



**Course title:** Law, Justice and Legitimacy

**Language of instruction:** English

**Professor:** José L. Martí

**Professor's contact and office hours:** [josepluis.marti@upf.edu](mailto:josepluis.marti@upf.edu); Office number: 40.0E26 (Roger de Lluria Building); office hours: Tuesdays and Thursdays, 4-5pm

**Course contact hours:** 45

**Recommended credit:** 3 US credits-6 ECTS credits

**Course prerequisites:** there are no prerequisites for this course

**Language requirements:** None

**Course focus and approach:** This is a multidisciplinary course that aims to integrate the perspectives of law, political philosophy, international relations, and political science. It is an introduction to some of the most relevant problems that both politics and the law (particularly, public law) are facing in the 21<sup>st</sup> century. It focuses on the structure, aims, and content of **public law**, and the main discussions about its **justice** and **legitimacy**. It is not an aim of this course, therefore, to provide a deep understanding of a particular issue concerning public law, but a general landscape of the many issues involved in the idea of the law itself, and in its acceptability from a normative point of view. It will emphasize the importance of the new global scenario and the current digital transformations.

**Course description:** The course is divided into four parts, and 22 class periods. The first part will be just introductory, but it is an attempt to introduce the student to the new scenario in which the law, politics, and justice are placed. This new scenario is characterized mainly by two distinct but interrelated phenomena that, together, are profoundly changing our societies: globalization and the digital revolution.



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The second part consists of an introduction to law, to its functions, to the idea of a rule of law, to its sources, the main law traditions, and the law branches. It continues with an introduction to constitutional law and criminal law, as two main branches of public law. And it also introduces the discussions about democratic legitimacy and judicial review.

The third part focuses on justice and legitimacy. It focuses on the main contemporary theories of justice, such as utilitarianism, liberal egalitarianism, libertarianism, Communitarianism, Multiculturalism, Feminism, and Republicanism. And it includes a session on the idea of political legitimacy, and more concretely of democratic legitimacy.

The fourth and last part deals with global issues, and mainly with the application of what we have learned on law, justice and legitimacy to this new scenario. It embraces the main recent discussions about global justice, state sovereignty and global democracy.

**Learning objectives:** The general aim of the course is to provide pre-law students with a general understanding of the law, particularly public law, at the light of the major normative challenges it must face in the 21st century. Besides this, the course adopts the following concrete learning objectives:

- The students must acquire a general understanding of what the law is, what is its usual content, what is the main role for public law in particular, and what are the main challenges that it faces in the 21st century, particularly those derived from globalization and the digital transformations.
- The students must learn the fundamentals of public law, and especially the constitutional essentials.
- The students must achieve a general knowledge and understanding of the main normative issues involved in current constitutional democracies, concerning questions of justice and legitimacy.

**Course workload:** The students are expected to attend the class periods having read in advance the assigned readings indicated below. They are also expected



to engage and participate actively in the class' discussions. Students will be required to make oral presentations of texts related to each period' s discussion topic, and will be asked to defend a position regarding such topic. Each student must do at least one oral presentation during the course. Students will also have to write 2-page discussion notes on five of the assigned readings that will be freely chosen by them, which will be due in different mid-term deadlines to be announced. There will be no final exam. But students will be required to write and submit a final essay, in the form of a policy paper of around 4,000 words, on a topic related to any of the course' s contents. In this policy paper, the student will be asked to defend a proposal for the amendment of a concrete legislation or institution. A video-presentation with a defense of the policy paper will also be required. Both the paper and the video-presentation will be due on one week after the end of the classes. The exact date will be announced during the course.

**Teaching methodology:** The course is basically structured in class lectures, oral presentations, and discussions. Students will be asked to be active taking part in the class discussions. Critical and autonomous thinking will be encouraged and praised. And any opinion will be welcome. On the other hand, there is an important workload that students will have to develop off-class at their convenience. Advice and supervision for the study of the materials and the preparation of the oral presentations, but specially for the research and writing of the policy paper will be provided by the instructor during the whole course.

