
Course: Law

Degree: Bachelor

Branch: Core curriculum

Study plan: Aviso n.º 9088/2019, de 23 de maio

Teaching staff:

Professor in charge of the curricular unit
Prof. Doutor Matej Accetto

Other Professors of the curricular unit

-

Language of instruction:

English

Functioning:

-

Intended learning outcomes:

The main objective of the course is to reconsider the European Union institutional set-up and legal order as a federal-type bargain between the union of attributed powers and the autonomy of its members. The purpose is to look beyond the basic features of the EU legal order and reassess them in their wider context. It is intended that by the end of the courses, students will have been familiarized with the political, legislative and judicial features of the EU institutional settlement and be able to critically engage with the open issues of current and future European constitutional refurbishments.

Syllabus:

The course covers four themes:

1. Limits of the European Political Community: European identity, Union citizenship, values v. principles of European integration, future constitutional refurbishments and the finalité of European integration
2. Revisiting the European Federal Bargain: applying theories of federalism to the European Union, “coming together” v. “holding together” federal bargain, political v. judicial safeguards of federalism
3. The Politics of the Federal Union: the division of legislative competences between the EU and Member States, the subsidiarity principle and the role of national parliaments, the types of “uncultivated growth” of EU competences
4. Judicial Federalism of the EU Legal Order: the nature of judicial review in EU law, primacy v. supremacy of EU law, the “political questions” doctrine, the role of the national (constitutional) courts

All four themes are also informed by a comparative appraisal of other federal (or federal-type) polities, notably the US legal system, and reconsidered in light of the current challenges of the integration project (Brexit, systemic deficiencies in the rule of law).

Evidence of the syllabus coherence with the curricular units intended learning outcomes:

The program contents are designed in a way that systematically draws out and highlights the various strands of the EU institutional set-up and constitutional order as they relate to the underlining issue of the EU “federal-type” balance. While familiarity with the basic concepts and features of EU law is advised and anticipated (and useful readings to that effect are listed in advance of the class), the topics allow for these features and their respective roles to be reassessed in the context of the overall legal and political system. The program addresses the most important features of the EU as a federal-type polity, the centralizing and decentralizing forces within EU law as an autonomous legal order and the tensions in the relationship between the EU and national legal orders. The program design also forces the students to engage with the topics as well as articulate and critically reassess their own position on the issues discussed.

Recommended prior learning (or curricular units whose prior attendance is recommended):

Students will benefit from having previously studied EU law (or having taken the introductory course on EU law & institutions). It is not impossible to follow the course without prior knowledge of EU law, but this will require significant additional effort on the part of such students if they wish to take part in a meaningful way in the class discussion as well as benefit from the way in which the course *reconsiders* (rather than *introduces*) the basic concepts of EU law in light of the modern conception of federalism.

Teaching and assessment methods:

The teaching method is based on interactive lectures with expected active participation by the students, with a discussion of problems and examples illustrating the features of federalism in the daily operation of the European Union, and adopting the approach of law in context.

Assessment will be comprised of evaluation of class participation (20%) and a final in-class exam (80%).

Evidence of the teaching methods and the intended learning outcomes:

As an intensive and comprehensive seminar providing an overview of the general framework of the European Union and its legal order, the seminar is designed in the form of interactive lectures with active participation by the students. That said, the structure of the program and the teaching methods employed are intended to allow for the objectives to be met in a graduated fashion that builds the students’ understanding of the issue as the course progresses through the individual lessons: the class first identifies the “constitutional” foundations of the European Union, then relates to them the classical features and considerations of federalism and federal orders, and finally traces them in the operation of the political (legislative/executive) and judicial branches of the EU’s governmental structures and functions. Each class is designed so as to first introduce another layer to the overall structure of the EU’s federal-type order and then allow for its critical appraisal in light of the emerging bigger picture.

Students are also assigned readings for class and some of these readings include questions for discussion which are intended to encourage the students to become critically engaged both with the assigned readings and the overall themes of the course. In class, a Socratic method of teaching is often employed. The intent is to provide students with the type of open-ended questions in the safe learning environment of the classroom that they will later be faced with in their professional careers, and to enable them to use their acquired knowledge in a creative and problem-solving manner. The final assessment follows the same method.

