

GRAD-C2-2001: Law and Governance

Mark Dawson, Dilek Kurban and Pierre Thielbörger

1. General information

Class time	Wednesday, 10-12 (Group A) Wednesday, 16-18 (Group B) Thursday, 14-16 (Group C) Thursday, 16-18 (Group D) Friday, 10-12 (Group E) Friday, 12-14 (Group F)
Course Format	Online Only: This course is taught online only via the platform Clickmeeting. Clickmeeting allows for interactive, participatory, seminar style teaching.
Instructor	Prof. Dr. Mark Dawson, Prof. Dr. Pierre Thielbörger, Dr. Dilek Kurban
Instructor's office	2.57
Instructor's e-mail	dawson@hertie-school.org ; thielboerger@gmail.com ; Kurban@hertie-school.org
Instructor's phone number	+49 30 259 219 311
Assistant	Denny Hofbauer +49 (0)30 259 219 -? hofbauer@hertie-school.org Room ?
Instructor's Office Hours	By appointment

Link to Module Handbook [MIA](#) and [MPP](#)Link to [Study, Examination and Admission Rules](#)Instructors Information:

Mark Dawson is Professor of European Law and Governance at the Hertie School. His research focuses on the relationship between law and policymaking in the EU, particularly in the fields of economic governance and human rights protection. Dawson was previously an Assistant Professor at Maastricht University, where he remains a scholar within the Maastricht Centre for European Law. He has held visiting positions at the London School of Economics and Political Science (LSE), the University of Wisconsin and Harvard Kennedy School. Dawson holds degrees from the Universities of Edinburgh and Aberdeen as well as a PhD from the European University Institute in Florence. He is

the Principle Investigator of LEVIATHAN, a research project exploring the legal and political accountability structure of EU economic governance. LEVIATHAN is supported by a Starting Grant of the European Research Council.

Dilek Kurban is a Fellow at the Hertie School, where she joined as a Marie Curie fellow in 2014. Before (re)transitioning to academia, she engaged in policy-oriented research. During 2005-2013, she worked at the Turkish Economic and Social Studies Foundation (TESEV), where she last served as the Director of the Democratization Program. Between 2012 and 2019, she was a member of the European Commission's Network of Independent Experts in the Non-Discrimination Field. Dilek Kurban has a PhD from Maastricht University Faculty of Law, a Juris Doctor (JD) from Columbia Law School and a Master in International Affairs (MIA) from the School of International and Public Affairs at Columbia University. Her PhD dissertation received the national Erasmus Dissertation Prize 2019 in the Netherlands. Her monograph titled *Limits of Supranational Justice: The European Court of Human Rights and Turkey's Kurdish Conflict* was published in 2020 by CUP. Her research interests are legal mobilization, supranational courts and the European human rights system, minority rights, forced displacement, state violence in politico-ethnic conflicts, with a regional focus on Turkey.

Pierre Thielbörger is Professor for German Public Law and Public International Law at the Ruhr University Bochum and the Director of the Institute for the International Law of Peace and Armed Conflict. He is Adjunct Professor in Law and Governance at the Hertie School since 2014. He holds degrees in law, journalism and public policy from the universities of Hamburg and Harvard as well as a PhD from the European University Institute in Florence. He also studied at Humboldt University, Berlin, and at McGill University, Montréal. He was a scholar of the Studienstiftung des Deutschen Volkes, including as „McCloy Scholar“ for studies at the Harvard Kennedy School. He is the Co-Convener of the Interest Group on Human Rights of the European Society of International Law, Preseident of the General Assembly of the Europe-wide Network on Humanitarian Action and editor of several international peer-reviewed journals in the field of international law. His main areas of research include public international law, human rights (including business and human rights as well as the freedom of speech), law and governance of climate change. international criminal law and the law of peace and armed conflict.

2. Course Contents and Learning Objectives

Course contents:

For those in the business of governing, understanding the institutions, methods and substance of the law is crucial. Policy-makers must understand the law, both as a potential instrument of societal change, and as an important constraint on the process of regulation and decision-making. The course 'Law and Governance' will explore the relationship between law and governance, providing course participants with an introduction into legal decision-making and the role of law and courts in the political system. It will also aim to develop core legal skills such as legal argumentation and interpretation.

A particular priority will be to explore the 'multi-level' nature of modern law. The growth of international and regional organizations and regimes has increasingly made disputes and rules that

were once 'local' the subject of international constraints and norms. At the same time, trans-national legal orders may have a quite different character from their national counter-parts. The course will therefore draw on examples from both the EU and International legal orders.

