

ALIGNMENT OF ILOs, TLAs AND ASSESMENT IN THE MA COURSE IN EU CONSTITUTIONAL LAW

TLHE PROJECT REPORT

By Urska Sadl

1. Introduction (motivation and intended outcome)

The report describes the process of restructuring the current MA course in EU constitutional law at the Faculty of law, Copenhagen. The main objective of the restructuring was to meet the challenges of the course, i.e. how to increase student participation in class and achieve a better learning outcome. The background assumption was that both challenges could be successfully met by the constructive alignment of the intended teaching and learning objectives (ILOs) with the teaching and learning activities (TLAs) and assessment tasks (ATs).

The motivation for the project is directly connected to my teaching experience and the ongoing reform of the MA programme at the Faculty of Law. With regard to past experience, for the last couple of years I have been teaching a master level course in EU constitutional law, as designed by my predecessors, following the standard format of teaching EU law (and law in general). Even though the ILOs were specified (that was a requirement, introduced a few years ago for all courses at the Faculty of Law), little thought was paid to the alignment of TLAs, ILOs and ATs. The lecturers experienced two standard challenges: they found students passive and felt that they did not have the time to pause at important and/or interesting topics, because they had to rush through the teaching materials. The students were often confused as they lacked a clear learning goal. They felt that the expectations were too high and that the course was too difficult. They repeatedly expressed this in mid-term and final evaluations.

As to the reform, The Faculty of Law is currently reforming its MA programme. One of the goals is to cut down on the amount of very specific courses, which are currently offered at the MA level, and instead offer a limited number of general courses. All courses will have to satisfy stricter requirements to be approved by the study board and the study leader. One of the requirements is to align the ILOs, TLAs and ATs, and carefully select the readings suitable for the MA level. This means less textbooks and *ex cathedra* lectures, and more academic articles, case-law and active learning. *Prima facie* the two objectives collide: a general course requires less focused, broader and larger syllabus, and less time spent on particular topics, and less time spent on student activities, such as presentations, group work and writing exercises.

The report is structured as follows. Section two presents the *problématique*, focusing on the institutional constraints (working with an existing course with “inherited” problems), section three sets out the approach and materials, trying to implement the suggestions that the literature offers. To assess the impact of constructive alignment on student learning I conducted a focus group interview. Additionally, the materials include the mid-term evaluation and the final evaluation as well as the final papers (the exams). Section four presents and

discusses the findings and assesses the impact of constructive alignment on student learning; section five is a reflection on the teaching practice. Section six proposes amendments to the old course on the basis of the findings in light of the reform of the MA programme at the Faculty of law.

In terms of the ILOs of the TLHE programme, the intended outcome of the project was to learn how to write down ILOs and select appropriate TLAs and ATs, so that the students will learn more in the courses, which I will teach. I also want to introduce and implement teaching methods that will engage the students and enhance the learning outcome. Basically, I would like to become a competent university teacher, who can critically reflect on her own teaching practices, and modify them when necessary and participate in the ongoing reform of the MA law programme at the Faculty.

2. The mismatch between teachers' teaching and students' learning in EU constitutional law course

EU constitutional law course between teaching visions and teaching reality

Low level of class debate and student participation, as well as poor student learning outcome are two major problems, which the lecturers in the course (so far three lecturers apart from me) encounter on a regular basis.

Additionally, lecturers complain that the syllabus comprises many topics, which make it impossible to explore any of them in depth. The lecturer rushes the student through the syllabus and all class activities (such as group work or class discussion) are stunted. In the course, we use one textbook, presented as "THE BIBLE OF EU LAW" (*SIC!*), and cases, decided by the Court of Justice of the European Union (CJEU, the Court), which provide an authoritative answer to the problem ("one right answer") that the students are expected to tease out.

In the following paragraphs, I will present the outline of the MA course in EU constitutional law in more detail. I will focus especially on the ILOs, the syllabus, the exam form and the expectations of the lecturer regarding participation in class. This somewhat lengthy introduction is necessary to identify the problems of alignment between ILOs, TLAs and final assessment, stemming from the teaching method and the selection of reading materials.

The following ILOs are specified in the course description:

- **Present and explain** the theoretical and practical problems involving European Constitutional law
- **Identify** the complex legal problems concerning the process of European constitutionalisation, such as **putting into practical perspective** the connection between different legal orders.
- Demonstrate the **analytical capacity** to connect legal reasoning to its political context, and possess the ability to **argue** how they interrelate in the context of EU constitutional law.

