



Seminar: International Legal Theory and International Relations  
Fall 2010 (first term)  
Prof. Friedrich V. Kratochwil

**All seminars will take place in room 4 unless otherwise indicated**

Please register with Maureen

**Tuesdays, 5.15 - 7.15 PM**

**Description:** This seminar attempts to provide an overview over some of the crucial conceptual issues and debates taking place at the intersection of international law and international relations analysis. The focus is on the interpenetration and co-constitution of both disciplines in that both law and the “field” of international relations are not treated as separate entities but are both embedded in a semantics of social action in which problems of meaning, of stabilization of expectations and of change figure prominently.

**Requirements:** All those taking this course for credits are expected to do the assigned readings and participate in class discussion and write a research paper. Those participating only in some sessions because of interest in the topic will receive no credits but are to do the readings in preparation for the class.

\* \* \*

**Session 1: What is Law? Tuesday, 5 October**

*Readings:*

- Hans Kelsen, Pure Theory of Law, transl. by Max Knight (Berkeley: Univ. of California Press 1978): 30-50.
- H.L.A Hart, The Concept of Law (Oxford: Clarendon, 1961), caps.1, 2, 10.
- Ronald Dworkin: Is Law a System of Rules? In R.M Dworkin (ed.), The Philosophy of Law (Oxford: 1977): 38-65.
- Joseph Raz, The Authority of Law (Oxford: Clarendon, 1997), chap. 6.

**Session 2: Is International Law “proper” law? Tuesday, 12 October**

*Readings:*

- Friedrich Kratochwil, “Thrasymachos Revisited: On the Relevance of Norms and the Study of Law for International Relations”, Journal of International Affairs (Winter 1984): 343-56.
- Jack Goldsmith and Daryl Levinson, “Law for States, International Law, Constitutional Law, Public Law”, Harvard Law Review, vol. 122 (May 2009): 1892-1962.
- Friedrich Kratochwil, Rules, Norms and Decisions (Cambridge, Engl: Cambridge University Press, 1989), chap. 6.

- Harold Koh, “Why Nations Obey International Law”, Yale Law Journal, vol. 106 (1996): 2599-659.

### Session 3: **The constitution of the international order. Tuesday, 19 October**

#### *Readings:*

- Hedley Bull, The Anarchical Society, 3<sup>rd</sup> ed. (New York: Palgrave 2002), chaps 1 and 2.
- William Coplin, “International Law and Assumptions about the State System”, World Politics, vol. 17 (1965): 615-34.
- Terry Nardin, Law Morality and the Relations of States (Princeton: Princeton University Press, 1983), chap. 1.
- Christian Reus-Smith, “The Constitutional Structure of International Society and the Nature of Fundamental Institutions”, International Organization, vol. 51, no. 4 (1997): 555-89.
- Jan Klabbers, “Constitutionalism lite”, International Organizations Law Review, vol. 1 (2004): 31-58.
- Jan Klabbers, Ann Peters and Geir Ulfstein, The Constitutionalization of International Law (Oxford: Oxford University Press, 2009), chap. 1.

### Session 4: **The Constitutionalization Debate. Tuesday, 26 October**

#### *Readings:*

- Bardo Fassbender, “The United Nations Charter as the Constitution of the International Community”, Columbia Journal of Transnational Law, vol. 36 (1998): 529-619.
- Hans Ulrich Petersmann, “Human Rights, Constitutionalism and the WTO”, Leiden Journal of International Law, vol. 19 (2006): 633-67.
- Jose Alvarez, “Constitutional Interpretation in International Organizations” in Jean Marc Coincaud and Veijo Heiskanen (eds.), The Legitimacy of International Organizations (Tokyo: UN University Press, 2001): 104-154.
- Martti Koskenniemi, “Constitutionalism as a mind set”, Theoretical Inquiries in Law, vol. 8 (2007): 9-36.

### Session 5: **The Fragmentation debate. Tuesday, 2 November**

#### *Readings:*

- Martti Koskenniemi and Paevi Leimo, “Fragmentation of International Law: Post-modern Anxieties?”, Leiden Journal of International Law, vol. 15 (2002): 553-79.
- Bruno Simma and Dirk Pulkowski, “Of Planets and the Universe: Self-contained Regimes in International Law”, European Journal of International Law, vol. 17 (2006): 483-529.
- Gunther Teubner, “Global Bukowina” in G. Teubner, Global Law without a State (Dartmouth, N.H. Aldershot, 1997): 3-28.
- Gunther Teubner and Andreas Fischer Lescano, “Regime Collisions: The Vain Search for Legal Unity in the Fragmentation of Global Law”, Michigan Journal of International Law, vol. 25 (2004): 999-1046.
- Oliver Kessler and Friedrich Kratochwil, “Functional Differentiation and the ‘oughts’ and ‘musts’ of International Law” (mimeo 2009).

