

Legitimate Aims and Ulterior Purposes in International Human Rights Law

Berlin, 2 June 2023

CALL FOR PAPERS

International human rights law ('IHRL') requires that states respect their international commitments. Restrictions in human rights are generally not permitted if they do not have a legitimate aim. However, the question of how to distinguish legitimate from illegitimate aims has tended to stay in the background of human rights jurisprudence and theory until relatively recently. This workshop aims to explore this issue in light of recent global jurisprudential developments, in particular those of the European Court of Human Rights, and the pressing contemporary challenges to democracy and the rule of law.

A central question when it comes to the establishment of qualified human rights violations is whether states' acts or omissions pursue a legitimate aim when restricting rights. However, in practice, the assessment of legitimate aims is often overshadowed by the questions of whether restrictions meet the requirements of proportionality. Yet, understanding the legitimacy of state aims is a key prior question, raising significant questions of political and democratic theory, as well as legal doctrine. In the past two decades, human rights adjudicators, the European Court of Human Rights in particular, has introduced deeper scrutiny into the legitimate aims, asking whether rights restrictions pursue ulterior purposes, that is, purposes, either by their nature are solely illegitimate or are predominant where a plurality of purposes are pursued. IHRL courts and bodies have also demonstrated increased scepticism in respect of the legitimate aims proclaimed by states in certain contexts, sometimes finding violations of human rights solely due to the illegitimacy of the aims pursued.

A deeper assessment of legitimate aims and ulterior purposes is timely for the both the theory and practice of human rights. Many states, democratic and authoritarian, assert expansive legitimate aims when they pursue rights restrictions. Some of these aims are overbroad and preclude appropriate scrutiny of official action. They may also conceal ulterior purposes, such as seeking to silence government critics, or moves to restructure rights and institutions for party-political or private economic benefit.

Against this backdrop, this research workshop, co-organised by the Centre for Fundamental Rights at the Hertie School, PluriCourts at the University of Oslo and the Academy for European Human Rights Protection at the University of Cologne invites paper submissions that analyse the demarcation of legitimate aims and/or ulterior purposes in contemporary IHRL.

We welcome papers that employ normative, doctrinal, critical or social science methods. We also particularly welcome papers that employ comparative methods drawing on public or human rights law, and other fields of law (public or private) to analyse legitimate aims and/or ulterior purposes, as well as papers that draw on political and democratic theory.

Suggested paper themes include:

- Doctrinal and normative demarcation of specific legitimate aims in respect of specific rights in IHRL;

- Reflections on those fields where legitimate aims tend to be broadly construed (such as national security, migration control);
- Doctrinal and normative tools to identify ulterior purposes in respect of specific rights in IHRL;
- Comparisons across regional and global human rights regimes on legitimate aims and/or ulterior purposes;
- Comparisons with other areas of international law where states' legitimate aims may permit restrictions or exceptions, such as international trade or international investment arbitration;
- Theoretical reflections on the relationship between democracy, the rule of law and legitimate aims and/or ulterior purposes;
- Papers tracing the interactions between the margin of appreciation doctrine, legitimate aims and/or ulterior purposes;
- The legitimacy of legitimate aim and ulterior purpose analysis by IHRL courts and bodies.

Submissions

The workshop is open to both established and early-career scholars and practitioners, including advanced PhD students. It welcomes submissions from researchers of human rights law and fundamental rights as well as inter-disciplinary researchers, encompassing political philosophy, political science, sociology and anthropology.

Interested participants should provide an abstract in Word format of no more than 500 words. Together with their abstracts, in the same Word document, applicants should provide the following information: name, affiliation, the title of the proposed paper and an email address. Interested participants should also indicate whether they are able to present in person in Berlin.

To submit an abstract please email fundamentalrights@hertie-school.org by **15 February 2023** with the heading 'Submission Legitimate Aims and Ulterior Purposes Workshop'.

Work already published, or under review for publication, is not eligible for submission. Speakers will be informed of the acceptance of their proposals by **1 March 2023** and will be required to submit a draft paper by **19 May 2022**. Papers may be between 5,000 and 7,000 words, excluding references.

Workshop Format

In principle, the one-day workshop shall be held in person at the Hertie School on **2 June 2023**. However, the workshop may be made hybrid to accommodate presenters online at the sole discretion of the organisers. Each paper will receive comments and feedback from senior academics as well as other workshop participants, who are expected to have read each other's papers in advance.

The organisers will cover meals for all invited paper presenters. We request that those who are invited use their own funds for travel and accommodation. The workshop has limited funds to support the attendance of early career researchers, in particular those from the Global South.