- **Put in to perspective** how legal principles and concepts developed as European integration progressed, and how this is reflected in the EU treaties and the case-law.
- **Adopt a critical attitude** to choices of the Court of Justice, Member States and European institutions in their historical, political, and legal context, and demonstrate the ability to **critically weigh relevant arguments** and make a legally reasoned choice in relation to European Constitutional law.
- Formulate your legal argument on the constitutional and institutional rules discussed in class and **argue in a coherent and concise fashion** that is linguistically correct.

Expectations of students are specified in the course description in the following terms:

In class, we strive for **active participation** and **dialogue**. The success of the classes entirely depends on students having **read** and **prepared** the reading material beforehand. This means that we expect the students to come to class with **notes**, where they have outlined the main arguments of textbook chapters and cases, the problems and issues, which the reading materials raised, and questions of understanding.

Past experience tells us that the students find this interactive method more enjoyable, and in the long time, more rewarding.

In the description (introduction) of the course, several topics are mentioned and usually also covered (some in greater detail, others superficially only):

[...] Questions we will address in this course concern the **relation between EU and domestic law, and the legal principles that govern it; institutions and law-making mechanisms; enforcement mechanisms; questions of EU and Member State competences; fundamental rights, and general principles of EU law**. A central focal point will be, with regard to all the topics to be discussed, **the role the Court of Justice of the EU** in the development of EU constitutional law as well as the European integration process writ large.

This course will engage students with a keen interest in the European Union to better comprehend key concepts, principles and institutions that constitute the EU constitutional legal framework. The course will consist of sessions **considering principles such as supremacy, proportionality, conferred powers, (horizontal) direct effect, and indirect effect**. However, the course will decidedly not consist of providing a descriptive narrative, but students will be engaged in a process of discovery and debate so as to provide you with the baggage to understand, and critically engage fundamental questions that face the EU legal order - including national legal orders. In doing so, we will place fundamental questions of constitutional law in their policy and political context. As a consequence, the course will also examine substantive areas of law such as the **Area of Freedom Security and Justice, 'the economic constitution', EU external relations, the (planned) accession to the ECHR and EU citizenship**.

As to the reading materials, the course is rather ambitious. In the course description it is specified that:

We divided the materials in two groups: required reading and recommended reading. Required reading is limited and you are expected to have read it in advance to each class. You are requested to bring articles and case-law to class, since we will discuss and interpret the readings together.

The recommended reading includes materials which are closely related to the session topic, and cover issues that we will discuss in class, giving you some more background or a different perspective.

For the final examination, you are expected to actively master the “required reading” materials and topics discussed in class. The “recommended readings” are there to support your understanding of the syllabus further.

Regarding the teaching method, the class is a lecture with a PPT presentation, usually uploaded the day before the lecture; the lecturer leads class “discussions” (the teacher pauses at a PPT slide, and asks several questions to the class or asks whether they have any questions at the end of a sub-unit), and group work is limited. Class assessment techniques are generally based on memorization skills (“tell me about the facts of case x,” or “what does Craig tell us about the impact of case x on Member States competence in education,” i.e. clarifying questions). During the course, the students do not receive feedback on their learning process. The only “feedback” is their exam grade.

The method of assessment is a take-home assignment, three days, at the end of the course. It is composed of an essay question (the theoretical part) and a practical problem, such as a brief to the policy maker, a legislative proposal, a hypothetical case, legal opinion, or a case-note (case commentary).

Diagnosing the problem of teaching “the law” within the framework of constructive alignment literature

Constructive alignment is a principle, developed by Biggs, which is used to create TLAs and ATs that are directly related to ILOs.¹ It is constructive in the sense that it is student centered; the *constructive* aspect refers to what the learner does, which is to construct meaning through relevant learning activities. The *alignment* aspect refers to what the teacher does, which is to set up a learning environment that supports the learning activities appropriate to achieving the desired learning outcomes. The key is that the components in the teaching system, especially the teaching methods used and the assessment tasks are aligned to the learning activities assumed in the intended outcomes.² This way of teaching encourages the so-called deep approach to learning, which efficiently deals with what Biggs calls backwash (term coined by Elton, describing the phenomenon of student learning, when students learn what they think they will be tested on). In a well-aligned system, where the test reflects the objectives, backwash will necessarily result in deep learning.³

Concretely, if we want the students to be able to reflect on the role of the Court of Justice of the European Union in the integration process (=the outcome statement), the intended verb, in our case “reflect” in the outcome statement must be present in the teaching and learning activity (for example, group work on the text that criticizes the Court for making policy choices) and in the assessment task (for example, an essay question on the role of the Court, which demands from the student to give arguments for and against a politically active international

¹ Biggs, J and Tang C. (2011): Teaching for Quality Learning at University, (McGraw-Hill and Open University Press, Maidenhead), Part I, Chapter 6.

