



THE INTERNATIONAL INSTITUTE OF SOCIAL STUDIES OF ERASMUS UNIVERSITY ROTTERDAM AND UTRECHT UNIVERSITY WILL ALTERNATELY APPOINT AN OUTSTANDING YOUNG ACADEMIC FROM A DEVELOPING COUNTRY TO THE PRINCE CLAUS CHAIR, FOR THE ADVANCEMENT OF RESEARCH AND TEACHING IN THE FIELD OF DEVELOPMENT AND EQUITY.

PRINCE CLAUS CHAIR ANNUAL REPORT

2015

## FOREWORD

Having succeeded Her Majesty Queen Máxima of the Netherlands in the spring of 2014, this has been my first full year as chair of the Prince Claus Curatorium. And what a year it has been! It is really inspiring to witness the Prince Claus Chair developing into an established organisation and to see its influence reach farther and wider. Needless to say, none of this would have happened without the unflagging zeal of our talented chair holders past and present, the members of the Curatorium, and, last but not least, our patron, Queen Máxima.

Thirteen years into its existence, the Prince Claus Chair has entered a new phase. Not only have we had the privilege of welcoming foreign scientists from a wider variety of research areas, we have also been able to involve a broader range of researchers from the Netherlands. In doing so, we have been able to forge cross-cultural and cross-disciplinary relationships. Our chair holders have been put in touch with colleagues from around the world and a substantial number of them still remain in close contact with each other. This touches the essence of what the Prince Claus Chair

is about: the exchange of experience and expertise across borders to promote development and equity.

If I were pressed to choose one event that struck me most this year, it would have to be the inaugural lecture in May of our chair holder, Professor Javier Couso from Chile. His address impressed me in more than one way. First of all, of course, there was the lecture itself. As a specialist in the field of sociology of law and comparative law, Couso spoke about the importance of judicial independence for the protection of human rights in Latin America. To provide an illustration he examined the disappearance, in September 2014, of forty-three Mexican students. The students were probably murdered and, sadly, the possibility cannot be ruled out that besides drug dealers, the perpetrators include local authorities. The case, Couso argued, is a striking example of what can happen when countries mix democracy with the (dis)rule of law. Furthermore, I am sure I was not the only one to be touched by Couso's words of gratitude to his Chilean-born wife. She grew up as a political refugee in the Netherlands

and introduced him to the very country where now, so many years later, he is based as a researcher. Full circle, indeed.

On the topic of our chair holders, I have had the honour of becoming acquainted with the next holder of the Prince Claus Chair, Professor Saradindu Bhaduri. It was fitting that we spoke using the video chat service Skype, a perhaps humble but certainly handy piece of technology. Based at the Centre for Studies in Science Policy of Jawaharlal Nehru University in New Delhi, Professor Bhaduri focuses on frugal innovation. Innovation, in other words, by and for the economically challenged. It is a field that is fully in line with the aims of the Prince Claus Chair. In our view, it is not so much technology itself that brings innovation, but rather technology that is accepted by, and embedded in, a community. We are following the progress of Professor Bhaduri's invaluable research with great interest.

For the first time we have appointed a search committee to look for an academic from the field of pharmacology to be considered as holder of the Prince Claus Chair. While this



may not be a traditional choice, it serves as evidence of the progress our organisation has made. It is part of an increasingly diversified approach towards a world in which all citizens can improve their lives and enjoy equal opportunities. I would like to thank our chair holders for their continued efforts in achieving this important goal.

### **Professor Louise J. Gunning-Schepers**

Chair of the Curatorium

Professor Louise J. Gunning-Schepers is Professor of Health and Society at the University of Amsterdam. Her position as chair of the Curatorium is in a personal capacity.

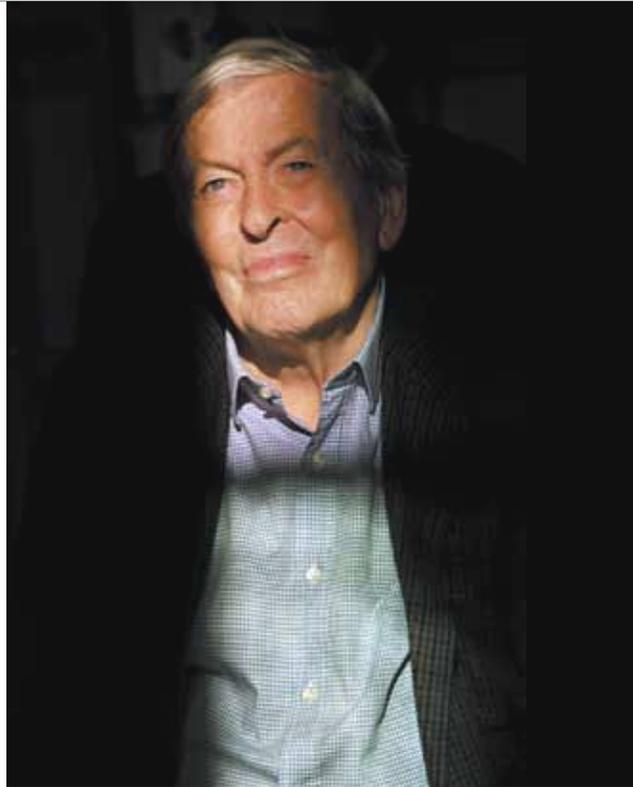
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## OBJECTIVES OF THE PRINCE CLAUS CHAIR

To continue the work of His Royal Highness Prince Claus of the Netherlands (1926-2002) in development and equity, by establishing a rotating Academic Chair.

Since the Chair was established in December 2002, Utrecht University and the International Institute of Social Studies of Erasmus University Rotterdam have alternately appointed an outstanding young academic from a developing country to the Prince Claus Chair. The objective is to advance research and teaching in the field of development and equity. Candidates for the Chair are nominated by a Curatorium, under the chairmanship of Professor Louise J. Gunning-Schepers.