**Session 6: Legal Pluralism and its Implications. Tuesday, 9 November**

*Readings:*

- John Griffith, “What is Legal Pluralism?”, Journal of Legal Pluralism and Unofficial Law, vol. 1 (1998): 1-55.
- Boaventura de Sousa Santos, “Law a Map of Misreading: Towards a Postmodern Conception of Law”, Journal of Law and Society, vol. 14 (Fall 1967): 279-302.
- Simon Roberts, “After Government? On Representing Law without the State”, Modern Law Review, vol. 68 (2005): 1-24.
- Prosper Weil, “Towards relative Normativity in International Law”, American Journal of International Law, vol. 77 (1983): 413-42.

**Session 7: Deformalization. Tuesday, 16 November**

*Readings:*

- Dinah Shelton, “Soft Law” in David Armstrong (ed.), Routledge Hand book of International Law (London: Routledge: 2009): 68-80.
- Mary O Connell, “The New Int. Legal Process”, American Journal of International Law, vol. 93 (1999): 334-51.
- Abraham Chayes and Antonia Handler Chayes, The New Sovereignty (Cambridge: Harvard University Press, 1995): 1-28.
- Erol Meidinger, “Private Import Regulation and Transnational New Governance”, in Cary Coglianese, Adam Finkel and David Zaring (eds.), Import Safety Regulatory Governance in the Global Economy (Philadelphia: University of Pennsylvania Pres, 2009): 233-253.
- Martti Koskenniemi, “The Fate of Public International Law: Between Technique and Politics”, Modern Law Review, vol. 70 (Jan. 2007): 1-30.

**Session 8: Globalization. Tuesday, 23 November**

*Readings:*

- William Twining, Globalization and Legal Theory (London: Butterworth, 200), chap. 6.
- Joanne Scott, “From Brussels with Love: The transatlantic Travel of European Law and the Chemistry of Regulatory Attraction”, The American Journal of Comparative Law, vol. 57 (2009): 897-942.
- Judith Resnik, “Law’s Migration: American Exceptionalism, Silent Dialogues and Federalism’s Multiple Ports of Entry”, Yale Law Journal, vol. 115 (May 2006): 1574-1640.
- Galf-Peter Calliess and Moritz Renner, “Between Law and Social Norms: The Evolution of Global Governance”, Ratio Juris, vol. 22, no.2 (2009): 260-80.

Session 9: **Legalization/Judicialization. Tuesday, 30 November**

*Readings:*

- Kenneth Abbott *et al.* “The Concept of Legalization”, International Organization, vol. 54 (2000): 401-19.
- Benedict Kingsbury, Nico Krisch and Richard Stewart, “The Emergence of Global Administrative Law”, Law and Contemporary Problems, vol. 68 (2004/2005): 14-62.
- Anne-Marie Slaughter, “A Global Community of Courts”, Harvard International Law Journal, vol. 44, no.1 (2003): 191-220.
- Nikolas Rajkovic, “Global Law and Governmentality: Reconceptualizing the ‘rule of Law’ as Rule ‘through’ law”, European Journal of International Relations (*forthcoming*).
- Martti Koskeniemi “The Ideology of International Adjudication”, Working Paper of the Erik Castren Institute of International Law and Human Rights, Sept 2007; at: <http://www.helsinki.fi/eci/Publications/MKHague%201907-puheversio07a.pdf07>

Session 10: **International Law, the international Community and the “Rule of Law”. Tuesday, 7 December**

*Readings:*

- Jean Cohen: “Whose Sovereignty? Empire vs. International Law”, Ethics and International Affairs, vol. 18, no.3 (2004): 1-24.
- David Kennedy, The Dark Sides of Virtue, Reassessing International Humanitarianism, (Princeton: Princeton University Pres, 2004), chap. 4.
- Hannes Peltonen, “Modelling Collective Responsibility: the case of grave Humanitarian Cries”, Review of International Studies, vol. 36, no. 3 (2010): 239-55.
- Friedrich Kratochwil, “Has the Rule of Law become a Rule of Lawyers?”, in Gianluigi Palombella and Neil Walker (eds.), Relocating the Rule of Law, (Oxford: Hart, 2009): 171-96.