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Democratic Processes at Local Level for International Public Authority

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Abstract

It opens the way for the international public authority to draw legitimacy from the democratic processes taking place at the local level. We are concerned about the limited ability of such approaches to deal with problems of political inclusion; While we share with constitutional pluralism the pluralist view that citizens and other communities see as subjects of legitimacy, it is proper to be concerned about the limited ability of such approaches. Constitutionalism places a primary emphasis on analyzing how various forms of government affect individual civil liberties. On the other hand, every behavior that makes people question its validity is not a violation of human rights. This will be an extremely limited focus. Constitutional methods often do not have a separate language, making it difficult for these approaches to grasp the wide variety of phenomena associated with global government. A third strategy, inspired by administrative law thinking rather than constitutionalism, for dealing with the phenomenon of global governance in an explicitly legal way is a method of solving the problem. Here again, many varieties appear. The global administrative law project is likely to have the most far-reaching effects. This idea suggests that a significant part of global governance can be conceptualized as governance and requires that this aspect of global governance be governed by administrative law principles such as transparency, participation, reasoned decision making and review mechanisms. While some scholars are concerned with the induction of such principles, others are more concerned with the deductive development of such principles. Both approaches receive help from the normative reserve of national or European administrative law.

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Keywords: *Public International Authority, Democratic Processes at Local Level, Democratic Processes, Public, Public Law*

1. Introduction _

The domestic administrative law focus shared by all these branches of study has an important potential for original thought and development. Our approach is similar in that we place emphasis on the value of interdisciplinary collaboration in the field of legal studies; In particular, we believe that the study of the law governing local public institutions should be influenced by the study of international public institutions. 95 Building on the understandings and doctrines of national administrative law developed in the last century seems almost impossible if all development of international law takes place as public international law.

Our strategy differs from the global administrative law strategy because we view the latter as an overly "global" approach. It risks obscuring or confusing the differences necessary for the development, evaluation and application of norms relating to public power. The mere name "public international law" emphasizes the idea that the validity, legality, legal consequences, and legitimacy of activities under international law are based on criteria specific to the international legal system. This idea is implicit in our definition of "public international law". If a legal problem arises in connection with any behavior, the first thing to do to solve the problem legally is to decide the legal order in which the transaction in question falls. We also wonder what the basic legal basis of a global administrative law would be.

2. The Foundation on which Global Administrative Law is Built

Moreover, the idea of fuzzy management serves as the foundation on which global administrative law is built. Extending its scope to cover all of these, it covers an overly broad spectrum of activities and actors running at various levels. Although it draws on the canon of public law, it

applies its standards not only to organizations that meet the criteria for international organization status , but also to organizations that have successfully bridged the gap between the public and private sectors. What is then considered government is likewise extremely broad and, most importantly, encompasses the functioning of international courts and tribunals. This definition of management covers a lot of areas.

The global field of administrative law brings together a wide variety of institutions and actions, each posing distinctly different challenges to the legitimacy of law. Administrative principles may be part of the solution for some, but not for all. In contrast to international administrative law as well as international institutional law and constitutionalism, we place emphasis on the idea of international public authority as the focus of our attention. This allows us to concentrate on the specific needs often associated with instruments . In fact, the concept of authority is already used in global administrative law and our development will continue in line with the same idea.

3. The Purpose of Public International Law, Which Is to Establish Public International Authority

4. *Our theory of public international law consists of five key components derived from the comparative outline of public international law. First, public domestic law serves as a model for public international law that is inspired by and based on it. However, national, and international public law are not synonymous. This strategy considers both the independent functioning and interdependence of domestic and international legal systems; it does not combine them into a single worldwide (or transnational) legal system.*
5. *Second, even if we accept that the global society is both complex and diverse, we do not think that these characteristics make it impossible to articulate shared values and priorities. Instead, public international law is what supplies the institutional basis for such public policies, and it does so even in the absence of a global state or other types of deep political cohesion such as the European Union.*
6. *A third feature that sets it apart is the international predominance of the idea of public authority. The emphasis of the public law approach is on activities that claim to work in*

the public interest and so call for a public law framework that guarantees the legitimacy of these activities despite having a legal basis. The area of law applicable to the exercise of public international power is known as public international law. Therefore, purely horizontal formations of public international law that do not claim to seek common interests do not fall within the scope of public international law. However, it covers events that fall outside the scope of a resource-based understanding of international law, such as the Group of Seven (G7).