Main learning objectives:

The course has the following overall learning objectives:

1. Course participants should understand the basic techniques, structures and sources of the law. How do lawyers use and apply legal sources; how do they argue; and what role do legal institutions, such as Courts, play in the development of a legal system?
2. Course participants should understand law in its global context. While often seen as closely tied to 'the state' and hence to a national setting, law has undergone a process of trans-nationalization both in Europe (through organizations like the EU and the Council of Europe) and beyond (i.e. through international obligations and Treaties). How has trans-nationalization altered the forms, structures and substance of the law? How has law been used to regulate at the trans-national level?
3. Course participants should understand the relationship between law and governance. How does law operate as a governance 'tool' i.e. how can law and the legal system be used to affect societal change? Secondly, how does law condition 'governance' i.e. what constraints does law place on, and how does it shape, the process of governing and decision-making?

These three over-arching objectives correspond to three sections of this course (see below):

Weeks 1-3: Part I – Legal skills and methods

Weeks 4-8: Part II – The Trans-Nationalization of Law

Weeks 9-11: Part III – Law, Governance and Regulation

Target group/Prerequisites:

The target group for this course is 1st year public policy students with limited knowledge and experience of law and legal systems. There are therefore no prior prerequisites for enrolment in the course.

Teaching style:

The course will combine introductory knowledge in substantive fields of law (e.g. presented by instructors) followed by close and interactive discussion of legal materials. As is common in legal teaching, a socratic method will often be employed, designed to build knowledge through close questioning and discussion among the group as a whole. There will also be a focus on specific legal cases and their societal and policy repercussions.

A central element of the course will be the Moot Court exercise (discussed below), the purpose of which is to build skills in legal argumentation and applying legal rules practically.

Diversity statement:

Given the extensive geographic diversity of our student body, the course takes general international law as its starting point while drawing on examples from different national/regional legal orders. Comparative insights and analogies to different legal and political systems are welcome and encouraged. As discussed under participation below, the socratic method of teaching requires respectful and active discussion among the group as a whole – as instructors, we will make strong efforts to encourage wide and balanced participation and encourage students to also support and be respectful of the diverse views and backgrounds of course participants.

3. Grading and Assignments

The course will be based on inter-active lectures held by the professors and discussions of reading materials and legal cases in class; active participation is therefore crucial. In order to participate effectively, all participants should read in advance the required readings and also the questions and comments for that class listed in the course book.

Composition of Final Grade:

Assignment 1: Moot Court pleadings	Deadline: tbc	Submit via Moodle	40%
Assignment 2: Final exam	Held during exam week		45%
Participation grade			15%

Assignment Details

Assessment will be based on three elements:

1. **Moot Court Pleadings.** Week 8 of the course will consist of a simulated legal pleading or 'Moot Court'. Course participants will be split into groups of 5/6 students (or similar) and will be given a hypothetical legal case. Working as a team, you will have to act for one of the parties to the case, submitting written pleadings in defence of your client. Pleadings should be 2,500 words maximum and should be submitted on Moodle (deadline tbc). You will also have to plead orally i.e. defend your client in simulated Court proceedings, responding to the arguments of the other side. More detailed instructions will be given in advance of Week 8.
2. **Class Participation.** Active and informed participation will be taken into account as part of the grade for this element. The participation grade is based on the assumption that students take part not as passive consumers of knowledge but as active participants in the exchange, production, and critique of ideas—their own the ideas of others. Therefore, students should come to class not only having read and viewed the materials assigned for that day but also prepared to discuss the readings and to contribute thoughtfully to the conversation. Participation is marked by its active nature, its consistency, and its quality.

3. **In-Class Exam.** During the final exam week, you will complete an in-class exam, which will assess your knowledge of the readings and themes we have discussed. More details on this exam will follow.

Participation grade

The participation grade is based on the assumption that students take part not as passive consumers of knowledge but as active participants in the exchange, production, and critique of ideas—their own ideas and the ideas of others. Therefore, students should come to class not only having read and viewed the materials assigned for that day but also prepared to discuss the readings of the day and to contribute thoughtfully to the conversation. Participation is marked by its active nature, its consistency, and its quality.

Late submission of assignments: For each day the assignment is turned in late, the grade will be reduced by 10% (e.g. submission two days after the deadline would result in 20% grade deduction).

Attendance: Students are expected to be present and prepared for every class session. Active participation during lectures and seminar discussions is essential. If unavoidable circumstances arise which prevent attendance or preparation, the instructor should be advised by email with as much advance notice as possible. Please note that students cannot miss more than two out of 12 course sessions. For further information please consult the [Examination Rules](#) §10.

Academic Integrity: The Hertie School is committed to the standards of good academic and ethical conduct. Any violation of these standards shall be subject to disciplinary action. Plagiarism, deceitful actions as well as free-riding in group work are not tolerated. See [Examination Rules](#) §16.

Compensation for Disadvantages: If a student furnishes evidence that he or she is not able to take an examination as required in whole or in part due to disability or permanent illness, the Examination Committee may upon written request approve learning accommodation(s). In this respect, the submission of adequate certificates may be required. See [Examination Rules](#) §14.

