

Global Law Program
Fundação Getulio Vargas
FGV DIREITO SP

Syllabus

Regular courses - 2 months courses
Fall Semester 2015

Global Law Program - Fundação Getulio Vargas

Course: Introduction to Brazilian Legal System

Professor: Luciana Ramos and Flavio Rubinstein

Workload: 30 hours

Credits: 2

Overview:

The main object of this course is to introduce foreign students to the Brazilian Legal system. After a brief overview of the main features of the 1988 Constitution, the course will focus in our system of constitutional review, especially on the role of the Supreme Court. The course will certainly have a comparative perspective, to help students understand the peculiarities of the Brazilian system vis-à-vis their own constitutional systems. The subpart of the *Introduction to Brazilian Legal System* discipline provides an overview of the basic concepts underlying Brazilian tax law. Subjects covered in this introductory course include the assignment of federal and subnational taxes, the main principles and rules of individual and corporate taxation and the tax law treatment of inbound and outbound transactions and investments. Special emphasis is placed on selected issues of Brazilian taxation with an international impact.

The course aims to develop on student's knowledge on the various sources and core concepts of Brazilian tax law, as well as critical analytical skills on the structure of the Brazilian tax system and its policy implications, with a special emphasis on inbound and outbound transactions and investments.

References:

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Global Law Program - Fundação Getulio Vargas

Course: Digital Democracy

Professor: Monica Guise

Workload: 30 hours

Credits: 2

Overview:

Explore the debate related to the digital environment and the exercise of democracy;

Work on a concept of digital democracy;

Debate the role of digital technologies regarding political participation in contemporary democracies;

Discuss the main issue related to Big Data and open government;

Debate virtual participation in legislative procedures around the world.

Lectures will fundamentally consist of debates based on the proposed class themes and assigned materials. We will explore theories and practice of digital democracy by reading, researching and discussing. Active student involvement and commitment is key to learning in this course.

References:

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- ✓ CHAPTER 5 – PARTIES, ELECTION CAMPAIGNING, AND THE INTERNET: TOWARD A COMPARATIVE INSTITUTIONAL APPROACH, PP. 73-88.
- ✓ FARREL, HENRY. THE CONSEQUENCES OF THE INTERNET FOR POLITICS. THE ANNUAL REVIEW OF POLITICAL SCIENCE, V. 15, 2012, PP. 35-52.
- ✓ HINDMAN, MATTHEW. THE MYTH OF DIGITAL DEMOCRACY. PRINCETON: PRINCETON UNIVERSITY PRESS, 2009, PP. 102-127. CHAPTER 6 – BLOGS: THE NEW ELITE MEDIA, PP. 102-128.
- ✓ NORRIS, PIPPA. A VIRTUOUS CIRCLE: POLITICAL COMMUNICATION IN POST-INDUSTRIAL SOCIETIES. CAMBRIDGE: CAMBRIDGE UNIVERSITY PRESS, 2000. CHAPTER 6 – THE EMERGENT INTERNET ERA, PP. 120-136.
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- ✓ WEINSTEIN, JEREMY; GOLDSTEIN, JOSHUA. THE BENEFITS OF A BIG TENT: OPENING UP GOVERNMENT IN DEVELOPING COUNTRIES – A RESPONSE TO YU & ROBINSON’S THE NEW AMBIGUITY OF “OPEN GOVERNMENT”. UCLA LAW REVIEW DISCOURSE, V. 60, 2012, PP. 40-48.