7. *A fourth essential feature can be derived from the idea of authority. It is characterized by its effect on freedom. Freedom, both in its political dimension, which gives people the right to collectively use public power, and in its individual dimension, which is reflected in human rights, is the primary rationale for the public law approach. This is true both in terms of its political dimension and its individual dimension. The impact of certain acts on a person's freedom is a primary subject of public international law. Also, the restoration of the public law framework can receive help from the advice that freedom offers. Public power needs to make sure that it respects freedom, whether political or individual.*
8. *A sixth feature is that they are closely interconnected. Our theory of public international law should be able to ease doctrinal restructurings that translate complex social dynamics into a language that can be understood by the legal system. While we place a strong emphasis on the importance of theoretical reflection, we believe that the ultimate aspect of practice should be primary, if not the sole purpose of the study of law. This forms the basis for the methods we will use in the future. We believe that an emphasis on doctrinal restructuring and interpretation is particularly useful when it comes to developing practical applications of legal studies. While only a few lawyers have mastered the methods of social research or political theory, lawyers all over the world have a mutual understanding of how to interpret and apply the principles of law. Therefore, our theory of finding international public authority will be formulated in such a way that it can be understood and used in the same way as other legal concepts.*

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Legal research is in the same place in terms of the concept of international institutions as it was at the beginning of the modern administrative state a century ago, about the conceptualization of local institutions.

3. Accessibility

It is much more difficult to decide exactly which aspects of international authority are public. Given the many different interpretations of the public-private dichotomy and the penetrating criticism of it, it should come as no surprise that this difficulty exists. It can be argued that such a distinction leads to more negative consequences than positive ones. For example, it hides the fact that power is used in the private sphere. We agree that it is difficult to understand the global governance universe without considering the roles played by private and hybrid players. However, the prominence of such actors does not make the public-private distinction meaningless; rather, it shows that the division continues to be important.

Compared to transnational businesses, it is indisputable that international organizations such as the United Nations and the World Bank are subject to a separate legal framework in which they run. The dilemma between the public and private sectors, with all the challenges it presents, is an important source of information to explain this difference. It is a fact that legal systems that cover everything are tried to be built, especially based on human rights. However, while some aspects of human rights apply directly to private organizations, there are still many disparities between the two.

The fundamental difference between public law and private law in contemporary countries has created the need for this diversity in legal systems. Private action, especially private economic activity, and public action, belong to different social spheres and must respond to different operational logics and justifiable requirements. (“From Public International to International Public Law: Translating ...”) (“From Public International to International Public Law: Translating ...”) This is a consensus that will be reached by most people, regardless of how the terms are defined. Both public and private law, both offering legal frameworks, but for diverse types of activities and

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with diverse types of aims in mind. Most importantly, private law allows individuals to act purely in their own self-interest, but public law requires adherence to a higher standard, sometimes referred to as the pursuit of a common interest. Although it has roots in continental Europe, the difference is now widely used in common law jurisdictions of the world. It is important to keep in mind that the United Kingdom has the same concept of public law as the United States. While the United States' experience is unique, there is no other legal regime with a tradition equivalent to the United States when it comes to constitutional authority. Despite this, the 20th century was a period in which administrative law was further combined. Undoubtedly, there have been efforts to bridge the gap between the public and private sectors, the most notable of which is state socialism; however, the results of these efforts were deeply dysfunctional.