Extenuating circumstances: An extension can be granted due to extenuating circumstances (i.e., for reasons like illness, personal loss or hardship, or caring duties). In such cases, please contact the course instructors and the Examination Office *in advance* of the deadline.

4. General Readings

There are no general textbooks which are suitable for this course: the required readings therefore vary between sessions. You will have the opportunity to read a variety of legal sources e.g. judgments from international courts, legislation, policy documents and academic book chapters and articles. All core course readings will be available at the Moodle course site at the beginning of the semester. Additional readings, or questions for class, may be uploaded to the Moodle site during the semester so please check Moodle regularly.

The books listed below provide a good introduction to the three main parts of the course, and are a good resource if you feel you need extra background or help (you need not, however, buy them):

W. Twining and D. Miers, *How to do Things with Rules* (Cambridge University Press, 2010) **NB:** particularly helpful as regards Part I of this course

M. Dixon, *International Law* (Oxford University Press, 2013) **NB: particularly helpful as regards Part II of this course**

Hans-Joachim Heintze / Pierre Thielbörger, *International Humanitarian Action*, Part II: International Law, (Springer 2017) **NB: particularly helpful as regards Part II of this course**

B. Morgan and K. Yeung, *An Introduction to Law and Regulation* (Cambridge University Press, 2007) **NB: particularly helpful as regards Part III of this course**

5. Session Overview .

Session	Session Date	Session Title
1	Pre-Recorded	Combined classes (A-F) – Course Introduction (MD, DK & PT)
2	10.02.2021	Groups A-B, The Autonomy of the Law (DK)
	11.02.2021	Groups C-D, The Autonomy of the Law (DK)
	12.02.2021	Groups E-F, The Autonomy of the Law (DK)
3	17.02.2021	Groups A-B, Interpreting the Law (DK)
	18.02.2021	Groups C-D, Interpreting the Law (DK)
	19.02.2021	Groups E-F, Interpreting the Law (DK)
4	24.02.2021	Groups A-B, Introduction to International law (DK)
	25.02.2021	Groups C-D, Introduction to International law (DK)
	26.02.2021	Groups E-F, Introduction to International law (DK)
5	03.03.2021	Groups A-B, The Use of Force and the United Nations (PT)
	04.03.2021	Groups C-D, The Use of Force and the United Nations (PT)
	05.03.2021	Groups E-F, The Use of Force and the United Nations (PT)
6	10.03.2021	Groups A-B, Human Rights Law and International Criminal Law (PT)
	11.03.2021	Groups C-D, Human Rights Law and International Criminal Law (PT)
	12.03.2021	Groups E-F, Human Rights Law and International Criminal Law (PT)
7	17.03.2021	Groups A-B, International Economic Law (PT)
	18.03.2021	Groups C-D, International Economic Law (PT)
	19.03.2021	Groups E-F, International Economic Law (PT)
	22-26.03.2021	Mid-Term Exam Week – No classes

	29.03-02.04.2021	Preparation for Moot Court Mid-Term – No classes
8	07.04.2021	Groups A-B, Moot Court (MD, DK & PT)
	08.04.2021	Groups C-D, Moot Court (MD, DK & PT)
	09.04.2021	Groups E-F, Moot Court (MD, DK & PT)
9	14.04.2021	Groups A-B, 'Multi-Level' Law and Governance (MD)
	15.04.2021	Groups C-D, 'Multi-Level' Law and Governance (MD)
	16.04.2021	Groups E-F, 'Multi-Level' Law and Governance (MD)
10	21.04.2021	Groups A-B, Judicial Review (MD)
	22.04.2021	Groups C-D, Judicial Review (MD)
	23.04.2021	Groups E-F, Judicial Review (MD)
11	28.04.2021	Groups A-B, The Rule of Law (MD)
	29.04.2021	Groups B-C, The Rule of Law (MD)
	30.04.2021	Groups E-F, Rule of Law (MD)
12	05.05.2021	Combined classes (A-F) – Revision Lecture (MD, DK & PT) NB: a lecture will be pre-recorded along with an interactive Q&A session for exam preparation
Final Exam: Week of 17.05 - 21.05.2021		

6. Course Sessions and Readings

Part I - Legal skills and methods

This first part of the course will provide an introduction to core legal skills and issues. It will first examine the differences between law and other types of social ordering, such as politics. What is it that is distinctive about the law, and to what extent is law really separate and independent from other parts of society? The objective is therefore to encourage you to reflect on how lawyers think and act. We will follow this by developing some core skills – how do judges and lawyers read and interpret rules, and how do they reason and argue? Concrete examples, as well as some exercises later in the course (e.g. the Moot Court), will be used to develop and analyse these legal techniques.

