

HOW COUNTRIES LEARN TO TAX

Complexity, legal transplants and legal culture

25 February to 1 March 2019

AIM AND DESCRIPTION

Aim

The workshop will focus on the feasibility of the current global governance model in international law making. In this respect, the differences in legal systems and legal cultures and the different problems of developing and developed countries will be taken into account.

In order to do so, the aim of this workshop will be to set a reference and evaluation framework for legal transplants with a main focus in taxation, but also extended to other areas of law. More specifically, this workshop will use of the theory of legal transplants and legal culture for understanding global governance.

This workshop will consist of an interdisciplinary mix of law, political science, international relations, and sociology of law; the aim is to identify a proper methodology in line with legal transplant theory that can allow to study how the legal transplant and implementation of international standards set by supranational organizations takes place.

Description

Societies that cannot tax successfully cannot build the necessary infrastructure to carry out their economic and social goals. But the criteria that constitute successful taxation are often conflicting, impacted by complex socio-political, economic, and technological forces within and beyond the power of regulators to control them, which makes an analysis within the confines of a single research discipline virtually impossible.

International efforts to coordinate policies and overcome some of the barriers to successful taxation have been spearheaded by the Organization for Economic Cooperation and Development (OECD), but it remains to be seen whether these efforts can be effectively implemented across a range of differently-situated countries — and to what effect. It is difficult to imagine that a set of policy papers, authored primarily by staff working at the OECD, but drawn from high-income country tax administrations, will be able to be translated into policy action in high-, medium-, and low-income countries around the world.

To date, researchers confronting the OECD have concerned themselves primarily with their proposed set of rules, but they have been less equipped to tackle the more essential governance and administrative problems. Doing so requires a holistic, multidisciplinary inquiry into (i) how norms move among nations, adapting and evolving as they go, and (ii) what will be the likely outcome of non-harmonized policy adoption; a nuanced perspective on the motivating factors that influence adoption and adaptation of norms — from how legislative reform occurs within any country to on-the-ground problems (such as whether tax administrations have access to sophisticated computer software) — is also required.

By bringing together scholars from an array of geographical focal points, academic perspectives, and disciplines, this workshop will provide a rare opportunity for collaboration among experts with distinct but symbiotic points of departure, proposing a socio-legal research method that will seek to apply the existing comparative law theories of legal transplants and the political science theory of legitimacy to international tax law making.

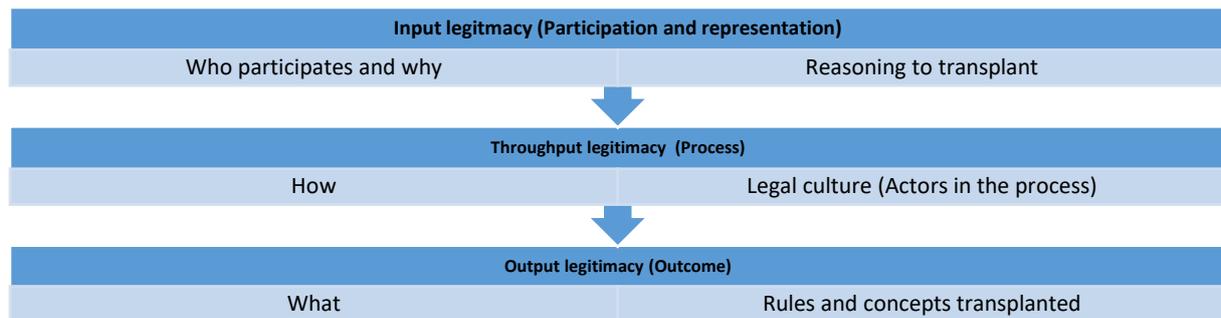
This workshop also aims to set a reference and evaluation framework for legal transplants in international taxation and, more specifically, to the use of the theories of legal transplants, legal culture, and tax culture to understand global governance.

In particular, the theory of legal and tax culture will take into account the behavior, values, and attitudes of the relevant actors (tax administration, judiciary, business, etc.) that can influence the transplantation process and the developing of tax rules.

Finally, the workshop will also consider the complexity inherent to developing an international legal order, mainly due to the differences in the legal systems and legal cultures.

Within this framework, the workshop will ultimately try to understand why countries implement the rules differently, providing enlightenment to the legitimacy of the model of global governance by answering the following questions (see figure below):

- why do countries participate (input legitimacy)?;
- how do actors influence the process (throughput legitimacy)?; and
- what are the rules that will be implemented (output legitimacy)?



PROGRAM

Organization of the week

The workshop will be organized around different topics, one for each day, accompanied by a set of cumulative drafting exercises in which the participants develop their working evaluation framework.

