

International Law

Academic year 2021-2022

Transnational Law

DI133 – Printemps/Spring - 6 ECTS

Tuesday 14h15 - 16h00 (Room S5)

Course Description

Transboundary issues are today increasingly addressed through legal and regulatory processes in a variety of sites, domestic and international, private and public. Often sidelining international law in its classical form, this shift calls into question our traditional understanding of law, authority, legitimacy and accountability. This course aims to analyze important illustrations of transnational legal processes, ranging from standards, ranking and indicators to *lex sportiva*, credit ratings and corporate social responsibility, with a particular emphasis on their role in global governance and the various challenges that they raise.

> PROFESSOR

[Nico Krisch](#)

[Office hours](#)

> ASSISTANT

Tomáš Morochovič

[Office hours](#)

Syllabus

Course requirements

The course will be taught in an interactive way, and its success depends on all students being well prepared for, and ready to participate in, each session.

Throughout the course, students will have to write two response papers on selected readings and complete a final take-home exam which will run from 3 June (12noon) to 10 June (12noon). The course grade will consist of: a 20% component for each response paper, a 50% component for the final exam, and a 10% component for participation in class.

Readings

The course does not use a particular textbook; the materials for the course will be available on Moodle. Please do also explore the literature beyond the required readings; it is only through

engaging with scholarship and practical materials on your own initiative that you will develop your own take on the law and its process.

Important books that address aspects of this course and could be used to complement the readings for the sessions include:

- S. Block-Lieb and T.C. Halliday, *Global Lawmakers: International Organizations in the Crafting of World Markets*, Cambridge University Press, 2017
- G.P. Calliess and P. Zumbansen, *Rough Consensus and Running Code: A Theory of Transnational Private Law*, Oxford Hart Publishing, 2010
- Y. Dezalay and B. Garth, *Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order*, University of Chicago Press, 1996
- T.C. Halliday and G. Shaffer, *Transnational Legal Orders*, New York Cambridge University Press, 2014
- J. Pauwelyn, R. Wessel and J. Wouters, *Informal International Lawmaking*, Oxford University Press, 2012
- T. Schultz, *Transnational Legality: Stateless Law and International Arbitration*, Oxford University Press, 2014
- Walker, Neil. *Intimations of Global Law*. Cambridge University Press, 2014.
- P. Zumbansen (ed.), *Oxford Handbook on Transnational Law*, Oxford University Press, 2021
- D.D. Avant, M. Finnemore & S.K. Sell (eds.), *Who Governs the Globe?*, Cambridge University Press, 2010

The reading list for the individual sessions (below) is provisional and subject to change as the course progresses. Readings will normally be made available two weeks before each session.

Structure

Part I: Frames

Session 1: Transnational Law (22 February)

We begin the course by exploring what transnational law means – and what it encompasses (and what not). How is it different from public international law? How has its meaning changed over time? What are the actors and processes that constitute it?

Readings

Jessup, Philip. *Transnational Law*. New Haven: Yale University Press, 1956, ch. 1 – read pp. 1-9

Shaffer, Gregory. "Theorizing Transnational Legal Ordering." *Annual Review of Law and Social Science* 12, no. 1 (2016): 231–53.

Zumbansen, Peer C. "Transnational Law: Theories & Applications." In *Oxford Handbook of Transnational Law* (P. Zumbansen, Ed.), 2021, 3-28

Further readings

Koh, Harold Hongju. "Transnational Legal Process." *Neb. L. Rev.* 75 (1996): 181.

Walker, Neil. "Beyond Boundary Disputes and Basic Grids: Mapping the Global Disorder of Normative Orders." *International Journal of Constitutional Law* 6, no. 3–4 (2008): 373–396.

Cotterrell, Roger. "What Is Transnational Law?" *Law & Social Inquiry* 37, no. 2 (2012): 500–524.

Krisch, Nico. "Liquid Authority in Global Governance." *International Theory* 9, no. 2 (July 2017): 237–60.

Zumbansen, Peer, ed. *The Many Lives of Transnational Law: Critical Engagements with Jessup's Bold Proposal*. Cambridge University Press, 2020.

Krisch, Nico, ed. *Entangled Legalities beyond the State*. Cambridge University Press, 2021.

