University of Florida Center for European Studies Law and Society: US and European Perspectives

Course Number: IDS 2935 Spring 2021

COURSE INFORMATION:

Instructor: Prof. Alexander Panayotov, Ph.D.

Email: apanayotov@ufl.edu

Course Time: Tuesday 10:40-11:30 AM; Thursday 10:40-12:35 PM

Office Location: Turlington Hall 3343

Office Hours: Tuesday, 2:00-4:00 PM; Wednesday 1:50-2:50 PM

"Thoughts without content are empty, intuitions without concepts are blind."

Immanuel Kant

COURSE DESCRIPTION:

Privacy is a concept that is both omnipresent and elusive. Lawyers, economists, political scientists, and philosophers – among others – try to capture its essence. Despite their efforts, the concept of privacy remains in flux: we have too much to study, we know too little about it, and even what we know is too unclear. For this reason, we will seek to clarify a pragmatic approach to privacy and embed it within a broader framework for understanding law, authority, and power. This means that we will establish the boundaries of the concept and look at its applications by using a multi-disciplinary approach grounded in both law and social science. Because of this, the course has the following objectives: 1) to explore the conceptual basis of privacy; 2) to outline how governments, corporations, and individuals view the concept of privacy and deploy it to attain their objectives; and, 3) to learn the difference between the American and European concepts of privacy and the regulatory implications of these differences. States, corporations, and individuals are involved in the negotiation, contestation, and regulation of privacy. We will study how these actors developed strategies for controlling, monetizing, and exploiting privacy. We will refrain from studying the technological aspects of privacy and their relations to global commerce and business. Overall, this Quest 2 course asks how law and social science conceptualize privacy and develop remedies for its protection in furtherance of personal autonomy and human dignity.

Students will master the concept of privacy by participating in a moot court competition. The moot court is a simulation of an actual trial and trains students to argue legal cases and hone their professional skills. In particular, students will be divided into groups that present the opposite sides of a hypothetical case with their peers assessing the merits of their arguments. The purpose of the moot court is to bolster students' intellectual confidence and self-assurance in presenting and communicating their expertise.

In this class, you will learn different styles of analysis and argumentation. Understanding these styles might prove challenging. Because of this, be prepared to discuss them in class. The

class discussion is a deliberative exercise: you are expected to contribute to it because everyone will benefit from a vigorous exchange of ideas. To facilitate this exchange, I will call people in class. Please be advised that class attendance is mandatory. In addition, please respect your colleagues' views: we will study problems open to multiple interpretations. Don't forget that collegiality and tolerance are virtues not vices.

COURSE DELIVERY:

WHAT ARE THE OBJECTIVES OF QUEST 2 (Q2)?

Social and Behavioral Sciences (S)

Social and behavioral science courses provide instruction in the history, key themes, principles, terminology, and underlying theory or methodologies used in the social and behavioral sciences. Students will learn to identify, describe and explain social institutions, structures or processes. These courses emphasize the effective application of accepted problem-solving techniques. Students will apply formal and informal qualitative or quantitative analysis to examine the processes and means by which individuals make personal and group decisions, as well as the evaluation of opinions, outcomes or human behavior. Students are expected to assess and analyze ethical perspectives in individual and societal decisions.

WHAT ARE THE OBJECTIVES OF GEN ED INTERNATIONAL (N) COURSES?

International courses promote the development of students' global and intercultural awareness. Students examine the cultural, economic, geographic, historical, political, and/or social experiences and processes that characterize the contemporary world, and thereby comprehend the trends, challenges, and opportunities that affect communities around the world. Students analyze and reflect on the ways in which cultural, economic, political, and/or social systems and beliefs mediate their own and other people's understanding of an increasingly connected world.

THESE QUEST AND SUBJECT AREA OBJECTIVES WILL BE ACCOMPLISHED THROUGH:

- Introducing students to the nature of law, legal reasoning, and dispute resolution by building on their own understanding of these phenomena, and clarifying their basic principles.
- Explaining the social science methods for studying law, legal institutions, and legal reasoning.
- Elaborating on this basic knowledge, students will explore the differences between the two dominant legal traditions in the world today: the civil and common law ones. Legal and social scientific studies will be used to explain the divergent paths of institutional development in both systems.
- Empowering students to apply this comparative knowledge to explore one major area of conflict and cooperation between these two legal traditions: the regulation of privacy. Students will learn to describe the difference in the privacy regimes in the United States and Europe, develop the skills to identify compliance problems in various issue areas, and apply legal and social scientific frameworks to propose solutions to these problems.