² Biggs & Tang, 98.

³ Biggs & Tang, 197 and literature cited, and figure on 198.

Court, which protect the rights of individuals at the expense of the competences of national states).

We do not typically encounter a lot of reflection on alignment between teaching activities, learning outcomes and assessment in traditional lectures, tutorials and examinations, where we follow the syllabus, and test students on how well they can reproduce the syllabus. The standard format of teaching law is top-down,⁴ and in practice means the following: the students at the MA level are taught in small groups (up to 20 students in class). The lecturer will normally introduce the topic and the general principles that govern a certain area of law (such as the court procedures). She will describe how these principles developed through the changes in legislation and judicial practice (case-law). Case-law (real life court decisions) will be used as examples, and usually only excerpts from cases will be used. The students will rarely learn how to apply those general maxims to concrete cases. Typically, the non-legal context (social, economic or political) will also be left out (the so-called black-letter law). The reading list includes a textbook, a selection of case-law, and an occasional academic article, usually as additional reading for more engaged students.

We use this method in EU constitutional law as well. The students remain largely passive – they do, if probed – participate in class discussion, but rarely ask questions of understanding. It is impossible to assess their progress in learning before the final exam (although it is always easy to spot very bright students). The system produces very few independent and life-long learners, i.e. reflective learners, who take responsibility for their learning.

This is evident from the final exams (essay type question, three day home assignment, which typically requires the student to reflect on complex legal problems). The students are able to find relevant passages from the textbook, but they are not so good at using these arguments in slightly different contexts, or applying them to practical problems. In marking last semester exams I noticed that the students were unable to use Court cases to support their arguments, and to reflect on the Court's practice, and instead relied heavily on the textbook for "their" opinion and the criticism of the solutions of the Court of Justice of the EU.

In terms of SOLO taxonomy, the students achieve uni- and multistructural SOLO outcomes, but they do not achieve relational and extended abstract outcomes.⁵

The problems of the course in the light of the literature on constructive alignment are the following:

The ILOs are not clear, they do not specify the threshold concepts that the lecturers find are central to the course (such as the principle of conferral or the principle of supremacy, direct effect or institutional balance), and aim at achieving relational and extended abstract outcomes (apart from the first two, they aim at relational and extended abstract learning outcomes according to the SOLO taxonomy).

The expectations are high, and require commitment. The TLAs, however, very rarely reward the work that the students put into reading and preparation (a typical question in a lecture would be "what did the Court say in this case with regard to x," or "what were the three main

⁴ Biggs & Tang, 61

⁵ Biggs & Tang, 87

arguments of the Court in case y”). The lecturers often look for a specific answer, which closely matches the one they put on the next slide....so the students can just scroll down and read it (and even that is a problem).

Because the lectures are structured around a textbook (albeit a very good one, which presents different views), one authoritative opinion is given.

Additionally, memorization skills are practiced in class. The teaching method does not develop the skills that the students will need to succeed at the exam, and it does not allow them to achieve the specified ILOs.

The ATs require reflection on complex topics, but the path from the facts of a case to a high level discussion of the problem of conflict of rights and overlapping legal orders, where the students are familiar with maximum 2 out of 5 is never practiced. The lecturers often think that reflection will come by itself, from thorough reading of cases and textbooks and a “good’ explanation by the lecturer (in combination with good listening). It sometimes rather mysteriously does, which is as puzzling as it is “amazing.”

To summarize, the ILOs, the TLAs and ATs are not constructively aligned. According to the literature, this encourages (in my opinion contrary to the intention of the drafters of the course & lecturers) the surface approach to learning⁶ – on the level of preparing for class (skimming the textbook and case-law) and essay writing.