## PRINCE CLAUS, THE INSPIRATION FOR THE CHAIR

His Royal Highness Prince Claus of the Netherlands was strongly committed to development and equity in North-South relations. Through his work, his travels and his personal contacts, he gained a deep understanding of the opportunities for, and the obstacles facing equitable development. He was tireless in his work for development and equity throughout the world, bringing people together to solve problems and make the most of opportunities. His knowledge, his accessibility and his personality all made an important contribution to his work. As a result, he was – and remains – a source of inspiration to many.

In 1988, Prince Claus received an Honorary Fellowship from the International Institute of Social Studies (ISS) 'in recognition of his continued insistence on the importance of reducing the differences between the rich and the poor in national and international fora, while emphasising the human dimension of this process and not only that of international policy and strategy.' At the official ceremony for the award of the Fellowship, Prince Claus gave an acceptance speech stating his views on development and equity in the form of 23 propositions.

The establishment of the Prince Claus Chair attests to the deep respect and appreciation of the academic community of Utrecht University and the ISS for Prince Claus as a person, for his work, and for his commitment to and authority in the field of development and equity throughout the world.

Prince Claus was born Claus von Amsberg in 1926, in Dötzingen (Hitzacker), Niedersachsen. He studied at the University of Hamburg in the Faculty of Law and Political Science (1948-1956), after which he worked at the German embassy to the Dominican Republic and as Chargé d'Affaires to the Republic of the Ivory Coast. From 1963 to 1965, he worked at the Ministry of Foreign Affairs in Bonn, in the Department of African Economic Relations.

After his marriage to Her Royal Highness Princess Beatrix of the Netherlands in 1966, Prince Claus focused his efforts on development cooperation. He was appointed as a member of the National Advisory Council for Development Cooperation (Nationale Adviesraad voor Ontwikkelings-samenwerking, NAR). In addition, he was Chair of the National Committee for Development Strategy (Nationale Commissie voor de Ontwikkelingsstrategie), a position he held from 1970 to 1980, and Special Advisor to the Minister of Development Cooperation. In 1984, he was appointed Inspector General of Development Cooperation. To commemorate the Prince's 70th birthday, the Dutch government established the Prince Claus Fund for Culture and Development (Prins Claus Fonds voor Cultuur en Ontwikkeling), of which Prince Claus was Honorary Chair. The objective of the Fund is to increase cultural awareness and promote development.



### **Queen Máxima of the Netherlands**

Her Majesty Queen Máxima served as the first chair of the Curatorium of the Prince Claus Chair from when it was founded in 2003. In May 2014 she symbolically handed over an African chief's staff to the incoming chair, Professor Louise J. Gunning-Schepers, and graciously agreed to assume the role of Patron. As Patron, Queen Máxima remains associated with, and deeply committed to, the work of the Prince Claus Chair on issues of development and equity.

“PROFESSOR COUSO IS MAKING AN IMPORTANT CONTRIBUTION TO ANSWERING THE QUESTION OF WHY SOME COUNTRIES SUCCEED IN MAKING THE TRANSITION TO DEMOCRACY, WHILE OTHERS DO NOT”



Bas van Bavel is Professor in Transitions of Economy and Society at Utrecht University and Chair of the Prince Claus Chair Search Committee 2014-2016.

“The Search Committee welcomed the appointment of Javier Couso as chair holder. His research is very much in line with the aims of the Prince Claus Chair in terms of development and equity. Couso’s research is making an important contribution to answering the question of why some countries succeed in making the transition from dictatorship to democracy, while others do not. He takes an original approach by focusing his analysis on countries’ judicial systems. The transition to democracy is only possible, according to Couso, when the judicial system of a country changes with it. For instance, courts and lawyers must be able to work independently. With this insight, countries that are making the transition from dictatorship to democracy will, in future, have a greater chance of success.

Professor Couso not only shares his findings with other academics, but ensures that his research gains acceptance in society at large. He regularly writes articles that are accessible to a wider audience and is deeply involved in public debate in Latin America. He also brings his research to the attention of civil-society organisations. In this way, the public at large can use the insights that his work reveals.”



## PROFESSOR JAVIER ANDRES COUSO SALAS

### CHAIR HOLDER 2014-2016

Professor Javier Couso is Professor and Director of the Constitutional Law programme at the Universidad Diego Portales in Santiago, Chile. He was also appointed by the Chilean President Michelle Bachelet as a member of the advisory group set up to evaluate Chilean anti-terrorist legislation. Professor Couso is a specialist in the field of sociology of law and comparative constitutional law, and was appointed by Utrecht University as holder of the Prince Claus Chair 2014-2016 because of his extensive and important work in this area of research. Professor Couso gave his inaugural address at the University Hall in Utrecht on 18 May 2015, in the presence of Her Majesty Queen Máxima, members of the Curatorium of the Prince Claus Chair and many distinguished guests.



## SINE QUA NON: ON THE ROLE OF JUDICIAL INDEPENDENCE FOR THE PROTECTION OF HUMAN RIGHTS IN LATIN AMERICA



### ABSTRACT OF THE INAUGURAL LECTURE

One aspect of the implementation of human rights is often taken for granted in the Global North, while it represents a crucial variable in the promotion and protection of fundamental rights: judicial independence from government. This achievement became entrenched in consolidated constitutional democracies over a century ago, thanks to the combined efforts of bar associations, law schools, and social movements. The emergence of independent courts eventually led to the consolidation of a system of governance known as the rule of law. At its core, this meant that even the sovereign was bound to respect the very laws it enacted – at least until they were amended. It was not much, since the laws introduced by the sovereign could be unjust, but it provided an unprecedented degree of individual freedom and security in what at the time was the era of absolute monarchies. Eventually, the rule of law opened the way to democratic rule.