Session 2: Moves Towards the Transnational (1 March TBC)

In this session, we inquire into the rise of transnational law often diagnosed over the past decades. Has there really been such a rise? If so, why? We will pursue different lines of explanation, most of them to do with economic globalization and the transformation of the state. We will pay particular attention to the 'poster child' of transnational law, the 'new lex mercatoria'. What is it? And who brought it about?

Readings

Sassen, Saskia. "Neither Global nor National: Novel Assemblages of Territory, Authority and Rights." *Ethics & Global Politics* 1, no. 1–2 (2008): 61–79.

Slaughter, Anne-Marie. "The Real New World Order." *Foreign Affairs* 76, no. 5 (1997): 183–97.

Calliess, Galf-Peter. "Lex Mercatoria." In *Encyclopedia of Private International Law* (J. Basedow et al., Eds.), 1120–29. Edward Elgar, 2017.

Teubner, Gunther. "Global Bukowina: Legal Pluralism in the World Society." In *Global Law without a State* (G. Teubner, Ed.), 3–28, 1997.

Further readings

Strange, Susan. *The Retreat of the State: The Diffusion of Power in the World Economy*. Cambridge University Press, 1996.

Cutler, A. Claire. *Private Power and Global Authority: Transnational Merchant Law in the Global Political Economy*. Vol. 90. Cambridge University Press, 2003.

Calliess, Galf-Peter, and Peer Zumbansen. *Rough Consensus and Running Code: A Theory of Transnational Private Law*. Hart Publishing, Oxford, 2010.

Krisch, Nico. "The Decay of Consent: International Law in an Age of Global Public Goods." *American Journal of International Law* 108, no. 1 (2014): 1–40.

Pauwelyn, Joost, Ramses A. Wessel, and Jan Wouters. "When Structures Become Shackles: Stagnation and Dynamics in International Lawmaking." *European Journal of International Law* 25, no. 3 (August 1, 2014): 733–63.

G. Cuniberti, "Three Theories of Lex Mercatoria", 52 *Columbia Journal of Transnational Law* (2014), pp. 369-434

Alter, Karen J., and Kal Raustiala. "The Rise of International Regime Complexity." *Annual Review of Law and Social Science* 14, no. 1 (2018): 329–49.

Block-Lieb, Susan, and Terence C. Halliday. *Global Lawmakers: International Organizations in the Crafting of World Markets*. Cambridge UK ; New York: Cambridge University Press, 2017.

Roger, Charles B. *The Origins of Informality: Why the Legal Foundations of Global Governance Are Shifting, and Why It Matters*. Oxford University Press, 2020.

Tutorial 1: Writing a Response Paper (between 28 February and 4 March, dates/times TBC)

Part II: Transnational Legal Processes in Business and Human Rights

Session 3: Transnational Lawmaking (8 March)

In this and the following two sessions we will use the case of business and human rights to inquire more deeply into the ways in which transnational law is made and practiced. We will reconstruct the polycentric structure in which law-making, interpretation and application occurs, and will be especially attentive to the interaction between the different sites. We will also seek to understand why the different sites have been chosen, by whom and with what consequences. In this session, we will focus on law- and rule-making of a transnational character.

Readings

Ruggie, John Gerard. "The Social Construction of the UN Guiding Principles on Business and Human Rights." *Research Handbook on Human Rights and Business* (Surya Deva and David Birchall, eds), 2020, 63-86

Partiti, Enrico. "Polycentricity and Polyphony in International Law: Interpreting the Corporate Responsibility to Respect Human Rights." *International & Comparative Law Quarterly* 70, no. 1 (January 2021): 133–64.

Kirkebo, Tori Loven, and Malcolm Langford. "Ground-Breaking? An Empirical Assessment of the Draft Business and Human Rights Treaty." *American Journal of International Law* 114 (ed 2020): 179–85.

Documents (skim through)

- UN Guiding Principles on Business and Human Rights, [here](#)
- OECD Guidelines for Multinational Enterprises, [here](#), ch. 4
- Third Revised Draft of a Legally Binding Instrument on Business and Human Rights, 2021, [here](#)
- Equator Principles, [here](#) - focus on pp. 1-17
- Unilever, *Human Rights Policy Statement*, [here](#)

Further readings

Weissbrodt, David, and Muria Kruger. "Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights." *American Journal of International Law* 97, no. 4 (October 2003): 901–22.

Baumann-Pauly, Dorothée, and Justine Nolan. *Business and Human Rights: From Principles to Practice*. Routledge, 2016.

Deva, Surya, and David Birchall. *Research Handbook on Human Rights and Business*. Edward Elgar Publishing, 2020.

