

SUBJECT**INTRODUCTION TO LAW**ECTS CREDITS: **6,00**SUBJECT CODE: **IINTDR**LANGUAGE IN WHICH IT IS GIVEN: **Catalan Spanish English****STUDIES**

CODE	DEGREE	TYPE	YEAR	SEMESTER
GRIN	Grau en Relacions Internacionals	Basic	First	----

PREREQUISITES

None

PREVIOUS KNOWLEDGE

None

SUBJECTS TO BE TAKEN SIMULTANEOUSLY

None

SUBJECT DESCRIPTION**Professor:** Farid Benavides**Core group:**

This course seeks to introduce students in the study and research of law, by analyzing its definition and structure and role within the complex social, political and economic context of contemporary societies.

The central idea is that the law is not a self-funded system or isolated from the context in which it operates; therefore, we need to address its analysis in close connection with ethical concepts that are expressed through it, and in parallel with the study of social, political and economic conditions within which it develops. The analysis of ethical concepts that have been at the center of the discussion and definition of what is "law" and the relationship between legal institutions and the degree of equality or political, social and economic inequality in a given society are, therefore, central axes of the course.

It is also at the center the discussion on the scope and limits of those concepts that have contributed to the characterization of law, such as the validity, effectiveness, validity and fairness. Overall, the course aims to introduce students in the analysis of three fundamental problems of law: i) What is law ?; ii) How is the law?; and finally iii) How should the law be? The first question refers to the definition of law; the second, to its internal structure, and third, the role law plays in society and its relationship to justice.

In connection with the academic skills they develop in this course, students will be responsible for reading and analysis of legal texts and the duty to participate actively in class discussions, arguing technically and accurately their positions and interpretations regarding readings and, in general, the suggested topics.

Learning Unit 1: International Human Rights and Cultural Diversity.**Professor:** Yvonne Donders

This LU addresses the relationship and interaction between cultural diversity and human rights. It addresses the general human rights framework, including the debate on universality or cultural relativity of human rights and the link between cultural diversity and equality. It will further focus on cultural human rights and on the possible tension between the protection of cultural rights and the existence of harmful cultural practices.

Learning Unit 2: Indigenous Peoples' legal status under international law.**Professor:** Joshua Cooper

Indigenous peoples are important actors in the world today. Some constitutions recognize them as Nations, like the Constitutions of Ecuador and Bolivia, and therefore these states are considered as plurinational states. Other constitutions, like the Colombian one, recognize their right to the territory and to their own system of justice, as long as they respect universal human rights.

Indigenous peoples have different rights that recognize their differential identity and therefore the need to grant them special rights. These rights are in the UN and OAS Declarations on the Rights of Indigenous Peoples.

COMPETENCES

1. An understanding of the most important concepts in different areas of Law.
2. Knowledge of the impact of international and regional law on domestic legal systems.
3. The ability to use the principal legal terminology and to interpret laws and judgements
4. Comprehensive knowledge of the Spanish Legal System
5. Knowledge of the main characteristics of the American Legal System

These competences will be evaluated based on the criteria and instruments specified below.

Students are expected to achieve the following **learning outcomes** by the end of the course:

1. To know the conceptual framework on which the law is based in order to understand the legal problem in general, and the practice of law in a particular international context.

CONTENTS

Core group:

Session 1. Introduction: What is Law?

Frank Kafka: Before the Law. In *The Trial*. (1937).

Movie: *A Civil Action*.

Session 2. Going to Court.

Marc Galanter. Why the "haves" come out ahead. *Law and Society Review* Vol. 9 (1975).

Session 3. Legal Actors: Judges, Lawyers and Clients

Austin Sarat & William Felstiner. Law and Social Relations: Vocabularies of Motive in Lawyer/Client Interaction. *Law and Society Review* Vol. 22 (1988).

Session 4. What do we think of lawyers?

David M. Spitz. Heros or Villains? Moral struggles vs Ethica dilemmas. An examination of dramatic portrayals of lawyers and the legal profession in popular culture. *Nova Law Review* 24:2 (2000).

Session 5. Legal Education

Corey Shdaima. What is in a name? Cause lawyers as a conceptual category. https://www.researchgate.net/profile/Corey_Shdaimah/publication/228146853_What's_in_a_Name_Cause_Lawyers_as_Conceptual_Category/links/0deec53c7b45c0a73a000000.pdf

William Deresiewicz. The disadvantages of an elite education. *The American Scholar* (2013).

Session 6. How do judges decide?

