

Global Law Program
Fundação Getulio Vargas
FGV DIREITO SP

Syllabus

Regular courses - 2 months courses
Fall Semester 2024
(August to December 2024)

Global Law Program - Fundação Getulio Vargas

Course: Introduction to Brazilian Legal System

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:

- ✓ Afonso, José Roberto; Barroso, Rafael, *BRAZILIAN TAX AFFAIRS* (Latin American and Caribbean Law and Economics Association Annual Papers, 2007) (transcript available at: <http://www.escholarship.org/uc/item/1rf7690j>).
- ✓ Rubinstein, Flavio, *Brazil*, in *TAX ASPECTS OF FISCAL FEDERALISM: A COMPARATIVE ANALYSIS*, (Claudio Sacchetto and Gianluigi Bizzoli, ed.), Amsterdam: IBFD, (forthcoming; an electronic draft will be circulated by the professor).
- ✓ Afonso, José Roberto; Rezende, Fernando, *THE BRAZILIAN FEDERATION: FACTS, CHALLENGES AND PROSPECTS* (Stanford University Center for Research on Economic Development and Policy Reform, Working Paper 149, 2002) (transcript available at: <http://www.stanford.edu/group/siepr/cgi-bin/siepr/?q=system/files/shared/pubs/papers/pdf/credpr149.pdf>).
- ✓ McLure, Charles E, *The Brazilian Tax Assignment Problem: Ends, Means and Constraints*, in *A REFORMA FISCAL NO BRASIL*, São Paulo: Fundação Instituto de Pesquisas Econômicas, 45-71 (1993).
- ✓ Schoueri, Luís Eduardo, *National Report: Brazil*, in *THE EU AND THIRD COUNTRIES: DIRECT TAXATION* (Michael Lang; Pasquale Pistone, ed.), Viena: Linde, 639-681 (2007).
- ✓ *CONTRIBUTION TO THE HISTORY OF TAX TREATIES: THE BRAZILIAN EXPERIENCE* (2008) (transcript available at: <http://www2.wu-wien.ac.at/taxlaw/events/Conferencepapers/Rust2008/NRRust2008BrazilSchoueri.pdf>).
- ✓ Souza, Celina, *Brazil's Tax System: The Dilemmas of Policy Reform* (Fondation canadienne pour les Amériques Working Paper FPP-05-02, 2002) (transcript available at: http://www.focal.ca/pdf/brazil_tax.pdf).
- ✓ Ter-Minassian, Teresa, *Brazil*, in *FISCAL FEDERALISM IN THEORY AND PRACTICE* (Teresa Ter-Minassian ed.), Washington: International Monetary Fund, 438-456 (1997).

- ✓ World Bank, BRAZIL: ISSUES IN FISCAL FEDERALISM (Report No. 22523-BR, 2002) (transcript available at: <http://siteresources.worldbank.org/BRAZILINPOREXTN/Resources/3817166-1185895645304/4044168-1186403960425/51IssuesFiscalFederalism.pdf>).

Global Law Program - Fundação Getulio Vargas

Course: Ethics, Regulation, and Governance of Artificial Intelligence in comparative perspective

Workload: 30 hours

Credits: 2

Overview:

AI is increasingly part of our daily lives. Students will likely encounter Artificial Intelligence (AI) both in their recreational endeavors as well as their professional careers. For lawyers, AI is quickly becoming assimilated into many aspects of the business of law. AI powered predictive analytics, research software, billing programs, contract analysis and many other tools will result in more streamlined, efficient, and effective legal practices.

The incorporation of AI into the legal sphere requires that law students gain an understanding of AI and the ethical, legal, and social implications of its use in the profession. Legal professionals also need to appreciate the role of AI in their client's businesses, especially the relevant laws and ethical implications. For example, consider explainable artificial intelligence, i.e., the ethical and social need to appreciate the underlying premises that result in determinations made by AI. Currently, most advanced forms of AI employ complex and opaque decision-making processes.