This is only exacerbated by a broad range of topics, which comprises:

- Relation between EU and domestic law, and the legal principles that govern it,
- EU institutions
- law-making mechanisms,
- enforcement mechanisms (judicial procedures),
- questions of EU and Member State competences,
- fundamental rights and accession to the ECHR,
- general principles of EU law, i.a. proportionality,
- the role the Court of Justice of the EU,
- principles of EU law, such as supremacy, , conferred powers, (horizontal) direct effect, and indirect effect,
- ‘area of freedom security and justice’,
- ‘the economic constitution’,
- EU external relations,
- EU citizenship

For instance, to give an impression of the range, in LLM programmes, several of the listed topics, *i.a.* EU institutions, Fundamental rights in the EU and EU external relations are usually taught as separate LLM one semester courses.

The surface approach to student learning (f.eks. students often claim that they read the chapter but that they forgot what they read until they are reminded in class and the lecturer explains it to them again. A week later, they have forgotten is already and need a second explanation.) Combined with the teaching method it does not increase student motivation

⁶ Ramsden, 55

(and maintains a low level of participation in class). It simply leads to bad, teacher focused teaching, and poor learning outcomes.

My hypothesis is that even in the current setup, where I have to work with existing syllabus, and ILOs, constructive alignment would

- Increase motivation to prepare for class, and thus student participation
- Help achieve higher learning skills (SOLO taxonomy)
- Encourage deep learning approach
- Result in high quality exam papers (higher marks)

3. Method and setup

To examine the effect of constructive alignment on student learning, I proceeded in four steps, suggested by Biggs:

- Defining the intended learning outcomes (ILOs);
- Choosing teaching/learning activities (TLAs) likely to lead to the ILOs;
- Assessing students' actual learning outcomes to see how well they match what was intended;
- Arriving at a final grade.⁷

I used mid-term evaluation, final evaluation, exam evaluation and grading and focus group interview to measure the change in learning outcomes. The remaining part of the report will focus on the alignment between ILOs, TLAs, and ATs in the area of human rights as one of the more difficult and extensive topics that we normally discuss in EU constitutional law.

In the beginning was a word....

I began by calling lectures “sessions.” This indicated little lecturing and more learning activities. In the first session, I asked students to think about what they thought they would learn in the course, and to discuss their expectations in groups. We also talked about what the Faculty of law could offer them within the University of life, and when they feel most motivated to learn. The course is an MA course taught in English, which attracts mainly Erasmus students from very different educational systems. Some of them feel like they are submerged in an oxygen bath when they emerge out of a three hour session consisting mainly of group work, peer-assessment exercises and role play. They remain sceptical when told that exams are not designed in the way, which tests them on something that we did not talk about in class and certainly not to find out what they don't know.

Defining the intended learning outcomes

⁷ Biggs, J.B. (2003). Teaching for quality learning at university, Open University Press/Society for Research into Higher Education. (Second edition)

I wrote ILOs for every session (12 three hour sessions in total), which reflected different levels of SOLO taxonomy.

Below is the example of a teaching note, specifying the ILOs for the topic of “Human rights in the EU,” and the TLAs:

<p>TLOs</p> <ol style="list-style-type: none">1. Identify the legal basis for HR protection in the EU (Charter, general principles, inspired by constitutional traditions of the MS and international instruments, and the ECHR as a formal source)2. Reflect on the relationship between the CJEU and the ECtHR through the practice of the CJEU, the GC and the ECtHR3. Analyse the development in the case-law of the CJEU related to the challenges of EU legal acts on the basis of compatibility with HR (from the early reluctance of the CJEU to its greater willingness to strike down legislation, incompatible with HR) <p>TLAs</p> <ol style="list-style-type: none">1. Class discussion of CJEU case-law2. Mind-map drawing2. Peer feedback on mock exam question (consisting on written exercise and peer feedback, work in pairs)
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Choosing teaching/learning activities (TLAs) likely to lead to the ILOs

