

**THE CONTEMPORARY GLOBAL LEGAL ORDER:
CONTINUITY, CHANGE, AND CHALLENGES**

6 ECTS credits (36 hours)
Language of instruction: English
Contact: pablo.pareja@upf.edu

I. COURSE DESCRIPTION

In 2001, Stanford Professor Lawrence M. Friedman suggested that “the coming Global Legal Order” was *erewhon* (nowhere and everywhere) and obscure.¹ Partly inspired by this, two years later a group of Law Professors led by David Kennedy gathered in Vienna to discuss the foundations of this new global legal order and its transformative potential of an increasingly complex international society.² In a similar vein, Andrew Halpin and Volker Roeben co-edited an interdisciplinary collective volume in 2009 exploring the main features of this legal order, its variations across several legal domains and its implications for the future development of Law both as a reality and an academic discipline.³

Following these reflections, this course seeks to analyze from an interdisciplinary approach the main features of the Contemporary Global Legal Order, some of the most relevant challenges confronting it, and the main elements of continuity and change in its recent evolution. More precisely, the aim of the course is threefold: first, to familiarize students with the notion and evolution of the Contemporary Global Legal Order, as well as with its interplay with other regional and national legal orders; second, to introduce students to some of the most pressing challenges confronting the former order from different legal domains (Criminal Law, Philosophy of Law, Public International Law, International Relations, Tax Law, Family Law and Private Law); third, to invite students to think critically about the legal, moral, and social implications of the Contemporary Global Legal Order, the latter’s elements of continuity and change, and the main contending visions.

The course *Continuity and Change in the Contemporary Global Legal Order: Current and Future Challenges* complements the current course offer of the UPF MLL Program in Legal Sciences. In particular, the course strengthens –without any relevant overlaps– the content of two courses: *Models of Justice and Human Rights* and *International Relations*. Additionally, the course may serve to reinforce some of the ideas covered in *Law and Gender Policies*.

¹ Friedman, L. M. (2001), “Erewhon: The Coming Global Order”, *Stanford Journal of International Law*, vol. 37, 347-364.

² An overview of the main conclusions of this symposium is included in Kenney, D. (2003), “International Symposium on the International Legal Order”, *Leiden Journal of International Law*, 16, 839-847.

³ Halpin, A. & Voelken, R. (2009), *Theorising the Global Legal Order*, New York: Hart Publishing. See also Sieber, U. (2010), “Legal Order in a Global World – The Development of a Fragmented System of National, International, and Private Norms”, *Max Planck Yearbook of United Nations Law*, 14, 1-49.

II. LECTURERS

Marta Abegón Novella (Public International Law/International Relations)

Esther Farnós Amorós (Family Law)

Mariona Llobet Angli (Criminal Law)

Ester Marco Peñas (Tax Law)

Raquel Montaner Fernández (Criminal Law)

Pablo Pareja Alcaraz (International Relations/Public International Law)

Lorena Ramírez Ludeña (Philosophy of Law)

Antoni Rubí Puig (Private Law)

III. DISTRIBUTION OF SESSIONS (18 SESSIONS/2 HOURS EACH)

SECTION I: THE CONTEMPORARY GLOBAL LEGAL ORDER: CHARACTERIZATION AND MAIN FEATURES

Unit 1: The Contemporary Global Legal Order: notion, origins and evolution. *Pablo Pareja Alcaraz*

Unit 2: The current (and changing) structure of the Contemporary Legal Global Order: the constitutional block, fundamental institutions and secondary rules. *Pablo Pareja Alcaraz*

Unit 3: Unity and Pluralism in the Contemporary Legal Global Order. The interplay between the Contemporary Global Legal Order, Regional Legal Orders and National Legal Orders. *Pablo Pareja Alcaraz*

Unit 4: International regimes in the Contemporary Legal Global Order. Contending visions and functions. *Pablo Pareja Alcaraz*

Unit 5: A Legal Philosophical approach to the Contemporary Global Legal Order. Theory of Law within the Modern State paradigm. The contributions of Ross, Kelsen, Hart, and Dworkin. *Lorena Ramírez Ludeña*

SECTION II: CURRENT AND FUTURE CHALLENGES TO THE CONTEMPORARY GLOBAL LEGAL ORDER

Unit 6: The Global War on Terror: limits between terrorism and war. Analysis of current relevant cases: Guantanamo and the shoot down of commercial planes. *Mariona Llobet Angli*

Unit 7: The Global Legal Order in light of the transformation of contemporary armed conflict. Environmental protection in conflict-ridden scenarios. *Marta Abegón Novella*

Unit 8: Migrants, Refugees, and Asylum Seekers in the Contemporary Global Legal Order. *Pablo Pareja Alcaraz*