Deva, Surya, and David Bilchitz, eds. *Building a Treaty on Business and Human Rights: Context and Contours*. Cambridge University Press, 2017.

Rodriguez-Garavito, César, ed. *Business and Human Rights*. Cambridge University Press, 2017.

Choudhury, Barnali. "Balancing Soft and Hard Law for Business and Human Rights." *International & Comparative Law Quarterly* 67, no. 4 (October 2018): 961–86.

Ratner, Steven R. "Introduction to the Symposium on Soft and Hard Law on Business and Human Rights." *American Journal of International Law* 114 (ed 2020): 163–67.

Muchlinski, Peter. "The Impact of the UN Guiding Principles on Business Attitudes to Observing Human Rights." *Business and Human Rights Journal* 6, no. 2 (June 2021): 212–26.

Session 4: National Regulation as Transnational Law (15 March)

This session will focus more directly on national institutions and their role in the making of transnational law. We focus on legislative and regulatory initiatives. What are openings and obstacles for national action to further business and human rights responsibility of companies? What tools do legislators and regulators use to tackle the problem? What jurisdictional limitations concerns exist for stringent home state regulation?

Readings

Diggs, Elise Groulx, Mitt Regan, and Beatrice Parance. "Business and Human Rights as a Galaxy of Norms." *Georgetown Journal of International Law* 50, no. 2 (2019 2018): 309–62.

Reinisch, August. "Human Rights Extraterritoriality: Controlling Companies Abroad." In *Community Interests Across International Law*, edited by Eyal Benvenisti and Georg Nolte, 396–413, 2018.

Further readings

Chilton, Adam S., and Galit A. Sarfaty. "The Limitations of Supply Chain Disclosure Regimes." *Stanford Journal of International Law* 53, no. 1 (2017): 1–54.

Chambers, Rachel. "An Evaluation of Two Key Extraterritorial Techniques to Bring Human Rights Standards to Bear on Corporate Misconduct." *Utrecht Law Review* 14 (2018): 22–39.

Bueno, Nicolas, and Claire Bright. "Implementing Human Rights Due Diligence through Corporate Civil Liability." *International & Comparative Law Quarterly* 69, no. 4 (October 2020): 789–818.

Mares, Radu. "Liability within Corporate Groups: Parent Companies Accountability for Subsidiary Human Rights Abuses." *Research Handbook on Human Rights and Business*, July 8, 2020.

Laura Knöpfel and Carlos Lopez, 'Finding a silver lining in the rejection of the Swiss Responsible Business Initiative: a hope of legal accountability in the parliamentary counterproposal', *Opinio Juris*, 17 December 2020, [here](#)

McGaughey, Fiona, Hinrich Voss, Holly Cullen, and Matthew C. Davis. "Corporate Responses to Tackling Modern Slavery: A Comparative Analysis of Australia, France and the United Kingdom." *Business and Human Rights Journal*, November 15, 2021, 1–22..

Session 5: In-Between Spaces (22 March)

In this session, we continue our exploration of the burgeoning business and human rights field by tracing institutions of norm interpretation and development that operate in different shades of legal grey zones. We focus in particular on the operation of the OECD National Contact Points, but also consider emerging mechanisms of arbitration and monitoring.

Readings

Huijstee, Mariëtte van, and Joseph Wilde-Ramsing. "Remedy Is the Reason: Non-Judicial Grievance Mechanisms and Access to Remedy." *Research Handbook on Human Rights and Business*, July 8, 2020.

Buhmann, Karin. "Analysing OECD National Contact Point Statements for Guidance on Human Rights Due Diligence: Method, Findings and Outlook." *Nordic Journal of Human Rights* 36, no. 4 (October 2, 2018): 390–410.

OECD National Contact Point Switzerland, *Building and Wood Workers International v FIFA*

- Initial Assessment, 13 October 2015
- Final Assessment, 2 May 2017
- Follow-up Assessment, 5 June 2018

The Accord on Fire and Building Safety in Bangladesh

- The Accord (2013, 2018), [here](#)
- The International Accord (2021), [here](#)

Desierto, Diane. "Why Arbitrate Business and Human Rights Disputes? Public Consultation Period Open for the Draft Hague Rules on Business and Human Rights Arbitration", [here](#)

Further readings

Salminen, Jaakko. "The Accord on Fire and Building Safety in Bangladesh: A New Paradigm for Limiting Buyers' Liability in Global Supply Chains?" *The American Journal of Comparative Law* 66, no. 2 (August 24, 2018): 411–51.

