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Global Law

Martina Conticelli, Giacinto della Cananea, Marco Macchia & Thomas Perroud

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### Course Description

This course focuses on the logics, dynamics, and challenges of what can be called “global law”. “Global law” refers to a situation in which: (1) relationships between the interests of individuals and public authorities are influenced or governed by multiple normative systems (from informal social norms to law, from specific rules to the general principles of law), with the consequence that such systems co-exist and compete with one another within the same territory or domain of activity; or (2) two or more systems of governance – such as the courts of different legal orders – claim authority over the same domain of activity.

Topics include: the criteria governing the expropriation of aliens; due process of law in regulatory and adjudicatory procedures; the tensions between custom, state law, and human rights in developing countries; and the ways in which the pluralist structure of international treaty law and organization are transforming law and courts at the national level.

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**First Part**  
Prof. Giacinto  
della Cananea

- 1. Introduction: What is Global Law?**
- 2. Enforcing the Rule of Law**
- 3. Indigenous Groups and Property**
- 4. When Legal Orders Collide: Due Process in Global Law**

**Second Part**  
Prof. Thomas  
Perroud

**Rajouter NAFTA :**

**[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=337480](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=337480)**

**Dont l'inspiration est Takings de Epstein**

- 1. Historical Introduction to Regulation**
- 2. Theories of Regulation**
- 3. Global Regulation and Global Competition Law**
- 4. Regulation and The Use of Private Standards**
- 5. Regulation and Market Building in the Field of Environment**

<b>Third Part</b> <b>Prof. Martina</b> <b>Conticelli</b> <b>Prof. Marco</b> <b>Macchia</b>	<b>6. Regulation, Impact Assessment and Participation</b> <b>7. New Perspectives: TAFTA, Nudging and Big Society</b>
	<b>1. Procedures: a structural and functional analysis</b> <b>2. Global procedural requirements</b> <b>3. The enforcement of decisions</b> <b>4. Legality and rule of law in the global space</b>

### Teaching Method

The class will survey approaches to understanding global law in a range of settings, focusing on “inter-normativity”: the various ways in which autonomous normative orders, including systems of law with fully-fledged courts, interact with one another. A variety of issues concerning legal principles and rules, as well as their underlying values, will thus be considered.

### Textbook and Materials

#### Part I (G. della Cananea)

##### 1. Introduction: What is Global Law?

Materials: Security Council of United Nations, *Resolution 1373 (2001)* [concerning the measures to prevent terrorism]

Reading

- M. Shapiro, *The Globalization of Law*, 1 *Indiana Journal of Global Legal Studies* 37 (2000)

(optional) B. Kingsbury, N. Krisch, R. B. Stewart & J. Weiner, *The Emergence of Global Administrative Law*, 68 *Law and Contemporary Legal Problems* 2005

##### 2. Enforcing the Rule of Law

- Materials: European Court of Human Rights, Judgment of 28 February 2008, *Case Saadi v. Italy*, (*Application no. 37201/06*)

- Reading:

B. Kingsbury, *The Concept of Law in Global Administrative Law*, 20 *European Journal of International Law* 1 (2009)

(optional) E. Stein, *International Law and Democracy: No Love at First Sight*, 95 *American Journal of International Law* (2001)

### 3. Indigenous Groups and Property

Materials:

- Compliance Advisor Ombudsman, *Follow-up assessment. Complaint Regarding the Marlin Mining Project* (May 2006).

Reading:

- U. Mattei, *A Theory of Imperial Law: A Study on U.S. Hegemony and the Latin Resistance*, 17 *Indiana Journal of Global Legal Studies* (2005)

### 4. When Legal Orders Collide: Due Process in Global Law

Materials (excerpts from):

- Court of First Instance of the EU, *Case T-315/01, Yassin Abdullah Kadi v Council of the EU and the Commission*;
- Advocate General Maduro, Opinion of 16 January 2008, Case C-402/05 P, *Yassin Abdullah Kadi v Council of the EU and the Commission of the EC*.
- European Court of Justice, Case C-402/05 P, *Yassin Abdullah Kadi v Council of the EU and the Commission of the EC*

Reading:

- G. De Burca, *The EU, the European Court of Justice and the International Legal Order after Kadi*, *Harvard International Law Journal*, 51 *Harv. Int'l L.J.* 1/2010, pp. 1-49.
- G. della Cananea, *Administrative Due Process in Liberal Democracies: a Post-9/11 World*, *Italian Journal of Public Law*, n. 3, 1/2011, pp. 195-223.