1) CONTENT SOLS:

General Ed S:

Identify, describe, and explain key themes, principles, and terminology; the history, theory and/or methodologies used; and social institutions, structures and processes.

General Ed N:

Identify, describe, and explain the historical, cultural, economic, political, and/or social experiences and processes that characterize the contemporary world.

Quest 2:

Identify, describe, and explain the cross-disciplinary dimensions of a pressing societal issue or challenge as represented by the social sciences and/or biophysical sciences incorporated into the course.

THIS COURSE:

- At the end of the Course: Students will be able to: Understand how rules are formed, expressed, and interpreted; Analyze both the similarities and the differences between the civil and common law traditions; and Conceptualize the process of legal change generated by these legal traditions in the context of the privacy regulation regimes in the United States and the European Union
- <u>ACHIEVEMENT OF THESE LEARNING OUTCOMES WILL BE ASSESSED THROUGH:</u> glossary assignment; précis, brief, and moot court competition presentation.

2) CRITICAL THINKING SLOS

General Ed S:

Apply formal and informal qualitative or quantitative analysis effectively to examine the processes and means by which individuals make personal and group decisions. Assess and analyze ethical perspectives in individual and societal decisions.

General Ed N:

Analyze and reflect on the ways in which cultural, economic, political, and/or social systems and beliefs mediate understandings of an increasingly connected contemporary world.

Quest 2:

Critically analyze quantitative or qualitative data appropriate for informing an approach, policy, or praxis that addresses some dimension of an important societal issue or challenge.

This Course:

- AT THE END OF THE COURSE: STUDENTS WILL BE ABLE TO: UNDERSTAND how to work with rules from diverse legal system; LEARN how to connect abstract rules and concrete factual disputes; and, DEPLOY social science theories to explain legal outcomes.
- <u>ACHIEVEMENT OF THESE LEARNING OUTCOMES WILL BE ASSESSED THROUGH:</u> group discussion, group projects, mini-case studies, and role playing.

3) COMMUNICATION SLOS

General Ed S:

Communicate knowledge, thoughts and reasoning clearly and effectively.

General Ed N: N/A

Quest 2:

Develop and present, in terms accessible to an educated public, clear and effective responses to proposed approaches, policies, or practices that address important societal issues or challenges.

This Course

- AT THE END OF THE COURSE: STUDENTS WILL BE ABLE TO: HIGHLIGHT the differences between the common law and civil law traditions; ILLUMINATE the potential for forging creative cooperative solutions between these legal systems in spite of their differences; and, PRESENT various scenarios for responsible legal regulation of technology.
- ACHIEVEMENT OF THESE LEARNING OUTCOMES WILL BE ASSESSED THROUGH: moot court competition, brief writing, and précis submissions.

4) CONNECTION SLOS

General Ed S: N/A

General Ed N: N/A

Quest 2: Connect course content with critical reflection on their intellectual, personal, and professional development at UF and beyond.

This Course:

- At the end of the Course: Students will be able to: Reflect on their knowledge about law and dispute resolution in a comparative perspective. They will be familiar with the divergent approaches to privacy regulation in both the United States and the European Union. The exploration of both legal and social science theories will enable them to master an increasingly important field: privacy regulation. As a result, students can hone their skills and pursue professional realization in institutions engaged in transatlantic commerce: corporations, regulatory agencies, and consulting companies.
- ACHIEVEMENT OF THESE LEARNING OUTCOMES WILL BE ASSESSED THROUGH: class discussions and moot court competition.

TEXTS:

- Joel P.Trachtman,, "The Tool of the Argument: How the Best Lawyers Think, Argue, and Win" [hereinafter TA].
- David S. Lane, "American Privacy: The 400-Year History of Our Most Contested Right" [hereinafter AP].
- European Agency for Fundamental Rights, "Handbook of European Data Protection Law" [hereinafter EDPL]. Please do not buy the book, it will be available on Canvas.
- Materials on the Canvas web site.