Levine, Judith, and Ashwita Ambast. "Responsibility Rising from the Rubble: Lessons from the Bangladesh Accord for Arbitration of Business and Human Rights Disputes" *Australian International Law Journal* 25 (2018): 1–24

The Hague Rules on Business and Human Rights Arbitration (2019), <https://www.cilc.nl/project/the-hague-rules-on-business-and-human-rights-arbitration/>

Haines, Fiona, and Kate Macdonald. "Nonjudicial Business Regulation and Community Access to Remedy." *Regulation & Governance* 14, no. 4 (2020): 840–60.

Morochovic, Tomas, and Lucy Lu Reimers. "Hidden in the Shades: Patterns of Entanglement within the Web of Corporate Social Responsibility Law", in *Entangled Legalities Beyond the State* (N. Krisch, Ed.). Cambridge University Press, 2021, 318-350.

Bhatt, Kinnari, and Gamze ERDEM Türkelli. "OECD National Contact Points as Sites of Effective Remedy: New Expressions of the Role and Rule of Law within Market Globalization?" *Business and Human Rights Journal* 6, no. 3 (October 2021): 423–48.

Session 6 (29 March): Making Transnational Law through Litigation

In this session we focus on litigation as a tool for realizing human rights vis-à-vis corporate actors. What is the trajectory of such litigation? Where and how have avenues opened up to sue corporations for their activities? What are the potential and problems of litigation in a forum far from where harm has occurred?

Readings

McCorquodale, Robert. "The Litigation Landscape of Business and Human Rights", in Richard Meeran (ed.), *Human Rights Litigation against Multinationals in Practice*, Oxford University Press, 2021, 1-23

Lindt, Angela. "Transnational Human Rights Litigation: A Means of Obtaining Effective Remedy Abroad?" *Journal of Legal Anthropology* 4, no. 2 (December 1, 2020): 57–77.

UK Supreme Court, *Vedanta Resources PLC and another v Lungowe and others*, Judgment of 10 April 2019, [here](#) - read pp. 1-3 and 16-33

Hague District Court, *Milieudefensie et al v Royal Dutch Shell*, Judgment of 26 May 2021, [here](#) – focus on sections 3 to 5

Further readings

Schrempf-Stirling, Judith, and Florian Wettstein. "Beyond Guilty Verdicts: Human Rights Litigation and Its Impact on Corporations' Human Rights Policies." *Journal of Business Ethics* 145, no. 3 (October 1, 2017): 545–62.

Corporate Legal Liability, Quarterly Update 12/2020, [here](#)

Meeran, Richard, ed. *Human Rights Litigation Against Multinationals in Practice*. Oxford University Press, 2021.

Eckert, Julia. "Entangled Hopes: Towards Relational Coherence." In *Entangled Legalities Beyond the State* (N. Krisch, Ed.). Cambridge University Press, 2021, 399-423.

Part III: Transnational Law in its Infinite Variety

Session 7: Ruling Global Finance (5 April)

In this and the following sessions, we explore transnational legal processes in different issue areas with a view to understanding the variety of ways in which law and rules are used to tackle transboundary issues. In this session we begin with a look at global finance, an area conspicuous for the absence of formal international law despite a high degree of globalized relations. What kind of law governs global finance? Why is the area governed in this way and not in another? Who calls the shots? Is such regulation effective? And can it be accountable?

Readings

Brummer, Chris. "Why Soft Law Dominates International Finance - and Not Trade." *Journal of International Economic Law* 13, no. 3 (2010): 623–43.

The Basel Committee on Banking Supervision:

- General: [here](#)
- Basel Framework: [here](#)
- Implementation: [here](#)

The Financial Action Task Force:

- General: [here](#)
- FATF Recommendations: [here](#)
- Surveillance and Monitoring: [here](#)

Kerwer, Dieter, and Rainer Huelssse. "How International Organizations Rule the World: The Case of the Financial Action Task Force on Money Laundering." *Journal of International Organizations Studies* 2, no. 1 (2011): 50–67.

Slaughter, Anne-Marie. "Disaggregated Sovereignty: Towards the Public Accountability of Global Government Networks." *Government and Opposition*, 2004, 159–90.