Santiago Basabe. Las preferencias ideológicas y políticas judiciales. *América Latina Hoy* (2008).

Stuart Scheingold. *The Politics of Rights. Lawyers, public policy and political change*. Ann Arbor: Michigan University Press, 2004.

Session 7. The sources of law

Diego López Medina. *El derecho de los jueces*. Bogotá: Legis, 2009. Cap. 7.

Session 8. Jurisprudence and stare decisis.

Rupert Cross. *Precedent in English Law*. London: Clarendon Law series, 1991. Chapters II & III.

Session 9. Law and everyday life.

Patricia Ewick & Susan Silbey. Conformity, contestation and resistance. An account of legal consciousness. *New England Law Review* 26 (Spring, 1992).

Session 10. Homo Sacer and the Law

Iker Barbero. El movimiento de los sin-papeles como sujetos de juridicidad. *Revint Sociologia* (2013).

Giorgio Agamben. *Homo Sacer. Sovereign Power and Bare Life*. Stanford University Press, 1998.

Session 11. Alternatives to Law

Boaventura de Sousa. The Law of the Oppressed: the construction and Reproduction of Legality in Pasargada. *Law and Society Review* Vol. 12 No. 1 (1977).

Film viewing. *The City of God* (2003).

Session 12. Law as an Instrument of Power.

Juan F. Perea. Brown At Fifty: Buscando America: Why Integration And Equal Protection Fail To Protect Latinos. 117 *Harvard Law Review* (2004).

Richard Price and Thomas M. Keck. "Movement litigation and unilateral disarmament: abortion and the right to die". *Law & Social Inquiry* 40:4 (Fall 2015).

Session 13. The Police: Zero Tolerance and Control of Immigrants.

Bernard Harcourt. Policing Disorder. *Boston Review*. (April/May 2002).

Philip Heymann. The New Policing. 28 *Fordham Urban Law Journal* (2000).

Movie: *A day without Mexicans*.

Session 14. Gender and Law: Do norms have sex?

Juan Antonio García Amado. "¿Tienen sexo las normas? Temas y Problemas de la Teoría Feminista del Derecho". *Anuario de Filosofía del Derecho* No. 9 (1992).

Ayodele Atsenuwa. "Promoting sexual and reproductive rights through legislative interventions: a case study of child rights legislation and early marriage in Nigeria and Ethiopia". Charles Ngwena & Ebenezer Durojaye eds. *Strengthening the protection of sexual and reproductive health and rights in the African region through human rights*. Pretoria: University of Pretoria Press, 2014.

Session 15. Law and Sex in Court

Thomas M. Keck. "Beyond Backlash: assessing the impact of judicial decisions on LGBT Rights". *Law & Society Review* 43:1 (2009).

Benjamin G. Bishin et al. "Opinion backlash and public attitudes: are political advances in gay rights counterproductive?". *American Journal of Political Science* 60:3 (July 2016).

John Goldberg Hiller & Neal Milner. Rights as Excess. Understanding the Politics of Special Rights. *Law and Social Inquiry* 28 (Fall 2003).

Movie: *Philadelphia*.

Session 16. The Victim in the Criminal System: women as victims of the system

Andrew Tatlitz. Rape and two concepts of the emotions in date rape. 15 *Wisconsin Women's Law Journal* (2000).

Movie: *Accused*.

Session 17. The Prison: a just measure of Pain?

Mona Lynch. From the Punitive City to the Gated Community: Security and Segregation across the Social and Penal Landscape. 56 *University of Miami Law Review* (2001).

Movie: *Shawshank Redemption*.

Session 18. Death Penalty: the best punishment of all?

Austin Sarat. The Cultural Life of Capital Punishment: Responsibility and Representation in Dead Man Walking and Last Dance. 11 *Yale Journal of Law & the Humanities* (1999).

Elizabeth Rapaport. The Death Penalty and Gender Discrimination. *Law and Society Review* Vol. 25 No. 2 (1991).

Movie: *The Last Dance (2003)*.

Session 19. Internet and Crime

Susan W. Brenner. Complicit Publication: When Should The Dissemination Of Ideas And Data Be Criminalized? 13 Albany Law Journal of Science & Technology (2003).

Susan W. Brenner. "At light speed. Attribution and response to cybercrime/terrorism/warfare". The Journal of Criminal Law and Criminology 97:2 (2007).

Session 20. Surveillance, Privacy, and technology

Nick Taylor. State Surveillance and the right to privacy. Surveillance and Society 1(1). (2002).