The challenge facing the bulk of the ‘Global South’ is that universal suffrage was introduced before the rule of law and constitutionalism were in place, leading to what Guillermo O’Donnell labelled ‘delegative democracies’; that is to say, countries where, after being elected by the population, the rulers govern without any limits that could protect the people from abuses of their power. What is missing, O’Donnell argued, are institutions – such as independent courts – providing ‘horizontal accountability’, that is to say, mechanisms that check the exercise of political authority in the period between elections. Unfortunately, this scenario frequently occurs in Latin America, where courts are often controlled by the

government. Furthermore, the lack of judicial independence has contributed to the emergence of what I have labelled ‘mass-killing democracies’, that is, political regimes that hold regular elections but then engage in the systematic violation of the most basic human rights of their people with impunity.

The astonishing reality of mass-killing democracies is beyond anything that could have been imagined at the end of the authoritarian regimes that once ruled most of Latin America (after all, state-perpetrated murder was typically the stuff of dictatorships, not of democracies), but we have to face this unforeseen reality straightforwardly, if we want to start doing something to put an end to this intolerable situation. This explains why students of democratic transition and consolidation have come to the conclusion that democratic elections ought to be accompanied by the institutions associated with the rule of law and constitutionalism (such as independent courts, separation of powers, respect for fundamental rights, and so on).

In this context, there has been significant international cooperation aimed at attempting to introduce constitutionalism and the rule of law into new democracies. And, of course, judicial independence has figured prominently in those efforts. The problem, however, is that – compared with introducing elections – constructing a working rule of law represents an extremely difficult proposition. Indeed, it is much easier to prescribe democratic elections than to introduce a culture of legality and, in particular, to establish courts that are truly independent of political power. In fact, whereas introducing universal

suffrage is a relatively mechanical task, achieving the rule of law represents a true 'cultural achievement'. As anthropologists, sociologists and historians know, cultural change is extremely hard to achieve. It is therefore important that human rights' scholars working in the Global South pay more attention to the constitutional structures of new democracies.

## PERSONAL PROFILE

Professor Couso's research in the field of the sociology of law and comparative law focuses on constitutional issues in Latin American countries including Chile, Mexico, Nicaragua and Peru. His areas of interest include judicial independence and human rights. Professor Couso's research spans various disciplines, including law, political science, sociology and history, making him ideally suited to the multidimensional approach to major issues pursued at Utrecht University.

## CURRENT POSITIONS

**August 2015 - to date**  
Advisor to Minister Marcelo Díaz, Ministerio Secretaría General de Gobierno (Chile), on the process of deliberation on a New Constitution.

**July 2015 - to date**  
Associate member of the 'International Academy of Comparative Law' (IACL), founded in 1924 in The Hague. The International Academy of Comparative

Law is the most important scientific association of comparative law in the world.

**July 2015 - to date**  
Member of the International Panel on Social Progress (IPSP), an initiative led by Nobel Prize winner Amartya Sen, which has assembled 200 authors to deliver a report addressed to all social actors, movements, organisations, politicians and decision-makers, in order to provide them with the best expertise on questions that have a bearing on social change.

**May 2001 - to date**  
Professor and Director of the Constitutional Law programme at the Universidad Diego Portales in Santiago, Chile.

## PREVIOUS POSITIONS

**May 2014**  
Visiting Professor, University of Melbourne (Australia).

**February 2013**  
Visiting Professor, University of Leiden (The Netherlands)

**August 2006 - February 2007**  
Visiting Professor, University of Wisconsin-Madison (USA)

**October 1990 - August 1994**  
Advisor to Minister Alejandro Foxley, Ministerio de Hacienda (Chile), on constitutional and legislative matters.



## EDUCATIONAL BACKGROUND

**2002**  
Ph.D. in Jurisprudence and Social Policy, University of California-Berkeley (USA)

**1997**  
M.A. in Jurisprudence and Social Policy, University of California-Berkeley (USA)

**1990**  
J.D. at Pontificia Universidad Católica (Chile)

## ACTIVITIES AS HOLDER OF THE CHAIR SPEECHES, LECTURES, PANELS, WORKSHOPS

Since his appointment as chair holder, Professor Couso has lectured and addressed audiences at various universities. Below is a selection of his activities.

**3 December 2015**  
Gave the lecture 'Back to the Future? The return of the 'principle of non-intervention with the internal affairs of the sovereign states' in Latin America's radical constitutionalism' at the Montaigne Centre for Judicial Administration and Conflict Resolution, Utrecht University School of Law in the Netherlands.

22 October 2015

Delivered the lecture 'Social and Economic Rights: A Latin American Perspective' at the conference 'Common Grounds- New Zealand & America Latina', at Victoria University in Wellington in New Zealand.

7 October 2015

Delivered the lecture 'Adjudicatory Autonomy in New Democracies: Understanding the Determinants of Independent Institutions of Accountability' for the 'Institutions' Research Group on Citizens, Trust and Democracy', Utrecht University in the Netherlands.

18 May 2015

Gave his inaugural lecture 'Sine qua non: on the role of judicial independence for the protection of human rights in Latin America' at Utrecht University in the Netherlands.

25 April 2015

Gave the panel presentation 'How do Constitutions Succeed? A view from Latin America' at the conference 'Defining and Assessing Constitutional Performance' at the University of Chicago Law School, Chicago in the United States.

25 March 2015

Delivered the lecture 'The road less travelled: Historical challenges for the consolidation of constitutionalism and the rule of law in Latin America' at the Centre for International Studies (UCIS), Utrecht University in the Netherlands.

17 March 2015

Delivered the lecture 'The judicialization of politics: Concept, normative implications,



and overview of its global impact' at CERES, Utrecht in the Netherlands.

16 March 2015

Delivered the lecture 'The pros and cons of the judicialization of human rights law and policy' at the Constitutional Law Seminar, Leiden University Law School in the Netherlands.