Further readings

Brummer, Chris. *Soft Law and the Global Financial System: Rule Making in the 21st Century*. 2nd ed. Cambridge University Press, 2015.

Zaring, David. *The Globalized Governance of Finance*. Cambridge University Press, 2019.

Newman, Abraham L., and David Zaring. "Regulatory Networks: Power, Legitimacy, Compliance." In *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art* (J.L. Dunoff & M.A. Pollack, Eds.), 244–65. New York: Cambridge University Press, 2013

Gadinis, Stavros. "Three Pathways to Global Standards: Private, Regulator, and Ministry Networks." *American Journal of International Law* 109, no. 1 (2015): 1–57.

Tsingou, Eleni. "Club Governance and the Making of Global Financial Rules." *Review of International Political Economy* 22 (2015): 225–56.

Choer Moraes, Henrique. "International Lawmaking By Transgovernmental Networks: Using Domestic Coordination to Address Asymmetries In Participation." *Journal of International Economic Law* 19, no. 4 (December 1, 2016): 821–43.

Mallard, Grégoire, and Aurel Niederberger. "Targeting Bad Apples or the Whole Barrel? The Legal Entanglements Between Targeted and Comprehensive Logics in Counter-Proliferation Sanctions." In *Entangled Legalities Beyond the State* (N. Krisch, Ed.). Cambridge University Press, 2021, 229-259.

Corradini, Francesco. "Ordering Multiplicity in the Fight for International Standards: A Historical Analysis of Entangling Legalities in International Finance." In *Entangled Legalities Beyond the State* (N. Krisch, Ed.). Cambridge University Press, 2021, 289-317.

Session 8: Private (Sustainability) Standards, Public Laws? (12 April)

This session focuses on standards of a different kind, namely privately-produced ones. We will look at private standard-setting on sustainability issues, with examples such as the Forest Stewardship Council and other sets of rules on sustainable forestry. How do these come about? How effective did they become, and through what channels? How does such private rule-making relate to state and inter-state rules?

Readings

Bernstein, Steven, and Benjamin Cashore. "Can Non-State Global Governance Be Legitimate? An Analytical Framework." *Regulation & Governance* 1 (2007): 1–25.

The Forest Stewardship Council:

- <https://fsc.org/en> (try to understand what the FSC does and how it functions)
- <https://fsc.org/en/forest-management-certification>
- <https://fsc.org/en/document-centre/documents/resource/392> (skim the document)

Overdevest, Christine, and Jonathan Zeitlin. "Assembling an Experimentalist Regime: Transnational Governance Interactions in the Forest Sector." *Regulation & Governance* 8, no. 1 (2014): 22–48.

Paiement, Phillip. *Transnational Sustainability Laws*. Cambridge University Press, 2017, ch. 5 (on ISEAL, pp. 164-200).

Further Readings

Meidinger, Errol. "The Administrative Law of Global Private-Public Regulation: The Case of Forestry." *European Journal of International Law* 17, no. 1 (2006): 47–87.

Bartley, Tim. "Institutional Emergence in an Era of Globalization: The Rise of Transnational Private Regulation of Labor and Environmental Conditions." *American Journal of Sociology* 113, no. 2 (September 1, 2007): 297–351.

Büthe, Tim, and Walter Mattli. *The New Global Rulers. The Privatization of Regulation in the World Economy*. Princeton: Princeton University Press, 2011.

Teubner, Gunther. *Constitutional Fragments: Societal Constitutionalism and Globalization*. Oxford University Press, 2012.

MacDonald, Kate. *The Politics of Global Supply Chains*. John Wiley & Sons, 2014.

Bartley, Tim. *Rules Without Rights: Land, Labor, and Private Authority in the Global Economy*. Oxford University Press, 2018.

Affolder, Natasha. "Looking for Law in Unusual Place: Cross-Border Diffusion of Environment Norms." *Transnational Environmental Law* 7, no. 3 (2018): 425–50.

Wood, Stepan, Rebecca Schmidt, Errol Meidinger, Burkard Eberlein, and Kenneth W. Abbott. *Transnational Business Governance Interactions: Advancing Marginalized Actors and Enhancing Regulatory Quality*. Edward Elgar Publishing, 2019.

Session 9: Ordering the Internet (26 April)

In this session we trace the transnational legal order developing around the internet – an order governing activities of a transboundary nature but with a limited role of the state. We will focus on the governance of domain names and numbers as well as the boundaries of state action in regaining control of cyberspace.