All readings will be accessible on the Moodle course site before semester start. In the case that there is a change in readings, students will be notified by email. Required readings are to be read and analysed thoroughly. Optional readings are intended to broaden your knowledge in the respective area and it is highly recommended to skim them at least.

Session 1: Course Introduction - Seeing the World through the Eyes of a Lawyer

Learning Objective	<u>General Objectives:</u>
--------------------	----------------------------

	<p>Overview of the Course + description of mutual expectations i.e. assessment, materials, preparation for class etc. NB: This session will be pre-recorded and available on Moodle</p> <p><u>Specific Objectives:</u></p> <p>First exercise – seeing the world through eyes of a lawyer. How do lawyers think, and to what extent do they think in a different and unique way from others? Consider the article on the recent litigation of the US Federal and State Courts concerning the 2020 Presidential election. To what extent might lawyers react differently to a decision on how Courts should police the electoral process to politicians, or citizens in general?</p> <p>Second exercise – law in society. Why do we have legal systems i.e. what are the general functions and roles which the legal system plays in society? Consider two recent cases of the European Court of Justice and the German Federal Labour Court (as illustrated in these articles and press releases, you do not need to read the judgments themselves), as well as a recent blog piece on the role of the Brazilian Supreme Court during the Bolsonaro presidency. How do these cases illustrate different functions of a legal system?</p>
Required Readings	<p>'Supreme Court rejects Republican challenge to Pennsylvania vote', New York Times (08.12.2020). Available at: Supreme Court Rejects Republican Challenge to Pennsylvania Vote - The New York Times (nytimes.com)</p> <p>'Court of Justice Press Release in Case C-421/13 Apple v Deutsches Patent und Markenamt' (10.07.2014). Available at: http://www.arena-patent.com/English/files/cp140098en.pdf</p> <p>'Case Watch: German Court sides with Muslim Women Teachers over Discriminatory Headscarf ban' (03.09.20). Available at: https://www.justiceinitiative.org/voices/case-watch-german-court-sides-with-muslim-women-teachers-over-discriminatory-headscarf-ban</p> <p>'Judicial Responses to Bolsonarism: The Leading Role of the Federal Supreme Court, Verfassungsblog (16.06.2020). Available at: Judicial Responses to Bolsonarism: The Leading Role of the Federal Supreme Court (verfassungsblog.de)</p>
Optional Readings	n/a

Session 2: The Autonomy of the Law

Learning Objective	<p><u>General objectives:</u></p> <p>To what extent is law an autonomous system? Can one apply and use rules in a purely objective manner or does applying the law also involve moral</p>
---------------------------	---

	<p>and political considerations? What is the relationship between law and its surrounding society?</p> <p><u>Specific objectives:</u></p> <p>We will begin by addressing a foundational question of legal theory. To what extent can one act 'legally' without also taking into account moral or political considerations? Read the article by HLA Hart – how would a legal positivist (a theory of which Hart was the leading exponent) address this question? By contrast, read the chapter by Schauer: how does American legal realism challenge the positivist view of the relationship between law and its surrounding society? Is there an 'objective' or 'scientific' way to apply the law?</p> <p>To unpack these questions, we will consider two cases, one hypothetical; the other all too real. Read first the famous (thankfully hypothetical!) case of the Speluncean explorers. Consider the different approaches to the relationship between law and morality of each of the judges – what are the strengths and weaknesses of each approach? With which judge do you agree?</p> <p>Finally, read the case of <i>A and Others</i>, a seminal judgment of the UK House of Lords on detention without trial for terrorist suspects. Pay particular attention to the (deservedly famous) dissenting judgment of Lord Hoffman – do not worry if you do not at this stage follow all of the legal complexities of the case. What role should political considerations play in the law? Is it <i>possible</i> for judges to decide cases without exercising their political and moral judgment? Is it desirable for them to act in this way? Consider how the responses of the two judges whose opinions you will read in this case relate to the theoretical approaches discussed by Hart and Schauer.</p>
Required Readings	<p>L. Fuller, 'The Case of the Speluncean Explorers' (1949) 62 <i>Harvard Law Review</i> 4. Available at: http://www.nullapoenade.stud/explorers.html</p> <p>H.L.A. Hart, 'Positivism and the Separation of Law and Morals', (1958) 71 <i>Harvard Law Review</i> 4, pp. 593-629 (please read pages 593-624 only)</p> <p>F. Schauer, <i>Thinking Like a Lawyer: A New Introduction to Legal Reasoning</i> (Harvard University Press, 2009), Chapter 7 ('The Challenge of Legal Realism'), pp. 124-146</p> <p>UK House of Lords, <i>A and Others v Secretary of State for the Home Department</i>, Judgement of 16 December 2004, [2004] UKHL 56 (please read only paragraphs 1-44 & 86-97)</p>
Optional Readings	