Felix Stalder. Privacy is not the antidote to surveillance. Surveillance and Society 1(1). (2002).

Movie: *1984*.

Session 21. Law and Identity

Ian Haney Lopez. The Social Construction of Race. Some observations on illusion, fabrication, and choice. 29 Harvard Civil Liberties Civil Rights Law Review (1994).

Session 22. Animal Rights

María Teresa López. Derechos de los Animales, deberes de los humanos. Isegoria (2005).

Luis María Bandieri. "Los animales: ¿tienen derechos?". Prudentia Juris No. 79 (2015).

Session 23. International Justice

Edoardo Greppi. The Evolution of Criminal Responsibility under International Law. International Review of the Red Cross 835 (1999).

William Schabas. Legal Perspectives And Analyses: Was Genocide Committed In Bosnia And Herzegovina? First Judgments Of The International Criminal Tribunal For The Former Yugoslavia. 25 Fordham International Law Journal (2001).

Movie: *Judgement at Nuremberg*.

Session 24. Globalization and Law

Cesar Rodriguez & Boaventura de Sousa. Law and Globalization from Below. Cambridge: Cambridge University Press, 2005. Ch. 1 and 3.

Session 25. The Spanish Legal System.

Main institutions within the Spanish Constitution
The Spanish Constitutional Court
The judiciary and the constitutional review
Fundamental rights in the 1978 Spanish Constitution

Session 26. Judicial Power

Organization of the court structure
New challenges: domestic jurisdiction and universal jurisdiction

Learning Unit 1: International Human Rights and Cultural Diversity. Prof. Yvonne Donders. University of Amsterdam.

The link between human rights and cultural diversity was clearly established by the Universal Declaration on Cultural Diversity, adopted by the Member States of UNESCO in 2001, which holds that "the defence of cultural diversity is...inseparable from respect for human dignity" and that it "...implies a commitment to human rights and fundamental freedoms". The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, adopted in 2005, states that "cultural diversity can be protected and promoted only if human rights and fundamental freedoms...are guaranteed" (Article 2(1)). International bodies supervising the implementation of human rights treaties also underline the value of cultural diversity in a pluralistic society for democracy and the promotion and protection of human rights. The precise relationship and interaction between cultural diversity and human rights, remains, however, to be further explored. To what extent does international human rights law provide a suitable framework to promote and protect cultural diversity? Or the other way around: to what extent does cultural diversity provide a good and/or necessary ground for the promotion and protection of international human rights standards? Different elements of the relationship and interaction between international human rights law and cultural diversity will be discussed, with a special focus on cultural rights.

Cultural rights have always been part of the human rights discourse, being one of the so-called categories of human rights, the others being civil, economic, political and social rights. However, for a long time, cultural rights received less attention and, consequently, they are conceptually and legally less developed than civil, political, economic and social rights. There has been discussion on the place of cultural rights in the human rights discourse. Can the promotion and protection of cultural rights be consistent with the idea of the universality of human rights? Furthermore, by emphasising differences, are cultural rights inherently in contradiction with the human rights principles of equality and non-discrimination? Another issue is that there is no clear consensus on which rights fall within the category of cultural rights. Are those only the ones explicitly referring to culture or do they include all human rights that have a link with culture? Apart from identifying and analyzing specific cultural rights, the cultural *dimension* of human rights is an important avenue to link cultural diversity and human rights. Although some human rights, at first glance, may not have a direct link with culture, most of them have important cultural implications. What is the precise content of these rights and what are the state obligations? A more contentious issue is the fact that while cultural rights promote and protect cultural diversity, they cannot be used as an excuse to justify harmful (cultural) practices that are in conflict with or limit the enjoyment of human rights. Examples are FGM, child and forced marriages, polygamy and honour crimes. The legal issues playing a role here are conflicting human rights and limitations of human rights. Cultural rights, just as other human rights, cannot be enjoyed unlimitedly. They can be restricted to protect the rights of others or a general interest of society. It should however also be noted that even if harmful cultural practices are formally prohibited by law, they may be practised. This shows that law alone cannot solve all issues and cannot by itself change cultural practices. Changes in cultural practices are most successful if they arise within the cultural community itself and are not imposed from outside, by law or by the state. This does of course not relieve states from the responsibility to find ways to promote such changes, in close cooperation with cultural communities.