The ability to grasp and work with reality is possible with concepts. Our overarching goal is to provide a set of legal values aligned with the demands of global public opinion for legal and effective international connection that serves the interests of the people. According to global public consensus, the degree of public acceptance of an action can be inferred from the degree to which it is of common interest. It depends on the social environment from which it was first derived. If the action belongs to the field where individual self-interest is a sufficient justification, then the action is considered private. On the other hand, if the activity is part of the area where common interests predominate, the behavior is considered public. Therefore, we define the public nature of international authority and public international law based on the fundamental differences that exist in contemporary cultures. However, it should be clear that the United Nations, the Basel Committee, and the World Bank are categorically different from, for example, Academi, Goldman Sachs or Exxon. While differentiation is less clear in world society than in most local societies, it should still be clear that these organizations exist on a different level.

Putting this method alongside several different notions of what it means to be public sheds even more light on its central focus. According to public international law, international law is public because it regulates relations between public legal entities, while the antithesis of public international law is known as private international law (or conflict of laws). However, research on global governance has shown that more parties than nations take part in this process. From another point of view, the (domestic) administration or the powers of a particular (domestic) administrative

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responsibility regime can be defined using the dichotomy between the public and private sectors. This is not a practical choice in the field of international politics, because few such institutions or regimes exist. The definition of 'public', which says that it relates to a nationality relationship that is not directly legitimized by permission, is a definition closer to our area of interest. However, due to the complex nature of most examples of global governance, it is difficult to define "publicity" in terms of hierarchies or unequal power relations. In addition, hierarchical and asymmetrical connections show an element of "power" and openness does not need to be equated with authority in any way.

4. Exemption from Legal Requirements and Procedures

Another school of thought suggests that an institution is considered public if it is exempt from normal legal requirements and procedures . In the past, one of the roles of public law, sometimes known as administrative law, was to protect administrative institutions from being subject to judicial review by the general courts. This statement is compelling considering the concerns voiced by the global public, especially the fact that international institutions enjoy substantial protection in domestic courts and that there is little opportunity for international surveillance. The validity of their actions is questioned because of their immunity. As the long history of kadı cases shows, some organizations promote policies that cannot withstand the restraint imposed by domestic courts. On the other hand, this exemption is since such institutions run worldwide. As a result, it would not make much sense to use this feature to define publicity.

On the contrary, given the circumstances of our situation, it is very meaningful that publicity revolves around the search for a common interest or common good.

This insight is supported by a substantial body of experience. It already existed in antiquity, as the distinction between ius publicum and ius privatum in Roman law shows; however, we should not ignore the differences between Roman society and the society we live in today. The pursuit of a common interest depends on legal mandate for our purpose. This is true regardless of the legal

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nature of the mandate, including soft law. Consequently, we characterize a use of force as public if the actor claims that the legal basis of the action requires the advancement of a common interest.

5. The Allegation That Doing So Serves a Common Interest

The concept is amenable to legal transactionalization as it relates to the legal basis of an action and is therefore open to legal interpretation. This makes the definition particularly suitable for legal operationalisation. Following the identification of the norm that the actor directly or indirectly refers to as a legal basis as the first step of the interpretation process, the next step involves the interpretation of this norm to decide whether it needs the pursuit of a common interest. Other legality requirements that the behavior must meet are irrelevant for the purposes of deciding whether it should be publicly categorized.

Second, even if we accept that the global society is both complex and diverse, we do not think that these characteristics make it impossible to articulate shared values and priorities. Instead, public international law is what supplies the institutional basis for such public policies, and it does so even in the absence of a global state or other types of deep political cohesion such as the European Union.

A third feature that sets it apart is the international predominance of the idea of public authority. The emphasis of the public law approach is on activities that claim to work in the public interest and so call for a public law framework that guarantees the legitimacy of these activities despite having a legal basis. The area of law applicable to the exercise of public international power is known as public international law. Therefore, purely horizontal formations of public international law that do not claim to seek common interests do not fall within the scope of public international law. However, it covers events that fall outside the scope of a resource-based understanding of international law, such as the Group of Seven (G7).