Session 3: Interpreting the Law

Learning Objective	<u>General objectives:</u>
---------------------------	----------------------------

	<p>How should judges and lawyers read and apply legal sources (i.e. cases, legislation or 'primary law' such as a country's constitution)? What techniques do they use to assist them in this task? And what should they do when legal sources have ambiguous or multiple meanings?</p> <p><u>Specific objectives:</u></p> <p>Interpreting legislation is a difficult issue for all lawyers and policy-makers. Often – see the contribution by Schauer – legislators think their provisions are clear and precise yet they become unclear later on as new social and political problems arise. In other cases, they are intentionally vague, reflecting a lack of consensus among legislators over how legislation should be framed. What should lawyers and policy-makers do in this situation? Should they read the text as 'literally' as possible, or should they – see the chapter from Ronald Dworkin – read it in light of the general principles and purposes underlying the law in question?</p> <p>An example of the difficulties that judges and policy-makers have in interpreting legislative provisions comes from an important right – the right to marry. This engages a crucial question: how should judges act when faced with having to apply Constitutional norms to social practices that were not envisaged when the Constitution was established?</p> <p>Read the differing Opinions of the US Supreme Court judges in <i>Obergefell</i>. Why, in Justice Kennedy's view, does the right to marry for same sex couples flow from the protections afforded by the 14th amendment to the US Constitution? And what is the basis for Justice Scalia's scathing disagreement with Kennedy? To what extent does their disagreement reflect differing views on 'how to read' the Constitution? Particular techniques of legal interpretation may frame their views of how to adjudicate marriage rights.</p> <p>Justice Robert's dissent (which we will not read) nonetheless carries a famous conclusion, which also resonates in Justice Scalia's opinion:</p> <p>'If you are among the many Americans—of whatever sexual orientation—who favor expanding same-sex marriage, by all means celebrate today's decision. Celebrate the achievement of a desired goal. Celebrate the opportunity for a new expression of commitment to a partner. Celebrate the availability of new benefits. But do not celebrate the Constitution. It had nothing to do with it.'</p> <p>Do you agree?</p>
Required Readings	<p>R. Dworkin, <i>Law's Empire</i> (Harvard University Press, 1986), Chapter 9 ('Statutes'), pp. 313-354</p> <p>F. Schauer, <i>Thinking Like a Lawyer: A New Introduction to Legal Reasoning</i> (Harvard University Press, 2009), Chapter 8 ('The Interpretation of Statutes', pp. 147-170)</p>

	Supreme Court of the US, <i>Obergefell v Hodges</i> , Judgment of 26 June 2014. (Please read the Opinions of Judges Kennedy (pp. 2-28) and the Dissenting Opinion of Justice Scalia only)
Optional Readings	

Session 4: Introduction to International Law

Learning Objective	<p><u>General objectives:</u></p> <p>International law is often said to be very different from national and regional (e.g. European) law. What is international law, and is it 'law' in the first place or rather a conglomerate of other international modes of governance in the disguise of law? What distinguishes 'international' law from law in a domestic context?</p> <p><u>Specific objectives:</u></p> <p>What are the basic rules of international law? Who creates these rules, who is bound by them (and who is not)? Which different forms of international law-making exist? What motivates different actors to adhere to international law and how do they justify its breaches? What is the relationship of domestic and international law? Which level is the more efficient one in terms of legal enforcement?</p>
Required Readings	Dixon, Textbook on International Law, Chapter 1 & 2, pp. 1-54.
Optional Readings	Dixon, Textbook on International Law, Chapter 4 & 5, pp. 90-147. Heintze / Thielbörger, Part II: Public International Law, pp. 123-140.

Session 5: The Use of Force and the United Nations

Learning Objective	<p><u>General objectives:</u></p> <p>This unit deals with the protection of international peace and security. On the one hand, the class looks into the most relevant substantive international law norms to protect possible threats to international peace and security, in particular the ban on the use of force (Art. 2 Nr. 4 UN Charter). On the other hand, we will look at the main international organization that is tasked with the protection of international peace and security: the United Nations (UN).</p> <p><u>Specific objectives:</u></p> <p>Firstly, what is the ban on the use of force in international law, and how did it historically evolve? What are the main exceptions to this most fundamental rule of international law? What are the concepts of the so called "responsibility to protect" and "humanitarian intervention"?</p>
--------------------	---

	Secondly, what is the UN and what are its main organs? What challenges does the organization face and what is its role in a world of changing international armed conflicts? What means can the UN employ to address threats to international peace and security? What are examples of successes in doing so, and which are the UN's biggest failures in this regard? The course will also look into recent developments, in particular the 2011 Libya-intervention and the continued non-intervention in the Syria conflict.
Required Readings	Dixon, Textbook on International Law, Chapter 11, pp. 321-353. UN Charter, Chapter VII: http://www.un.org/en/documents/charter/ <i>Case Military and Paramilitary Activities In and Against Nicaragua</i> (Nicaragua v. USA), 1986 ICJ 14 (27 June).
Optional Readings	