Additionally, AI requires immense amounts of data, both personal & private and otherwise, to develop, teach and implement the algorithms. Here, big data has its own unique set of ethical, legal and social concerns, prominently, relating to privacy, intellectual property rights and ownership, that arise with its collection, analysis and implementation.

Finally, the widespread use of cloud-based technologies means that jurisdictional concerns are international, and students need to appreciate the legal issues not only at home, but in far-flung locales, as well.

The course aims to contribute to the development of appropriate professional ethics for legal practitioners working in the field of Artificial Intelligence, or more generally Digital Law. It will encourage students and practitioners to seek tools to solve everyday moral or legal dilemmas or problems of automated data processing. It begins with a contextualization of the challenges of the digital society. It then presents a comparative overview of legal systems, complementing the idea of ethics through law. Finally, it explores governance and risk management mechanisms that are indispensable for professionals today. The classes will be structured around emblematic cases from everyday life in law and technology so that students and professionals can apply concepts to real situations.

References:

To be assigned

Global Law Program - Fundação Getulio Vargas

Course: Stabilization of International Commercial Transactions: from contract formation to dispute resolution

Workload: 30 hours

Credits: 2

Overview:

In an increasingly international environment, the stabilization and uniformization of commercial transactions depend on contracts, contract law, private international law, and dispute resolution mechanisms.

In this course we will first have a look at the United Nations Conventions on Contracts for the International Sale of Goods (CISG), one of the most successful and relevant initiatives to standardize the commercial relations across the globe.

The first part of the course will be devoted to central questions of contract law related to cross-border commercial transactions. This topic includes issues related to formation, interpretation, remedies (avoidance and damages), hardship and force majeure provisions.

The second part of the course will address the dispute resolution methods applicable to commercial disputes, particularly international arbitration. In this sense, the course will focus on the UNCITRAL Model Law on International Commercial Arbitration and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, two sets of laws that provide the general framework for international arbitration.

In this part the drafting of arbitration clauses, the choice of law, the proceedings and the limitations of arbitration will be discussed.

The course will combine lecturing with experiential learning tools, including simulated drafting of contractual clauses and dispute resolution situations.

References:

To be assigned

Global Law Program - Fundação Getulio Vargas

Course: Law and Politics in the Southern Cone: assessing Argentine-Brazilian relations since redemocratization

Workload: 30 hours

Credits: 2

Overview:

From the perspective of international law, this course will explore the ways in which Argentine-Brazilian relations have played out since the turn to democracy in the Southern Cone in the 1980s.

More specifically, the course will address transitional justice issues, bilateral and regional integration, political economy and the recent turn to right-wing populism in both countries.

Key international legal aspects will be debated, aiming to shed light on the ways in which international law has both facilitated and hindered the rapprochement between Argentina and Brazil.

References:

To be assigned

Global Law Program - Fundação Getulio Vargas

Course: M&A Hot topics and Challenges

Workload: 30 hours

Credits: 2

Overview:

The purpose of this course is three-folded:

- (1) to provide a broad overview of the structuring and development of M&A transactions, including key players, deal motivation and common structures and the due diligence process;
- (2) to debate hot topics in connection with M&A documentation; and
- (3) to discuss policy matters faced by courts addressing M&A challenging issues.

This course will look into real life transactions to further the purposes mentioned above. We may have two or three guest speakers who will offer their invaluable insights during short presentations."

References:

To be assigned

**Global Law Program
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Syllabus

**Visiting Professor – Short Term Courses
Fall Semester 2024
(August to December 2024)**

Global Law Program - **Visiting Professor**
Prof. Bruno Rodrigues de Lima – Max Planck Institute for Legal History and Legal Theory

Course: Legal History: Sources and Methods

Workload: 15 hours

Credits: 1

Overview:

This course seeks to explore the foundational role of legal history within German law and its broader influence. Savigny's definition that law is "primarily a historical science" encapsulates the importance of legal history in legal scholarship not only in Germany but also in other countries influenced by German legal thought, such as Brazil. Starting from the 1870s, and especially with Tobias Barreto at the Recife Law School, the methods of legal study and the methodology of legal history developed in Germany have gained followers and reformers in Brazil. Throughout the 20th century, numerous examples of cultural translation of normative knowledge from Germany to Brazil can be observed. However, in recent decades, Brazilian legal history appears to have diverged from German legal history. Recovering these historical connections is a significant task for the current generation of legal historians. The proposed approach for this course is to critically engage with the Frankfurt School of Legal History.