Unit 9: State, Sovereignty and Intervention in the Contemporary Global Legal Order. The Responsibility to Protect as an “emerging guiding principle”. *Pablo Pareja Alcaraz*

Unit 10: Criminal Liability of corporations in the Global Legal Order. Corporate culture, corporate governance and criminal compliance in comparative Law. The case of corporate environmental crimes. *Raquel Montaner Fernández*

Unit 11: Surrogacy arrangements in a global world. “Reproductive tourism” or “Cross-Border Reproductive Care? The case of Spain. The variety in assisted reproductive policies before the ECtHR. New challenges at both domestic and international levels: recognition or regulation? Time for a convention: a global phenomenon demanding a global solution. *Esther Farnós Amorós*

Unit 12: Global Order beyond Private Law. The role of information and communication technologies in facilitating relational contracting. The case of cross-border software agreements. Social norms in global IP industries: emerging global trends in the fashion, tattoo, cuisine and open software communities. *Antoni Rubí Puig*

Unit 13: Global relations in taxation. “Harmful” tax practices: Tax havens and aggressive tax planning. *Designing possible solutions*: The Automatic Exchange of information (before and after FACTA). The OECD BEPS Action Plan. *What remains to be done and new challenges*: The need for Compliance (Jurisdictions and Financial Institutions). Too costly to implement? The protection of private information. *Ester Marco Peñas*

SECTION III: CONTINUITY AND CHANGE IN THE CONTEMPORARY GLOBAL LEGAL ORDER

Unit 14: Contending and complementary visions of the Contemporary Global Legal Order. Acceptance and Contestation of the Contemporary Global Legal Order. *Pablo Pareja Alcaraz*

Unit 15: Beyond the Modern State paradigm: The challenge of the Global Legal Order for Contemporary Theory of Law. *Lorena Ramírez Ludeña*

Unit 16: Global Public Goods and the Contemporary Global Legal Order. *Pablo Pareja Alcaraz*

Unit 17: Multilevel Governance of the Contemporary Global Legal Order. *Pablo Pareja Alcaraz*

Unit 18: Continuity and Change in the Contemporary Global Legal Order. Main drivers of continuity and change. Current trends and (potential) future scenarios. *Pablo Pareja Alcaraz*

IV. ORGANIZATION OF SESSIONS

Students are required to read one or two articles before each 2-hour session of the course. All readings will be accessible to students via the “Campus Global”, to which they will have access from the beginning of the term. The content of these readings and the lectures will serve as the basis for a class discussion that will take place at the end of each session (20 min. approximately).

In addition to lectures and class discussions, the course will include two different seminars the content of which will be announced to students at least two weeks before

so that they can prepare for them. The two seminars will take place in sessions 9 and 17 of the course.

V. EVALUATION

The evaluation of this course comprises three different components:

- a) Participation in class debates. This component is worth 20% of the course's final grade.
- b) Attendance and active participation in two different seminars. This component is worth 30% of the course's final grade.
- b) A final take-home exam based on both the content of the lectures and the list of readings available through "Aula Global". This component is worth 50% of the course's final grade.

VI. GENERAL BIBLIOGRAPHY OF THE COURSE

- Abbott, K. W. & Snidal, D. (2009), "The Governance Triangle: Regulatory Standards Institutions and the Shadow of the State", in Walter Mattli & Ngaire Woods (eds.), *The Politics of Global Regulation*, Princeton, NJ: Princeton University Press, pp. 44-88.
- Abbott, K. W.; Keohane, R. O. *et al.* (2000), "The Concept of Legalization", *International Organization*, vol. 54, n° 3, pp. 401-419.
- Alagappa, M. (ed.) (2003), *Asian Security Order. Instrumental and Normative Features*, Stanford: Stanford University Press, pp. 33-69 ("The Study of International Order. An Analytical Framework").
- Anderson, J., Ikenberry, G. J. and Risse, Th. (eds.) (2008), *The End of the West? Crisis and Change in the Atlantic Order*, Ithaca, New York: Cornell University Press.
- Avant, D. D.; Finnemore, M.; Sell, S. K. (2010), "Who governs the globe", in Deborah D. Avant; Martha Finnemore; Susan K. Sell (eds.), *Who Governs the Globe?*, Cambridge: Cambridge University Press, pp. 1-31.
- Ba, A. D. & Hoffmann, M. J. (eds.) (2005), *Contending Perspectives on Global Governance. Coherence, Contestation and World Order*, Londres: Routledge.
- Barbieri, G., Gleditsch, K., & Schneider, N. P. (eds.) (2003), *Globalization and Armed Conflict*, Lanham: Rowman & Littlefield.
- Barnett, M. & Duvall, R. (eds.) (2005), *Power in Global Governance*, Cambridge: Cambridge University Press.
- Barnett, M. N. (1997), "Bringing in the New World Order: Liberalism, Legitimacy, and the United Nations", *World Politics*, vol. 49, num. 4, pp. 526-551.
- Beck, U. (1998), *World Risk Society*, Cambridge: Polity Press.
- Boli, J. & Thomas, G. M. (eds.) (1999), *Constructing world culture: International nongovernmental organizations since 1865*, Stanford: Stanford University Press.
- Boyle, Ch. (2008), "The Mystery of Modern Wealth: Mercantilism, Value, and the Social Foundations of Liberal International Order", *European Journal of International Relations*, vol. 14, num. 3, September, pp. 405-423.

