

**Advanced Master in Legal Sciences /
Master in European and Global Law
2016-2017**

Supranational integration, democracy and constitutional transformations

Term: 2

Number of Credits: 4

Language: English

Instructor: Maribel González Pascual; Hèctor López Bofill

Office hours: Office hours will be set during the first class.

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Course Description

Supranational integration poses a challenge for Constitutionalism. The Constitution, by definition, is the supreme norm of the States' legal systems. It provides an all-encompassing regulation of the exercise of public authority within the State. However, public authority and sources of Law are currently regulated by several provisions at supranational level.

Such constitutional transformations are obvious within the European Union's Member States. Thus, the analyses proposed will be focused on rethinking the basic concepts of Constitutionalism within a European context.

Prerequisites

None. However, any students unfamiliar with European Union Law are encouraged to consult some handbooks on the subject (among many others, we might recommend Hartley, T., *The Foundations of European Union Law*, Oxford University Press).

Methodology

- 1) **Methodology:** Classes will be developed from a previous reading of the materials provided in the work plan. Students will be required to read the main articles before class in order to participate in class discussions. Participation in class will be evaluated. Instructors may request a commentary on the readings over the course. The reading of the other materials referred to in the work plan are recommended as well.
- 2) **Skills:** understanding the decision-making processes within a supranational integration framework. Critical analysis on the role of the democratic players within a multilevel governance structure.
- 3) **Attendance policy:** students must attend at least 80% of the classes in order to be evaluated. Any exception to said rule will require a proper justification of non-attendance.
- 4) **Workload:** the number of hours per week that every student is expected to spend might be different depending on the student's background. However, at

least, every student is expected to spend:

- Two hours in order to prepare every class.
- Three hours on the commentaries on the materials provided during the course.
- A final paper or a final exam which will require at least 12 hours preparation.

Assignments and Evaluation

The work plan includes all the readings scheduled for every class. During the course one or two comments on the readings will be required. The date for handing in the work will be announced at least seven days in advance. Comments and participation in class will count for around 25 per cent of the global qualification.

Students will be required to hand in a paper at the end of the course in order to demonstrate their skills and the knowledge acquired. The content of the paper will be established by the instructors before the end of the course and will be based on the topics discussed in class.

If they fail, students will be required to hand over four comments on the readings previously established by the instructors and a final paper.

Schedule and Work Plan

SESSION 1:

Lesson 1: Constitutional pluralism. Discussion on the constitutional pluralism theory compared with the constitutional hierarchical approach.

Reading: J.H.H. Weiler, « Prologue: Global and Pluralist constitutionalism : some doubts » in J.H.H. Weiler and G.De Burca: *The Worlds of European Constitutionalism*, Cambridge University Press, Cambridge, 2011, pp. 8-18.

SESSION 2:

Lesson 2: Introduction to the supranational integration: the European Union. The Autonomy of the EU Legal Order. EU Law and the Member States' legal systems: the principle of direct effect.

Case C- 26/62 Van Gend en Loos, Court of Justice Judgment of February 5, 1962

Case C-6/64 *Costa v. Enel*, Court of Justice Judgement of July 15, 1964.

SESSION 3:

Lesson 3: The openness of the Constitutional Law to the International and Supranational Law. Constitutional clauses concerning the openness to the

International Law. The Constitutional Law Court's position.

Reading: Spanish Constitutional Court Declaration 1/2004 of December 13, 2004.

SESSION 4:

Lesson 4: Democratic principle within the context of legal pluralism. Democracy and supranational integration. Proposals, criticisms and challenges.

Reading: Weiler, J.H.H., "European Democracy and Its Critics: Polity and System", in *The Constitution of Europe*, Cambridge, 1999.

SESSION 5:

Lesson 5 (I): Supranational Courts and global international organizations. Analysis of the relations and conflicts that arise between supranational Courts within a regional integration context and international global organizations.

Reading: Cases C-402/05P and C-415/05P, *Kadi and Al Barakaat v. Commission and Council*, judgment of the European Court of Justice (Grand Chamber) [2008] ECR I-6351.

SESSION 6:

Lesson 5 (II): Supranational Courts: Human Rights and States' Constitutional framework. Analysis of the influence of European Human Rights judgements on the constitutional structure of the States Parties to the Convention.

Readings:

European Court of Human Rights Judgement of February 18, 1999, *Matthews v. United Kingdom*.

European Court of Human Rights Judgement of December 22, 2009, *Sejdic and Finci v. Bosnia Hercegovina*.

SESSION 7:

Lesson 6: Supranational Courts and Domestic Courts. Domestic Courts and integration. The impact of Supranational Court judgments on domestic judiciary. Constitutional Courts and ordinary Courts.

Readings:

Case C-173/09, *Elchinov*, Opinion of Advocate General Cruz Villalon of January 10, 2010

Case C-409/06, *Winner Wetten*, European Court of Justice Judgement of September 8, 2010

SESSION 8:

Lesson 7: Constitutional framework of the global economy. World Trade Organization, Free Trade Treaties, Bilateral Investment Treaties and their impact on Constitutional structures. Discussion on the influence of global economic organization's resolutions in the Constitutional Framework of Regional organizations and their Member States.

