



# Bergen Summer Research School

> Global Development Challenges

## PhD-Research Course: Fundamentals of Law in Globalization

Course leader:

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### **In collaboration with:**

Professor [Bjarte Askeland](#), University of Bergen, Faculty of Law

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Senior Researcher [Tina Søreide](#), Chr. Michelsen Institute

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Invited course leaders:

[Professor Eric David](#), Faculté de Droit, Campus du Solbosch, Belgium

## *Course description, goals and objectives*

### **Outline of the Course**

Changing structures of legal regulation is a core aspect of the current globalization of society that is often named in terms of the internationalization of law. In brief, legal norms are today not only produced at the national, but also at the international level. This fact is clearly visible in the **mass** of legal norms that is produced in international and regional forums (UN, EU, WTO etc.). To some extent the legal norms aims at controlling different effects of globalization (e.g. crime), but legal norms are also a means to promote globalization in the meaning of facilitating cross-border co-operation and transnational legal development. However, it is by no means obvious what kind of legal norms that should be made in order to fill these aims, by whom the legal norms should be created or how these norms should be effectuated. On the contrary, the ambition to create norms that should be valid for different legal, political and societal cultures raises many questions in regard of these aspects concerning the content, grounds and function of the law. In addition, it is an important question what concepts that should be applied in the process of the internationalization of law, how a transnational law more generally can acquire its needed legitimacy and whether transnational legal regulation in the end should aim at new legal systems rather than to be implemented in the existing national legal systems.

This course aims at stimulating discussions concerning core principles and concepts of law, in the context facilitating more general discussions on the ongoing internationalization of law. The course will first concentrate, by means of four different lectures, on the concept of legal cultures, which is to a large extent a turning point for understanding the internationalization of law and the challenges this process faces. Then the course will focus on specific discussions concerning 1) criminal justice, 2) regulation of the economic field by means of law, 3) tort law and the law of evidence as exemplifications of internationalization of law and the relation between law, culture and constitutions. By providing these lectures, the aim is to facilitate the students with a better understanding of law as resource in dealing with the different aspects of internationalization. The aim is also the challenges to and the inherent limitations in law as a means for solving different problems in this process.

### *Targeted students, Prerequisites and ECTS*

The course is open to PhD students from all the disciplines mentioned above. A short abstract of own research interests will be required. 3 ECTS will be awarded upon successful participation and completion of the course. This requires mandatory

attendance to all the lectures, class presentations, and plenary events of the overall program of the Bergen Summer Research School 2011. Course information will be posted at 'My Space'. A reading list will be available by May 1st 2011.

## ***Part 1: Lectures on Law, Culture and Constitutions***

### **Lecture 1.1: Legal culture as phenomena and as an analytical instrument**

Lecturer: Professor Jørn Øyrehaugen Sunde, Faculty of Law, UiB

Abstract: The lecture aims to contextualize, arrange and analyze the legal culture phenomenon to ensure the concept is a subject for discussion. This will be achieved firstly by explaining why legal culture is a concept we would find hard to manage without, secondly, by contextualizing and defining the concept of legal culture, and thirdly, by explaining how the concept is structured internally, and the historically relativistic character of this structure. The end result will be a preliminary insight into the phenomenon of legal culture. In short, legal culture is ideas and expectations of law made operational by institutional (-like) practices. The concept of legal culture is, firstly, difficult to define, since ideas and expectations of law, and how they are made operational, are hard to identify precisely. Secondly, it is a concept that is hard to manage without, since, in the end, law in action is a question of how ideas and expectations of law are made operational by institutional (-like) practices. Thirdly, it is especially hard to manage without at a time when the law frequently crosses jurisdictional borders, which means that ideas and expectations of law, and the institutions that make them operational by means of their practices, are challenged and changed by encountering a multitude of other ideas, expectations and practices relating to the law.

### **Lecture 1.2: Sharia in Europe**

Lecturer: Katja Jansen Fredriksen, Research Fellow, Faculty of Law, UiB

Abstract: Increased immigration from Muslim states and transnational marriages has challenged European legislators and European courts in defining the threshold for the application of Muslim law through private international law provisions. Do European states recognize polygamous marriages and their legal effects? How do European states face the increasing claims of Muslim citizens for Muslim legal institutions as, for instance, kafala (an Islamic form of adoption) and the mahr, the dower? This lecture will draw upon comparative legal studies and provide concrete examples from European legislation and litigation in explaining how Muslim legal transplants can be embedded in the domestic legal order.