## Part II (Thomas Perroud) 7 sessions on Global Regulation

Rajouter NAFTA : [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=337480](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=337480)  
Dont l'inspiration est Takings de Epstein

### 8. Historical Introduction to Regulation

Readings:

- Cassese, 'La costruzione del diritto amministrativo: Francia e Regno Unito', in S. Cassese (ed.), *Trattato di diritto amministrativo*, 2nd ed., vol. I (Milan: Giuffr , 2003)
- Rabin, *Federal Regulation in Historical Perspective*, 38 *Stanford Law Review* 1189
- Stewart, *The Reformation of American Administrative Law*, 88 *HARV. L. REV.* 1667 (1975)
- Craig, *Constitutions, Property and Regulation*, *Public Law* 1991

### 9. Theories of Regulation

Readings:

- Majone, (1994) 'The rise of the regulatory state in Europe', *West European Politics*, 17: 3, 77 — 101

- Black, Critical Reflections on Regulation, Australian journal of legal philosophy, 27 . pp. 1-35
- Koop, C. and Lodge, M. (2015), What is regulation? An interdisciplinary concept analysis. Regulation & Governance.
- Gerber, Constitutionalizing the Economy: German Neoliberalism, Competition Law and the "New" Europe, The American Journal of Comparative Law, Vol. 42, 1994.

## **10. Global Regulation and Global Competition Law**

### **Readings:**

- Koenig-Archibugi, Global Regulation, Oxford Handbook of Regulation
- Gerber, Global Competition: Law, Markets, and Globalization, chapters 5, 6, 8, 9

## **11. Regulation and The Use of Private Standards**

### **Readings:**

- De Bellis, *EU and Global Private Regulatory Regimes: the Accounting and Auditing Sectors*, in E. Chiti e B.G. Mattarella (a cura di), *Global Administrative Law and EU Administrative Law. Relationships, Legal Issues and Comparison*, Springer, 2011, pp. 269-292;
- De Bellis, *Public law and private regulators in the global legal space*, in *International Journal of Constitutional Law*, 2011, Vol. 9, pp. 425-448;
- Scott, Standard-Setting in Regulatory Regimes, Oxford Handbook of Regulation

## **12. Regulation and Market Building in the Field of Environment**

### **Readings:**

- Driesen, Alternatives to Regulation?, Market Mechanisms and the Environment, Oxford Handbook of Regulation
- Ackerman, Stewart, Reforming Environmental Law : The Democratic Case for Market Incentives (1988) Columbia Journal of Environmental Law, vol. 13

## **13. Regulation, Impact Assessment and Participation**

### **Readings:**

- Radaelli, Francesco, Regulatory Impact Assessment, Oxford Handbook of Regulation
- Auby, Perroud, Regulatory Impact Analysis, Global Law Press
- Rose-Ackerman, Perroud, Policymaking and Public Law in France: Public Participation, Agency Independence, and Impact Assessment

## **14. New Perspectives: TAFTA, Nudging and Big Society**

## Readings:

- Alemanno, The Regulatory Cooperation Chapter of the Transatlantic Trade and Investment Partnership: Institutional Structures and Democratic Consequences, Forthcoming in *Journal of International Economic Law*, 2015
- Alemanno, Spina, Nudging legally: On the checks and balances of behavioral regulation, *Int J Constitutional Law* (2014) 12 (2): 429-456.
- See the Big Society Entry in Wikipedia and the relevant resources.

## Part III (Martina Conticelli, Marco Macchia)

### 1. Procedures: a structural and functional analysis (Conticelli)

The context

Kingsbury et al., *The Emergence of Global Administrative Law*, 68 *Law and Contemporary Problems*, p. 15-62 (Summer 2005)

### 2. Global procedural requirements (Conticelli)

M. Conticelli, *Global administrative Procedure: Distinguishing Features* (forthcoming)

### 3. The enforcement of decisions (Conticelli)

G. della Cananea, *Beyond the State: the Europeanization and globalization of procedural administrative law*, (2003) 9 *European Public Law*, p. 563 ff.

S. Cassese, *Global Standards for National Administrative Procedure*, 68 *Law and Contemporary Problems*, p. 109-126 (Summer 2005)

### 4. Legality and rule of law in the global space (Macchia)

Readings:

S. Cassese, *The Global Polity. Global Dimensions of Democracy and the Rule of Law* (Editorial Derecho Global / Global Law Press) 2014, 15-31

D. Dyzenhaus, M. Hunt, M. Taggart, The Principle of Legality in Administrative law: Internationalisation as Constitutionalisation, in *Comm. Law Journal*, 2001, 5

## Assessment

Students will be evaluated on the basis of (A) three short (2-3 page) “response papers” on the weekly readings (45%), (B) attendance and participation (25%), and (C) a final exam (30%).

**Office Hours:** before and after classes/ or upon request by email