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use public power, and in its individual dimension, which is reflected in human rights, is the primary rationale for the public law approach. This is true both in terms of its political dimension and its individual dimension. The impact of certain acts on a person's freedom is a primary subject of public international law. Also, the restoration of the public law framework can receive help from the advice that freedom offers. Public power needs to make sure that it respects freedom, whether political or individual.

A sixth feature is that they are closely interconnected. Our theory of public international law should be able to ease doctrinal restructurings that translate complex social dynamics into a language that can be understood by the legal system. While we place a strong emphasis on the importance of theoretical reflection, we believe that the ultimate aspect of practice should be primary, if not the sole purpose of the study of law. This forms the basis for the methods we will use in the future. We believe that an emphasis on doctrinal restructuring and interpretation is particularly useful when it comes to developing practical applications of legal studies. While only a few lawyers have mastered the methods of social research or political theory, lawyers all over the world have a mutual understanding of how to interpret and apply the principles of law. Therefore, our theory of finding international public authority will be formulated in such a way that it can be understood and used in the same way as other legal concepts.

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6. Inventing New Terminology Is an Approach That Can Be Used Forward

A brand-new methodological approach must first tackle the obstacle that they are just old concepts available to explain inadequate new entities. Inventing new terminology is an approach that can be used going forward. Examples include good governance and personal responsibility. They were helpful in finding facts and normative issues. However, it is impossible to develop them without

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connecting with more fundamental ideas. And these ideas are like prime ballet dancers because as soon as they hit the stage, they draw attention from new expressions and make them look outdated.

7. General Public Interest

The ability to grasp and work with reality is possible with concepts. Our overarching goal is to provide a set of legal values aligned with the demands of global public opinion for legal and effective international connection that serves the interests of the people. According to global public consensus, the degree of public acceptance of an action can be inferred from the degree to which it is of common interest. It depends on the social environment from which it was first derived. If the action belongs to the field where individual self-interest is a sufficient justification, then the action is considered private. On the other hand, if the activity is part of the area where common interests predominate, the behavior is considered public. Therefore, we define the public nature of international authority and public international law based on the fundamental differences that exist in contemporary cultures. However, it should be clear that the United Nations, the Basel Committee, and the World Bank are categorically different from, for example, Academi, Goldman Sachs or Exxon. While differentiation is less clear in world society than in most local societies, it should still be clear that these organizations exist on a different level.

Putting this method alongside several different notions of what it means to be public sheds even more light on its central focus. According to public international law, international law is public because it regulates relations between public legal entities, while the antithesis of public international law is known as private international law (or conflict of laws). However, research on global governance has shown that more parties than nations take part in this process. From another point of view, the powers of (domestic) administrative courts or a particular (domestic) administrative responsibility regime can be defined using the dichotomy between the public and private sectors. This is not a practical choice in the field of international politics, because few such institutions or regimes exist. The definition of 'public', which says that it relates to a nationality relationship that is not directly legitimized by permission, is a definition closer to our area of

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interest. However , due to the complex nature of most examples of global governance, it is difficult to define "publicity" in terms of hierarchies or unequal power relations. Also, hierarchical, and asymmetrical connections imply an element of "power", and we do not want to equate openness with authority in any way.

8. Public Law in Many Legal Orders Is Driven by This Idea

Accepting freedom as the guiding idea is a choice, of course, but a restructuring choice supported by both theoretical reflection and legal developments. Public law in many legal orders is guided by this idea. Freedom, as we understand it, refers to the freedom of individuals, i.e., both their private and public freedoms. The public freedom of individuals consists, at the most abstract level, of being meaningfully involved in the political process that decides the common interest. Private freedom encompasses the full development of the individual. This concept of freedom is much broader than the concept of freedom, which only opposes interference with rights such as property rights. This is in full harmony with the triad of obligations to respect, protect and fulfill.