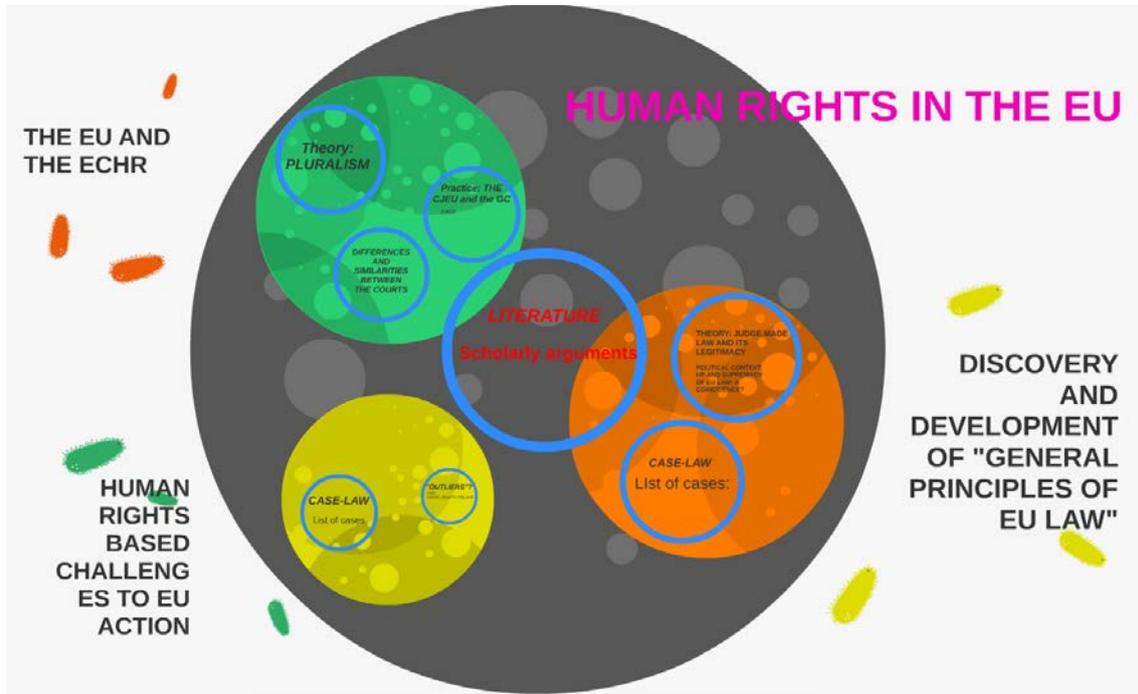
How did I structure class activities and preparation between classes? How did I align ILOs with TLAs?

First of all, I ditched PPT and introduced mind-map drawing in all sessions. The points of the mind-map were intended to represent the ILOs as close as possible, and students should ideally have arrived at these points through exercise (group work, role play, peer assessment, or self-assessment). They should also be able to connect the points of the mind-map in different ways and reflect on the connections between the points. Second, I never confined one topic to one session, but worked with the approach suggested by Von Müllen.⁸ I spread the topics across two to three lectures, to encourage independent learning and extend the preparation before class from one day to several days. I also tried to design activities, which addressed two or three topics (to minimize time on task).

The sessions Human rights in the EU was structured around the mind-map presented below. Moreover, the topic was covered in two sessions. The first session ended with a written exercise (the exercise was a continuation of the topic “relationship between the EU and the member states” and a “repetition” of the topic “EU law and international law.” The principles that govern Human rights in the EU stem from the principles that developed in the case-law on the relationship between EU and the member states and are a concrete example of a difficult relationship between the EU and international law). The students were asked to outline an answer to an essay question, which was the exam question in the previous semester, in bullet points. The bullet points had to reflect the main line of argumentation. The students were instructed to point out instances, where they were insecure, and had difficulties (for instance, can I use this case, or does that argument really work?). They were told that they would hand

⁸ R. Von Mullen, Preparing students to prepare, Dansk Universitetspædagogisk Tidsskrift 2010, Vol. 10

in the outline to a peer (appointed by me), and that the peer would provide written and oral feedback in the following session. The feedback had to be based on the ILOs that were specified in the session outline and on the general course objectives. The students were also encouraged to consult me in case they got “stuck.”



The “essay question” was:

QUESTION 1

In *Kadi v Council and Commission (Kadi I)* the Court of First Instance held:

“225 It must therefore be considered that the resolutions of the Security Council at issue fall, in principle, outside the ambit of the Court’s judicial review and that the Court has no authority to call in question, even indirectly, their lawfulness in the light of Community law. On the contrary, the Court is bound, so far as possible, to interpret and apply that law in a manner compatible with the obligations of the Member States under the Charter of the United Nations.”

Elaborate on the background of the Kadi case and discuss the different views of the ECJ and the Court of First Instance (now the General Court) regarding:

1. The relationship between EU law and international law
2. The jurisdiction of the Court of First Instance and the ECJ with regard to legal acts of international law, particularly the acts of the UN
2. Critically evaluate the impact of the judgment of the ECJ on the role of the EU as a global human rights actor.