- ✓ LATHROP, DANIEL; RUMA, LAUREL. OPEN GOVERNMENT: COLLABORATION, TRANSPARENCY, AND PARTICIPATION IN PRACTICE. CALIFORNIA: O'REILEY MEDIA, 2011. CHAPTER 4 – THE SINGLE POINT OF FAILURE, PP. 49-69.
- ✓ CASTELLS, MANUEL. NETWORKS OF OUTRAGE AND HOPE: SOCIAL MOVEMENTS IN THE INTERNET AGE. CAMBRIDGE: POLITY BOOKS, 2012. A RHIZOMATIC REVOLUTION: INDIGNADAS IN SPAIN. CHANGING THE WORLD IN THE NETWORK SOCIETY.
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- ✓ PARISER, ELI. THE FILTER BUBBLE: WHAT THE INTERNET IS HIDING FROM YOU. NEW YORK: THE PENGUIN PRESS, 2011. CHAPTER 5 – THE PUBLIC IS IRRELEVANT, PP. 137-164.
- ✓ SUNSTEIN, CASS. GOING TO EXTREMES: HOW LIKE MINDS UNITE AND DIVIDE. OXFORD: OXFORD UNIVERSITY PRESS, 2009. CHAPTER 2 – EXTREMISM: WHY AND WHEN, PP. 21-98.

Global Law Program - Fundação Getulio Vargas

Course: Brazilian Business Contracts Standards as Protection of Foreign Investment

Professor: Daniel Levy

Workload: 30 hours

Credits: 2

Overview:

One of the most frequently asked questions of international lawyers working with foreign investment protection is: why Brazil has never ratified any of the investment protection instruments, as Bilateral Investment Treaties (BITs) or the Washington Convention, renouncing to very important foreign investors protection mechanisms? Many would answer that Brazil still remains one of the most attractive venues for foreign investments even without BITs because its domestic legal system has incorporated enough international standards of contractual protection as to turn transnational protection needless.

The main purpose of this course is to analyse not only the present position of Brazil in the foreign direct investment (FDI) system, but, also, to expose which are these contractual standards of Brazilian internal law that still makes this country one of the 10th most attractive places for foreign investments. The course will depart from a macroscopic study of the country actual position in the FDI debate to reach a more microscopic perspective in the analysis of the specific contractual standards of different economic areas in order to try to answer the introductory question: can Brazil's contractual standards of protection replace the FDI transnational system?

Therefore, the course main goal is to study how international standards, principles, clauses and philosophies have been incorporated in Brazil's corporate contract law in such different fields as virtual and electronic contracts, infrastructure, energy, insurance, international sales of goods and alternative dispute resolution mechanisms. We will see how these standards were translated within a Brazilian culture and or even inspired new principles and legislations. One example will be the analysis of new business contract clauses like "best efforts", "most favored client", "hardship", only recently internalised in Brazilian legal practice, and which we will study under this "economic-cultural" perspective.

Finally, after beginning with a macroscopic perception of Brazil's position in the worldwide FDI system, passing thought a microscopic perspective of the different kind of contracts where international standards have been incorporated, the course will be concluded with a macroscopic question: to what extend does the protection provided by international contracts in Brazil is – or may be – similar to the protection provided by BITs, which answer may simply reinforce that the FDI system remain pointless for our country.

References:

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Global Law Program - Fundação Getulio Vargas

Course: International Human Rights Law

Professor: Oscar Vilhena Vieira

Workload: 30 hours

Credits: 2

Overview:

This course explores the law and practice of international human rights. It divides into three parts.

Part I surveys the key sources of human rights law. It asks, first, what counts as international law, and calls students' attention to Article 38 of the ICJ Statute. It then considers the UN Charter, particularly Articles 55, 56, and 103. To what extent do these Articles oblige States legally to respect human rights? What do they tell us about the place of human rights in today's international legal order? Building on these discussions, Part I then considers the range of canonical texts – from the Genocide Convention to the customary prohibition against torture to the doctrine of state responsibility – that together form the nucleus of the human rights regime. Do these texts and judgments establish a minimum core of human rights that all States are bound to respect?

Which rights does such a core include? Under what, if any, circumstances may a State derogate from it?

Part II explores the mechanisms and institutions that interpret and enforce human rights.