The course will begin with the "back to the sources" movement led by Helmut Coing (1912-2000), who reinterpreted the legacies of Roman law in German law, especially in German private law. We will then examine the monumental work of Michael Stolleis (1941-2021) on the history of public law within the social history of Germany, and move to the creative reinterpretation of legal sources by Cornelia Vismann (1961-2010). Finally, we will explore the theoretical formulations of Thomas Duve (1967-) who understands legal history as part of the history of knowledge. This comprehensive review will present the state of the art of legal history as a scientific discipline. In essence, we will revisit the Frankfurt School of Legal History to understand the current scientific dilemmas in this fundamental research area of legal science.

General Objective:

To critically present and discuss the different methodologies of legal history developed in Germany—especially at the Max Planck Institute for Legal History and Legal Theory—over the past 60 years and to revisit the formation of legal history in Brazil, particularly the social history of slavery in light of the legal work of the black jurist Luiz Gama.

Specific Goals:

1) Examine Key Methodologies

Goal: To critically analyze the different methodologies of legal history developed in Germany over the past 60 years.

Objective: Understand the approaches used by prominent German legal historians, such as those at the Max Planck Institute for Legal History and Legal Theory, and evaluate their applicability to legal historical research.

2) Contextualize Legal Histories

Goal: To explore the cultural and historical translation of German legal history methodologies to the Brazilian context.

Objective: Investigate the historical development of Brazilian legal history, particularly focusing on the social history of slavery and the contributions of Luiz Gama, and compare it with German legal history traditions.

3) Engage with Contemporary Debates

Goal: To engage students in critical discussions on the current scientific dilemmas and debates in the field of legal history.

Objective: Facilitate dialogue and critique of the Frankfurt School of Legal History's contributions, encouraging students to develop their perspectives on the role and relevance of legal history in modern legal studies.

References

- ✓ Coing, Helmut. *Europäisches Privatrecht 1800-1914: Entwicklung des Privatrechts in Deutschland und Frankreich*. München: Beck, 1989.
- ✓ Duve, Thomas. *Entanglements in Legal History: Conceptual Approaches*. Frankfurt am Main: Max Planck Institute for European Legal History, 2014.
- ✓ Duve, Thomas. *Rechtsgeschichte als Kulturgeschichte: Zur historischen Konzeption von Recht*. Frankfurt am Main: Vittorio Klostermann, 2006.
- ✓ Gama, Luiz. *Democracia, 1866-1869* (organização, introdução, estabelecimento de texto, comentários e notas de Bruno Rodrigues de Lima). São Paulo: Hedra, 2023.
- ✓ Gama, Luiz. *Direito, 1870-1875* (organização, introdução, estabelecimento de texto, comentários e notas de Bruno Rodrigues de Lima). São Paulo: Hedra, 2023.
- ✓ Gama, Luiz. *Crime, 1877-1879* (organização, introdução, estabelecimento de texto, comentários e notas de Bruno Rodrigues de Lima). São Paulo: Hedra, 2023.
- ✓ Gama, Luiz. *Liberdade, 1880-1882* (organização, introdução, estabelecimento de texto, comentários e notas de Bruno Rodrigues de Lima). São Paulo: Hedra, 2023. Herzog, Tamar. *Defining Nations: Immigrants and Citizens in Early Modern Spain and Spanish America*. New Haven: Yale University Press, 2003.
- ✓ Lima, Bruno Rodrigues de. *Luiz Gama contra o Império: a luta pelo direito no Brasil da Escravidão*. São Paulo: Contracorrente, 2024.
- ✓ Lopes, José Reinaldo de Lima. *O direito na história: lições introdutórias*. São Paulo: Max Limonad, 2000.
- ✓ Parron, Tamis. *A política da escravidão no Império do Brasil*. Rio de Janeiro: Civilização Brasileira, 2011.
- ✓ Stolleis, Michael. *A History of Public Law in Germany, 1914-1945*. Oxford: Oxford University Press, 2004.
- ✓ Vismann, Cornelia. *Files: Law and Media Technology*. Stanford: Stanford University Press, 2008.

