

**REGULATORY FOUNDATIONS OF PUBLIC LAW**  
LL4245V/ LL5245V/ LL6245V

Course Objective:

The course aims to facilitate new or advanced research into the phenomenon of public law. Public law here refers to the law that governs the creation and perpetuation of the state. Paradigmatic examples include, of course, constitutional law and administrative law. But can go far beyond that. For example, the European Union uses competition law as a way of defining and constructing its 'state'; the early United States used contract law. Arguably, the French Code Napoleon can be seen as having a public law component, as one of its foundational purposes was to give identity to the post-Revolutionary French state.

Seen in this light, aspects of public law can be seek to vest in many legal areas that are not normally thought of as 'public law'. Recognizing these implications can have important real-world implications, as it can allows us to see more clearly how legislative and doctrinal changes to seemingly private areas of law can have significant consequences for the legitimacy and capacity of 'the state' itself.

We will also explore the 'public law' of non-state institutions as well. Many institutes other than the state use law to construct and perpetuate themselves, and give themselves identity. In this sense, they have 'public law' aspects as well. And like states, this aspect can implicate regulatory strategies that are commonly seen to be straight-forwardly technocratic. To definitive examples are the EU, the Internet, and the regime of international trade. All of these sport governance structures that can be analogized to public law, and whose implication extend beyond mere technocratic regulation.

Teaching style:

Teaching style is fluid, and depends on the size of the class. Each class session will generally be divided into two parts, a 'lecture' part, which focuses on the conveyance of information; and a discussion part, which focuses on class discussion obviously. For the discussion part, each week selected students will be required to submit short 'thought pieces' in advance for discussion.

Tentative syllabus:

1. 1 Meet and greet
2. Core elements: 'state', 'law', 'society'
3. Public-law metaphors: The paradoxical relationship between the state and law
  - Consent
  - Separation of powers
  - Rule of law

4. Law and/vs. politics
5. Visions of constitutionalism
6. The tools of the State
  - dominium vs. universitas
  - despotic power vs. infrastructural power
  - imperium vs. dominium
  - state vs. state-less societies

\* \* \* Recess Week \* \* \*

7. Consultation week
8. Territory and geography
9. States and markets: the 'economic constitution' and 'indirect dominium'
10. Public law in private law:
  - Competition law
  - Contract law
  - Property
11. Citizenship
12. Public law beyond the state

Mode of assessment:

Written assignments ('thought pieces') - 30%;  
6-hour take home exam - 70%