First, it considers international mechanisms. What is the role of the ICJ in interpreting and generating human rights norms? Does the UN treaty monitoring system – the seven expert bodies established under the core UN human rights treaties – effectively ensure compliance? Can the Security Council intervene in the name of human rights? If so, should it? Part II then turns to regional and national institutions. What role do regional courts play in legal interpretation? Why and how have some of their judgments become authoritative in other regions? Do national courts play a similar role? Do they provide effective remedies? What about national truth commissions?

Throughout, Part II draws attention to the many tensions – concerning jurisdiction, hierarchy, power, and accountability – that continue to inform, and to confound, human rights enforcement globally.

Part III investigates the promise – and the challenge – of human rights lawyering within three substantive areas: 1) rights during war; 3) economic and social rights; and 4) rights as checks on corporate malfeasance. These areas subsume many of the most pertinent debates within the field of international law today – debates concerning the right to life; torture; self-determination; extraterritoriality; the relationship between distinct legal regimes; negative versus positive rights; and the status of corporations under international law. In exploring these case studies, Part III examines the doctrines and techniques of legal reasoning that judges and practitioners use to navigate these and other legal disputes.

The goal of this course is fluent understanding of a complicated legal landscape. It is an ambitious goal. It is also a worthwhile one.

References:

- ✓ Statute of the International Court of Justice
- ✓ United Nations Charter
- ✓ Universal Declaration of Human Rights
- ✓ International Covenant on Civil and Political Rights
- ✓ International Covenant on Economic, Social, and Cultural Rights
- ✓ Genocide Convention

- ✓ Torture Convention
- ✓ Vienna Convention on the Law of Treaties
- ✓ Draft Articles on Responsibility of States
- ✓ UN Guiding Principles on Business & Human Rights
- ✓ Restatement (Third) of the Foreign Relations Law of the United States (1987)
- ✓ Human Rights Committee, General Comment No. 6, No. 29, No. 31
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**Global Law Program
Fundação Getulio Vargas
FGV DIREITO SP**

Syllabus

**Visiting Professor – Short Term Courses
Fall Semester 2015**

Global Law Program – **Visiting Professor**

Course: Intellectual Property Law

Professor: Abraham Bell

Workload: 15 hours

Credits: 1

Overview:

This course provides a broad overview of intellectual property law.

After discussing the policies underlying the protection of intellectual property rights, we will cover trade secret, patent, copyright, and trademark law, and related doctrines such as the right of publicity. These topics will be examined with a focus on new technologies, but a science or technical background is not required.

This course provides a foundation for advanced intellectual property courses and is also appropriate for students who seek only a general understanding of intellectual property law.

References:

Global Law Program – **Visiting Professor**

Course: International Tax Systems

Professor: Eduardo Baistrocchi

Workload: 15 hours

Credits: 1

Overview:

This course examines how taxation applies to transactions in the international context, and considers tax law that operates at the international and supra-national levels. The focus is on rules that operate at an international or supra-national level, though we will look at some domestic rules that are important to international taxation and that can be found in a number of important tax systems. The course will look at a series of international transactions, starting with the very basic example of an export and import of goods and culminating with the treatment of some complex and artificial structures. The features of tax systems will be studied through these transactions, particularly those features found in double tax conventions and in the law of the European Union. In the first part of the course this will be supplemented by introductions to some key foundation concepts that are needed in the study of international taxation. Throughout the course examples will be drawn from the tax systems of a range of countries.

References:

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- ✓ Global Law Program – **Visiting Professor**

Course: Inside and outside Global Law: theorizing the emergence of global legal orders

Professor: Hans Lindahl

Workload: 15 hours

Credits: 1

Overview:

The proposed course offers a philosophical reflection on global law. On the one hand, it is concerned to explore how emergent global legal orders demand rethinking the concept of law; on the other, it identifies and discusses a fundamental normative issue called forth by legal globalization: the problem of inclusion and exclusion. In the course of addressing these issues, the course discusses a range of legal and political theories, showing how they illuminate the conceptual and normative dimensions of emergent global legal orders in different—often conflicting—ways. It also advances an original approach to emergent global legal orders that can address at least some of the conceptual and normative difficulties encountered by legal and political theories that take a stance with respect to global law.