22 January 2015

Delivered the lecture 'Inclusive approaches to the European Union's human rights, democracy and rule of law' at the symposium 'Fostering Human Rights among European Policies' (FRAME), at the Netherlands Institute of Human Rights (SIM), Utrecht University in the Netherlands.

#### PUBLICATIONS

Professor Couso has continued to submit papers to specialist journals and publish widely since his appointment as chair holder. Below is a selection of his publications.



25 March 2015, Professor Couso at the Centre for International Studies (UCIS), Utrecht University

- 'Latin-American Legal Systems' in James D. Wright (editor-in-chief), *International Encyclopaedia of the Social & Behavioral Sciences*, 2nd edition, Vol 13 (Oxford: Elsevier), pp. 410-413.
- 'Sine Qua Non: On the Role of Judicial Independence for the Protection of Human Rights in Latin America', *The Netherlands Quarterly of Human Rights*, Vol. 33, N° 2, pp.: 251-258.
- 'La solución constitucional. Una aproximación desde la sociología constitucional' in Fuentes and Joignant eds., *La solución constitucional. Plebiscitos, asambleas, congresos, sorteos y mecanismos híbridos* (Catalonia, Santiago de Chile, 2015).
- 'La demanda de una Nueva Constitución para Chile: hacia una democracia plenamente soberana' in *Aportes para una reforma constitucional* (Clapes UC, 2015).

- 'La implementación de las decisiones del Sistema Interamericano de Derechos Humanos: Ensayo de un balance' in *Revista de Derecho Universidad Católica del Norte*, Vol. 22, N° 2.

#### KNOWLEDGE BUILDING AND SHARING

1-2 December 2015

Organised the international conference 'Institutional and Socio-Political Determinants of Judicial Independence in Latin America', which took place at Utrecht University School of Law, with the participation of distinguished specialists from the Netherlands, Italy, United Kingdom, Norway, Spain and Argentina.

31 May 2015

Organised the roundtable 'Comparative Constitutional Theory' at the annual conference of the Law and Society Association (LSA), Seattle in the United States.



18 June 2015, Professor Couso at the valedictory lecture of Professor Leo de Haan, Rector ISS

### 28-31 May 2015

Co-chaired the annual meeting of the Law and Society Association (LSA) in Seattle in the United States, a meeting attended by over 2,000 socio-legal scholars from around the world.

### CONTRIBUTION TO THE ACADEMIC ACTIVITIES AT UTRECHT UNIVERSITY AND ELSEWHERE

In 2015, the Prince Claus Chair allowed Professor Couso to start building an inter-disciplinary and inter-institutional network of scholars and practitioners with expertise relevant to the issue of judicial independence in new democracies. This allowed him to broaden his intellectual perspective on the issue at the core of his current research involving the institutional and socio-political determinants in the new democracies of Latin America.

In addition, the many invitations Professor Couso received to give lectures and presentations allowed him to share his research on constitutionalism and the

judiciary in Latin America with Dutch and international scholars working or studying in the Netherlands. For example, at Leiden University Law School, the Montaigne Center at Utrecht University, the institutions' network of Utrecht University and CERES.

### NETWORKING AND PARTNERSHIPS

While at Utrecht, Professor Couso made a special effort to start building a network of scholars and organisations that will allow him to further his research in an effective way.

- Professor Couso is involved with the Institutions for Open Societies network of Utrecht University. This inter-disciplinary group of scholars works in one of the strategic themes that the university has set up to conduct further research on key topics of societal and global interest. Professor Couso has also developed a network with public law scholars at Leiden University School of Law. He first became acquainted with

Dean Rick Lawson, who then introduced him to professors Titia Loenen and Jerfi Uzman. This led to an invitation to lecture at Leiden and, eventually, to the active participation of Loenen and Uzman at the international conference Professor Couso organised in December in Utrecht.

- The United Nations' Special Rapporteur on the Independence of Judges and Lawyers, Mónica Pinto, sent her research assistant to the international conference on judicial independence in Latin America that Professor Couso organised in December. She has indicated that she is more than willing to become involved on an ongoing basis in the research on judicial independence in Latin America.
- Professor Couso is also working with the Dutch office of International IDEA, an international organisation which specializes in constitution-building processes (a theme in which judicial independence is key). The director, Sumit Birsaya, has been in constant touch with Professor Couso throughout 2015.
- Professor Couso is in close contact with an excellent group of law professors working in the Utrecht University School of Law, particularly at the Netherlands Institute for Human Rights (SIM) and in the area of public law. Aside from his host at SIM, Antoine Buyse, Professor Couso was fortunate to have long conversations with Professor Bas de Gaay Fortman,

as well as with Professors Ton Hal, Henk Kummeling and many others. They were all very willing to engage in academic discussions and to take part in interdisciplinary meetings with colleagues from the social sciences.

### NWO - WOTRO

Professor Javier Couso has received financial support from WOTRO, an organisation that supports scientific research on development issues, in particular poverty alleviation and sustainable development. Its scope includes all low and middle-income countries. WOTRO is a division within the Netherlands Organisation for Scientific Research (NWO). WOTRO receives funding for its activities from the Dutch Ministry of Foreign Affairs.

The WOTRO funding has enabled Utrecht University to finance a research assistant, Stefanie Lemke, for Professor Couso. Stefanie supports the professor in the preparation and performance of his various activities, including outreach and drawing up research proposals.

The support from WOTRO represents an important contribution towards the expansion and broadening of the Prince Claus Chair. The Curatorium is delighted with the continued support of WOTRO and the role it plays in helping to achieve the aims of the Prince Claus Chair.

