Seminario Internacional de Derecho Comparado: Nuevos Métodos y Desafíos Interdisciplinarios

Universidad de San Andrés
Departamento de Derecho
20 de diciembre del 2012

Este evento tendrá lugar en la Escuela de Educación de la Universidad de San Andrés en el Campus Victoria. El seminario se desarrollará enteramente en inglés.

9:00 – 9:30 a.m. Desayuno y bienvenida del Director de Posgrados del Departamento de Derecho.
Iván Reidel, Universidad de San Andrés.

9:30 –10:30 a.m. Primera sesión.
Stavros Gadinis, University of California, Berkeley.
“From Independence to Politics in Financial Regulation”

10:30 – 10:45 a.m. Coffee break.

10:45 – 11:45 p.m. Segunda sesión.
Katerina Linos, University of California, Berkeley.
“The Democratic Foundations of Policy Diffusion: An Introduction”

11:45 – 12:00 p.m. Coffee break.

12:00 – 1:00 p.m. Tercera sesión.
Holger Spamann, Harvard University.
“Normal Crime, Unusual Punishment: US Numbers in Global Comparative Perspective.”
Abstracts of presentations

Stavros Gadinis, University of California, Berkeley.
“From Independence to Politics in Financial Regulation”

Abstract:
Independent agencies have long dominated the institutional structure of financial regulation. But after the 2007-08 crisis, this Article argues, the independent agency paradigm is under attack. To monitor financial institutions more thoroughly and address future failures more effectively, the U.S. and other industrialized nations redesigned the framework of financial regulation. Post-2008 laws allocate new powers not to independent bureaucrats, but to elected politicians and their direct appointees.

To document this global paradigm shift, the Article examines the laws of fifteen key jurisdictions for international banking: the U.S., the U.K., France, Germany, Japan, Spain, Switzerland, Belgium, Ireland, Italy, Denmark, Canada, Australia, Mexico, and South Korea. This analysis points to a marked increase in the influence of elected politicians over banking. Politicians’ new powers extend not only over emergencies, but also over financial institutions’ regular operations. Politicians are now at the helm of innovative institutional arrangements, typically in the form of regulatory councils that encompass pre-existing independent agencies. In these councils, supermajority requirements and veto rights designate politicians as the ultimate decision-makers.

The Article shows how this paradigm shift resulted from the interplay of factors unique to the 2008 crisis and long run trends. The collapse of institutions in diverse areas of financial activity, including investment banks, insurance companies, and thrifts, created a sense that independent regulators as a class had failed. Concerns about regulatory capture, combined with disillusionment with the markets’ potential to self-correct, further undermined confidence in past paradigms. Developments in financial markets attracted great interest from ordinary Americans, who over the last two decades have increasingly relied on the financial system for their pension savings, housing credit, and other investments. Politicians could not remain as distant from financial regulation as in the past.

From a normative standpoint, politicians’ greater involvement in financial regulation is in line with calls for enhanced presidential control over independent agencies. Scholars have argued that the President’s stamp of approval will increase accountability and boost the legitimacy of hard choices, such as bank bailouts. However, greater political involvement might endanger financial stability, this Article argues. Electoral strategizing can influence politicians’ bailout choices, as incumbents might be particularly sensitive to upheavals as elections approach. Politicians are also under pressure from groups at ideological extremes, which often express a deep distrust to the financial system. In this climate, financial institutions are likely to lobby politicians more intensely. Thus, the risk of a financial catastrophe may now hinge upon considerations that have little to do with the health of the financial system.
Katerina Linos, University of California, Berkeley.
“*The Democratic Foundations of Policy Diffusion: An Introduction*”

Abstract:
Why do law reforms spread around the world in waves? In the dominant account of diffusion through technocracy, international networks of elites develop orthodox policy solutions and transplant these across countries without regard for the wishes of ordinary citizens. But this account overlooks a critical factor: in democracies, reforms must win the support of politicians, voters, and interest groups. This book claims that laws spread across countries in very public and politicized ways, and develops a theory of diffusion through democracy. I argue that politicians choose to follow certain international models to win domestic elections, and to persuade skeptical voters that their ideas are not radical, ill-thought-out experiments, but mainstream, tried-and-true solutions. This book shows how international models generated domestic support for health, family, and employment law reforms across rich democracies. Information that international organizations have endorsed certain reforms or that foreign countries have adopted them is valuable to voters. Public opinion experiments show that even Americans respond positively to this information. Case studies of election campaigns and legislative debates demonstrate that politicians with diverse ideologies reference international models strategically, and focus on the few international organizations and countries familiar to voters. Data on policy adoption from many rich democracies document that governments follow international organization templates and imitate the policy choices of countries heavily covered in national media and familiar to voters. The book provides a direct defense to a major criticism international organizations and networks face: that they conflict with domestic democracy. The book also explains how to design international institutions and transnational advocacy campaigns to spread laws more effectively. The introductory chapter follows.

Holger Spamann, Harvard University.
“*Normal Crime, Unusual Punishment: US Numbers in Global Comparative Perspective.*”

Abstract:
I generate out-of-sample predictions from cross-country regressions for US crime and punishment and compare them to the actual US values. Using only the variables confirmed in the data, I predict 74% of the actual US homicide rate and 98% of the actual US victimization rate from smaller common crimes, but only 15% of the actual US incarceration rate and a less-than-average probability (17%) of applying the death penalty. In sum, given US background characteristics, US crime rates look normal, while US punishment seems excessive by almost an order of magnitude. This raises the intriguing possibility that much US punishment does not actually contribute to crime control.