- Day 1 International law and theory of legal transplants: introduction of the evaluation framework for global governance
- Day 2 The importance of legal culture in international law making
- Day 3 Comparative experiences and multidisciplinary approaches for understanding the implementation of international standards
- Day 4 Legitimacy in international law making
- Day 5 What did we learn? Legal transplants and legal culture in the international law field

Venue

Leiden University

Lorentz Center@Snellius

2nd Floor Snellius Building, Niels Bohrweg 1, 2333 CA Leiden

Time table

Day 1 - International tax law and theory of legal transplants: an introduction of the evaluation framework for global governance

Arrival & registration 9:30 to 10:00

Morning: 10:00 to 12:30 (150 min)

- Introduction to the Lorentz center (15 min)
- Introduction to the workshop (15 min)

- Introducing legal transplants: Irma Mosquera (30 min)
- Coffee break (20 min)
- Setting up of the small groups and small group discussions (40 min)
- Plenary discussion (30 min)

Lunch 12:30 to 14:30

Afternoon: 14:30 to 17:00 (150 min)

- An historical perspective of legal transplants (Assaf Likhovski) (25 min)
- Legal transplants in comparative (private) law research (Jan Smits) (25 min)
- Coffee break (30 min)
- Setting up of the small groups and small group discussions: (30 min)
- Plenary discussion (30 min)
- Main conclusions and closing of the day (10 min)

Wine & cheese 17:00 to 18:00

Day 2 - The importance of legal culture in international law making

Morning: 9:30 to 12:30 (180 min)

- Introduction to the second day (10 min)
- Revisiting trajectories of tax reform (Miranda Stewart) (25 min)
- The theory of legal culture: Experiences in comparative tax research (Allison Christians) 25 min)
- Coffee break (30 min)
- Methods for ascertaining the impact of context in the legal transplant of new rules (Omri Marian) (25 min)
- Setting up of the small groups and small groups discussion. (45 min)
- Plenary discussion (20 min)

Lunch 12:30 to 14:30

Afternoon: 14:30 to 17:00 (150 min)

- Presentation case studies (20 min).
- Setting up of the small groups and small groups discussion of case studies. (50 min)
- Coffee break (30 min)
- Small groups session cont. (20 min)
- Plenary discussion (20 min)
- Main conclusions and closing of the day (10 min)

Day 3 Comparative experiences and multidisciplinary approaches for understanding the implementation of international tax standards

Morning: 9:30 to 12:30 (180 min)

- Introduction to the third day (15 min)
- Comparative legal research experiences:

- Tax law perspective (Kim Brooks) (25 min)
- Accounting law perspective (Kerrie Sadiq) (25 min)
- Coffee break (30 min)
- Setting up of the small groups and small groups discussion. (30 min)
- Plenary discussion (30 min)
- How to trace and measure legal diffusion processes based on the work on international economic treaties? (Wolfgang Alschner) (25 min)

Lunch 12:30 to 14:30

Afternoon: 14:30 to 17:30 (150 min)

- Explanation of methodology for the afternoon sessions (20 min)
- Setting up of the small groups and small groups discussion. To draft a framework for the analysis of legal transplants (60 min)
- Coffee break (30 min)
- Plenary discussion (30 min)
- Main conclusions and closing of the day (10 min)

Dinner (boat trip) 18:00 to 22:00

Day 4 Legitimacy in international tax law making

Morning: 9:30 to 12:30 (180 min)

- Introduction to the fourth day (10 min)
- Considerations of global justice, domestic distributive justice and legitimacy (Tsilly Dagan) (25 min).
- Coffee break: (30 min)
- Setting up of the small groups and small groups discussion. (40 min)
- Plenary discussion (25 min)
- Exchange of experiences: (2 PhDs students (names t.b.a.) to address their experiences in carrying out comparative legal research. (50 min – 15 minutes with 10 minutes for questions per PhD).

Lunch 12:30 to 14:30

Afternoon: 14:30 to 17:00 (150 min)

- Setting up of the small groups and small groups discussion. (40 min)
- Plenary discussion (20 min)
- Coffee break (30 min)
- Exchange of experiences: (2 PhDs students (names t.b.a.) to address their experiences in carrying out comparative legal research. (45 min – 15 minutes with 10 minutes for questions per PhD).
- Main conclusions and closing of the day (15 min)

Day 5 Conclusions: Legal transplants in the international tax law field

Morning: 9:30 to 12:30 (180 min)

- Introduction to the fifth day (15 min)
- The model for an evaluation framework: plenary discussion on the outcome of the small group workshops (75 min)
- Coffee break (30 min)
- Small groups discussion further cooperation and research (60 min)

Lunch 12:30 to 13:30

Afternoon: 13:30 to 15:30 (120 min)

- Main proposals for further cooperation and synergies: plenary discussion on the outcome of the small group workshops (60 min)
- Coffee break (30 min)
- Close workshop (30 min)

Literature list

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