“I AM MOST GRATEFUL AND PROUD TO CONTRIBUTE TO JUSTICE AND SOCIAL CHANGE IN THE WORLD THROUGH THIS UNIQUE PROJECT”



Stefanie Lemke is a postdoctoral researcher working with Professor Javier Couso. She is based at the Netherlands Institute of Human Rights (SIM), School of Law, Utrecht University.

“Together with Professor Couso, I explore why some countries in transition, especially Latin American countries, have managed to consolidate independent judiciaries and to hold former military rulers accountable for their past human rights’ abuses, while others have not. We collaborate with a wide range of leading scholars and practitioners working in this often complex discipline, including the UN Special Rapporteur on the Independence of Judges and Lawyers. For instance, in December we invited sociologists, political scientists, lawyers and anthropologists from around the globe to Utrecht University to discuss the challenges judiciaries face in Latin America and beyond.

Our research can help to further equity in the world. Courts, as institutions of accountability, can make a significant contribution to the protection of human rights and to social change. In Latin America, however, the degree of judicial independence varies greatly from one country to another. In some countries, members of the judiciary are continuously threatened by political authorities and other external influences, if they do not align themselves with the latter’s policies. In the past decade, many governments of the region have increased their influence on the outcomes of a trial, for example by politicising the appointment, promotion and impeachment of judges. Thus, a judge who opposes a policy of the ruling party has to fear being removed from the bench. As a result, a court is less likely to hold the government accountable for its wrongdoings – and to deliver justice.”



## "AN INDEPENDENT JUDICIARY IN LATIN AMERICA IS NOT AN ILLUSION, BUT NOR IS IT A REALITY"

### INTERNATIONAL WORKSHOP

Judicial independence in Latin America is not an issue that only interests lawyers. Professor Javier Couso recently organised a workshop that was also attended by anthropologists and political scientists, describing it as "a unique opportunity to explore the subject from a number of different angles."

### Serious legal and moral crisis

In the shadow of the Domtoren of the city's cathedral, a group of Latin American and European researchers gathered in the Toon Peterszaal of the University of Utrecht to discuss the institutional and socio-political determinants of judicial independence in Latin America. Professor Javier Couso was at pains to emphasise the exceptional nature of the assembled group. "Discussion of the independence of the judiciary is generally confined to lawyers," said the Chilean holder of the Prince Claus Chair, himself a lawyer. "Once in a blue moon, the issue is raised by political scientists, but almost never by anthropologists. However, although it is, in essence, a legal question, the independence or otherwise of the judiciary cannot be explained by legal factors alone. What makes this workshop so interesting is that we can also examine the role of cultural and political aspects."



Professor Wil Pansters immediately set the tone of the workshop. Taking his listeners to Mexico, Pansters described the fundamental freedoms underpinning the Central-American state from a social and cultural anthropological perspective, rather than in terms of legal precepts. “The majority of ordinary Mexicans feel that democracy and fundamental freedoms are out of reach,” he said. Pansters sketched a country in a serious legal and moral crisis, in which the state is not able to protect its citizens, and may even be the cause of violence and fear. “Politics and society in Mexico are organised by the logic and law of the ‘informal order’, an informal exchange of goods and favours between friends and relatives, including preferential treatment in administrative procedures and legal proceedings.” Pansters acknowledged the contradiction between this ‘informal order’ and the workings of a state founded on respect for the principles of democracy and human rights, which he described (in the words of Peruvian politician Oscar de Benavides) as: “For my friends, everything; for my enemies, the law.”

In that context, Pansters presented the example of a group of Mexican citizens who organise so-called ‘citizen trials’: civilised, non-violent proceedings in which suspects are symbolically tried in absentia. Using these alternative tribunals, which follow the rituals of official legal procedure, citizens focus attention on particular issues in an attempt to prompt the formal judiciary to take note and bring those matters to trial.

Luis Pásara, of the Universidad de Salamanca in Spain, took up where Pansters left off by



wondering out loud what an independent judiciary might amount to in Latin America. His own answer: “Not a lot.” After describing the recent history of the judiciary in Central and South America, where it was commonplace for dictators to force courts to comply by threatening them with dismissal, Pásara remarked that “The elected governments that later replaced the dictators showed the same tendency to influence judges whenever it suited them.”

“WHAT AN INDEPENDENT  
JUDICIARY MIGHT AMOUNT  
TO IN LATIN AMERICA?  
NOT A LOT”

That had to change, and the means chosen to accomplish that was to transfer responsibility for appointing and evaluating judges from politicians and the Supreme Court to so-called ‘councils of the judiciary’. However, although these councils have definitely had a positive

effect, judges who oppose those in power can still be removed from office swiftly and ruthlessly. And, as Pásara concluded, “An independent judiciary in Latin America is not an illusion, but nor is it a reality.”

**Manipulation of the Supreme Court**

Andrea Castagnola, an assistant professor at the Latin American Faculty of Social Sciences (FLACSO) in Mexico and a post-doctoral researcher in comparative politics at the University of Bergen in Norway, narrowed the focus to Argentina. “Manipulation of the Supreme Court has been the order of the day there for over 80 years. It is striking that it is not just military dictatorships, but also democratically-elected governments that have been guilty of it.” Castagnola is primarily interested in the question of where such manipulation has its roots, why it is still such a persistent problem, and what form it takes.

“It is important for politicians to have high-ranking judges on their side, as those judges can determine their fate, for instance by permitting or forbidding their re-election and admitting or barring specific

candidates,” said Castagnola. “It is relatively easy for politicians in developing countries to influence judges since the political and social consequences are negligible.” Castagnola referred to the distinction between ‘natural retirement’ (due to age or death) and ‘political retirement’ (due to causes such as regime change, dismissal or the threat of being dismissed) and mentioned that since 1900, 40% of judges in Argentina have resigned for natural reasons and 60% for political reasons.