Readings

Barlow, John Perry, *A Declaration of the Independence of Cyberspace* (1996), [here](#)

Bietti, Elettra. "A Genealogy of Digital Platform Regulation." SSRN Paper, 2021, [here](#) – read pp. 12-24

Kal Raustiala, "Governing The Internet," *American Journal of International Law* 110, no. 3 (2016): 491–503

Zalnieriute, Monika. "Beyond the Governance Gap in International Domain Name Law: Bringing the UDRP in Line with Internationally Recognized Human Rights." *Stanford Journal of International Law* 56, no. 1 (2020): 79-122 – read pp. 89-95.

Daskal, Jennifer. "Borders and Bits." *Vanderbilt Law Review* 71 (2018): 179–240 – read pp. 179-186 and 209-240.

ICANN, Governance and Accountability

- [Articles](#) of Incorporation
- [Organizational](#) chart
- The Empowered [Community](#)
- The Government Advisory [Committee](#)
- [Accountability](#)

ICANN, Uniform Domain Name Dispute Resolution Policy, [here](#)

WIPO Arbitration and Mediation Center, Domain Name Dispute Resolution,

- Overview: [here](#)
- Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale, *wal-martsucks.com*, Case No. D2000-0662, [here](#)

Court of Justice of the European Union, C-507/17, *Google v CNIL*, Judgment of 24 September 2019, [here](#) - focus on paras. 30-74

Further readings

Lindsay, David. *International Domain Name Law: ICANN and the UDRP*. Bloomsbury Publishing, 2007.

D. Drezner, *All politics is global: Explaining International Regulatory Regimes*, Princeton University Press (2007), Chapter 4: The Global Governance of the Internet, pp. 91-118

Thomas Schultz, "Carving up the Internet: Jurisdiction, Legal Orders, and the Private/Public International Law Interface," *European Journal of International Law* 19, no. 4 (2008): 799–839,

DeNardis, Laura. *The Global War for Internet Governance*. Yale University Press, 2014.

Carr, Madeline. "Power Plays in Global Internet Governance." *Millennium* 43, no. 2 (January 1, 2015): 640–59.

Bradshaw, Samantha, and Laura DeNardis. "The Politicization of the Internet's Domain Name System: Implications for Internet Security, Universality, and Freedom." *New Media & Society* 20, no. 1 (January 1, 2018): 332–50.

Edwards, Lillian (ed.), *Law, Policy and the Internet*, Hart Publishing, 2018

Lambach, 'The Territorialization of Cyberspace', *International Studies Review* 22 (2020) 482

Symposium, International Law and the Internet, *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 81 (2021), 597-886

Streinz, Thomas. "Global Hybrid Internet Governance: The Internet Corporation for Assigned Names and Numbers (ICANN)", manuscript.

Session 10: The Rise of Platform Law (3 May)

In this session we continue our engagement with all things internet by focusing on social media platforms and the ways in which they are regulate and, especially, self-regulate. We take the the Facebook Oversight Board – its creation, framework and operation – as a lens for exploring the emergence of particular transnational legal orders around platforms. We ask: is the Oversight Board a court for the information age? What limitations does it have? And what kind of law is it applying? What role does international play in content moderation on social media? And how do states try to gain back control over platforms – what, for example, does the EU Digital Services Act try to achieve?

Readings

Di Stefano, Stefania, "The emergence of 'platform law': implications, challenges and law 'beyond the state'", manuscript

Klonick, Kate. "Inside the Making of Facebook's Supreme Court." *The New Yorker*, 12 February 2021, [here](#) (or listen to the podcast of the New Yorker Radio Hour: [here](#))

Douek, Evelyn. "The Limits of International Law in Content Moderation." *UC Irvine Journal of International, Transnational, and Comparative Law* 6 (2021): 37–76.

Facebook Community Standards, [here](#) (read especially no. 1)

Facebook Oversight Board

- Overview: [here](#)
- Case decision 2021-010-FB-UA, 27/09/2021, SOS Colombia, [here](#)

- Case decision 2021-002-FB-UA, 13/04/2021, Zwarte Piet Netherlands, [here](#)

European Union, Proposal for a Digital Services Act, [here](#) – focus on disciplines for social media platforms

Further readings

Klonick, Kate. “The New Governors: The People, Rules, and Processes Governing Online Speech.” *Harvard Law Review* 131, no. 6 (2018 2017): 1598–1670.