Whatever else the terms “globalization” and “global” might mean, they evoke, first and foremost, a transformation of the spatiality of law, where transformation means both continuity and discontinuity. Legal globalization entails a continuity with other types of law because, as the course will show, no legal order is thinkable that doesn’t present itself as a putative spatial unity of some sort. Legal globalization also entails a discontinuity, because the emergence of global legal orders overcomes, on the face of it, the kind of spatial unity proper to the territorial state. Accordingly, the spatiality of legal orders will be the privileged prism for an enquiry into fundamental conceptual and normative issues called forth by the emergence of global legal orders. Why and how does the spatiality of legal orders yield the key to the concept of emergent global law? Why and how do inclusion and exclusion remain a normative problem for global legal orders? In particular, what normative conception of legal authority would be up to the task of dealing with inclusion and exclusion in the transformed context of emergent global legal orders?

References:

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- ✓ Boaventura de Sousa Santos: *Toward a New Legal Common Sense*, 2nd ed. (Butterworths, 2002).
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- ✓ Paul Schiff Berman, *Global Legal Pluralism: A Jurisprudence of Law Beyond Borders* (CUP, 2014)
- ✓ Michael Hardt & Antonio Negri, *Empire* (Harvard University Press, 2001)
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- ✓ Niklas Luhmann, *Law as a Social System* (OUP, 2008)
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- ✓ Scott Shapiro, *Legality* (Belknap Press, 2013)
- ✓ Martin Heidegger, *Being and Time* (Blackwell, 1995)
- ✓ Hans Kelsen, *Das Problem der Souveränität und die Theorie des Völkerrechts* (Scientia Verlag, 1981)
- ✓ Hans Lindahl, *Fault Lines of Globalization: Legal Order and the Politics of A-Legality* (OUP, 2013).
- ✓ Niklas Luhmann, *Social Systems* (Princeton University Press, 1996)
- ✓ Axel Honneth, *The I in We: Studies on the Theory of Recognition* (Polity, 2012)
- ✓ Jacques Rancière, *Dissensus: On Politics and Aesthetics* (Bloomsbury Academic, 2010)
- ✓ Joseph Raz, *The Authority of Law* (Clarendon Press, 2002); *Between Authority and Interpretation* (OUP, 2009)
- ✓ James Tully, *Public Philosophy in a New Key* (CUP, 2008)
 - ✓ Jeremy Waldron, *Law and Disagreement* (OUP, 1999)

Global Law Program – **Visiting Professor**

Course: Social Rights and Scarcity

Professor: Lucas Grosman

Workload: 15 hours

Credits: 1

Overview:

This course will discuss how scarcity of resources affects social rights, and how courts should address cases where the state budget is not sufficient to provide a certain social benefit. It will critically assess the somewhat simplistic way in which Latin American courts have addressed this issue, and suggest alternative manners of facing the concrete difficulties imposed by scarcity. Special attention will be paid to the right to health, given the central place the enforcement of this right has occupied in the region.

The course will combine the discussion of theoretical concepts related to theory of law, constitutional law, and political philosophy with the analysis of cases from different countries.

References:

- ✓ L. Grosman, “Judicial Review of Social Policy” in Perspectives in Conflict. Philosophical or Political Foundation of Constitutional Law?
- ✓ S. Holmes and C. Sunstein, The cost of rights. Why liberty depends on taxes
- ✓ C. Sabel and J. Simon, Destabilization rights: how public law litigation succeeds
- ✓ R. Dworkin, Sovereign Virtue.
- ✓ Ejde, Food as a Human right
- ✓ F. Cross, The Error of Positive Rights
- ✓ Cases from Argentina, United States, Colombia, South Africa, and Brazil.