The students were “shocked” by the exercise, but after some convincing, they reluctantly began leafing through the textbook, the cases, and their class notes. They looked tired. After some 15 minutes, however, they were all deeply engaged in writing, and surprisingly, they were disinclined to finish, and willingly stayed after the class was over to read through their

outlines (they arranged a five minute extension with their peer, who was supposed to give feedback). None of 10 students consulted me. None of them seemed tired.

Assessing students' actual learning outcomes

The peer assessment worked well. The students came to the following session with feedback. They shared their concerns regarding their work, and provided constructive criticism (“I also had difficulty with...but I think that you should stress this point more to strengthen your argument...”). After the exercise, we had a short class discussion about their learning experience. All found giving feedback very difficult. They also had problems operationalizing course objectives, and formulating their feedback around course objectives when working in pairs.

Arriving at a final grade

Exam questions in light of ILOs and TLAs, was the following essay question:

“The ECJ was formerly reluctant to engage in strong rights-based review of EU policy and legislation. However, with the expansion of EU policy activities into the fields of internal and external security and anti-terrorism, human rights-based challenges against EU action have more recently met with significant success before the ECJ.” (P. Craig and G. de Burca, *EU Law: text, cases, and materials*, OUP 2008, p. 381)

To what extent do you agree with this statement?

4. Findings and discussion

During the semester, I observed active, well prepared students and I found teaching tiring but mostly rewarding. The mid-term evaluation and final evaluation confirm that the students were satisfied.

The students reported general satisfaction with the course in mid-terms evaluation. They were realistic about their own input (“I should prepare more.”), but they “blamed” their lack of preparation on their schedule (“I have two other courses and all my lectures are on the same day. If I read everything for all my courses, it is too much. I get tired and mix everything up.”). They generally enjoyed working with their peers, and found that they were learning from group work, but some of them found it overwhelming (“I am exhausted by 3PM. I just want to sit down for a little while and listen to a lecture. Then I am ready to work actively in a group.”) They felt that the lecturer was not tying the sessions together, not providing the final answer, and that they were left in the dark (“I would really appreciate it if you could summarize the main points for us” or “I am often not sure what I am supposed to know. I could use more practice for the exam.”).

The final evaluation was encouraging.

With regard to the TLAs, the students seemed to appreciate them more. Among the three things that the students thought worked best were: group work and mind map drawing,

student participation and cooperation, and the energetic attitude of the teacher, who involved all students – those who did and those who did not prepare benefited from class.

With regard to ILOs, the students thought that they achieved the competences described in the course’s goal description (the latter required some “translation”), and that the teaching was suitable for the demands, which are made for the exam (i.e. they correspond to ILOs).

The interview with the focus group (the four students who did not miss a single class, and two students who were present around 50% of the time) confirmed that the students were mostly confident about taking the exam and that they were beginning to internalize the course objectives. They generally enjoyed the course and were motivated to prepare for sessions. They felt inspired to take more courses in EU law or explore some topics more (“We go so many places,” or “I never thought EU law was so interesting and could be taught in a fun way.”). However, they still felt that they should have had more time to get deeper into the topics, especially in groups, and receive clearer instructions (“We need more time, or a warm-up. Then things go faster. It is difficult to come to class and start group work immediately.”)

Most disturbing was the fact that class participation dropped drastically from the fourth class onwards, when the students realized that they had to work quite hard (they confirmed my suspicion in the mid-term evaluation). Sometimes, of 20 students that initially signed up for class, only 6 (!) were present. The “hard core” consisted of typically four to five students, with around three to four coming regularly, and 6 whom I never saw in class. Three students dropped out (and signed out of the course actively), and twelve students handed in exam papers (two of those were “blank”).

Exams

Some exam papers were excellent. The discussion of the Kadi case, which is the prime example of the Court striking down EU action in the field of security and anti-terrorism, was outstanding in several exams, and better than the discussion of other cases involving anti-terrorism. Many papers included a sophisticated reflection of the Court’s action in Kadi and its implications for policy makers.

The distribution of grades was the following:

GRADE	N.OF STUDENTS
-3	2
0	0
2	1
4	1
7	2
10	3
12	3

Total:	12

The average grade was 6,67 (all students that handed in the exams).

The average grade of the four most active students was ...(TBC by admin.)⁹

The average grade of the students that handed in the exams was 8,6.