**Assessment criteria:**

Final assessment and grades will be distributed according to the following criteria:

- Class participation: 10%
- Discussion notes: 20%
- Oral presentation: 10%
- Final essay - policy paper: 40%
- Video-presentation: 20%



**Absence policy**

After the add/drop, all registrations are considered final and **LEGAL STUDIES PROGRAM Absence Policy** begins to apply. For the academic year 2015-2016, such policy is as follows:

*Attending class is mandatory and will be monitored daily by professors. Missing classes will impact on the student' s final grade as follows:*

| <b>Absences</b>                  | <b>Penalization</b>   |
|----------------------------------|---|
| <i>Up to two (2) absences</i>    | <i>No penalization</i>  |
| <i>Three (3) absences</i>        | <i>1 point subtracted from final grade (on a 10 point scale)</i>            |
| <i>Four (4) absences</i>         | <i>2 points subtracted from final grade (on a 10 point scale)</i>           |
| <i>Five (5) absences or more</i> | <i>The student receives an INCOMPLETE ( "NO PRESENTAT" ) for the course</i> |

*The PEHE/HESP attendance policy **does not distinguish between justified or unjustified absences.** The student is deemed responsible to manage his/her absences.*

*Emergency situations (hospitalization, family emergency...) will be analyzed on a case by case basis by the Director of the Education Abroad Program.*

**Classroom norms:**

- Proper behavior in the classroom is required
- Students will have a ten-minute break during each hour session

**Weekly schedule:** The course is structured into 22 class periods of two hours each along 11 weeks, grouped into 4 parts. Every week there will be a general theme, a topic for discussion, and a list of required readings.



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**PART I: INTRODUCTION TO A NEW SCENARIO**

**Period 1: Introduction: Law, Justice and Legitimacy**

(Tue, Jan 12<sup>th</sup>):

No readings assigned

**Period 2: A New Global Scenario for Law and Politics**

(Thu, Jan 14<sup>th</sup>)

Reading Assignments:

- Nye, Joseph. S., "Globalization" in *The Paradox of American Power: Why the World's Only Superpower Can't Go It Alone*, New York: Oxford University Press, 2002, pp. 77-110.
- Held, David and Anthony McGrew, "The Great Globalization Debate: An Introduction" , in Held, David and Anthony McGrew (eds), *The Global Transformations Reader*, London: Polity Press, 2003, pp. 8-14 and 32-42.

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Topic for discussion: How is globalization changing our nation states?

**Period 3: The Digital Revolution**

(Tue, Jan 19<sup>th</sup>)

Reading Assignments:

- Rheingold, Howard, *Net Smart. How to Thrive Online*, Cambridge (Mass.): MIT Press, 2012, excerpts: pp. 1-3, 12-26, 147-190, and 191-202.
- Benkler, Yochai, *The Wealth of Networks: How Social Production Transforms Markets and Freedom*, New Have: Yale University Press, 2006: ch. 1, pp. 1-28.

Topic for discussion: Will the new technologies change dramatically the way in which we politically and legally organize our societies?

**PART II: INTRODUCTION TO LAW**



**Period 4: The Law, Its Functions, and the Rule of Law**

(Thu, Jan 21<sup>st</sup>)

Reading assignments:

- Partington, M., "Law and society: the purposes and functions of law" , in *Introduction to the English Legal System*. 6th ed, Oxford: Oxford University Press, 2010: p.12-26.

**Period 5: Legal Traditions, Sources of Law and Branches of the Law**

(Tue, Jan 26<sup>th</sup>)

Reading assignments:

- Wacks, Raymond, *Law. A Very Short Introduction*, Oxford: Oxford University Press, 2008: pp. 1-28 and 36-66.

Topic for discussion: Should the rule of law be respected at any rate, even when the legal provisions to be enforced are unjust?

**Period 6: Constitutionalism and Fundamental Rights**

(Thu, Jan 28<sup>th</sup>)

Reading assignments:

- Eric Barendt, *Introduction to Constitutional Law*, Oxford: Oxford University Press, 1998: chap.1, pp. 1-25.
- Waluchow, Will, "Constitutionalism" , *Stanford Encyclopedia of Philosophy*.  
<http://plato.stanford.edu/entries/constitutionalism/>

**Period 7: Legal Interpretation and Legal Indeterminacy**

(Tue, Feb 2<sup>nd</sup>)

Reading assignments:

- Philip Bobbitt, "Constitutional Law and Interpretation" , in Dennis M. Patterson (ed.), *A Companion to Philosophy of Law and Legal Theory*, Oxford: Blackwell Publishers, 1996.

Topic for discussion: Does the American constitution prohibit death penalty? Isn't it a cruel and unusual punishment?

**Period 8: The Case for Constitutional Rigidity and Judicial Review**

(Thu, Feb 4<sup>th</sup>)



Reading assignments:

- Dworkin, Ronald, *Is Democracy Possible Here?*, Princeton: Princeton University Press, 2006: chap. 5: pp. 127-159.
- Ferreres, Victor, "A Defense of Constitutional Rigidity" , *Analisi e Diritto*, 2000: pp. 45-68.