- Bradley, K. (2004), *Strategic Studies and World Order*, Cambridge: Cambridge University Press.
- Bull, H. (1994), "Martin Wight and the theory of international relations", in Wight, M., *International Theory. The Three Traditions*, Leicester/London: Leicester University Press for the Royal Institute of International Affairs, pp. ix-xxiii.
- Bull, H. (2002), *The Anarchical Society. A Study of Order in World Politics*, Basingstoke/New York: Palgrave, 3rd ed. (1st. of 1977), pp. 3-21 ("The Concept of Order in World Politics").
- Bull, H. (2002), *The Anarchical Society. A Study of Order in World Politics*, Basingstoke/New York: Palgrave, 3rd ed. (1st. of 1977).
- Buzan, B. (1993), "From international system to international society: structural realism and regime theory meet the English school", *International Organization*, vol. 47, no. 3, pp. 327-352.
- Clark, I. (1989), *The hierarchy of states: reform and resistance in the international order*, Cambridge Studies in International Relations, num. 7, Cambridge: Cambridge University Press.
- Cooper, R. (2000), *The post modern State and world Order*, London: The Foreign Policy Centre, 2000.
- Cox, R. W. and Sinclair, T. J. (1996), *Approaches to World Order*, Cambridge: Cambridge University Press.
- Cutler, A. Claire; Haufler, Virginia; Porter, Tony (1999), "Private Authority and International Affairs", in Cutler, A. Claire; Haufler, Virginia; Porter, Tony (eds.) (1999), *Private Authority and International Affairs*, New York: New York State University Press, pp. 3-28.
- Desai, M. & Redfern, P. (eds.) (1995), *Global Governance. Ethics and Economics of the New World Order*, Londres: Pinter.
- Diehl, P. F. & Frederking, B. (eds.) (2010), *The Politics of Global Governance: International Organizations in an Interdependent World*, Boulder, CO: Lynne Rienner Publishers, 4^a ed.
- Drezner, D. W. (2007), *All Politics Is Global. Explaining International Regulatory Regimes*, Princeton: Princeton University Press.
- Dunoff, J. L. & Trachtman, J. P. (eds.) (2009), *Ruling the World? Constitutionalism, International Law and Global Governance*, Cambridge: Cambridge University Press.
- Gareis, S. & Varwick, J. (2005), "Reforms for the Twenty-first Century" & "Conclusions", *The United Nations. An Introduction*, New York: Palgrave Macmillan, pp. 213-254.
- Gilpin, R. (1981), *War and Change in World Politics*, Cambridge: Cambridge University Press.
- Grant, R. W. & Keohane, R. O. (2005), "Accountability and Abuses of Power in World Politics", *American Political Science Review*, vol. 99, n° 1, pp. 29-43.
- Hall, J. A. (1996), *International Orders*, Cambridge: Polity Press.