EXAMINATIONS AND ACADEMIC HONESTY:

- I will not be able to reschedule assignments except in the following cases: a medical emergency, which must be properly documented, and a death in the immediate family.
- Absences from class must be properly documented.
- Depending on our progress, there might be changes in the schedule. You will be notified of all changes in advance.
- A minimum grade of C is required for general education credit.
- Please note that UF students are bound by The Honor Pledge which states, "We, the members of the University of Florida community, pledge to hold ourselves and our peers to the highest standards of honor and integrity by abiding by the Honor Code. On all work submitted for credit by students at the University of Florida, the following pledge is either required or implied: "On my honor, I have neither given nor received unauthorized aid in doing this assignment." The Honor Code (http://www.dso.ufl.edu/sccr/process/student-conduct-honor-code/) specifies a number of behaviors that are in violation of this code and the possible sanctions. Furthermore, you are obligated to report any condition that facilitates academic misconduct to appropriate personnel. If you have any questions or concerns, please consult with the instructor in this class. Please note that this is a research-intensive course. Because of this, plagiarism and other forms of academic dishonesty will not be tolerated. Students are required to read, understand, and abide by the University of Florida Academic Honesty policy. The policy can be found here: https://sccr.dso.ufl.edu/process/studentconduct-code/. All violations of the said policy will be reported in accordance with the process outlined in it.
- The requirements in the syllabus are consistent with the UF grading policy. The policy can be found here: https://catalog.ufl.edu/UGRD/academic-regulations/grades-grading-policies/

ATTENDANCE:

- Please be advised that class attendance is mandatory.
- Arrive on time.
- Do not leave early.
- Requirements for class attendance and make-up exams, assignments, and other work in this course are consistent with university policies that can be found at: https://catalog.ufl.edu/ugrad/current/regulations/info/attendance.aspx

ZOOM POLICY

The participation portion of your grade for this class will be calculated on the basis of your attendance and your participation in class activities. Since the pedagogical approach of this course depends heavily on student engagement and interaction, you are required, at a minimum, to participate in class activities through the audio function of Zoom. Your video presence is invited as well.

COURSE EVALUATIONS:

"Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner is available at https://gatorevals.aa.ufl.edu/students/. Students will be notified when the evaluation period opens, and can complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via https://ufl.bluera.com/ufl/. Summaries of course evaluation results are available to students at https://gatorevals.aa.ufl.edu/public-results/."

ACCOMMODATIONS:

Students with disabilities requesting accommodations should first register with the Disability Resource Center (352-392-8565, www.dso.ufl.edu/drc/) by providing appropriate documentation. Once registered, students will receive an accommodation letter which must be presented to the instructor when requesting accommodation. Students with disabilities should follow this procedure as early as possible in the semester. Specifically, all students who need accommodation should inform the professor in writing within the first two weeks of class. Please provide proper documentation. If a student needs accommodation for a particular assignment, she must inform the professor in writing at least 72 hours prior to the beginning of the assignment. Students are also advised to explore the opportunities offered by the UF Disability Resource Center. The Center is located at 001 Reid Hall, web page: https://disability.ufl.edu/#.

RESPONSIBILITIES:

- Ensure that you have a reliable access to Canvas because it will be used extensively throughout the semester. Note that you will be responsible for printing or viewing the assigned material.
- Read the materials in advance and in the order indicated in the syllabus.
- Turn off your cell phones **before** coming to class.
- Restrict the use of electronic devices to class-related activities, e.g., note-taking or article reading.
- Please note that I will call people in class. This means that it's your responsibility to be prepared at all times.

RECORDINGS: No recording of the class discussion is permitted.

