THESEUS Interview with Visiting Professor Fabien Terpan

THESEUS: Prof Terpan, in your course, you will discuss "The Politics of Law in the European Union" – why did you choose this topic?

Terpan: It links three of my research interests: soft law and resistance to soft law, the European Court of Justice and the Politics of Law, and the impact of crises on integration.

Which aspects will you focus on in your seminar?

This course will analyse the link between law and politics in the European Union (EU), opposing scholars claiming that intergovernmental mechanisms prevail more and more (Bickerton, Hodson & Pütter 2015) to those who argue in favour of continued judicialization of the EU (Maduro & Azulaï 2010; Kelemen 2011; Schmidt 2012). Together with my students, I will try to find answers to the following questions: Are the Court and legal integration still central today? Is European integration still based on 'integration through law'? Or, conversely, is the EU less and less based on legal integration due to the introduction of soft law and self-restraint of the Court?

How will you approach these questions in your seminar?

During the seminar, we will focus on two (interconnected) topics. First, we will deal with soft law in the European Union. We will define soft law, identify soft law in the EU and depict its impact regarding the member states' compliance. Also, we will look at the impact of soft law on the integration process more generally.

Second, we will investigate the role of the European Court of Justice in the European system of governance, and talk about the debate on the Court's 'activism' (is the ECJ still an 'activist' Court ?), discuss 'internal' (sociological approach: explains the power of the Court by the sociological profile of its judges) and 'external' explanations of the Court's political power (governance approach: explains the power of the Court by its relationship with other institutions at national and EU level).

Which context is important to understand to deal with "The Politics of Law in the EU"?

In every political system, the link between law and politics is intimate: decision-making leads to the establishment of law, the basis of government and governance; law, once established, influences politics as well as policies and policy-making. In the context of the EU, this co-constitution is no exception. As Cappelletti, Seccombe and Weiler argued in their seminal work of the mid-1980s ('Integration through Law'), European Law is the product of EU politics and policies, and at the same time a factor of integration.

The European Court of Justice (ECJ) is both a (legal) jurisdiction and a (political) actor (Alter; Burley & Mattli) which plays a key role in the EU system of governance (Stein; Weiler; Conant; Stone Sweet). The ECJ's rulings have been surprisingly influential in its first forty

years of existence. This has certainly been one of the most fascinating puzzles in European studies, but also in the politics of law more generally.

The centrality of law and the Court has been challenged since the early 1990s. Confronted with growing contestation in the 1990s, EU policy makers responded by introducing mechanisms aimed at making EU governance simpler, more flexible and less formal. The aim was to reduce opposition to integration through so called 'new modes of governance' that would use coordination mechanisms and soft law instead of coercive tools and hard law (Halpern & Graziano; Terpan). Moreover, the Court is considered to have become less active since the early 1990s, replacing activism by self-restraint (Dehousse).

Which gain will the students have from participating?

The objective of this course is to understand the link between law and politics in the European Union, based on the discussion of a series of academic articles. Students will also analyse the link between law and politics through the writing of research papers. Their papers will be based on a theoretical framework, a clear research question and hypotheses and empirical data. Naturally, it is not necessary to have an academic background in law to benefit from this course (students trained in law are most welcome, but legal knowledge is not a prerequisite). Legal integration will be analysed through the lenses of social sciences.

Which aspects of the topics could serve as interesting seminar papers?

The students are totally free to work on the policy-areas or actors they are interested in, provided they look at the interplay between law and politics. Three groups of paper topics are suggested:
- The ECJ and the politics of law: the influence of the ECJ in specific policy-areas (discrimination, social policy, internal market, human rights…); the relationship between the ECJ and other actors at national or EU level; interest groups and the Court (how and why do interest groups use the Court as a means to achieve their goals?); ECJ activism; Public debate on the Court's activism, etc.
- Soft law in the EU: areas of soft law (environment, social policy, education...); efficacy of soft law norms in a policy-area; evolutions from soft law to hard law (immigration and asylum, human rights…); factors explaining the choice of soft law instead of binding commitments; factors explaining the transformation of norms (from soft law to hard law; from hard law to soft law), etc.
- Resistance to law in the EU: member states' compliance with EU law; comparison between the compliance record of different member states; forms of resistance at national level; reasons for resisting at national level.

Which questions would you recommend the students to think about prior to the start of the seminar?

It would be helpful, if they thought about the topic of their paper prior to the first session and read the articles that have been made available. These compulsory readings will be discussed in class and will give the basis of (fruitful) debates.

Thank you very much for this interview, Prof Terpan!

In his inaugural lecture Prof Terpan will address the topic "Is the ECJ an Activist Court? Studying the Court's Power from a 'Law and Politics' Perspective".