Our understanding of public international authority as acts based on international law that affect the freedom of other actors is broad, but different from broader concepts such as power, hegemony, dominance, or leverage. The exercise of international public authority implies the assertion that one is empowered by international law to influence another's freedom. As with public opinion, this does not mean that an illegal act will be disqualified as an exercise of authority. There may be illegal power practices and the action could be the subject of a legal dispute. In many jurisdictions it is crucial that the exercise of a public authority (puissance public, öffentliche Gewalt) can be considered illegal and revoked by the proper institutions without losing its character as an exercise of public authority. Similarly, it is useful to remind our readers that this understanding of authority must be distinguished from legitimacy: Authority implies a refutable claim of legitimacy. In this respect, our concept is compatible with Joseph Raz's understanding of effective authority.

9. The Many Faces of Public International Authority

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What would it take to affect freedom? According to the information received, the authority of local public institutions is based on the ability to use physical coercion to make a person or entity act by their orders. Sometimes the actions of international organizations are supported by reliable means of coercion, such as some UN Security Council resolutions.

10. Intelligent Adaptation Mechanisms

One type of mechanism that supplies 'teeth' to policies is financial sanctions or benefits. This form of power is well known internationally. We note from the world of international authority that a trade measure found to violate international trade law may lead to sensitive countermeasures.

However, they may face more indirect sanctions. The deny list of non-cooperating states on money laundering issues by the Financial Action Task Force showed that the prospect of being on such a list even encouraged emerging powers like China to follow relevant international standards.

11. Semantic Authority

The authority of international actions may also rest on their ability to shape the conditions of international discourse. An important example is the impact of international law on the distribution of argumentative burdens. The function of precedents is explanatory. International judicial decisions are not considered binding, except for the parties to the dispute. However, the dynamics of the legal discourse and the normative expectation that similar cases should be decided in the same way trigger the discussion loads for those who want to have a legal debate. A party seeking compensation in the context of world commercial law against rules governing wildlife protection, whether it accepts its report or not, will have to base its justification on the Appellate Body's report in EC - Seals. Rather than saying that precedents are not binding on non-disputed parties, the attorney will argue with precedents to turn them in their favour. In fact, they fight over the meaning of earlier resolutions, just as they fight over WTO agreements.

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are expected to respond to the arguments put forward by the parties . They even have a genuine interest in using precedents as they support their decisions and offer consistency. Therefore, the WTO Appeals Body decided that WTO panels should follow earlier decisions as they set legitimate expectations. This testifies to the semantic authority of courts and similar international institutions, that is, to their ability to set up reference points for legal discourse. Anyone who makes legal arguments must give to such discursive constraints. They become part of the rules of the game.

To understand this kind of authority, it is important to broaden the view of the social context and the discursive construction of authority, and not to limit it to the dual relationship suggested by the 'order-and-obedience' logic that underlies traditional understandings of authority.

12. Governance by Knowledge

The actions of international institutions can further influence the freedom of others by influencing their knowledge and feelings.158 Governance through information has become a particularly valuable tool at the global level. Michel Foucault has analyzed its function in the modern state. His research on Gouvernementality emphasizes that binding law is only one form of governing people. As the modern state began to aim to manage the economy and the social life of the people, it developed a multitude of other tools to discipline, direct people and shape their mentality.

At the international level, governance through knowledge affects a particular policy area by putting pressure on policy makers or shaping their cognitive framework through the collection, processing, and dissemination of knowledge. Many empirical studies have shown how this governance works.162 Cognitive frameworks influence what facts we see and consider important, and how we respond to them. International institutions look to apply governance through knowledge to advance international policies. The OECD supplies comparative data on the performance of school policies. The Program for International Student Assessment (PISA) publishes a ranking list as well as detailed reports every three years. In addition, investment decisions are guided by the EU while publishing OECD Economic Outlooks165, which supplies important recommendations for macro-

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economic policy making. The World Bank's 'Ease of Doing Business' reports The UN Development Program has developed the Human Development Index, which shows the level of development and assesses the overall outcome of domestic policy. Indicators supply a powerful mechanism for policy making as they make data accessible and enjoyable. There is great confidence and pressure for the policies the data suggests. At the very least, those who disagree come under a serious burden of justification.