- Hall, R. B. & Biersteker, T. J. (eds.) (2002), *The Emergence of Private Authority in Global Governance*, Cambridge: Cambridge University Press.
- Haufler, V. (2001), *A Public Role for the Private Sector: Industry Self-Regulation in a Global Economy*, Washington, DC: Carnegie Endowment for International Peace.
- Held, D. & McGrew, A. (eds.) (2002), *Governing Globalization: Power, Authority and Global Governance*, Cambridge: Polity Press.
- Held, D. & McGrew, A.; Goldblatt, D. & Perraton, J. (1999), *Global Transformations. Politics, Economics and Culture*, Stanford: Stanford University Press.
- Held, D. & Koenig-Archibugi, M. (eds.) (2005), *Global Governance and Accountability*, Cambridge: Polity Press.
- Hewson, M. & Sinclair, T. J. (eds.) (1999), *Approaches to Global Governance Theory*, New York: State University of New York Press.
- Huntington, S. P. (1996), *The Clash of Civilizations and the Remaking of World Order*, New York: Simon and Schuster.
- Hurrell, A. (2003), "Order and Justice in International Relations: What is at Stake?", in Foot, R., Gaddis, J. L. and Hurrell, A. (eds.), *Order and Justice in International Relations*, Oxford: Oxford University Press, pp. 24-48.
- Ikenberry, G. J. (2001), *After Victory. Institutions, Strategic Restraint and the Rebuilding of Order After Major Wars*, Princeton, NJ: Princeton University Press, pp. 21-49 ("Chapter Two: Varieties of Order: Balance of Power, Hegemonic, and Constitutional").
- Ikenberry, G. J. (2001), *After Victory. Institutions, Strategic Restraint and the Rebuilding of Order After Major Wars*, Princeton, NJ: Princeton University Press.
- Ikenberry, G. John, "Illusions of Empire: Defining the New American Order", *Foreign Affairs*, vol. 83, num. 2, March-April, 2004, pp. 144-154.
- Jones, B., Pascual, C. and Stedman, S. J. (2009), *Power and Responsibility: Building International Order in an Era of Transnational Threats*, Washington, DC: Brookings Institution, pp. 3-20 ("Sovereignty's Last Best Chance").
- Kahler, M. (ed.) (2009), *Networked Politics: Agency, Power, and Governance*, New York: Cornell University Press.
- Keene, E. (2002), *Beyond the Anarchical Society: Grotius, Colonialism, and Order in World Politics*, Cambridge: Cambridge University Press.
- Krasner, S. D. (1995), "Compromising Westphalia", *International Security*, vol.20, num. 3, pp. 115-151.
- Krasner, S. S. (1999), *Sovereignty: Organized Hypocrisy*, Princeton: Princeton University Press, pp. 3-43 ("Sovereignty and its Discontents").
- Lamb, H. (2008), *The Rise of Global Governance*, Sovereignty International.
- March, J. G. y Olsen, J. P. (1998), "The institutional dynamics of international political orders", *International Organization*, vol. 52, num. 4, pp. 943-969.
- May, C. (ed.) (2006), *Global Corporate Power*, Boulder: Lynne Rienner.
- Meyer, J. M., et al. (1997), "The Structuring of a World Environmental Regime, 1870-1990", *International Organization*, vol. 51, n° 4, pp. 555-589.

- Nye Jr., J. S. & Donahue, J. D. (eds.) (2000), *Governance in a Globalizing World*, Washington, D.C.: Brookings Institution Press.
- Parent, J. M. and Erikson, E. (2009), "Anarchy, hierarchy and order", *Cambridge Review of International Affairs*, vol. 22, num. 1, March, pp. 129-145.
- Paul, T. V. y Hall, J. A. (eds.) (1999), *International Order and the Future of World Politics*, Nueva York: Cambridge University Press.
- Reinicke, W. H. (1998), *Global Public Policy: Governing Without Government?*, Washington, D.C.: Brookings Institution Press.
- Reus-Smit, Ch. (1997), "The Constitutional Structure of International Society and the Nature of Fundamental Institutions", *International Organization*, vol. 51, num. 4, Fall, pp. 555-589.
- Rosenau, J. N. & Czempiel, E. O. (eds.) (1992), *Governance Without Government: Order and Change in World Politics*, Cambridge: Cambridge University Press.
- Ruggie, J. G. (2004), "Reconstituting the Global Public Domain – Issues, Actors, and Practices", *European Journal of International Relations*, vol. 10, nº 4, pp. 499-531.
- Shaw, M. (ed.) (1999), *Politics and Globalisation. Knowledge, ethics and agency*, London: Routledge.
- Simai, M. (1995), *The Future of Global Governance Managing Risk and Change in the International System*, New York: Twentieth Century Fund Press.
- Soederberg, S. (2006), *Global Governance in Question: Empire, Class, and the New Common Sense in Managing North-South Relations*, New York: Pluto Press.
- Spruyt, H. (2000), "The End of Empire and the Extension of the Westphalian System: the Normative Basis of the Modern State Order", *International Studies Review*, special issue "Continuity and Change in the Westphalian Order", vol. 2, núm. 2, pp. 65-92.
- Thérien, J. P. (1999), "Beyond the North-South Divide: The Two Tales of World Poverty", in Rorden Wilkinson (ed.) (2005), *The Global Governance Reader*, London: Routledge, 2005, pp. 218-238.
- Väyrynen, R. (ed.) (1999), *Globalization and Global Governance*, New York: Rowman and Littlefield.
- Waltz, K. (1986), "Anarchic Orders and Balances of Power", in Keohane, R. O. (ed.), *Neorealism and Its Critics*, New York: Columbia University Press, pp. 98-130.
- Weiss, T. G. & Thakur, R. (2010), *Global Governance and the UN: An Unfinished Journey*, Bloomington, IN: Indiana University Press.
- Young, O. (1999), *Governance in World Affairs*, Ithaca: Cornell University Press.