### **Lecture 1.3: Social rights/minority rights.**

Lecturer: Karl Harald Søvik, Professor, Faculty of Law, UiB

### **Lecture 1.4: *Legal globalization and indigenous peoples' rights: lessons from Latin America***

Lecturer: Rachel Sieder, CIESAS, Mexico and CMI.

This lecture will consider global trends towards recognizing indigenous peoples' collective rights to greater autonomy, particularly the 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and their impacts in Latin America, where the move towards "pluri-cultural" or "plurinational" constitutionalism has advanced most in recent years. The lecture will consider the interplay between international instruments, the jurisprudence of the interamerican system of human rights, and constitutional and legal change. It will also address some of the challenges involved in the formal recognition of legal pluralism and indigenous autonomies, including: the harmonization of individual and collective rights; natural resources claims, and; gender and indigenous women's access to justice.

## ***Part 2: A Question of Criminal Justice as a Challenge for the Civil Globalised Society of the 21<sup>st</sup> century***

### **Lecture 2.1: Understanding the Criminal Justice System/Responsibility in Criminal Law**

Lecturers: Postdoc. Dr Linda Grøning, Faculty of Law, UiB and Postdoc., PhD, Jørn Jacobsen, Faculty of Law, UiB.

Abstract: The first part of this lecture will discuss the importance of the design of the criminal justice system, as an institutional and normative structure for the administration of punishment. The point of departure will be the Rechtsstaat model that has been developed within the European context and the relevance of this model in a wider global setting will be discussed. The second part of this lecture aims at drawing up the basic principles of responsibility or imputation in criminal law. A part of the purpose of this lecture is to clarify their deep foundation and fundamental importance for European criminal law, going back to the works of Samuel Pufendorf and, originally, Aristotle.

## **Lecture 2.2: Procedural Justice in the Criminal Law Process: A Movement towards Perfect Future or the Utopian Idea?**

Lecturer: Postdoc. Dr Joanna Beata Banach-Gutierrez, Faculty of Law, UiB

Abstract: This lecture aims at drawing up the basic principles of responsibility or imputation in criminal law. A part of the purpose of this lecture is to clarify their deep foundation and fundamental importance for European criminal law, going back to the works of Samuel Pufendorf and, originally, Aristotle. J.J. The primary discussed issues will concern the international fair trial standards offering some inquiry into the conception of procedural justice. This issue will be analyzed in the perspective of international criminal procedure and the emerging European criminal justice. JBG the application of IHL to legal entities, the application of the criteria of complicity to legal entities, the responsibility of legal entities in case of violations or crimes of IHL. E.D.

### ***Part 3: Lectures on Tort Law and Evidence***

#### **Lecture 3.1: The Internationalization of Tort Law**

Lecturer: Professor Bjarte Askeland, Faculty of Law, UiB

Abstract: The course will address the phenomenon of *internationalization of the tort law* within Europe. Starting with a presentation of some basic principles in tort law, the lecturer will open the perspectives of the European impact on national tort law regimes within Europe. The interplay between EU, academia and practitioners of tort law will be described and analyzed. An important feature of this interplay is the function of soft law principles as an instrument of harmonization of EU law. An interesting point to be investigated is that the soft law principles represent a development of modern law which does not comprise formal democratic institutions.

#### **Lecture 3.2: Law of Evidence**

Lecturer: Magne Strandberg, Research Fellow, Faculty of Law, UiB

Abstract: There are close relations between the law of evidence and the law of tort. Any trial concerning damages makes it necessary to prove complex facts like the causal connection between the defendant's behaviour and the claimant's damage. Therefore, in an international perspective concerning harmonisation of tort law, it is necessary to pay some attention to questions of evidence law. Above all, it is necessary to note the standards of evidence in different countries. Do the European

countries have the same standard of evidence in tort cases? And if these standards are unequal: Does this create problems for the harmonisation of tort law in Europe?