5. Can the leopard change its spots? A reflection

Active students, well-argued exams and substantively more rewarding teaching (for the teacher), together with higher student satisfaction speak in favour of introducing new teaching methods, and working harder on the alignment of ILOs, TLAs and ATs.

However, the initial effort of re-designing a course in the light of constructive alignment literature is enormous. I felt that I simply did not have enough experience in teaching and that I was subjecting students to experiments, which sometimes did not work as intended. This required a lot of improvisation in class and even more preparation before class – I had to have at least a couple of escape routes ready for each session, meaning that I had to make several (and at least three) versions of teaching notes: one in case the TLAs went as planned, the other in case they took more time and the third one in case they would not work at all.

Also, I had to put a lot of energy and enthusiasm into teaching, which collided to a great extent with my obligations as a researcher (not to mention the toll it took on my private – meaning family – life). The investment into teaching and into becoming a competent university teacher should not be a frustrating experience. Yet, it often was. First, because the faculty (apart from the study leader) undervalues the effort (your centre leader thinks you are wasting your time by putting more than three hours of preparation into a three hour lecture), and second because the effort counts very little when it comes to career advancement – i.e. tenure.

The problem is of course not tied to the Faculty of Law, but is global. All universities base tenure decisions primarily on research productivity and quality. Teaching matters only after you have cleared the research bar: It is a bonus to teach well. Studies, however, show, that untenured lecturers (those who teach at university level without research obligations) greatly improve student learning.¹⁰ This led some scholars to propose (albeit admittedly in blogs and newspaper articles) divided tenure tracks – to teaching and to research: “Let’s reserve teaching for professors with the relevant passion and skill — and reward it. Sharing knowledge with students should be a privilege of tenure, not an obligation.”¹¹

But can leopard change its spots?

6. A proposal

⁹ We do not have access to student grades. I sent a request to the administration and am waiting for the reply.

¹⁰ David N. Figlio, Morton O. Schapiro, Kevin B. Soter, ARE TENURE TRACK PROFESSORS BETTER TEACHERS? Working Paper 19406 available at <http://www.nber.org/papers/w19406>

¹¹ Adam Grant, A Solution for Bad Teaching (NYT, Feb. 5, 2014)

ADVANCED EU CONSTITUTIONAL LAW

General information

- Responsible for the course: Helle Krunke, Urska Sadl
- Lecturers: Urska Sadl (main lecturer), PhD students of CECS
- MA course, taught in fall and spring semesters
- 10 ECTS points (34 teaching hours)
- Schedule: 1/week (3 hours)
- Teaching method: lectures combined with student activities (50:50)
- Exam form: Written assignment on a chosen subject, which will allow the students to explore in depth a topic, in which they have a keen interest (the lecturers will not provide a list of topics, but they will provide general guidelines for academic paper writing and suggestions)

Course description

The course will give the students with an interest in the EU an opportunity explore a selection of topics of European constitutional law, which are both fundamental (timeless) and timely. This means that the course will not provide the students with a general overview of European constitutional law nor adopt a linear narrative. Instead, we will initiate a dialogue and rethink established dogmas, address current constitutional challenges and venture into the European constitutional future.

With regard to the Union's constitutional past, the students will be encouraged to question the established narrative of constitutionalization through law and critically examine the arguments of the Court, pertaining to the autonomy and effectiveness of the EU legal order.

With regard to the Union's constitutional present, we will *i.a.* look closer at the reception and the application of European constitutional doctrines in national (Member State) settings. In this regard we will evaluate instances in which the reception of supremacy typically turns problematic (such as the protection of national constitutional rights and the dialogue between the Court of Justice and the German Constitutional Court). We will touch upon the frictions between the EU and the Member States and between the EU institutions.

As to the Union's future, we will analyse the relationship between European and international law, in particular in the field of human rights.

This calls for an approach that analyses the European constitutional order through the interaction between the legal structure and political processes, principles and practice, and the

relationship between the major European legal actors, such as the Commission, the Court of Justice and national courts.

Course objectives

1. Describe the key concepts of European constitutional structure, processes and effects, such as institutional balance (power-sharing), subsidiarity, and implied powers.
2. Analyse the interplay between law and politics in the making of the Constitution of Europe (the political process in terms of Treaty changes and the judicial constitution of Europe) and rethink critically the founding cases of the EU.
2. Evaluate the arguments of the Court of Justice of the European Union pertaining to the nature of the European legal order, especially to its autonomy and primacy with regard to the legal systems of the Member States and the international legal order.
4. Discuss past and current problems of the European institutional setup, such as the problem of legitimacy and the postulated democratic deficit.
5. Connect the legal discussion of the nature of the EU and its legal order, to its political reality, and argue in a coherent manner whether the EU is an international organization, a sui generis entity or a “federation of states.”
6. Question and theorize the relationship between different legal orders (the EU legal order, international legal order, national legal systems).