**Period 9: The Democratic Objection to Strong Constitutionalism**

(Tue, Feb 9<sup>th</sup>)

- Sinnott Armstrong, Walter, "Weak and Strong Judicial Review" , *Law and Philosophy*, 22, 2003: 381-392.
- Hirschl, Ran, "The Judicialization of Mega-Politics and the Rise of Political Courts" , *Annual Review of Political Science*, 11, 2008, pp. 93-118.
- Martí, José Luis, "Is Constitutional Rigidity the Problem? Democratic Legitimacy and the Last Word" , *Ratio Juris*, 2014.

Topic for discussion: Would it be legitimate to be ruled by experts and technocrats?  
What is the limit, if any, of a technocratic government?

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Further reading:

- Waldron, Jeremy, "The Core of the Case Against Judicial Review" , *The Yale Law Journal*, 115, 2006.

**Period 10: Criminal Law and Theories of Punishment**

(Thu, Feb 11<sup>th</sup>)

Reading assignments:

- Tebitt, Mark. "Responsibility and guilt" , in *Philosophy of Law: an Introduction*, London: Routledge, 2005: pp. 157-177.
- Duff, Antony, "Theories of Criminal Law" , *Stanford Encyclopedia of Philosophy*, <http://plato.stanford.edu/entries/criminal-law/>

Topics for discussion: Are we criminalizing too much? Are we punishing too much?

Text for presentation:

- Husak, Douglas, *Overcriminalization*, Oxford University Press, 2008: pp. 3-33.





**Period 11: Paternalism, Perfectionism, and the Limits to State Intervention**

(Tue, Feb 16<sup>th</sup>)

- Dworkin, Gerald, "Paternalism" , *Stanford Encyclopedia of Philosophy*:  
<http://plato.stanford.edu/entries/paternalism/>

Topic for discussion: Should we decriminalize drugs?

Text for presentation:

- Husak, Douglas, "Four Points About Drug Legalization" , *Criminal Justice Ethics*,  
Winter/Spring 2003: pp. 21-29.

**PART III: JUSTICE AND LEGITIMACY**

**Period 12: Theories of justice 1: Utilitarianism**

(Thu, Feb 18<sup>th</sup>)

Reading assignments:

- Sandel, Michael, *Justice. What' s the Right Thing to Do?*, New York: Farrar, Strauss and Giroux, 2009: chaps. 1 and 2, pp. 3-57.
- Sandel on Torture: <http://vimeo.com/52821463>

**Period 13: Theories of justice 2: Liberal Egalitarianism**

(Tue, Feb 23<sup>rd</sup>)

Reading assignments:

- Sandel, Michael, *Justice. What' s the Right Thing to Do?*, New York: Farrar, Strauss and Giroux, 2009: chaps. 5 and 6, pp. 103-166.

**Period 14: Theories of justice 3: Libertarianism**

(Thu, Feb 25<sup>th</sup>)

Reading assignments:

- Sandel, Michael, *Justice. What' s the Right Thing to Do?*, New York: Farrar, Strauss and Giroux, 2009: chaps. 3 and 4, pp. 58-102.
- Sandel on markets: <https://www.youtube.com/watch?v=UbBv2ZGC2VI>



Topic for discussion: Are there any limits to markets?

Text for presentation:

- Cohen, Gerald, "The Camping Trip" , in *Why Not Socialism?*, Princeton University Press, 2009, pp. 1-11.

**Period 17: Theories of Justice 4: Communitarianism, Multiculturalism, Feminism, Republicanism**

(Tue, Mar 8<sup>th</sup>)

Reading assignments:

- Sandel, Michael, *Justice. What's the Right Thing to Do?*, New York: Farrar, Strauss and Giroux, 2009: chaps. 7 and 9, pp. 167-183 and 208-243.
- Philip Pettit, "Civic Republican Theory" , in José Luis Martí and Philip Pettit, *A Political Philosophy in Public Life*, Princeton: Princeton University Press, 2009: chap. 2.
- McAfee, Noëlle, "Feminist Political Philosophy" , *Stanford Encyclopedia of Philosophy*: <http://plato.stanford.edu/entries/feminism-political/>
- MacKinnon, Catherine, "Difference and Dominance: on Sex Discrimination" , in *Feminism Unmodified*. Cambridge: Harvard University Press, 1987: pp.32-45.

**Period 18: Democratic Legitimacy**

(Thu, Mar 10<sup>th</sup>)

Reading assignments:

- Christiano, Tom, "Democracy" , *Stanford Encyclopedia of Philosophy*, <http://plato.stanford.edu/entries/democracy/>

Text for presentation:

- Lahsen, Myanna, "Technocracy, Democracy, and the US Climate Politics" , *Science, Technology and Human Values*, 30(1), 2005, pp. 137-169.