GRADING: Your final grade will be determined by the following:

DUE DATE	ASSIGNMENT	DESCRIPTION	WEIGHT
	Attendance	Please note that attendance is mandatory. Please note that regular attendance and arrival on time are expected. All requirements for class attendance and work are consistent with the UF policy. It can be found here: https://catalog.ufl.edu/UGRD/academic-regulations/attendance-policies/ . Please read and understand this policy.	10%
	Participation	Participation is an essential ingredient for your success in the course. I expect regular and informed class participation. Informed class presentation means that your claims will be based on the required readings.	10%
02-Feb-2021	Précis	The précis is a one-page summary of an important socio-legal concept. I will post five concepts on Canvas and you will have to select one of them. The précis will have to be one page, 1" margin all around, Times New Roman font, size 12, single line spacing. The précis should not exceed 500 words. The assignment will be graded according to the following critera:1) demonstrated understanding of the nature of the concept; 2) evaluation of this concept's importance for the study of privacy; and, 3) clarity of writing. You may cite course materials or external sources — books, articles, judicial decisions or primary documents — related to the concept. All sources must be properly cited in a bibliography, which will not be counted toward the page requirement. You will have to submit the paper on February 2 nd before 11:59 PM. This assignment is worth 100 points. I will deduct 15 points for assignments submitted after the deadline and before 11:59 PM on February 4 th . I will not accept submissions after that and no points will be awarded for this assignment.	10%
04-Mar-2021	First Draft of the Group Briefs/ Judgment due	You will be asked to work in groups. Two of the groups will work on behalf of particular clients: The United States and the European Union. The third group will be sitting as the Court of Justice of the European Union (CJEU). This and all subsequent assignments will revolve around an important privacy case decided by the CJEU: <i>Schrems</i> II. I will provide the necessary information and readings about the case. The two parties will write a brief. The group	10%

		sitting as a court will draft a preliminary judgment. A brief/judgment is a statement of factual, legal, and policy positions. There is no minimum page requirement. The draft brief should not exceed 7 double-spaced pages. It will have to explain how the legal dispute must be resolved depending on the	
		position of the party to the dispute. Most importantly, the brief will to provide the legal and policy rationales for this position. After the draft briefs are submitted, I will circulate them among all participants and we will discuss their reasoning during the class discussion. The assignment will be graded according to the following critera:1) demonstrated understanding of the legal issues involved in the dispute; 2) ability to weave the concepts studied in the course in the legal exposition and, 3) clarity and persuasiveness of the legal brief. Endnotes will not be counted toward the page requirement.	
		All members of the group must divide the group assignment among themselves. Their individual contributions will be graded. The group grade will be the average of their individual grades. This will be the final grade. All members of the group will receive the same grade. Students are encouraged to provide prompt feedback about their colleagues' contribution to the group project in order to ensure fair grading.	
		You will have to print out the paper and submit it on March 4 th , 11:59 PM. This assignment is worth 100 points. I will deduct 15 points for assignments submitted after the deadline and before 11:59 PM on March 6 th . I will not accept submissions after that and no points will be awarded for this assignment. Additional instructions about the briefs will be posted on Canvas.	
06-Apr-2021	Group Briefs/Judgm ent due	You will be asked to work in groups. Two of the groups will work on behalf of particular clients: The United States and the European Union. The third group will be sitting as the Court of Justice of the European Union (CJEU). The two parties will write a brief. The group sitting as a court will draft a preliminary judgment. A brief/judgment is a statement of factual, legal, and policy positions. The draft brief should not exceed 9 double-spaced pages.	30%

		It will have to explain how the legal dispute must be resolved depending on the position of the party to the dispute. Most importantly, the brief will to provide the legal and policy rationales for this position. After the draft briefs are submitted, I will circulate them among all participants and we will discuss their reasoning during the class discussion. The assignment will be graded according to the following critera:1) demonstrated understanding of the legal issues involved in the dispute; 2) ability to weave the concepts studied in the course in the legal exposition and, 3) clarity and persuasiveness of the legal brief. Endnotes will not be counted toward the page requirement. All members of the group must divide the group assignment among themselves. Their individual contributions will be graded. The group grade will be the average of their individual grades. This will be the final grade. All members of the group will receive the same grade. Students are encouraged to provide prompt feedback about their colleagues' contribution to the group project in order to ensure fair grading. Additional instructions about the briefs will be posted on Canvas.	
15-Apr-2021	Moot Court	The briefs will be presented during the moot court competition. The parties will be able to ask questions, make inquiries to the court, and respond to the other party's claims. The responses will be timed in accordance with the moot court rule book. The assignment will be graded according to the following critera:1) demonstrated understanding of the legal issues involved in the dispute; 2) ability to synthesize legal and social scientific concepts in furtherance of each team's position; and, 3) ability to weave the concepts studied in the course in the legal exposition and, 4) clarity and persuasiveness of the legal brief. All members of the group must divide the group assignment among themselves. Their individual contributions will be graded. The group grade will be the average of their individual grades. This will be the final grade. All members of the group will receive the same grade. Students are encouraged to provide prompt feedback about their colleagues' contribution to the group project in order to ensure fair grading.	30%