Global Law Program - **Visiting Professor**
Prof. Jan Lieder – University of Freiburg

Course: EUROPEAN BUSINESS LAW

Workload: 15 hours

Credits: 1

Overview:

Participants should have prior knowledge of commercial and corporate law. You should also be interested in economic issues. Participants will particularly enjoy it if they are interested in other legal systems as well as in supranational and international law.

The course offers a well-founded overview of European Business Law. The participants will become familiar with the most important legal principles and legal sources of European commercial law. In addition, implementation and implementation problems will be treated in a comparative legal manner with a specific focus on German law.

The course follows a methodological pluralistic approach. Based on a doctrinal analysis of the EU law foundations of European Business Law, comparative legal insights from national states in the same area are provided. In addition, economic findings are also included, and the method of economic analysis of law is used. Sometimes the legal-historical and legal-political methods are also used to round things off.

Class schedule

- A. Europeanization of business law
 - I. Meaning
 - II. Development
- B. Freedom of establishment and movement of capital (primary law)
 - I. Freedom of establishment
 - II. Freedom of movement of capital
- C. Legal basis for the Europeanization of business law
 - I. Legal approximation
 - II. Basics of legal approximation
- D. Instruments of the EU legislature for legal approximation (secondary law)
 - I. Priority of application of Union law
 - II. EU regulations
 - III. EU directives
 - IV. Others
 - V. Role of the ECJ
- E. Recognition of companies in the European Union
- F. Cross-border mobility of companies
 - I. Development of ECJ jurisprudence (from Daily Mail 1988 to Polbud 2017)
 - II. EU legislative measures (from the Merger Directive 2005 to the Conversion Directive 2019)
- G. EU legal forms at a glance
 - I. European stock corporation (Societas Europaea – SE)
 - II. European Cooperative (Societas Cooperativa Europaea – SCE)
 - III. European Economic Interest Grouping (EEIG)
 - IV. Others
- H. Corporate Governance in the European Union

In-class exam on Friday, October 4th, at 5.30pm, 90 min, Q&A

Global Law Program - **Visiting Professor**
Prof. Pål Wrange – Stockholm University

Course: Cyber Security and International Law

Workload: 15 hours

Credits: 1

Overview:

This course focuses on international law relating to the protection of computer systems and of data, and on measures that states may take to protect themselves and their inhabitants from unwanted intrusions. While domestic legislators and agencies are struggling to keep up with the developments in information technology, international law is far behind, and international regulation and cooperation is piecemeal and regional.

What is sovereignty in cyberspace? How does the concept of territory apply? Who has access to and jurisdiction over data regarding a citizen (a data subject) of country A, if that data is stored in country B by a data holder incorporated in country C and is of relevance for an important interest in country D? Which obligations do states have to cooperate to fight against cybercrime? What rights do states have to access information in order to protect national security?

This course is designed to give students an overview over some of the most important international legal debates on cybersecurity and international law. Given the nature of the issues as well as the brevity of the course, few certain answers can be provided, but the course will help students better understand and navigate in the developing legal landscape.

The course will be particularly relevant for law students who wish to work professionally with information technology in the public or the private sphere, not least in law enforcement, legislation and national security.

Teaching, examination

The course includes five lessons of three hours each (see below). The first two hours of each lesson will consist of “interactive lectures”, for which students will prepare by studying texts and thinking over two or three discussion points. The last hour will be devoted to a problem, real or fictitious. The course will be examined through active participation in class and a final paper, in which students will both provide an overview of the course (knowledge test) and provide their reflections on these issues from a legal, economic, political and/or philosophical point of view.