Teaching method and student activities (expectations)

In class, we expect active participation and dialogue. Students should generally come to class prepared, having read the materials and outlined the main arguments, problems and issues, which the reading materials raised. Teaching and learning activities will include:

- Short student presentations in each session of the case-law of the Court of Justice or of journal articles, which can serve as a starting point for the final assignment
- Group work, and peer-discussion
- “Mind-map” drawing in order to systematize the materials discussed in class
- 10-min nonstop writing exercise to clear possible misunderstandings after individual lectures, summarize the main points of the lecture and discuss them with peers or/and lecturer
- Outline of an essay question, in bullet points, as a preparation for the written exam
- Case study and inductive learning (case-based teaching)

Topics covered

1. *Europe's constitutional past: Questioning the "constitutionalization through law" narrative*

- Political process and judicial process of European constitutionalization
- Europe's constitutional milestones in political and social context (critical reading of "grand cases" in EU law, such as Van Gend and Costa v ENEL, Internationale Handelsgesellschaft, ERT and Les Verts)

2. *Europe's constitutional present: challenges and dilemmas*

- Europe's new constitutional structure: 'gaps' between the formal constitution and the institutional reality
 - Implementing acts, delegated acts and accountability in the EU post-Lisbon
 - Competences and subsidiarity pre and post-Lisbon
- Is the EU legal order autonomous?
 - Primacy, Reception and Constitutional conflict
 - Protection of fundamental rights in the EU and International legal order
- The euro-crisis and its impact on Europe's constitutional balance
- EU citizenship and political rights

3. *Europe's constitutional future*

Constitutionalism beyond the state (Constitutional pluralism)

The future of European fundamental rights law, Accession to the ECHR

Reading list

The readings will comprise approximately 500 pages. Articles and book chapters (approximately 300 pages in total) will be uploaded on Absalon, in accordance with copy right rules of respective publishers. Students will be encouraged to find relevant case-law (approximately 200 pages in total).

- P Craig and G de Burca (eds) *The Evolution of EU Law* (Oxford University Press, 2nd ed. 2011); Chapters 12, Bruno de Witte: *Direct Effect, Primacy and the Nature of the Legal Order*; 16, G. De Búrca: *The Evolution of EU Human Rights Law*; and 19, J. Shaw: *Citizenship: Contrasting Dynamics at the Interface of Integration and Constitutionalism*.

- R. Schütze, *European Constitutional Law* (Cambridge University Press 2012), Chapter 5 Legislative Powers: Competences and Procedures
- Academic articles:
 - S Peers & M Costa, Accountability for Delegated and Implementing Acts after the Treaty of Lisbon, (2012) 18 *European Law Journal* 427
 - J.P. Jacque, The Principle of Institutional Balance, (2004) 41 *Common Market Law Review* 383
 - M Kumm, Who is the Final Arbiter of Constitutionality in Europe?, (1999) 36 *Common Market Law Review* 351
 - M Maduro, Europe and the Constitution: What If This Is As Good As It Gets?, in Marlene Wind and Joseph Weiler (eds) *Constitutionalism Beyond the State* (Cambridge University Press 2003) 74
 - M Maduro, The importance of being called a constitution: Constitutional authority and the authority of constitutionalism (2005) 3 *International Journal of Constitutional Law* 33
 - A. Vauchez, The Transnational Politics of Jurisprudence. Van Gend en Loos and the Making of EU Polity, (2010) 16 *European Law Journal* 1
- Case-law
- Treaty on the Functioning of the European Union and the Treaty on European Union, which students can download from <http://europa.eu/eu-law/treaties/> or another official source

Formal requirements

There are no formal requirements.

Academic prerequisites

A good command of English is crucial for active participation and class debate.

We highly recommend that students take a general course in EU law, including institutional EU law and free movement at a BA level or in addition to the Advanced EU constitutional law.

To foreign students, who are not familiar with EU law, we recommend to follow the Introduction to EU law, which is offered in parallel.

Assessment

The Danish 7-point grading scale will be used.

The students will be assessed according to the extent that they achieve the course objectives.