Session 6: International Human Rights Law and International Criminal Law

Learning Objective	<p><u>General objectives:</u></p> <p>Human Rights are supposedly the most fundamental norms of international law. But: are they really? What are human rights - are they more than 'non-sense upon stilts' (Bentham)? Who is protected and who is bound by them? And what is the new body of law termed 'international criminal law'? In which way is international criminal law the logical mirror of human rights law? This class altogether aims to understand how international law - often said to be the law between states - has welcomed the individual into its sphere.</p> <p><u>Specific objectives:</u></p> <p>In this class we will identify different schools of human rights. What makes a right a human right? How, if at all, should we counter the trend of creating ever new human rights? We will discuss the historical emergence and different generations of human rights. What are civil and political rights, and how are they different from socio-economic rights? What are the most important human rights institutions on the international arena (e.g. the Human Rights Council, Special Human Rights Procedures and the High Commissioner for Human Rights) and are they bodies of law or non-binding governance?</p> <p>With regard to international criminal law, we will understand its historical emergence and discuss current trends, in particular with regard to the International Criminal Court (ICC). What is this court tasked to do, and how does it do it? What challenges does international criminal law face, and what are its future prospects?</p>
Required Readings	Dixon, Chapter 12, pp. 354-373.

	<p>Marie-Bénédicte Dembour, 'What are Human Rights? Four Schools of Thought', in: <i>Human Rights Quarterly</i> 32 (2012) 1, pp. 1-20.</p> <p>Heintze / Thielbörger, Chapter II: International Criminal Law, pp.173-197.</p>
Optional Readings	<p>ICCPR: http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx</p> <p>ICESCR: http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx</p> <p>Excerpts from Case <i>Barcelona Traction</i> (Belgium v. Spain), 1970 ICJ 3 (5 February), paras. 32-36.</p> <p>Rome Statute: http://www.un.org/law/icc/index.html</p>

Session 7: International Economic Law

Learning Objective	<p><u>General objectives:</u></p> <p>This class deals with one of the most important fields of international law: economic law. How is the international economic order regulated by means of law and other forms of governance? Who are the most important actors and what are the basic rules that they are bound by? What modes of governance (attempt to) regulate the global or regional protection economic order? Is international economic law equipped to effectively and timely respond to political, economic, social, environmental and public health crises caused by liberalization and globalization?</p> <p><u>Specific objectives:</u></p> <p>What is the role of multi-national corporations and of international organisations in the economic order, in particular the World Trade Organisation (WTO)? How are property rights of foreign investors protected? What are the main regulatory orders and how do they function (General Agreement on Trade and Tariffs (GATT); General Agreement on Trade and Services (GATS); Treaty on Intellectual Property Rights (TRIPS)? What has the COVID-19 pandemic and its ongoing consequences revealed about the strengths and weaknesses of international economic law?</p>
Required Readings	<p>Malcolm Evans, <i>International Law, International Investment Law</i>, Chapter 23.</p>
Optional Readings	<p>Case <i>Barcelona Traction</i> (Belgium v. Spain), 1970 ICJ 3 (5 February).</p> <p>IEL Collective, 'International Economic Law and COVID-19' (24.03.2020), available at: https://medium.com/iel-collective/international-economic-law-and-covid-19-d46e17fdcd3f</p>

Session 8: Legal Reasoning and Argumentation (Moot Court Midterm)

Learning Objective	<p><u>General objectives:</u></p>
---------------------------	-----------------------------------

	<p>How do lawyers reason and argue, and how does this differ from other forms of argumentation (such as scientific deduction or political rhetoric)? To what extent does law place constraints on the types of arguments one may use? What is a 'valid' argument in legal terms?</p> <p><u>Specific objectives:</u></p> <p>The class this week will take the form of a moot court; the case and instructions will be provided to you through Moodle. The case will be hypothetical and will deal with the law of the European Convention on Human Rights. You are not expected by now to have much in the way of substantive knowledge of the ECHR system, so please do not worry if you feel lost. The purpose of the task instead is to build an argument that is convincing in legal terms i.e. that can identify the relevant sources of law; build analogies to other cases and examples that you have researched; and that can apply legal knowledge to a concrete case through written and oral arguments.</p>
Required Readings	<p>A general article will be provided which provides some of the legal background to the hypothetical case</p> <p>Oral Submission of Jo Weiler, available at: http://www.youtube.com/watch?v=ioylyxM-gnM</p> <p>W. Twining and D Miers, <i>How to do Things with Rules</i> (Cambridge University Press, 2010), Chapter 11 'Rules, Reasoning and Interpretation', pp. 336-363</p>
Optional Readings	