Reading:

D. Schneiderman, *Constitutionalizing Economic Globalization*, Cambridge University Press, Cambridge, 2008, p. 37-45.

SESSION 9:

Lesson 8: Supranational integration, economic crisis and Constitutional systems. Budget decisions within supranational and international frameworks. Citizenship and social policy.

Reading: Salomon, M., Of Austerity, Human Rights and International Institutions, LSE Working Papers 2/2015

SESSION 10:

Lesson 9 (I): Member States' institutions and their participation in the integration processes. Parliaments and governments within the new constitutional scenario.

Reading: Moravcsik, A., "Why the European Union Strengthens the State: Domestic Politics and International Cooperation", Center for European Studies, Harvard University. Working Paper, 1994

SESSION 11:

Lesson 9 (II): Member States' institutions and their participation in the integration processes: the regions. Territorial decentralization and supranational integration.

Reading: Keating, M. "A Quarter Century of the Europe of the Regions", *Regional & Federal Studies*, n. 5, vol. 18, 2008.

SESSION 12:

Lesson 10; Implementation and development of supranational norms and constitutional allocation of powers within Member States. Analysis of the implementation of supranational norms within Federal and Regional Constitutional States.

Reading: Bourne, Angela K., The impact of European Integration on Regional Power.

Bibliography/List of readings and materials

Judgments

Spanish Constitutional Court

Spanish Constitutional Court Judgement 93/2015 of May 15, 2015.

European Court of Justice

- Case C- 26/62 Van Gend en Loos, Court of Justice Judgment of February 5, 1962
- Case C-6/64 *Costa v. Enel*, Court of Justice Judgement of July 15, 1964.
- Cases C-402/05P and C-415/05P, *Kadi and Al Barakaat v. Commission and Council*, - Judgment of the European Court of Justice (Grand Chamber) of September 3, 2008.
- Case C-173/09, *Elchinov*, Opinion of Advocate General Cruz Villalon of January 10, 2010
- Case C-409/06, *Winner Wetten*, European Court of Justice Judgement of September 8, 2010

European Court of Human Rights

- European Court of Human Rights Judgement of February 18, 1999, *Matthews v. United Kingdom*.
- European Court of Human Rights Judgement of December 22, 2009, *Sejdic and Finci v. Bosnia Hercegovina*.

Articles and book's chapters.

- Auel, K., "Democratic Accountability and National Parliaments: Redefining the Impact of Parliamentary Scrutiny in EU Affairs", *European Law Journal*, vol. 13, 2007.
- Bogdandy, A v. and Makatsch, T. "Collision, Co-existence or Co-operation? Prospects for the relationship between WTO Law and EU Law en *The EU and the WTO: legal and constitutional issues*, Hart Publish., Oxford/Portland, 2001, pp 132-150.
- Bourne, Angela K., The impact of European Integration on Regional Power. *Journal of Common Market Studies*, Volume 41, Issue 4, September 2003, p. 597-620.
- Dawson, M. "Re-generating Europe through Human Rights? Proceduralism in

European Human Rights Law”, *German Law Journal*, Vol. 14, No. 05, 2013.

- Fassbender, B. “Notes on the place of the UN Charter in International Legal Order” in Dunoff J.L and Trachtman, J.P., *Ruling the World? Constitutionalism, International Law, Global Governance*, Cambridge University Press, Cambridge, 2009, pp. 133-148.

- González Pascual, M. “Austerity Measures and Welfare Rights. The Spanish Constitutional System under Stress”, *European Social Law Journal*, nº 1, 2014

- Keating, M. “A Quarter Century of the Europe of the Regions”, *Regional & Federal Studies*, n. 5, vol. 18, 2008.

- Moravcsik, A., “Why the European Union Strengthens the State: Domestic Politics and International Cooperation”, Center for European Studies, Harvard University. Working Paper, 1994.

- Pernice. I, "Multilevel Constitutionalism in the European Union" Working Paper, WHI 5/02

- Scharpf, F. W., “Legitimacy in the multilevel European polity”, *European Political Science Review*, n. 1, 2009.

- Schneiderman, D. *Constitutionalizing Economic Globalization*, Cambridge University Press, Cambridge, 2008, p. 37-45

- Thatam, M., "Going Solo: Direct Regional Representation in the European Union", *Regional and Federal Studies*, vol. 18, n. 5, 2008

Weiler, J.H.H., “European Democracy and Its Critics: Polity and System”, in *The Constitution of Europe*, Cambridge, 1999.

Weiler, J.H.H., "Prologue: Global and Pluralist constitutionalism: some doubts", in Weiler, J.H.H. and De Burca, G.: *The Worlds of European Constitutionalism*, Cambridge University Press, Cambridge, 2011, pp. 8-18.