Sander, Barrie. “Freedom of Expression in the Age of Online Platforms: The Promise and Pitfalls of a Human Rights-Based Approach to Content Moderation.” *Fordham International Law Journal* 43, no. 4 (2020 2019): 939–1006.

Klonick, Kate. “The Facebook Oversight Board: Creating an Independent Institution to Adjudicate Online Free Expression.” *Yale Law Journal* 129, no. 8 (2020 2019): 2418–99.

Kettemann, Matthias C. *The Normative Order of the Internet: A Theory of Rule and Regulation Online*. Oxford, New York: Oxford University Press, 2020.

Andrew, Jonathan, and Frédéric Bernard. *Human Rights Responsibilities in the Digital Age: States, Companies and Individuals*. Bloomsbury Publishing, 2021.

Bietti, Elettra. “A Genealogy of Digital Platform Regulation.” SSRN Paper, 2021, [here](#)

Tutorial 2: Themes of Transnational Law (between 2 and 6 May, date/time TBC)

Session 11: Weaving a *lex sportiva* (10 May)

*Many sports have an important global dimension, through the Olympic Games, the football World Cup, and other competitions. Yet the law governing them is a composite of norms from different settings, national, international, transnational, private and public. We will explore how the *lex sportiva*, still in relative infancy, is being construed by sporting associations, national and international courts, and especially the Court of Arbitration for Sport.*

Readings

Casini, Lorenzo. “The Making of a *Lex Sportiva* by the Court of Arbitration for Sport”, 12 *German Law Journal* 5 (2011), pp. 1317-1340

Court of Arbitration for Sport, Igor Labuts v. Football Association of Ireland, 2018/A/6075, Award of 17 July 2020, [here](#)

Duval, Antoine. “Seamstress of Transnational Law: How the Court of Arbitration for Sport Weaves the *Lex Sportiva*.” In *Entangled Legalities Beyond the State* (N. Krisch, Ed.). Cambridge University Press, 2021, 260-288

ECtHR, *Mutu and Pechstein v Switzerland*, 2 October 2018, [here](#) – read paras. 77-168 and skim the rest

Further readings

Casini, Lorenzo. "Global Hybrid Public-Private Bodies: The World Anti-Doping Agency (WADA)." *International Organizations Law Review* 6, no. 2 (September 1, 2009): 421–46.

Casini, Lorenzo. *Il diritto globale dello sport*. Giuffrè Editore, 2010.

Foster, K. "Lex sportiva: Transnational Law in Action", 3-4 *The International Sports Law Journal* (2010), pp.20-24

Mavromati, Despina, and Matthieu Reeb. *The Code of the Court of Arbitration for Sport: Commentary, Cases and Materials*. Kluwer Law International, 2015.

Lindholm, Johan. *The Court of Arbitration for Sport and Its Jurisprudence: An Empirical Inquiry into Lex Sportiva* (The Hague, Netherlands: Asser Press, Springer, 2019).

Duval, Antoine. "Transnational Sports Law: The Living Lex Sportiva." In *The Oxford Handbook of Transnational Law* (P. Zumbansen, Ed.). Oxford University Press, forthcoming.

Session 12: Beyond Law? Governing through Rankings and Indicators (17 May)

Law operates through general rules to be applied to concrete circumstances. Yet much transnational governance today eschews the use of rules and instead turns to alternative mechanisms, such as the use of rankings or indicators – or algorithms. In this session, we try to understand this turn away from law, its origins and consequences. We will look at the World Bank Doing Business Indicators, among other examples.

Readings

Merry, Sally E. 'The Seductions of Quantification: Bureaucracy and the Politics of Measurement', 2017 Max Weber Lecture at the EUI, [here](#)

World Bank Doing Business Index, [here](#)

- *Ranking: [here](#)
- *About Doing Business: [here](#)

Davis, Kevin E., Benedict Kingsbury, and Sally Engle Merry. "Indicators as a Technology of Global Governance." *Law and Society Review* 46, no. 1 (2012): 71–104.

Von Bogdandy, Armin, and Matthias Goldmann. "Taming and Framing Indicators: A Legal Reconstruction of the OECD's Programme for International Student Assessment (PISA)." In *Governance by Indicators. Global Power through Qualification and Rankings* (K.E. Davis et al., Eds), 52–85. Oxford University Press, 2012.

