



## LAW SCHOOL

### **"JUSTICE AND FUNDAMENTAL RIGHTS"**

#### *Course Syllabus*

#### **1) Course's Basic Data**

Course Title: "Justice and Fundamental Rights"

Optional Course 2014-2015

ECTS Credits: 4

1<sup>st</sup> Trimester

Third/Fourth Year

Degree in Law

Professor: José Luis Martí

Language: English

#### **2) Course Description**

The course will introduce students to the contemporary discussions on ethics and political philosophy as a way to achieve the critical thinking required to assess the substantive merits of the law in any particular country.

To do this, the course is divided into two parts: one devoted to justice, the other to political legitimacy. The first part will provide an introduction and a critical examination of the eight most prominent contemporary theories of justice –namely, utilitarianism, liberal egalitarianism, libertarianism, analytical Marxism, communitarianism, multiculturalism, republicanism, and feminism.

In the second part, the students will be introduced to the concept of political legitimacy and to two major contemporary practical discussions in which such concept is centrally involved: the legitimacy of judicial review and the necessity and legitimacy of global authorities.

This is a course on critical thinking. So it is necessarily speculative and philosophical. But it expects the students to develop their own critical perspective and reasoning on our real world and to adopt a practical view.

There are no academic prerequisites to take the course.

### **3) Learning Objectives**

The students are not expected to memorize authors' names and the content of their theories, which would be useless and pointless. The aim is rather to allow the students to understand the existing world, specially the law, from a critical perspective.

Students should learn, first of all, that existing reality is not necessarily just, fair or legitimate. Second, they should be aware of the main theoretical schemes from which reality may be critically assessed. They must understand the distinction between justice and legitimacy, and why it is appropriate to care about these two things. And, finally, they must acquire a minimal competence in assessing themselves such reality, particularly the content of the law.

### **4) JUSTICE AND FUNDAMENTAL RIGHTS' table of contents**

#### **Unit 1. Introduction to political philosophy: What's the right thing to do? (week 1)**

- 1.1. The idea of justice and the idea of legitimacy
- 1.2. The circumstances of justice and the circumstances of politics
- 1.3. Why justice and legitimacy are relevant for the law? Doing the right thing
- 1.4. How things are and how they should be? The normative point of view
- 1.5. Objectivity and Relativism

#### **Unit 2. Utilitarianism (week 1)**

- 2.1. Introduction to utilitarianism
- 2.2. Types of utilitarianism: hedonism, preferences, act-utilitarianism, rule-utilitarianism
- 2.3. Objections

#### **Unit 3. Liberal egalitarianism (weeks 2/3)**

- 3.1. John Rawls: *A theory of Justice*
- 3.2. John Rawls: *Political Liberalism*
- 3.3. Ronald Dworkin: luck egalitarianism
- 3.4. Criticisms
- 3.5. Analytical Marxism

#### **Unit 4. Right-wing liberalism: libertarianism and conservatism (weeks 3/4)**

- 4.1. Right-wing liberalism and conservatism: a historical background
- 4.2. Robert Nozick's libertarianism
- 4.3. Objections

#### **Unit 5. Communitarianism, nationalism and multiculturalism (weeks 4/5)**

- 5.1. The Communitarian critique to liberalism: McIntyre, Sandel, Taylor and Walzer
- 5.2. Nationalisms

5.3. Multiculturalism: Kymlicka and Raz

5.4. Objections

### **Unit 6. Republicanism (week 5/6)**

6.1. Introduction: the republican historical tradition and the contemporary revival

6.2. Two types (and a half) of republicanism

6.3. Freedom as non-domination

6.4. Republican self-government and civic virtues

6.5. Objections

### **Unit 7. Feminism (week 7)**

7.1. Introduction: the history of the feminist movement

7.2. Contemporary feminism as an anti-liberal theory: the feminism of equality and the feminism of difference

7.3. Catharine MacKinnon's theory

7.4. The ethics of care

7.5. Domination, equality and democratic deliberation

7.6. Objections

### **Unit 8. The concept of legitimacy (week 8)**

8.1. Legitimacy and the duty to obey the law

8.2. Main theories of legitimacy

8.3. Democratic legitimacy: substantivism and proceduralism

### **Unit 9. The legitimacy of judicial review (week 9)**

9.1. The origins and foundations of constitutionalism

9.2. Strong and weak constitutionalism. The SC Formula

9.3. The counter-majoritarian difficulty: a democratic objection

9.4. The irrelevance of the interpretive issue and how to solve the practical problem

### **Unit 10. Global justice and global democracy (week 10)**

9.1. Introduction: the new historical background in a globalized world

9.2. The necessity and legitimacy of new global authorities

9.3. Normative theories of the international legitimate order: is global democracy possible and desirable?

9.4. The discussion on global justice: Beitz, Rawls, Pogge

## **5) Basic readings and other materials (per unit)**

### **Unit 1**

- Michael Sandel, *Justice. What's the Right Thing to Do*, Farrar, Strauss and Giroux, 2009: ch. 1.