13. Conclusion and Recommendations

Of course, it is difficult to decide which acts of knowledge are effective enough to constitute practices of authority and therefore should be framed according to the public law paradigm . However, our theoretical framework coupled with information from the field supplies good guidance. Take the example of the OECD's PISA programme. Its impact on policy making is based both on long-term developments, such as changing attitudes towards education, and on the immediate use of survey data, for example, for fund allocation. A rough sign of the impact is media coverage after the release of a new PISA report. A more reliable indicator would be government reform projects, which could be defined as the direct or indirect results of PISA, especially if they differ from past education policies. For PISA, a large body of evidence justifies considering the publication of rankings as an exercise of public authority and therefore restructuring the legal framework according to the public law paradigm , as it concerns a particularly sensitive policy area. (“From Public International to International Public Law: Translating ...”) Which actions are practices of public international authority depends on how much they affect freedom? Where to draw the border is a matter of authority or political preference. Our theoretical framework cannot replace such judgment or choice, but it can inform it. Legal science can then offer a set of standardized tools that ease the definition of the actions of international public authority and provide them with an enforceable legal regime, thus supplying a basic level of legitimacy. This is detailed elsewhere for the OECD PISA programme. Some may think that the project of transforming world public opinion into more legitimate standard instruments of stronger multilateral institutions is too evocative of the hopes triggered by the fall of the Berlin wall. Since

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then, concepts such as state power, bilateralism, geopolitics, or realism have returned to the forefront of global politics . can be considered myopic. However, the public law approach neither suggests nor implies moving towards a harmonious world intelligently regulated by enlightened international institutions. As we mentioned at the beginning, our basic stance reflects the indecision of the world public opinion. More importantly, many international institutions, although in some ways impotent, continue to affect people's lives in many ways. The IMF, for example, is much busier than it was in the decade before the global fiscal crisis. And whatever its fate, the Transatlantic Trade and Investment Partnership negotiations show that political projects for powerful international institutions are not a relic of the past. Many people have a keen awareness of international public authority. They do not trust the policies of international institutions while calling for improvement.

14. References

Although we use 'common interests' and 'common good' as synonyms, we are aware that they are linked to different traditions of political and legal thought. See AO Hirschman, The Passions, and the Interests (1977).

Alvarez, supra note seventy-four.

Arendt, supra note 114, at 38.

cf. Avbelj, Fontanelli and Martinico, supra note eighty-eight; Kadi, supra note eighty-eight.

E. Goffman, Frame Analysis: An Essay on the Organization of Experience (1974). (“Framing the Bullfight: Aesthetics Versus Ethics”) (“Framing the Bullfight: Aesthetics Versus Ethics”)

Eg, J.-J. Rousseau, Du contrat social ou Principes du droit politique (1762), book 1, ch. VI and VII; Hegel, supra note fifteen, para. 258; Rawls, supra note eighty-three, at 35ff, 201ff. Recently, see Best and Gheciu, 'Theorizing the Public as Practices: Transformations of the Public in Historical Contexts', in J. Best and A. Gheciu (eds), The Return of the Public in Global Governance (2014) fifteen, at 32 .

Exceptions include the administrative tribunals of international organizations. In detail, see Schermers and Blokker, supra note sixty-two, at 462–467.

For a well-developed argument in this vein, see HLA Hart, The Concept of Law (1994), at 254–259. See further I.

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Venzke, 'Between Power and Persuasion: International Institutions' Authority in Making Law,' 4 Transnational Legal Theory (2013) 354; d'Aspremont, supra note forty-three, at 192–194; Friedmann, supra note sixty-seven, at 71.