Further readings

Kruck, Andreas. *Private Ratings, Public Regulations: Credit Rating Agencies and Global Financial Governance*. Palgrave Macmillan, 2011.

Davis, Kevin E., Angelina Fisher, Benedict Kingsbury, and Sally Engle Merry, eds. *Governance by Indicators: Global Power through Classification and Rankings*. Oxford University Press, 2012.

Cooley, Alexander, and Jack Snyder, eds. *Ranking the World*. Cambridge University Press, 2015.

Kelley, Judith G., and Beth A. Simmons. "Politics by Number: Indicators as Social Pressure in International Relations." *American Journal of Political Science* 59, no. 1 (2015): 55–70.

Merry, Sally Engle. *The Seductions of Quantification: Measuring Human Rights, Gender Violence, and Sex Trafficking*. University of Chicago Press, 2016.

Kelley, Judith G. *Scorecard Diplomacy*. Cambridge University Press, 2017.

Malito, Debora Valentina, Gaby Umbach, and Nehal Bhuta, eds. *The Palgrave Handbook of Indicators in Global Governance*. Palgrave Macmillan, 2018.

Meerssche, Dimitri Van Den. "International Organizations and the Performativity of Measuring States: Discipline through Diagnosis." *International Organizations Law Review* 15, no. 1 (May 1, 2018): 168–201.

Ellis, Jaye. "Calculative Practices in International Environmental Governance: In (Partial) Defence of Indicators." *Transnational Environmental Law* 9, no. 2 (July 2020): 297–321.

Part IV: Tying Things Together Again

Session 13: Is it Law? Is it Legitimate? (24 May TBC)

Transnational law comes in many forms, and some of them – especially the ones involving primarily private actors – are frequently criticized for lacking legitimacy and for lacking the quality of law. In this session we will try to unpack these critiques and try to understand what it might mean to speak of legality and legitimacy in a way that is somewhat unmoored from the statist frame traditionally at the centre of our legal imagery.

Readings

Murphy, Liam. "Law Beyond the State: Some Philosophical Questions." *European Journal of International Law* 28, no. 1 (February 1, 2017): 203–32.

Buchanan, Allen, and Robert O. Keohane. "The Legitimacy of Global Governance Institutions." *Ethics & International Affairs* 20, no. 4 (2006): 405–437.

Macdonald, Terry, and Kate Macdonald. "Towards a 'Pluralist' World Order: Creative Agency and Legitimacy in Global Institutions." *European Journal of International Relations* 26, no. 2 (June 1, 2020): 518–44

Further readings

Sousa Santos, Boaventura de. "Law: A Map of Misreading. Toward a Postmodern Conception of Law." *Journal of Law and Society*, 1987, 279–302.

Dahl, Robert A. "Can International Organizations Be Democratic? A Skeptic's View." In *Democracy's Edges* (I. Shapiro & C. Hacker-Cordon, Eds.), 19–36. Cambridge University Press, 1999.

Habermas, Juergen. "The Constitutionalization of International Law and the Legitimation Problems of a Constitution for World Society." *Constellations* 15, no. 4 (December 1, 2008): 444–55.

Steffek, Jens. "Public Accountability and the Public Sphere of International Governance." *Ethics & International Affairs* 24, no. 1 (2010): 45–68.

Daniel Bodansky, "Legitimacy in International Law and International Relations," in *Interdisciplinary Perspectives on International Law and International Relations*, ed. Jeffrey L. Dunoff and Mark A. Pollack (Cambridge: Cambridge University Press, 2012), 321–42

Paiement, Phillip. "Paradox and Legitimacy in Transnational Legal Pluralism." *Transnational Legal Theory* 4, no. 2 (October 1, 2013): 197–226.

Walker, Neil. *Intimations of Global Law*. Cambridge University Press, 2014.

Schultz, Thomas. *Transnational Legality: Stateless Law and International Arbitration*. Oxford University Press, 2014.

Steffek, Jens. "The Output Legitimacy of International Organizations and the Global Public Interest." *International Theory* 7, no. 02 (July 2015): 263–293.

Tamanaha, Brian Z. "A Reconstruction of Transnational Legal Pluralism and Law's Foundations." In *Entangled Legalities Beyond the State* (N. Krisch, Ed.). Cambridge University Press, 2021, 449-477.

Session 14: Revision (31 May)

In this concluding session, we will return to the themes of the course and try to connect some of the dots. Please think about questions you would like to raise yourselves.

Take-home exam (3 to 10 June)