### **Unit 2**

- Michael Sandel, *Justice*: ch. 2
- Roberto Gargarella, *Las teorías de la justicia después de Rawls*, Paidós, 1999: pp. 21-30.

### **Unit 3**

- Michael Sandel, *Justice*: ch. 5 and 6
- Roberto Gargarella, *Las teorías de la justicia después de Rawls*: ch. 1, 4 and 7

### **Unit 4**

- Michael Sandel, *Justice*: ch. 3 and 4
- Roberto Gargarella, *Las teorías de la justicia después de Rawls*: ch. 2

### **Unit 5**

- Michael Sandel, *Justice*: ch. 8 and 9
- Roberto Gargarella, *Las teorías de la justicia después de Rawls*: ch. 5

### **Unit 6**

- Michael Sandel, *Justice*: ch. 10
- Roberto Gargarella, *Las teorías de la justicia después de Rawls*: ch. 6
- Philip Pettit, "Civic Republican Theory", in José Luis Martí and Philip Pettit, *A Political Philosophy in Public Life*, Princeton University Press, 2010, ch. 2 (**Available in pdf at Aula Virtual**)

### **Unit 7**

- Michael Sandel, *Justice*: ch. 7
- Roberto Gargarella, *Las teorías de la justicia después de Rawls*: pp. 85-98

### **Unit 8**

- José Luis Martí y Hugo Seleme, "Teorías de la legitimidad", manuscript (**Available in pdf at Aula Virtual**)
- Robert Dahl, *On Democracy*, Yale University Press, 1998: ch. 4, 5 and 8 (**Available in pdf at Aula Virtual**)

### **Unit 9**

- Víctor Ferreres, "En defensa de la rigidez constitucional", *Doxa*, 23, 2000 (**Available in pdf at Aula Virtual**)
- Roberto Gargarella, "La dificultad de defender el control judicial de las leyes", *Isonomía*, 6, 1997 (**Available in pdf at Aula Virtual**)
- José Luis Martí, "Courts and Democracy: Strong Constitutionalism, Judicial Review and the

Deliberative Role of Supreme Courts”, manuscript (**Available in pdf at Aula Virtual**)

### **Unit 10**

. Rafael Domingo, *The New Global Law*, Cambridge University Press, 2009: ch. 4 and 5 (**Available in pdf at Aula Virtual**)

- José Luis Martí, “A Global Republic to Prevent Global Domination”, *Diacrítica*, 24/2, 2010 (**Available in pdf at Aula Virtual**)

### **6) Further readings and materials**

- Will Kymlicka, *Contemporary Political Philosophy*, 2nd ed., Oxford University Press, 2002

- Steven Lukes, “Five Fables on Human Rights”, in Stephen Shute and Susan Hurley (eds.), *On Human Rights*, Basic Books, 1993, pp. 47-86 (**Available in pdf at Aula Virtual**)

- 12 Episodes of the Harvard University’s Justice Program, at <http://www.justiceharvard.org/>

### **7) Methods of Instruction**

The content of this course is theoretical. But it intends to provide a deep understanding of the currently relevant topics and theories through the analysis of concrete problems and cases and through the free and open discussion of alternative solutions. It is a central aim of the course, then, to adopt a practical perspective as well.

Students are expected to learn the contents of the course basically on the basis of these three elements: i) the required readings; ii) the attendance to, and participation in, the class lectures and discussions; and iii) the preparation of the oral presentation, the short essay and the final exam.

### **8) Method of Assessment**

The final grading of this course will be defined on the basis of three different elements:

- Oral presentations and participation in class debates: 20%
- Short essay: 30%
- Final exam: 50%

Every student is expected to be part of a group of three or four, and jointly prepare and make an oral presentation on a particular topic provided by the teacher, at least once during the whole trimester. Further instructions will be provided by the teacher in the first day.

Every student is required to write a short essay (5,000 words maximum) on a topic related to the contents of this course. The concrete topic can be selected by students themselves, but with previous approval by the teacher. This essay will give a 30% of the final grading.

There will also be a final short exam, which will be composed of two open questions regarding two or more units of the course. This final exam will give a 50% of the final grading.