GRADE SCALE:

A	94-100
A-	90-93
B+	87-89
В	84-86
B-	80-83
C+	77-79
С	74-76
C-	70-73
D+	67-69
D	64-66
D-	60-63
Е	0-59

IMPORTANT DATES:

- January 14th: Topics for the précis to be posted on Canvas
 February 2nd: Précis due
 March 4th: Draft briefs due

- **April 6**th: Briefs due
- April 15th: Moot Court

TOPICS AND READINGS:

WHAT IS LAW?

"The purpose of law is to prevent the strong always having their way"

Ovid

Date	Subject	Readings
12-Jan-2021	Introduction	 Richard Fontaine and Kara Frederick, "The Autocrat's New Toolkit" [Canvas] Amy Dockser Marcus, "When Your Ancestry Test Entangles Others" [Canvas] Rob Copeland, Dana Mattioli and Melanie Evans, "Paging Dr. Google: How the Tech Giant Is Laying Claim to Health Data" [Canvas]
14-Jan-2021	Law and Legal Argumentation I	1. TA 1-65
19-Jan-2021	Law and Legal Argumentation II	1. TA 67-105
21-Jan-2021	Law and Legal Argumentation III	1. TA 107-126 (skim) 2. TA 127-150 3. Julie Novkov, "How to Read a Case" [Canvas]
26-Jan-2021	Law and Legal Argumentation IV	1. TA 151-177

WHAT IS (AMERICAN) PRIVACY?

"History is a guide to navigation in perilous times. History is who we are and why we are the way we are."

David McCullough

Date	Subject	Readings
28-Jan-2021	American Privacy I: The Beginning	1. AP 1-37 (skim) 2. AP 38-77
02-Feb-2021	American Privacy II: The Beginning	1.Samuel D.Warren, Louis D.Brandeis, "The Right to Privacy" [Canvas]
04-Feb-2021	American Privacy III	1. AP 77-140
09-Feb-2021	American Privacy IV	1. AP 141-163
11-Feb-2021	American Privacy V	1. AP 164-228
16-Feb-2021	American Privacy VI	1. AP 229-263

18-Feb-2021	The Concept of Privacy I	1. Daniel Solove, "Conceptualizing Privacy", pp. 1088-1126 [Canvas]
23-Feb-2021	The Concept of Privacy II	1. Daniel Solove, "Conceptualizing Privacy", pp. 1126-1155 [Canvas]
25-Feb-2021		No class
02-Mar-2021	The Value of Privacy I	1. Daniel Solove, "A Taxonomy of Privacy", pp. 477-548 [Canvas]
04-Mar-2021	The Value of Privacy II	1. Daniel Solove, "A Taxonomy of Privacy", pp. 523-560 [Canvas] 2. REVIEW SESSION

WHAT IS (EUROPEAN) PRIVACY?

We feel as if we had to repair a torn spider's web with our fingers"

Ludwig Wittgenstein, "Philosophical Investigations", §106

Date	Subject	Readings
09-Mar-2021	European and American Privacy I	1. James Q. Whitman, "The Two Western Cultures of Privacy: Dignity vs. Liberty", pp. 1153-1171 [Canvas]
11-Mar-2021	European and American Privacy II	 James Q. Whitman, "The Two Western Cultures of Privacy: Dignity vs. Liberty", pp. 1189-1196 [Canvas] James Q. Whitman, "The Two Western Cultures of Privacy: Dignity vs. Liberty", pp. 1211-1221 [Canvas]
16-Mar-2021	Foundations of European Privacy I	1. EDPL 83-114
18-Mar-2021	Foundations of European Privacy II	1. EDPL 115-138 2. EDPL 205-227
23-Mar-2021	Foundations of European Privacy III	1. EDPL 227-249
25-Mar-2021	Foundations of European Privacy IV	1. EDPL 249-271

THE TRANSATLANTIC CLASH: AMERICAN VS. EUROPEAN PRIVACY IN THE SHADOW OF THE LAW

"Ius est ars boni et aequi"
(Law is the art of the good and the equitable)

Celsus, "Digests", 2nd ct. AD

"Right, as the world goes, is only in question between equals in power, while the strong do what they can and the weak suffer what they must."