Session 9: 'Multi-level' Law and Governance

Learning Objective	<p><u>General objectives:</u></p> <p>What is the relationship between different levels of law-making and regulation i.e. national, European and international law? Do these levels sit in a hierarchical or a cooperative relationship to each other? How <i>should</i> different levels of law and governance interact?</p> <p><u>Specific objectives:</u></p> <p>What should be the relation between different 'levels' of international and domestic law? This question was addressed in a famous foundational judgment of the ECJ from the 1960's – <i>Costa v ENEL</i>. Read the chapter by Robert Schütze – what arguments did the ECJ use to assert the supremacy of its legal order in that case? Are these arguments convincing? And what are the implications of EU law's supremacy for domestic legal orders?</p> <p>Given the constraints that international and EU law place on the autonomy of national legal systems, some Courts have begun to resist elements of</p>
---------------------------	---

	<p>the supremacy doctrine. Read the extract from the Damian Chalmers' text, particularly focusing on the attitude of the German Constitutional Court to the authority claims of the European Courts. How does the German Court view the supremacy claim of European law and how has its attitude to EU integration evolved over time? What limits does EU law have to meet – in the German Court's view – in order for it to be consistent with the provisions of the German Constitution?</p> <p>Finally, consider how these tests impact policy-making. A key example is the recent dispute between the German Court and the European Court of Justice over the Quantitative Easing programmes of the European Central Bank. For some context to the dispute, see the blog piece below as well as the explosive ultra vires decision of the German Constitutional Court issued in May 2020 (the summary of this judgment is in your readings). To what extent have the euro and Covid-19 crises led to tensions between the EU and national legal orders? Are national constitutional orders and the European Court on an inevitable collision course?</p>
Required Readings	<p>D. Chalmers <i>et al.</i> <i>European Union Law</i> (Cambridge University Press, 2014), pp. 222-245 ('Conditional Authority of EU Law')</p> <p>R. Schütze, 'Legal Supremacy' in <i>An Introduction to European Law</i> (Cambridge University Press, 2012) (please read pp. 133-143 only)</p> <p>A. Bobic and M. Dawson, 'Covid-19 and the European Central Bank: The Legal Foundations of EMU as the Next Victim?', <i>Verfassungsblog</i> (07.03.2020). Available at: COVID-19 and the European Central Bank: The Legal Foundations of EMU as the Next Victim? (verfassungsblog.de)</p> <p>Bundesverfassungsgericht (Press Release), 'ECB decisions on the Public Sector Purchase Programme exceed EU competences'. Available at: Bundesverfassungsgericht - Press - ECB decisions on the Public Sector Purchase Programme exceed EU competences</p>
Optional Readings	

Session 10: Judicial Review

Learning Objective	<p><u>General objectives:</u></p> <p>What role do Courts play in reviewing the decisions of policy-makers, and in holding them accountable? What standards of review should Courts use in addressing political decisions? Is judicial review – for example, the striking down of legislation or other regulatory acts – legitimate in a democratic polity? And if so, for what reasons?</p> <p><u>Specific objectives:</u></p> <p>The most powerful weapon at the disposal of most high Courts is their ability to review, and even strike down, legislative measures. Consider two examples of this. The first comes from EU law. What role has the European Court of Justice played in policing the boundaries between the legislative</p>
---------------------------	--