Castagnola described manipulation of the Supreme Court as a self-reinforcing process. The reasoning behind that is surprisingly simple. Once a decision has been taken, the same decision is more likely to be taken the next time. “In the case of Argentina, the greater the level of political manipulation of the judicial system in the past, the greater the chance of manipulation in the future.”

Pilar Domingo, a research fellow at the Overseas Development Institute in the UK, and Elin Skaar, a senior researcher and political scientist at the Chr. Michelsen Institute in Norway, shared their thoughts on the presence of women on the bench in Latin American courts. They regard gender as an important consideration in any discussion of the institutional and socio-political conditions for judicial independence in Latin America. Domingo and Skaar noted that there has not been sufficient research into the role of women in the judiciary and proposed a research agenda on the experience, role and impact of women judges. Domingo: “Observing the experience and conduct of women judges in their role of adjudication allows us to ask questions about

whether, and if so how, changes in the make-up of the bench (for instance through more gender equality) result in altered perceptions about the inclusivity of judicial conduct, or affect the direction of rulings.” It would also encourage reflection on the complexity of the principle of judicial independence. To the extent that improved gender equality on the bench is an indicator of greater inclusivity, does that alter the nature and direction of judicial decisions? If so, what does that tell us about judicial independence, and the socio-normative influences that life experiences bring to judicial reasoning?

“IN ARGENTINA,  
MANIPULATION OF  
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**Flexible concept**

Returning to the legal perspective, associate professor Rene Urueña of the Universidad de los Andes in Colombia explained that most attempts to enhance the independence of the judiciary in Latin America and to protect judges from political pressure are targeted at judicial appointments and budgetary aspects. Urueña prefers to highlight what he referred to as ‘decisional independence’.



Using examples from countries such as Colombia, Peru and Uruguay, he showed that the use of international law is a dimension of judicial independence in the region, particularly with regard to politically sensitive issues likely to produce disputes between local powers. “A growing number of Latin American courts,” said Urueña, “cite international law and use terms such as ‘humanity’ and ‘the international community’ to legitimise their intervention in domestic politics.”

Urueña views judicial independence as a function of a transnational network of domestic and international institutions, in which local courts, drawing on the prestige of foreign courts and international institutions, make strategic use of international law as a platform to legitimise their intervention in domestic politics, and in doing so further feed this transnational network and provide further resources for judicial independence.

The final speaker, Jerfi Uzman, a lecturer in constitutional and administrative law at the University of Leiden, talked about the steadily increasing political role of courts.

He said that he could understand many people’s fear that this could ultimately have an impact on judicial independence, but noted that there is no real evidence to support that fear. Whether there will actually be any erosion of independence depends, in Uzman’s view, on the national culture and political context. “Judicial independence is a flexible concept that adapts to circumstances in society. It is not a static phenomenon, but a matter of convention, the context of which may vary according to the time and place”. There is a danger in that notion of the conventional nature of judicial independence. “Conventions depend to a large degree on the key political players sharing the same values. Where the political culture is highly fragmented, those shared values are no longer self-evident. That can lead to polarisation, resulting in political reactions that might challenge judicial independence.”

The discussion continued after the workshop. Several participants talked informally about the role the European Union has played in stimulating judicial independence in Greece, Portugal and Spain. Professor Couso stressed the importance of the EU in that respect.

“Democracy and the rule of law were weak in those countries, but intervention by the EU in the 1970s and 80s changed that”. There is no real equivalent of the EU in Latin America, but Couso referred to the Inter-American Commission on Human Rights (IACHR), the autonomous body established by the Organization of American States (OAS) to examine violations of human rights within its sphere of influence. “The IACHR is respected by civil society, lawyers, journalists and academics and, in that sense, might well have the same effect as the EU”. Thus the day ended on a positive note.

## “THE PRINCE CLAUS CHAIR HAS HELPED ME

### IN MANY WAYS”

Midway through his tenure as holder of the Prince Claus Chair, Professor Javier Couso looks back on the first year and ahead to the second year.

#### Window on Europe

“How has the Prince Claus Chair helped me in my research? In many ways. Until recently, I spoke primarily with Anglo-American academics, but the Prince Claus Chair has opened doors in Europe. The legal system in continental Europe has many similarities with the system in Latin America, so it is useful for me to be able to meet academics from Europe. The position offers a fascinating window onto this area of the world.”

#### Valuable contacts

“The Prince Claus Chair has allowed me to create a valuable network. For instance, I have met Susanne Baer, the German legal scholar and justice of the German Constitutional Court, who even agreed to give a lecture at my university in Chile. I was also especially happy with the presence at the workshop of Nahuel Maisley, assistant to Mónica Pinto, the United Nations’ Special Rapporteur on the independence of judges and lawyers. This contact, which I would not have been able to establish had I not been the holder of the Prince Claus Chair, is a major step in the direction of a formal partnership. And finally, I expect to be able to build on my contacts with Bas van Bavel and Bas de Gaay Fortman at the University of Utrecht, and Titia Loenen and Jerfi Uzman at the University of Leiden. It is too early to say what form this will take, but it is clear that they will be lasting relationships.”

#### Innovative chair

I am very happy that there is a Chair dedicated exclusively to development and equity. The Prince Claus Chair is leading the way in this respect. A chair in this field is important, as it focuses the attention of the development community on questions that have a role to play in the southern hemisphere. In the specific case of my chair, I hope I can demonstrate how a constitution and a legal system can contribute to a country’s development.”



## PROFESSOR OLAJUMOKE ODUWOLE

### CHAIR HOLDER 2013-2015



My tenure as the Prince Claus Chair holder 2013-2015 focused on the nexus between international law and the implementation of the Right to Development (RTD). In particular, my research investigated the practical effectiveness of the RTD in relation to development in Africa. I proposed a pragmatic approach that draws attention primarily to the negative legal obligations of States (on both sides of the divide) not to inhibit the development of African peoples.