**PART IV: GLOBAL JUSTICE AND GLOBAL LEGITIMACY**

**Period 19: Global Justice: World Poverty and Global Inequalities**

(Tue, Mar 15<sup>th</sup>)

Reading assignments:

- Risse, Mathias, *Global Political Philosophy*, Basingstoke, Palgrave Macmillan, 2012: ch. 4, pp. 88-118.
- Blake, Michael, "International distributive justice" , *Stanford Encyclopaedia of Philosophy*, accessible at: <http://plato.stanford.edu/entries/international-justice/>

Text presentation:

- Singer, Peter, *The Life You Can Save*, Random House, 2009, chaps. 1, 2 and 3, pp. 3-42.

**Period 20: The Defence of National Sovereignty and National Democracies**

(Thu, Mar 17<sup>th</sup>)

Reading assignments:

- Alvarez, José E., "State Sovereignty is Not Withering Away: A Few Lessons For the Future" , in Antonio Cassese (ed.), *Realizing Utopia*, OUP, 2012, pp. 26-37.
- Miller, David, "Cosmopolitanism" , in Brown, Garrett Wallace and David Held (eds), *The Cosmopolitanism Reader*, London: Polity Press, 2010, pp. 377-392.

**Period 21: Global Democracy**

(Tue, Mar 22<sup>nd</sup>)

Group presentations:

- Archibugi, Daniele, "Critical Debate on Cosmopolitan Democracy" , in *The Global Commonwealth of Citizens*, Princeton: Princeton University Press, 2008, pp. 123-149.
- Dahl, Robert, "Can International Organizations be Democratic? A Skeptic' s View" , in Brown, Garrett Wallace and David Held (eds), *The Cosmopolitanism Reader*, London: Polity Press, 2010, pp. 423-434.
- Falk, Richard and Andrew Strauss, "Toward Global Parliament" , *Foreign Affairs*, January/February 2001, pp. 212-220.
- Barber, Benjamin, "Why Mayors Should Rule the World?" , *TEDTalk*, 2013: [http://www.ted.com/talks/benjamin\\_barber\\_why\\_mayors\\_should\\_rule\\_the\\_world](http://www.ted.com/talks/benjamin_barber_why_mayors_should_rule_the_world)

Topic for discussion: Should we create a world parliament?

**Period 22: Policy Paper Presentations**

(Thu, Mar 24<sup>th</sup>)

**Other Recommended Bibliography:**

- ARTHUR, John and William H. SHAW, *Readings in the Philosophy of Law*, 2<sup>nd</sup> ed., Prentice Hall, 1993.
- BOBBIT, Philip, "Constitutional Law and Interpretation" , in Dennis M. Patterson (ed.), *A Companion to Philosophy of Law and Legal Theory*, Oxford: Blackwell Publishers, 1996: pp. 126-39.
- BRIGHOUSE, Harry, *Justice*, London: Polity, 2005.
- DUFF, R.A., *Punishment, Communication and Community*, Oxford: Oxford University Press, 2001: pp. 3-34.
- DUFF, R.A., "Legal Punishment" , in Stanford Encyclopedia of Philosophy.
- FABRE, Cecile, *Justice in a Changing World*, Polity Press, 2007.
- GREEN, L., "Legal Positivism" , in Stanford Encyclopedia of Philosophy,
- KYMLICKA, Will, *Contemporary Political Philosophy*, 2nd edition, Oxford University Press, 2001.
- MARMOR, Andrei, "The Ideal of the Rule of Law" , in D. Patterson (ed.), *A Companion to Philosophy of Law and Legal Theory*, Second edition, Oxford: Wiley-Blackwell, 2010.
- MARMOR, A., "The Nature of Law" , in Stanford Encyclopedia of Philosophy.
- MILLER, David, *Political Philosophy. A Very Short Introduction*, Oxford: Oxford University Press, 2003.
- MURPHY, Jeffrie and Jules COLEMAN, *Philosophy of Law. An Introduction to Jurisprudence*, Westview, 1990: pp. 1-66; and 109-142.
- OWENS, K., *Law for non-law students*, London: Cavendish, 2001: pp. 1-33.
- SCHAUER, Frederick, *Thinking like a lawyer*, Cambridge: Harvard University Press, 2009.
- SONG, Sarah, "The Subject of Multiculturalism: Culture, Religion, Language, Ethnicity, Nationality, and Race?" , in Boudewijn de Bruin & Christopher F. Zurn (eds.), *New Waves in Political Philosophy*. Palgrave Macmillan, 2009.
- TEBITT, M., *Philosophy of Law: an Introduction*, London: Routledge, 2005.
- WACKS, R., *Philosophy of law. A Very Short Introduction*, Oxford: Oxford University Press, 2006: pp. 1-51.



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- WOLFF, Jonathan, *An Introduction to Political Philosophy*, Oxford: Oxford University Press, 2006.