I. Kant, Zum Ewigen Frieden (1795).

I. Venzke, How Interpretation Makes International Law: On Semantic Change and Normative Twists (2012), at 62–64.

Kingsbury and Donaldson, 'From Bilateralism to Publicness in International Law,' in U. Fastenrath et al. (eds), From Bilateralism to Community Interest (2011) seventy-nine, at 84. ("Lessons of Imperialism and of the Law of Nations:Alberico Gentili's ...") ("Fiduciaries of Humanity: How International Law Constitutes Authority ...")

Kumm et al., 'How Large Is the World of Global Constitutionalism?' 3 Global Constitutionalism (2014) one; M. Koskenniemi, 'Constitutionalism as Mindset: Reflections on Kantian Themes about International Law and Globalization', 8 Theoretical Inquiries 8 (2007) 9 , at 22.

Kumm, 'The Legitimacy of International Law: A Constitutionalist Framework of Analysis,' 15 EJIL (2004) 907.

Mac Amhlaigh, 'Defending the Domain of Public Law,' in C. Mac Amlaigh et al. (eds), After Public Law (2012) 103ff (about para. Six of the UK Human Rights Act, 1998, c. 42, which sets up responsibility for public entities only).

Most notably in the Administrative Procedure Act of 1946, 60 Stat. 237; see Stewart, 'The Reformation of American Administrative Law', 88 Harvard Law Review (1974–1975) 1667.

Mutatis mutandis, this idea has been applied by the International Court of Justice, in the Certain Expenses of the United Nations (Article 7, paragraph 2, of the Charter), Advisory Opinion, 20 July 1962, ICJ Reports (1962) 151. Only in cases of gravest shortcomings, the act is invalid. cf. C-275/10, Residex Capital IV CV v. Gemeente Rotterdam, [2011] ECR I-13067.

On this, see section II.A.1 above.

Readers with a background in the common law should note that this function makes the public–private distinction incredibly important in many domestic legal orders.

Regarding the psychological foundations, see Ryan and Deci, 'Intrinsic and Extrinsic Motivations: Classic Definitions and New Directions,' 25 Contemporary Educational Psychology (two thousand) fifty-four.

Rivero, 'Existe-t-il un critère du droit administratif?' 69 Revue du droit public et de la science politique en France et a l'étranger (1953) 279; Cassese, '"Le droit tout puissant et unique de la société": Paradossi del

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diritto amministrativo', 59 Rivista trimestrale di diritto pubblico (2009) 879; Kelsen, Pure Theory, supra note fifty-five, at 281ff.

Schill, 'System Building in Investment Treaty Arbitration and Lawmaking,' in A. von Bogdandy and I. Venzke (eds), International Judicial Lawmaking (2012) 133; see also A. von Bogdandy and I. Venzke, In Whose Name? A Public Law Theory of International Adjudication (2014).

See section 2.B.2 above.

See, eg, Peters, supra note seventy-seven, at 583–584. On freedom as the overarching concept of modernity, see Hegel, supra note fifteen; Berlin, 'Two Concepts of Liberty ,' in I. Berlin, Four Essays on Liberty (1969) 118; J. Rawls, A Theory of Justice (1972), para. 32; Preamble of the UN Charter: 'We the people of the United Nations determined … to promote social progress and better standards of life in larger freedom.' ("Human Rights Developments After The Second World War") ("Human Rights Developments After the Second World War") The idea of freedom brings together both public and private law. See M. Auer, Der privatrechtliche Diskurs der Moderne (2014), 15ff.

M. Foucault, Surveiller et punir. Naissance de la prison (1975), at 36.

Foucault, L'hermeneuque du sujet: Cours au Collège de France, 1981–1982 (2001), at 241–242; M. Foucault, Securité, territoire, population (1977–1978); M. Foucault, Histoire de la sexualité (1976).

Waldron, 'Public Rule of Law,' NYU School of Law, Public Law Research Paper No. 14–41 (2014), available at http://ssrn.com/abstract=2480648 (last visited 22 December 2016).

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