Together with Professor Karin Arts (Professor of International Law and Development), who was my academic host at the International Institute of Social Studies (ISS) of Erasmus University Rotterdam, and Dr. Atabong Tamo (Prince Claus Chair post-doc from Cameroon), two research themes were explored. At first we considered how the RTD could be operationalised in the context of the Economic Partnership Agreements between the European Union and West Africa. The second theme concentrated on the deadly Ebola virus disease affecting parts of West Africa. This research characterized the current Ebola epidemic as an RTD crisis. The Ebola epidemic has revealed the inability of some West African states to respond adequately to crises of such magnitude. This situation was analysed in the light of the development constraints of West African states and the failure of international actors to effectively mobilise international cooperation in a timely manner. Both aspects are at the core of the content and the realisation of the RTD. This research formed the basis for putting together a research funding proposal entitled 'State Obligations and the Right

to Development: A Case Study of West Africa's Ebola Epidemic'.

Two high profile events were organised in 2015. In April 2015, a PCC Roundtable on 'Implementing the Right to Development in Africa' was hosted by the Centre for Human Rights, University of Lagos, Nigeria. In May 2015, a PCC Roundtable was organized in The Hague, in collaboration with The Hague Institute for Global Justice (THIGJ) and the ISS, with support of the United Nations Office of the High Commissioner for Human Rights. The theme of this Roundtable was 'Thinking Ahead: The Right to Development Approaching 30'. On the basis of the papers presented at these Round Tables, two edited volumes are being compiled which are scheduled for publication by December 2016, when the UN will commemorate the 30th anniversary of the UN Declaration on the RTD.

In May 2015 I was delighted to attend the inaugural lecture of my successor Prince Claus Chair holder (2014-2016), Professor Javier Couso Salas, at Utrecht University. In June 2015, I was privileged to be invited to facilitate an expert session at the World Economic Forum on Africa. In July 2015, I delivered a lecture at the International Criminal Court (ICC) in The Hague and participated in the European Commission's Brainstorming Session on 'Taking Stock on the Right to Development' held in Brussels, Belgium.

During my final stay at the ISS from May-August 2015, I expressed my passion for photography by exhibiting a collection of 30 photographs at the ISS, under the title

'Nigeria Decides'. This exhibition was sponsored by the ISS. Part of the exhibition chronicled the developmental challenges faced on a daily basis by people living in Lagos, Nigeria. The other part documented impressions of the 2015 Presidential elections in Nigeria.

I look back on my PCC tenure with a sense of fulfilment and deep gratitude. As of January 2016, I have embarked on a new challenge, as I have taken up the position of Senior Special Assistant to the President on Industry, Trade and Investment in the Office of the Vice President of Nigeria.

## PROFESSOR SARADINDU BHADURI

### CHAIR HOLDER 2015-2017

On the recommendation of the Curatorium of the Prince Claus Chair, the International Institute of Social Studies/Erasmus University Rotterdam has appointed the promising Indian researcher, Professor Saradindu Bhaduri, as holder of the Prince Claus Chair 2015-2017. Professor Bhaduri works at the Centre for Studies in Science Policy, Jawaharlal Nehru University, New Delhi, India, where he conducts research on 'frugal innovation', a new field of research within the discipline of innovation studies.

Frugal innovation as a form of technological solution and/or business practice caters to the needs of economically marginalised sections of society. Professor Bhaduri conducts research on frugal innovation for and by the poor. He is specifically interested in innovation and knowledge generation in the informal economy, which brings his research into the realm of the core values of the Prince Claus Chair: development and equity.

During his two-year tenure, Professor Bhaduri will work closely with the Centre for Frugal Innovations in Africa, one of the joint, multidisciplinary research centres of Leiden University, Delft University of Technology and Erasmus University Rotterdam. He will spend about three months each year at the International Institute of Social Studies in The Hague during this tenure, to teach and give public lectures on the topic of frugal innovation. He will also be involved in research projects involving fieldwork in India and Africa. Professor Bhaduri has an extensive network, which he will call upon to bring together academics from different countries. In this way, he hopes to promote the exchange of knowledge and experience between frugal innovation hotspot India and other emerging economies.



## PREVIOUS HOLDERS OF THE CHAIR



**2012 - 2014**

Professor Aylin Küntay was appointed to the Prince Claus Chair by the International Institute of Social Studies because of her work in the field of language and the socio-cognitive development of young children. Through her research, Professor Küntay enables children with less-well-off parents to improve their social status by helping them to improve their language proficiency.



**2006 - 2007**

Professor Nasira Jabeen was appointed to the Prince Claus Chair by Utrecht University. Coming from a Pakistani background, Professor Jabeen focuses her teaching and research on the possibilities and constraints of good governance as a concept in the developing world.



**2011 - 2013**

Professor Stella Quimbo from the Philippines was appointed by the International Institute of Social Studies. During her tenure as holder of the Prince Claus Chair, her research focused mainly on health insurance. She conducted research on access to health insurance and carried out an evaluation of the impact of health insurance on financial risk protection and quality of care.



**2005 - 2006**

Professor Rema Hammami was appointed to the Prince Claus Chair by the International Institute of Social Studies because of her impressive academic contribution, as an intellectual champion, to peace and co-existence in the Palestinian Territories. Her gendered approach provides a valuable point of entry into issues of governance, civil society, citizenship, rights and peace.



**2010 - 2012**

Professor Atul Kumar was appointed to the Prince Claus Chair by Utrecht University. Indian-born Professor Kumar has extensive experience in researching climate change, energy policy, energy-system technology and how a sustainable lifestyle can combat climate change.



**2004 - 2005**

Professor Gaspar Rivera-Salgado was appointed to the Prince Claus Chair by Utrecht University. The Mexican professor was appointed on the basis of his academic work in the field of indigenous rights, particularly in Latin America and the United States.