	<p>competences of the EU and its Member States? Read the extracts from Craig and de Búrca: what is the meaning under EU law of the principle of conferral and what kind of discretion does the Court allow the EU legislature in defining the scope of the EU's powers? This issue is taken up in the article of Koen Lenaerts (the Court's Vice-President and leading public voice) discussing more recent case-law. What does Lenaerts mean when he refers to 'process oriented review'? Under what circumstances, in his view, should the European Courts' review of measures enacted by policy-makers be strict and under what circumstances should greater legislative discretion be permitted?</p> <p>The second example comes from the European Court of Human Rights. Consider the question of legislative discretion in the context of the ECtHR's 'margin of appreciation doctrine' in <i>Hirst v UK</i> (a 2005 decision on prisoner voting rights that the ECtHR recently re-affirmed, much to the anger of the present UK government). How does the Court balance the security and other interests of the state in this case with the individual voting rights of the applicant? Which techniques does it use, and is the balance struck the right one?</p> <p>Finally, to what extent is it desirable and legitimate for Courts to strike down measures that have been agreed by a democratic legislature? Is there – as Habermas argues – an 'internal relationship' between the rule of law and democracy – such that judicial review is necessary for a democratic polity to function? Or – as suggested by the response of the UK Parliament to <i>Hirst</i>, as well as the article of Jeremy Waldron - does the argument for judicial review overlook the need for political institutions themselves to define and elaborate fundamental legal values? Who – Courts of Parliaments – should have the last word?</p>
Required Readings	<p>Jürgen Habermas, 'On the Internal Relation between the Rule of Law and Democracy', in J. Habermas, <i>The Inclusion of the Other</i> (MIT Press, 1998), pp. 253-264</p> <p>Excerpts from P. Craig and G. de Búrca, <i>EU Law: Texts, Cases and Materials</i> (Oxford University Press, 2011), pp. 73-78 ('Competence')</p> <p>K. Lenaerts, 'The European Court of Justice and Process-oriented Review' (2012) <i>College of Europe Research Papers in Law</i> 1</p> <p>'Council of Europe Accepts UK Compromise on Prisoner Voting Rights', <i>The Guardian</i> (07.12.2017). Available at: https://www.theguardian.com/politics/2017/dec/07/council-of-europe-accepts-uk-compromise-on-prisoner-voting-rights</p> <p><i>Hirst v. UK</i> (No. 2), Case no. 74025/01 [2004] ECHR 122 (30 March 2004) (read paras. 11-25; 40-85; plus concurring opinion of Judge Caflisch)</p>
Optional Readings	<p>J. Waldron, 'The Core of the Case Against Judicial Review' (2006) 115 <i>Yale Law Journal</i>, pp. 1348-1406 (see particularly pages 1366-1376)</p>

Session 11: The Rule of Law

Learning Objective

General objectives

What is required for a legal and political order to be governed by the rule of law? What social, economic or political conditions are necessary to embed the rule of law in a given society and what conditions can lead to its erosion? Why is the rule of law necessary at all? And is there a role for international organizations, as well as domestic institutions, in upholding it?

Specific objectives:

Most societies – whether they be democratic or not; developed or developing - pride themselves on carrying a law-based order. What does it mean, however, to say that a given society is based on ‘the rule of law’? Read the introductory paper of Brian Tamanaha. What are the basic requirements that a legal order has to meet to fulfil the rule of law? And what is the distinction between a ‘thin’ and a ‘thick’ notion of that concept? Are democracy, human rights and the rule of law necessarily connected or can a legal order be based on the rule of law without these other two components? Are there particular types of social, economic or political system that facilitate or hinder the rule of law’s development?

We will consider this question in more detail by examining one state where many commentators see the rule of law as under serious threat: Poland. For more general background on the Polish case, read the essay of Jan-Werner Mueller and the article from Politico. What has been the distinct experience of Poland in relation to the rule of law since the end of the cold war, and why has a rule of law crisis emerged in the country since the end of 2015? Comparing Tamanaha’s description and the developments seen in Poland, what aspects of the rule of law could be in jeopardy?

This context is also crucial to understanding the capacities of external actors, such as the European Union, to intervene to address any rule of law violations in Poland. Read the press release of the Court of Justice’s judgment in Commission v Poland. What might be the EU’s justification for intervening in the Polish case (or in other states facing threats to fundamental values such as Hungary)? See also the other legal tools available to the EU as summarised in the Commission’s factsheet: what mechanisms or legal instruments does the EU have available to it and what are some of their limitations? The EU-Poland dispute has become something of a battle of wills: who is likely in the end to prevail in this dispute and what factors might be important in bringing the impasse to an end? Is international surveillance of the domestic rule of law – either in Europe or elsewhere - feasible and under what conditions?

Required Readings	<p>B. Tamanaha, 'A Concise Guide to the Rule of Law' (2009) <i>St John's Legal Studies Research Paper Series</i> 7 (available at: http://content.csbs.utah.edu/~dlevin/conlaw/tamanaha-rule-of-law.pdf)</p> <p>J-W. Müller, 'The Problem with Poland', <i>New York Review of Books</i> (11.02.16)</p> <p>CJEU Press Release, Commission v Poland (27.06.19). Available at: https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-06/cp190081en.pdf</p> <p>Art. 7 TEU; Chapters VI and VII of the EU Charter of Fundamental Rights</p> <p>European Commission Fact-Sheet, 'The EU's Rule of Law Toolbox' (01.04.19). Available at: https://ec.europa.eu/info/sites/info/files/rule_of_law_factsheet_1.pdf</p>
Optional Readings	<p>M. Dawson, 'Governing Justice and the Rule of Law' in <i>The Governance of EU Fundamental Rights</i> (Cambridge University Press, 2017)</p>

Session 12: Revision and Reflection – Looking Back at the Role of Law in Governance

Learning Objective	This session will constitute a revision lecture, examining the main issues and topics discussed from previous sessions and preparing participants for the final exam.
Required Readings	Please look back over notes and slides from previous sessions.
Optional Readings	n/a

Final Exam Week: Week of 17.05 - 21.05.2021