Bibliography:

While there is no mandatory reading for the course, the students are expected to be familiar with the basic features of EU law and institutional setup, and they may benefit from some prior understanding of the theories of federalism.

In general preparation for the course, they may find it useful to read up on the basic features of the development of the European Union and its institutions, especially if they have not yet studied EU law. Ideally, the students would have access to a reputable textbook on EU law and institutions. Alternatively, freely available teaching materials online can also be used as a workable alternative to provide an introduction to the subject for those in need of it. One possibility is to use the teaching materials prepared some time ago by Joseph Weiler, a dated but still useful introduction to the subject provided at this website: <https://jeanmonnetprogram.org/resources/the-law-of-the-european-union/teaching-materials/>, particularly Units I-1 and I-2. (NB. There is no need to read these texts in their entirety: students should just feel they know the respective roles of the major EU institutions and how the current EU legal order has developed.)

As more specific preparation for the lectures, the following readings may also be useful:

- Two texts by Daniel Elazar available at his online library (<http://www.icpa.org/dje/index-fs.htm>), especially the one serving as a general introduction to federalism (<http://www.icpa.org/dje/books/fedsysworld-intro.htm>), but if interested also one on Europe and its federal experience (<http://www.icpa.org/dje/articles/eur-fed-bruges.htm>).
- The paper “Federalism: A Critical Guide” by Daniel Halberstam, available at the SSRN website (http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1924939; you must click on the link to download the full paper). (NB. There is no need to read the entirety of this paper, but especially the first parts up to page 26 offer a good overview of the theory of federalism for those interested.)

A short reading (an excerpt of a judicial case to be discussed) will also be provided in class. After classes, students will also be provided with the copies of presentations used in class.

Legislation:

The seminar draws on various texts of EU legislation and legal doctrine, but the primary legislative framework is provided by the primary legislation of the European Union, the consolidated versions of the Treaty on the European Union (as amended by succeeding treaties up to – for the time being – the Treaty of Lisbon) and the Treaty on the Functioning of the European Union, along with the protocols, annexes and declarations, and the EU Charter of Fundamental Rights.

Lesson's Plan:

The seminar meets in four lecture sessions, each of the sessions comprising two lecture units comprising the following main topics:

Lecture #1(a): antecedents to European integration, the notion of European identity and its relevance for the operation of the European Union and its legal order.

Lecture #1(b): values and principles of European integration, external limits of the European political community (i.e. the possible mental maps of Europe) and internal limits of its legal order (i.e. revisiting the fundamental doctrines of the supranational legal order).

Lecture #2(a): tension between EU law and national (constitutional) legal orders, the shaping of general principles of EU law, the example of fundamental rights.

Lecture #2(b): overview of the theories of federalism, federal and confederal features and types of extant federal arrangements, fundamental principles of federalism, judicial and political safeguards of federalism.

Lecture #3(a): applying the general theory to the European Union, exploring the fundamental principles of EU “federalism” (principle of conferral, principle of subsidiarity, principle of loyalty/loyal cooperation).

Lecture #3(b): delimitation of competences in EU law, the mutations of competences, exploring the nature and methods of the expansion of EU competences.

Lecture #4(a): judicial control of compliance with EU law, the relationship between ECJ and national courts, direct actions and preliminary rulings, evaluation of the role of courts as judicial safeguards of the EU “federal” balance, the political questions doctrine.

Lecture #4(b): a brief retrospective look at revisiting the dominant narratives of European integration as a “success story” as well as a prospective look at the future EU constitutional refurbishments and the *finalité* of European integration, and the in-class exam.

The themes and their order may be slightly adjusted depending on the class discussions and students’ prior familiarity with various elements of EU law, but the course is always expected to cover the above topics, with the adjustments as needed in order to conduct the in-class exam. (Which, in comparison with prior years and without prejudice to students’ academic integrity, is a change introduced in the wake of new AI tools.)