The LU is built up in three parts. The first session will outline the general human rights framework and deal with the different categories of human rights (civil, cultural, economic, political and social), including the differences in terms of content of the rights, state obligations and monitoring. The session will also discuss two issues related to cultural rights within the general human rights framework, namely the debate on universality or relativity of human rights and the link between cultural diversity and equality.

The second session will introduce cultural human rights in more detail, including the different forms of cultural rights and the cultural dimension of human rights. Specific attention will be paid to the right to take part in cultural life (Article 15(1)a ICESCR) and the right to freedom of religion.

The third session will address the tension between the protection of cultural rights and the existence of harmful cultural practices. It will focus on possible limitations of cultural rights in order to protect the rights of others or a general interest of society and will also discuss the role of the cultural communities themselves in eliminating harmful cultural practices.

Learning Unit 2: Indigenous Peoples and the United Nations: Indigenous Diplomacy in Global Affairs & Indigenous Direct-Action on the Ground in Own Homeland. Prof. Joshua Cooper. University of Hawaii.

I.- From the League of Nations to the United Nations: History of Indigenous Peoples in International Law

II.- The UN Working Group on Indigenous Populations to the UN Expert Mechanism on the Rights of Indigenous Peoples

III.- The United Nations Permanent Forum on Indigenous Issues: 15 Years in the Family of Nations

IV.- The United Nations Human Rights Council: From Special Procedures to New Forums for Fundamental Freedoms. The Universal Periodic Review

V.- The United Nations Human Rights Treaty Bodies & the Universal Periodic Review: Five Phases of Participation to Impact International Human Rights Institutions

VI.- Implementation of Indigenous Peoples Rights in Public International Law: From the UN Declaration on the Rights of Indigenous Peoples to the UN World Conference on Indigenous Peoples

VII.- The UN Sustainable Development Goals & Indigenous Peoples: Development in the Post 2015 Agenda

METHODOLOGY

1. Lectures
2. Individual and group activities: text readings and comments, research, presentations and debates
3. Exam (for core-group classes)

LU 1. Students are required to read the materials before coming to class. During the first part of the sessions, the main lines of the theory and the materials will be presented by the lecturer and students are invited to ask questions clarifying issues that they do not understand. The second part of the sessions will be more interactive whereby the lecturer will ask questions to the students and encourage them to discuss specific situations, issues and cases.

LU 2. Final Exercise of Education, Empowerment & Engagement: Model United Nations Universal Periodic Review - Role Play.

EVALUATION

The overall grade for this course is based on the coursework completed during the core-group and the final exam (60%) and two learning units (20% each LU) sessions.

Lecture class and learning units must be passed separately in order to pass the course.

Core group:

First sitting:

EXAM. 40%

The first call will count for 40% of the Core Class' grade.

INDIVIDUAL EXERCISES: 10%

Text readings and comments and assignments to be completed during the course. This evaluation will have the following items:

- Summaries of assigned readings
- Pop quizzes

A minimum mark of 3.5 in each of the three evaluation concepts is required to pass the above-mentioned percentages.

GROUP EXERCISES: 10 %

Second sitting: The second sitting will count as 40% of the class. The work done in the first sitting will be taken into account.

Learning Unit 1.

First sitting:

The last hour of session three will include a written exam, composed of 8 MC questions (40%) and 3 short-answer open questions (60%). The questions are based on the compulsory reading materials of all three sessions.

Second sitting:

In case students fail the first sitting, they will be given a retake exam in the form of a short paper of 800 words. The topic of the paper and instructions will be sent to the students by email two weeks after the LU. The paper has to be submitted via email to the lecturer (Professor Yvonne Donders: y.m.donders@uva.nl) within 7 days.

Learning Unit 2:

First sitting.

The grade is determined on the basis of:

- Active participation in class
- Individual final exercise in class

Attendance to all sessions is compulsory. Evaluation will be based on the student's performance in the various LU activities, *inter alia*, group or individual exercises, in take-home or in-class written assignments and active participation in class.

Second sitting

VERY IMPORTANT: Lecture class and learning units must be passed separately in order to pass the course. In the second sitting, the student will be entitled to retake only the failed part in the first sitting (with the same percentages), but not the one in which he or she was "no-show"; in that case, he or she will fail the whole course and will have to repeat it.

CRITERIA OF EVALUATION OF RESULTS

The following criteria will be considered to determine the fulfillment of each evaluation item:

- Good understanding and use of key concepts and ideas about Law.
- Ability to connect the course's key ideas with broader issues of international relations.
- Ability to present your own ideas on the basis of the guidelines given.
- Active participation in class and meeting of deadlines.