The list of literature is indicative and may develop, due to the quickly changing landscape. I have assumed that a total of 200 p of reading will be appropriate, but that can be changed in accordance with FGV standards. The total readings listed below amount to more than 200 p, but several of them will be provided as extracts.

Outline of the course

Lesson 1: Basics: Cyberspace, cyber security, international law

This lesson will give a background and provide some basic concepts.

- a. What is cyberspace?
- b. What is cybersecurity?

- c. Approaches to cybersecurity of different states (US, EU, Russia, China, Brazil and other countries in the global south)
- d. Geoeconomics and geopolitical aspects.

Lesson 2: Cybercrime

As information has become globally accessible and people have become connected around the world, criminals have found new opportunities. The internet has opened new avenues for criminality, but it is also the case that common, offline crime is to a large extent enabled by modern information and communication technologies (ICTs). While it used to be possible to investigate crime within national territories, today investigations very often have to transcend the national borders in cyberspace.

- a. Cybercrimes and cyber-enabled crimes.
- b. Jurisdiction to legislate, adjudicate and enforce. Overlap and safe havens.
- c. International cooperation (mutual legal assistance) and its limits.
- d. Ways to investigate and enforce without bilateral cooperation

Lesson 3: Cyber terrorism and economic cyber espionage

This lesson will cover two distinct phenomena, cyber terrorism and economic cyber espionage. Both of these issues have connections to lesson 2 as well as to lesson 4.

- a. The distinction between cyber terrorism and the “mere” use of cyberspace by terrorist. Connections to law enforcement and to national security.
- b. Economic cyber espionage by governments and by private parties. The link to intellectual property law. The link to cyber espionage.

Lesson 4: Cyber espionage and other cyber operations, cyber war

This lesson will take us into the realm of national security. It is sometimes difficult to distinguish between state acts and private acts (like cybercrime) in cyberspace. Nevertheless, states often have far more sophisticated means at their disposal than non-state actors, and some states very actively engage in computer systems in other states, for the purpose of intelligence or for sabotage. It is highly controversial whether such activities are legal.

- a. Territorial sovereignty in cyberspace
- b. The principle of non-intervention in cyberspace
- c. Cyber operations – a typology
- d. Cyber espionage
- e. Cyber operations in war, the UN Charter and international humanitarian law

Lesson 5: Concluding lesson: Outlook and assignment

This lesson will include a general discussion about the future of cyber security. In particular, I want to bring in human rights and the sustainable development goals. The assignment will be introduced.

Global Law Program - **Visiting Professor**
Prof. Matthew Taylor – American University

Course: Is Brazilian Democracy Designed for Growth? The politics of controls, rents, reciprocity and regressivity

Workload: 15 hours

Credits: 1

Overview:

Brazil has engaged in significant economic and political reforms and policy innovations since the return to democracy in 1985. Yet growth has not flourished, and indeed, the economy has remained in a low-level equilibrium marked by significant inequality and lackluster growth. This course analyzes the economic and political foundations of this pattern of development and its persistence over nearly four decades of democratic governance.

We will especially focus on the role of controls and rents in the developmental process. Control is understood as the process of strategic oversight, evaluation and adjustment. Rents are understood as governmental supports intended to generate incentives that will drive particular actors in economically strategic directions. The effectiveness of rents in driving development is largely a consequence of the system of economic, political, and legal controls over developmental policies.

Course outline

Class 1: Introduction to the theme

Required: Taylor (2020; Chapter 1); Schedelik (2023; Chapter 1); Wade (2018).

Complementary: Philips (2021); Kohli (2004); Amable (2016).

Class 2: The Politics of Economic Policy under Coalitional Presidentialism

Required: Taylor (2020; Chapter 5); Schedelik (2023; Chapter 2).

Complementary: Bersch et al. (2022); Cavalcante (2024).

Class 3: The Macro- and Micro-Economics of the Developmental State

Required: Taylor (2020; Chapters 2 and 4); Schedelik (2023; Chapter 9).