Thucydides "History of the Peloponnesian War", 4th ct. BC

Date	Subject	Readings
30-Mar-2021	The Safe Harbor Agreement	1. Henry Farrell, "Constructing the International Foundations of E-Commerce: The EU-US. Safe Harbor Arrangement", pp. 277-280, 285-299 [Canvas]
01-Apr-2021	The Passenger Data, SWIFT, and Privacy in the Age of Anti-Terrorism	 Abraham Newman, "Transatlantic Flight Fights: Multi-Level Governance, Actor Entrepreneurship and International Anti-Terrorism Cooperation", pp. 481-500 [Canvas] Marieke de Goede, "The SWIFT Affair and the Global Politics of European Security", pp. 214- 227 [Canvas]
06-Apr-2021	The Data War	 David Lyon, "Surveillance, Snowden, and Big Data: Capacities, Consequences, Critique", pp. 1-13 [Canvas] Abraham Newman & Henry Farrell, "The Transatlantic Data War: Europe Fights Back Against the NSA", pp. 124-133 [Canvas]
08-Apr-2021	The GDPR: The European Approach to Global Privacy	 The Congressional Research Service, "Data Protection Law: An Overview", pp. 40-50 [Canvas] Paul M.Schwartz, "Global Data Privacy: The EU Way", pp. 771-786, 793-818 [Canvas]
13-Apr-2021	Moot Court	Preparation for the Moot Court
15-Apr-2021	Moot Court	1. MOOT COURT
20-Apr-2021	Moot Court	1. Reflections on the Moot Court & Review

USEFUL LINKS:

- 1. The Electronic Frontier Foundation: https://www.eff.org/ (United States)
- 2. European Digital Rights: https://edri.org/ (Europe)
- 3. The Sedona Conference: https://thesedonaconference.org/ (The premier source on policy research and recommendations on privacy in the United States)
- 4. The European Digital Market: https://ec.europa.eu/digital-single-market/ (Short and lucid explanation on how the European Union has built its digital infrastructure and incorporated privacy rights into it).
- 5. Privacy Rights Clearinghouse: https://privacyrights.org/data-breaches (This link is particularly useful if you are interested in the systematic study of data breaches).
- 6. The Legal Information Institute (Cornell Law School): https://www.law.cornell.edu/ (It covers the US law as a whole).

FOREIGN LEGAL PHRASES:

A contrario: "from a contrary position" A fortiori: "for a still stronger reason" Ad hoc: "for this; for the specific purpose"

Contra legem: "against the law" (often used in the context of legal interpretation)

De jure: "according to law" De facto: "in reality; in fact"

Erga omnes: "toward all" (often used in relation to obligations)

De lege ferenda: "law as it should be"

De lege lata: "law as it is"

Opinio juris: "opinion of the law"

BOOK LIST (OPTIONAL):

WRITING	Bryan A. Garner, "Legal Writing in Plain English" 2 nd edn. (The University of Chicago Press, 2013)	
EDITING	Claire Cook, "Line by Line: How to Edit Your Own Writing", Houghton Mifflin Harcourt, 1985	
PRESENTATION	Jerry Weissman, "Presenting to Win" The Art of Telling Your Story" (Pearson FT Press, 2008)	
LEGAL REASONING (ADVANCED)	Antonin Scalia and Bryan A. Garner, "Reading Law: The Interpretation of Legal Texts" (West Publishing, 2012)	
	Edward H. Levi, "An Introduction to Legal Reasoning", (The University of Chicago Press, 2013)	
SOCIOLOGY OF LAW	Roger Cotterrell, "The Sociology of Law: An Introduction" 2 nd edn.(Oxford University Press, 2005)	