BASIC BIBLIOGRAPHY

Core group:

HARRIS, Phil, *An introduction to law*, Butterworths LexisNexis, Law in Context, 7th Ed.,UK, 2006, pp.498.

GLENDON, M.A., WALLACE, M., OSAKWE, Ch., *Comparative Legal Traditions in a Nutshell*, St. Paul: West Publishing Co., 1982.

Learning Unit 1:

Session 1:

Reading materials:

- Theo van Boven, "Categories of Rights", in: D. Moeckli (et al), *International Human Rights Law* (OUP, 2013) Chapter 7 (pp. 143-155).
- Advisory Council on International Affairs, Advice No. 63, *Universality of Human Rights – Principles, Practice and Prospects*, The Hague, November 2008, ONLY Chapters 1-6 and 10 (pp. 7-24 and pp.32-37). Full text available on:

<http://aiv-advies.nl/download/dcf2892-482e-4189-ae0d-80383a6025dc.pdf>

- Human Rights Committee, *General Comment No. 18: Non-Discrimination*, 10 November 1989.

Reference materials:

- Human Rights Committee, *General Comment No. 31*, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 29 March 2004.
- Committee on Economic, Social and Cultural Rights, *General Comment No. 3*, The nature of States parties obligations (Art. 2, para. 1 of the Covenant), 14 December 1990.
- Universal Declaration on Human Rights (1948)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)

Session 2

Reading materials:

- Yvonne Donders, "Do Cultural Diversity and Human Rights make a Good Match?", *International Social Science Journal* 199, 2010, UNESCO, Blackwell Publishing, pp. 15-35. SSRN: <http://ssrn.com/author=1417815>
- European Court of Human Rights, *Mann Singh v France*, 13 November 2008 (Appl.no. 24479/07) (decision in French, summary in English).
- Human Rights Committee, *Mann Singh v France*, 19 July 2013, (Comm.no. 1928/2010).

Reference materials:

- Committee on Economic, Social and Cultural Rights, *General Comment No. 21, The Right to Take Part in Cultural Life* (article 15(1)a), 21 December 2009.

Session 3

Reading materials:

- Committee on the Elimination of Discrimination against Women and Committee on the Rights of the Child, *Joint General Recommendation No. 31/General Comment No. 18 on Harmful Practices*, 2014.

Reference materials:

- Convention on the Elimination of All Forms of Discrimination Against Women (1979)

Learning Unit 2:

Anaya, James. *Indigenous Peoples under International Law*. 2d ed. Oxford: Oxford University Press, 2004.

Burger, Julian. "The United Nations Draft Declaration on the Rights of Indigenous Peoples", 9 *St. Thomas L.Rev.* pp. 209-229 (Fall 1996).

Sanders, Douglas, "The UN Working Group on Indigenous Populations", 11 *Human Rights Quarterly* pp. 406-433 (1989).

Thornberry, Patrick. *Indigenous Peoples and Human Rights*. Melland Schill Studies in International Law. Manchester, UK: Manchester University Press, 2002

Venne, Sharon Helen. *Our Elders Understand Our Rights: Evolving International Law Regarding Indigenous Peoples*. Penticton, BC: Theytus, 1998.

BIBLIOGRAPHY AND MATTER COMPLEMENTARY

BANKER HAMES, Joanne & EKERN, Yvonne, *Introduction to Law*, 5th Ed., New Jersey, 2014.

FINE, T., *American Legal Systems: A Reference and Resource Guide*, New York: Elsevier Science, 1997.

FLETCHER, G.; SHEPPARD, S., *American Law in a Global Context: the basics*, Oxford University Press, 2005.

FRIEDMAN, L., *Law in many societies. A reader*, Stanford: SUP, 2011.

GORDILLO, A. *An Introduction to Law*, London: Esperia, 2003. Also available at: www.gordillo.com.

KAGAN, R., *Adversarial Legalism: the American Way of Law*, Harvard University Press, 2003.

LEWIS, A., *Gideon's Trumpet*, Vintage Books, NY, 1989.

TUSHNET, M., FLEINER, TH. AND SAUNDERS, CH., *Routledge handbook of constitutional law*, London, Routledge, 2015.

VILLIERS, Charlotte, *The Spanish Legal tradition: an Introduction to the Spanish Law and Legal System*, Aldershot [etc.]: Ashgate : Dartmouth, 1999.

WILLIMAS, Glanville, *Learning the Law*, Sweet&Maxwell, 15th Edition, London, 2013, pp. 279.

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