments or proposals
3. Focusing on structural biases and blind spots that existing approaches ignore
4. Bringing new (or old but forgotten) theories, theorists, personal narratives, and/or empirical methods to bear on familiar problems
5. Presenting new data or a new analysis that challenge(s) existing empirical findings
6. Engaging in cost/benefit analysis

Offering feedback

All of us give feedback and comment on other people's intellectual work. We all try to situate our own work in relationship to the ideas other people have had about issues we care about, which also requires that we accurately reflect on their prior work. We hope the PG Workshop will help us all become better at this crucial professional activity. Below is a general outline of constructive and unhelpful feedback, along with some more specific suggestions.

Offering constructive feedback:

a. Identify one or more key ways in which the way the research question is posed could be improved – is the question too broad (the usual case)? Too narrow? How might the question be re-framed without losing sight of the author's primary intellectual goal(s)?
b. Identify additional literature that might shed light on the proposed question or methods. Suggest completed projects/books that might serve as models for the author to follow.
c. Identify ways in which the proposed method of the project could be improved – what additional sources of data or materials might help answer the question? Is the case selection appropriate? Is the choice of historical period or corpus of materials the right one?
d. Identify whether the proposed methods, data or primary materials on which the author proposes to rely are appropriate for the question proposed.

You should always strive to **avoid a form of feedback that is unfortunately common** in reviews of other people's work– explaining what you would write, how you would intervene in the same debate. Although crucial for your own work, this is only rarely helpful to another author. Each of us begins our own work by moving from what others are saying to what we wish to say. In formulating your feedback aim to assist the author achieve his or her own objectives better, and avoid feedback such as that identified below.

Helpful Types of Feedback

When no significant new research is needed or possible:

1. Suggest how the author might clarify or sharpen the thesis, type of intervention, etc.
2. Suggest ways the author might reorganize the paper to make the thesis/intervention clearer. (Hint: Imagine how the paper would read if it were to start with the conclusion.)
3. Offer objections that are likely to be raised to the paper and suggest responses.

When some more research might be feasible:

1. Offer objections that are likely to be raised to the paper and suggest responses.
2. Propose the consideration of related literature that might offer further theoretical or methodological insight or that might be good models for the paper. It is usually helpful to be as specific as possible – and to work within the author's chosen method/approach.
3. Consider ways that the author might sharpen or strengthen the paper's method.
    a. Is the author reaching macro conclusions from micro analysis? The reverse?
    b. Is the author relying on unexamined assumptions?

When there are some fundamental issues with the paper or project:

1. Are there unexamined alternative explanations for the conclusions offered?
2. Might the author's analysis lead to a different conclusion?
3. More broadly, are the methods appropriate to the question/data?

Not Helpful Types of Feedback

1. Suggest that the author take a totally different theoretical/political approach (such as the one you might take) to the issue she or he is addressing.
2. Propose an entirely new field or literature that the author needs to know before continuing with her or his project (unless it is directly implicated and clearly overlooked).
3. Propose a different/more interesting question the author could answer.