



## **Economic Analysis of Public Law Syllabus 2019/2020**

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### **Course description**

#### **1. The content of this course**

In this course we are going to cover different topics of economic analysis of public law. The main focus of this course will be on regulations.

Many aspects of people's lives are regulated by the state. For instance, traffic rules, education, marriage, etc. Economic analysis helps to identify the justifications and the forms of regulations in different areas of life. We will start with the public interest theory and continue to private interest theories (i.e. public choice theory). The fundamental question in this context is whether regulations are driven by interests and needs of the public or the personal interests of those who make the rules and small interest groups. Those theories will also shed light on the chosen forms of regulations in each particular area.

In the next step we will study the specificities of risk regulations. This field of research focuses on regulating behaviour or situations that pose a certain risk. The fundamental question in this context is which methodology should be adopted and to which extent public perception of risks should play a role.

The third part on regulations will be devoted to the emerging field of behavioural law and economics and policymaking. In recent years, application of insights from behavioural sciences (cognitive and social psychology) to regulations has become popular. Behavioural law and economics approach challenges the strict assumptions of the rational choice theory and demonstrates how people deviate from predicted behaviour. For as much as effectiveness of regulations depends on the responsiveness of its target group, understanding whether people are rational is crucial. However, different biases can also be utilised to direct behaviour. In this part of the course, I will introduce you to the studies of different psychological biases and demonstrate how those findings can affect the design of regulations.

In the last part of the course, you will apply their acquired instruments to analyse chosen cases in a group work.





## 2. The goals of this course and learning objectives

After this course, you will be able to do the following:

1. To **describe** the particularities of the theories and how they can explain given regulations (public and private interest theories of regulations); to **describe** the theory of rent seeking.

To **describe** what is Cost-Benefit Analysis (CBA) and which methods are used to perform it.

2. To **illustrate** situations of rent seeking. In class, we will learn the rent seeking theory, which is a fundamental concept in public choice, what constitutes rent seeking and what doesn't. You will then be able to apply this knowledge to new markets.

To **illustrate** suitable forms of regulations. Governments have a range of instruments to regulate behaviour. You will learn about those instruments and their theoretical justifications, and at the end of the course, will be able to apply this knowledge to new markets and regulations.

3. To **analyse** new markets. In the course, you will learn the theories and the justifications of regulations in general and different forms in particular. At the end of the course, you will be expected to apply this knowledge: to break down new markets to components (i.e. to identify the potential market failures, the justifications to regulate, and the relevant stakeholders who can become private interest groups); and to analyse independently those new markets and regulations (i.e. which regulations *should be* in place and how can the regulations which *are* in place can be explained).

4. To **assess** Pros and Cons of certain broad regulations. At the end of the course, you will be able to use the knowledge you acquired through the course to justify different regulations (or lack of them).

The first goal of this course is to demonstrate to you how economic theory can contribute to the understanding and the design of public law. At the end of the course you should be able to understand the various economic theories that describe behaviour of public agents and to be able to apply those theories in other contexts. Of course, public law is a broad concept that incorporates different areas of law (e.g. constitutional law, criminal law, etc.) therefore, we will not cover all possible theories and their application.

The second objective of the course is to help you develop analytical skills in order to be able to implement economic theories in your research and future work. At the end of the course you should be able to analyse, for instance, your national legislation in light of the theories and examples you have studied.

The third aim of the course is to help you develop critical view on different aspects of policy and research. On the side of research, you should be able to identify problems in theories, e.g. its assumptions, and its application. You ought to critically evaluate the value of different arguments. On the policy level, you should be able to critically analyse different national legislations of your countries or international agreements, etc.

Finally, the general goal of this course is to show you the value of economic analysis of law and to trigger your curiosity for future research. I hope this course will provide you tools to develop your own ideas in law and economics research (whether it is by extending existing theories, testing them or developing new theories).



### 3. Requirements and materials

For each class you will receive a list of mandatory readings. You are expected to read this before the class. Furthermore, for some of the lectures, we will have one (or two) “Food for thought” / discussion paper, which brings an interesting perspective on the studied topic, or a critical view. You are expected to read it carefully and to actively participate in class discussions. Finally, I will always provide a list of additional reading materials for those who would like to explore more a particular topic. I will upload the mandatory materials to Google Drive. Moreover, I will upload to Google drive the slides.

