

Workshop ‘Rethinking Representation on the International Bench: Democracy, Inclusion, and Legitimacy’

19 and 20 of November 2021

The progressive consolidation of an international judiciary has been generally perceived as a major step towards building an international order based on the rule of law. Strengthening the international mechanisms to fight impunity against major crimes, guarantee the effectiveness of core human rights norms, and hold states accountable to their international commitments appeared, in the eyes of many, as a key component of a liberal-legalist international order. Yet international courts and tribunals are facing significant challenges derived from a historically entrenched deficit: the lack of diversity among the judges. Since their establishment, these institutions have been primarily composed of members of white, male, and privileged elites. Instead, members of vulnerable or marginalised groups such as, among others, women, racial or religious minorities, indigenous peoples, and those coming from disadvantaged socioeconomic backgrounds among others remain significantly excluded. Tackling this deficit appears as increasingly relevant considering the current challenges to the legitimacy and authority of the international judiciary, the growing criticism of international institutions, and the so-called backlash against human rights.

So far, issues of diversity connected to the representativeness of international judges have found modest attention in the specialised scholarship. Several contributions to the theory and practice of international courts and tribunals still render the meaning of representation confined to state-centric or geographic understandings of the concept. To a lesser extent, some works circumscribe the notion of representation to the inclusion of members standing for diverse legal cultures and language proficiency. These understandings generally reflect the notion of diversity and representation as established in the statutes of the different international courts and tribunals, most specifically regarding the regulation of the election and appointment procedures of judges. More recently, a growing stream of works has foregrounded the question of diversity beyond state-centric or geographical lenses. However, a number of questions remain underexamined, including what representation means in this specific realm, its embeddedness in democratic theories, and its concrete application to the different international courts and tribunals.

This workshop —organised under the SNF funded-project [‘Diversity on the International Bench: Building Legitimacy for International Courts and Tribunals’](#)— aims to critically rethink the concept of representation in international courts and tribunals. The goal is to explore what representation means in international law, how the concept of representation applies to different international courts and tribunals, and in which ways it can transform existing institutions and make them more democratic and inclusive. These questions are framed against the possibility that a richer understanding of representation has the potential to consolidate international institutions’ legitimacy. This, in turn, could enhance the trust of the global public in international courts, as well as strengthen international courts and tribunals’ role in creating and interpreting international law.

For such an endeavour, the workshop seeks to bring together academics from various scholarly traditions and backgrounds. We aim to enable a rich conversation about the theoretical questions of representation, diversity, and democratic legitimacy in relation to the international bench and encourage empirically grounded reflections on the pathways and obstacles to achieve a more diverse, democratic, and inclusive international judiciary.

The workshop's general theme can be unpacked in the following issues, organised around three sub-themes:

1. Rethinking the question of representation in international law and justice: questions from theory and philosophy
 - What does 'representation' mean in international law, including (but not limited to) questions such as the different frames for political representation and the perils of essentialism.
 - The relationship between the concepts of representation and democracy, and representation and legitimacy, as well as the relationship between representation and notions of accountability, independence and impartiality of international adjudicatory bodies.
 - Whether theoretical accounts should also be concerned about non-human representation, such as biodiversity and the environment.
2. Institutional design of international courts and tribunals and the challenge of meaningful representation
 - Critiques of current understandings of representation within the institutional design of international courts, exploring their sexist, racialized, and colonial legacies.
 - The different understandings of representation of international courts and tribunals held across locations, regions, and groups.
 - Whether the meaning of representation should vary depending on the international court in question, as well as on the field it adjudicates on.
3. Exploring avenues to transform and shape diversity in the international judiciary
 - The promise and perils of addressing the question of representation through institutional routes, such as reforming the process of appointment of international judges. Likewise, the promise and perils of addressing the question of representation through the individual agency of judges.
 - Addressing representation through extra-institutional channels.
 - The question of failed reforms, inaccessibility in appointment processes, and the resilience of majoritarian bias and structural discrimination that minority judges still face in the international judiciary

Although these issues are organised under three main strands, they are by no means insulated from one another. We acknowledge that many of them are interconnected and, throughout the workshop, we aim to encourage discussions that cross-dialogue among the different topics delineated above.



DATE & VENUE:

This workshop will be held on 19 and 20 November 2021 at the Graduate Institute under the auspices of the Albert Hirschman Centre on Democracy. We are planning for this workshop to be in a hybrid format, respecting all health and sanitary measures in place. An alternative plan will be devised in case the workshop needs to be held entirely online, given the changing circumstances of the pandemic.