#### ***Part 4: Lectures on Law, Economics and Corporate Governance***

##### **Lecture 4.1: The relationship between competition and corruption in a law & economics perspective**

Lecturers: Birthe Taraldset, Research Fellow, Faculty of Law, UIB and Tina Søreide, Senior Researcher and Economist, Chr. Michelsen Institute

Abstract: The welfare effects of trade depend on fair competition in markets. In different ways, however, the market players seek higher profits through exclusive advantages in the market. The ways of making influence for exclusive benefits include legal rent-seeking as well as undue and sometimes illegal pressure on sector regulators, courts and politicians. Ways of making influence unduly and the presence of obstacles to fair competition must be considered in combination, including in investigation and prosecution. What we observe in practice, however, is significant variation across countries in their ability to secure welfare through market mechanisms. Laws might have been copied, especially from the United States and into very different legal cultures and institutional frameworks. This lecture will consider how some of these difficulties play out when it comes to antitrust regulations, the use of leniency and other whistleblower mechanisms, as well as in anti-corruption initiatives.

##### **Reading list:**

**Buscaglia, Edgardo.** Jurimetric analysis of best and not so best practices of anti-corruption worldwide: Laws in action vs. laws in the books. (Forthcoming 2011)

**Buisman C., Gumpert B., Hallers M.** Trial and Error – How Effective is Legal Representation in International Criminal Proceedings?, I.C.L.R. , Volume 5, Issue 1, (2005), s. 1-82. The Oxford Companion to International Criminal Justice, Editor-in-chief A. Cassese, 2009.

**van Dam, Cees.** European Tort Law, Oxford 2006, page 106-138.

**van Dijk J., Letschert R.** Globalisation and Victims Rights, Springer 2010.

**Horst Dippel,** "Modern constitutionalism, an introduction to a history in need of writing", i: Tijdschrift voor rechtsgeschiedenis/Revue d'histoire du droit/The legal history review 2005 s. 153-169

**Fredriksen, Katja Jansen.** "Mahr (dower) as a bargaining tool in a European context: A comparison of Dutch and Norwegian judicial decisions", in: Rubya Mehdi, Jørgen S. Nielsen, eds., *Embedding Mahr in the European Legal System* (Copenhagen: DJØF Publishing, 2010), ISBN 978 8757 424768, pp. 147-190.

**Gröning, Linda.** 'A Criminal Justice System or a System Deficit: Notes on the System Structure of the EU Criminal Law', *European Journal of Crime, Criminal Law and Criminal Justice*, Vol. 18, Nr. 2/2010, s. 115-137.

**Hruschka, Joachim.** 'Imputation' (1986) Brigham Young University LR 669

**Holmøyvik, Eirik.** "A little bit of this and a little bit of That – the Complexity of Legal Reception", in Jørn Øyrehagen Sunde and Knut Einar Skodvin (eds.) *Rendezvous of European Legal Cultures* (Bergen 2010) pp. 45-59.

**Knoops G.-J.A.** *Theory and Practice of International and Internationalized Criminal Proceedings*, Kluwer 2005.

**Makinwa, Abiola O.** "Researching civil remedies for international corruption: The choice of the functional comparative method." *Erasmus Law Review*, 2(3): 331-351, (2009).

**McCarthy B.** *Reparations under the Rome Statute of the International Criminal Court and Reparative Justice Theory*, *IJTJ* 2009 3(2), s. 250-271.

**Rohe, Mathias.** "Islamic Law in German Courts" in: *Hawwa*, 1, 1, (Erlangen-Nürnberg: Friedrich-Alexander-Universität 2003), ISSN Online 1569-2086, pp., 46-59.

**Ryngaert C.** (ed.), *The Effectiveness of International Criminal Justice*, Intersentia 2009.

**Sands Ph.** *International Law Transformed? From Pinochet to Congo...?*, in: *Leiden Journal of International Law*, 16 (2003), pp. 37-53.

**Schabas, William A.** "Enforcing international humanitarian law: Catching the accomplices", *Int. Rev. of the Red Cross*, 2001, pp. 439-460.

**Sunde, Jørn Øyrehagen.** "Champagne at the Funeral – an Introduction to Legal Culture", in Jørn Øyrehagen Sunde and Knut Einar Skodvin (eds.) *Rendezvous of European Legal Cultures* (Bergen 2010) pp. 11-28

**Wagner, Gerhard.** *The project of harmonising European Tort Law*, *Common Market Law Review* 2004, 505 ff.

**Weatherill, Stephen.** Why object to harmonisation of European private law by the EC?, *European Review of Private Law* 2004, 633 ff.

**Wright, Richard W.** Proving facts: Belief versus Probability, in *Tort and Insurance Law Yearbook. European Tort Law 2008* (Helmut Koziol and Barbara C. Steininger (eds.) p. 79-105.