Complementary: Ban (2013); Schneider (2004).

Class 4: Rents and Controls: International Perspectives

Required: Stallings (2016); Trubek, Coutinho and Schapiro (2013); Khan (2000).

Complementary: Evans (1992); Amsden (2001)

Class 5: Rents and Controls: The Brazilian Case

Required: Taylor (2020, Chapter 6); Schapiro (2016); Schedelik (2023; Chapter 10).

Complementary: Chiarini et al. (2020); Schedelik (2023; Chapter 11).

Required readings:

- Schedelik, Michael. *The Political Economy of Upgrading Regimes: Brazil and Beyond*. Switzerland: Palgrave Macmillan, 2023.
- Taylor, Matthew M. *Decadent Developmentalism: The Political Economy of Democratic Brazil*. Cambridge: Cambridge University Press, 2020.

Complementary readings:

- Amable, Bruno. "Institutional Complementarities in the Dynamic Comparative Analysis of Capitalism." *Journal of Institutional Economics* 12, no. 1 (2016): 79-103.
- Ban, Cornel. "Brazil's Liberal Neo-Developmentalism: New Paradigm or Edited Orthodoxy." *Review of International Political Economy* 20, no. 2 (2013): 298-331.
- Bersch, Katherine, Felix Garcia Lopez, and Matthew M. Taylor. "Patronage and Presidential Coalition Formation." *Political Research Quarterly* (2022).
- Cavalcante, Pedro Luiz Costa. "Desmonte Da Política De Inovação: Estratégias E Causas No Brasil Contemporâneo." *Revista de Administração Pública* 58, no. 1 (2024): 1-23.
- Chiarini, Tulio, Fernanda Cimini, Marcia Siqueira Rapini, and Leandro Alves Silva. "The Political Economy of Innovation: Why Is Brazil Stuck in the Technology Ladder?". *Brazilian Political Science Review* 14, no. 2 (2020): 1-39.
- Evans, Peter B. "The state as problem and solution: predation, embedded autonomy, and adjustment," in S. Haggard and R. R. Kaufman, eds. *The Politics of Economic Adjustment*. Princeton: Princeton University Press, 1992.
- Khan, Mushtaq H. "Rent-seeking as Process," in M.H. Khan and K.S. Jomo, *Rents, Rent-seeking, and Economic Development: Theory and Evidence in Asia*. Cambridge: Cambridge University Press, 2000.
- Kohli, Atul. *State-Directed Development: Political Power and Industrialization in the Global Periphery*. New York: Cambridge University Press, 2004.
- Philips, Jonathan. 2022. "How Politics and Economics Work Together to Limit Development: Institutional Complementarities in Brazil." *Brazilian Political Science Review* 16(2).
- Schapiro, Mario G. "Discricionariedade desenvolvimentista e controles democráticos: uma tipologia dos desajustes." *Revista Direito GV* 12, no. 2 (2016): 311-44.
- Schneider, Ben Ross. *Business Politics and the State in Twentieth-Century Latin America*. Cambridge: Cambridge University Press, 2004.
- Stallings, Barbara. "Innovation, Inclusion and Institutions: East Asian Lessons for Latin America?". In *Innovation and Inclusion in Latin America: Strategies to Avoid the Middle Income Trap*, edited by Alejandro Foxley and Barbara Stallings, 1-32. New York: Palgrave Macmillan, 2016.
- Trubek, David M., Diogo R. Coutinho, and Mario G. Schapiro. "New State Activism and the Challenge for Law." In *Law and the New Developmental State: The Brazilian Experience in Latin American Context*, edited by David M. Trubek, Helena Alviar Garcia, Diogo R. Coutinho and Alvaro Santos, 28-61. Cambridge: Cambridge University Press, 2013.

- Wade, Robert. "The Role of the State in Escaping the Middle-Income Trap: The Case for Smart Industrial Policy." In *The State in the 21st Century*, edited by Ana Célia Castro and Fernando Filgueiras, 181-208. Brasília: ENAP, 2018.