**2009 - 2011**

Professor Patricia Almeida Ashley was appointed to the Prince Claus Chair by the International Institute of Social Studies. The Brazilian professor is known for her interdisciplinary approach to Socially Responsible Entrepreneurship (SRE) and her research on the relationship between SRE and important social issues.



**2003 - 2004**

Professor Amina Mama was appointed to the Prince Claus Chair by the International Institute of Social Studies. The Nigerian professor Mama was appointed for her contribution to the academic field of African culture and its relationship to development.



**2008 - 2010**

Professor Irene Agyepong was appointed to the Prince Claus Chair by Utrecht University. As a public health expert, Professor Agyepong is a strong advocate of investing simultaneously in research into public health and the development of health policy. In her research she has been concentrating on how to manage and transform health systems in Sub-Saharan Africa.



**2002 - 2003**

Professor S. Mansoob Murshed was appointed as the first holder of the Prince Claus Chair by Utrecht University. Professor Murshed is an economist from Bangladesh and was appointed for his academic work in the fields of trade and freedom of trade and in the field of peace and conflict management in relation to economic development.



**2007 - 2008**

Professor Alcinda Honwana was appointed to the Prince Claus Chair by the International Institute of Social Studies. Born in Mozambique, Professor Honwana is an authority on child soldiers in Africa and on the predicament of young Africans in the context of ongoing globalisation processes in postcolonial Africa.

## THE CURATORIUM OF THE PRINCE CLAUS CHAIR



The Curatorium is responsible for appointing new Prince Claus chair holders. Her Majesty Queen Máxima of the Netherlands is the Patron of the Prince Claus Chair. In 2015, the Curatorium comprised the following members:

- Professor Louise J. Gunning-Schepers  
[Chair](#)
- Professor Ton Dietz  
[Vice Chair](#)  
Director of the African Studies Centre,  
Leiden
- Professor Bert van der Zwaan  
[Member](#)  
Vice Chancellor of Utrecht University
- Professor Leo de Haan  
[Member until 1 August 2015](#)
- Professor Inge Hutter  
[Member from 1 August 2015](#)  
Rector of the International Institute  
of Social Studies/Erasmus University  
Rotterdam

Linda Johnson, BA (Hons), MBA,  
is [Secretary](#) to the Curatorium

## PARTICIPATING INSTITUTES

### THE INTERNATIONAL INSTITUTE OF SOCIAL STUDIES

The International Institute of Social Studies (ISS) in The Hague is part of the Erasmus University Rotterdam (EUR). It is a graduate institute of policy-oriented critical social science, founded in 1952, and so able to draw on over 60 years of experience.

ISS is a highly diverse international community of scholars and students from the global south and the global north, which brings together people, ideas and insights in a multidisciplinary setting. This environment nurtures, fosters and promotes critical thinking, and ISS researchers conduct innovative work into fundamental social problems. ISS offers a PhD programme, a Masters programme and various short courses. Between 300 and 400 students and PhD researchers, from over 50 different countries, enrol at ISS each year.

Key to the ISS philosophy and practice is the wish to make a contribution to achieving social justice and equity on a global level. The strong partnerships with organisations and individuals in developing countries make up a network in which the co-creation of knowledge and an integrated approach to research and teaching can flourish, and remain societally relevant.

ISS research focuses on studying political, economic and societal developments in Africa, Asia, Latin America, the Middle East and transition countries. Research is organised within 4 programmes: Economics of development and emerging

markets; Civic innovation; Governance, globalisation and social justice; Political economy of resources, environment and population.

ISS shares expertise with a wider public by providing high-level policy advice and serving as a platform for debate and the exchange of ideas.

Further information about ISS can be found at [www.iss.nl](http://www.iss.nl)



### UTRECHT UNIVERSITY

Utrecht University is one of Europe's leading research universities, recognised internationally for its high quality, innovative approach to both research and teaching.

Founded in 1636, the university has always focused strongly on research. Owing to its solid grounding in discipline-based scholarship, Utrecht University is at the forefront of developments in interdisciplinary knowledge. The university participates in various thematic multidisciplinary collaborations that conduct excellent research. The Shanghai Ranking of World Universities puts Utrecht University in first place in the Netherlands, in 17th place in Europe and in 56th place in the world.

Utrecht University is home to 30,000 students and 6,500 staff members. Each year, more than 2,000 students and researchers come to the university from abroad.

Utrecht University conducts fundamental and applied research in a broad array of disciplines. Its wide-ranging research activity provides an inspiring basis for multidisciplinary research inside and outside the university. Utrecht University has chosen four strategic themes: Sustainability; Institutions for Open Societies; Life Sciences, Dynamics of Youth.

Commitment, inspiration, ambition and independence are Utrecht University's core values. The university works collaboratively with the business sector to undertake societally relevant and innovative research.

More information can be found at [www.uu.nl](http://www.uu.nl)



**Universiteit Utrecht**

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## CONTACTING THE CURATORIUM

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## PROPOSITION #23

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HIS ROYAL HIGHNESS PRINCE CLAUS OF THE NETHERLANDS, IN HIS ACCEPTANCE SPEECH UPON RECEIVING AN HONORARY FELLOWSHIP AT THE INTERNATIONAL INSTITUTE OF SOCIAL STUDIES, 1988:

FREEDOM OF SPEECH IS AN ESSENTIAL ELEMENT  
IN ANY FORM OF DEMOCRACY AND THEREFORE  
A PREREQUISITE FOR TRUE DEVELOPMENT.  
THE POWER ELITE, WHEREVER THEY MAY BE  
IN THE WORLD, CANNOT BE TRUSTED IF THEIR  
COUNTRY KNOWS NO FREEDOM OF SPEECH.  
IT IS A FACT OF HUMAN LIFE AND ALSO  
ESSENTIAL FOR THE PROTECTION OF THOSE  
IN POWER WHO ARE WORTHY OF TRUST.