### 4. Methods of assessment

Your final grade in this course consists of three parts:

The first part is based on active participation in class (especially during paper discussions and the group work – part 8) and constitutes **5% of the grade**. This part of the grade is on pass/fail basis.

The second part is based on a group presentation and constitutes **20% of your grade**. In the first class, you will be divided to seven groups and each group will be allocated to one of the following topics:

1. Regulation of commercial sex industry
2. Regulation of 3D printing
3. Regulation of the drug industry
4. Regulation of driverless cars
5. Regulation of human organ sale
6. Regulation of (American) gun possession
7. Regulation of ‘market for babies’

You will need to prepare a presentation analysing those markets based on the theories we will learn during the course, and according to questions that will be provided to you after the first class (in a separate document that will be uploaded to Google Drive). The time frame for the presentation will also be mentioned in that document. The last three classes will be devoted to presentations of these topics by the groups. In addition, you will need to provide a one page summary report of the analysis. The grade will depend on the level and accuracy of the analysis and your understanding of the studied material in the course.

The third part of the final grade will be based on your performance in the final, open questions, class exam (closed books) and it will constitute **75% of your final grade**. The exam will take place on **December 12**. Prior to the exam you will receive an explanation of the structure of the exam and an example question for you to know what to expect from the exam.



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The following table summarises the methods of assessment, the learning objectives it will examine, and their respective weight in the final grade.

	Methods of assessment		
Learning objectives	Class participation and class group assignment	Group presentation + report	Written exam
Learning objective 1			X
Learning objective 2		X	X
Learning objective 3	X	X	X
Learning objective 4	X		X
Weight (total=100%)	5%	20%	75%





## Course Structure

The course consists of five topics and two opportunities for group work. For each topic you can see the number of lectures that will be devoted to it, the subjects that will be covered, the mandatory and the optional reading.

In the course, I will use slides, which will be provided before the class. Furthermore, after finishing a topic, I will provide “a food for thought” / a discussion paper, usually presenting a critical view on the learned topic or some interesting perspective. You are expected to read the paper before the class and prepare for a discussion. Finally, you are expected to read the mandatory literature in order to prepare for the classes.

### 1. Introduction (Lecture 1)

- Introduction to the course: structure and overview
- Introduction to Regulation
- Justifications of Regulation: Public Interest Theories

In this class, I will first explain about the course, its structure and requirements. Then we will discuss briefly what public law and regulations are. We will identify the market failures, which justify regulation from a public interest view. And finally, we will cover non-economic justifications for regulations.

#### Reading:

- Anthony Ogus, *Regulation Legal Form and Economic Theory* (Oxford, Hart Publishing 2004), pp. 29-54. [This section will be available on Google drive. The 1994 version of the book is available in the library].
- Johan A. den Hertog, “Economic Theories of Regulation,” in *Regulation and Economics, Vol. 9, Encyclopedia of Law and Economics*, 2<sup>nd</sup> ed., Roger van den Bergh and Alessio Paccos Eds., (2012), 25 – 95. Read only pp. 1-17 of the paper, not the book [available on Google drive].
- Rose-Ackerman, Susan. "The economic analysis of public law." *European journal of law and economics* 1.1 (1994): 53-70.

#### Optional Reading:

- Dennis C. Mueller, *Public Choice III* (Cambridge University Press, 2003), Chs. 2+3, pp. 9-63.
- Ronald Coase, “The Problem of Social Cost”, *Journal of Law and Economics* 3(1960), 1-44.
- Garrett Hardin, “The Tragedy of the Commons”, *Science* 162 (3859) (1968), 1243-1248.
- George Akerlof, “The Market for ‘Lemons’: Quality Uncertainty and the Market Mechanism,” *Quarterly Journal of Economics* 84(3) (1970), 488-500.



### 2. Private Theories of Regulation (Lectures 2-3)

- Public Interest Theories: Criticism
- Political economy theory (public choice)
  - Politicians
  - Bureaucracies
  - Voters
- Interest Groups and Rent-Seeking

After learning about the economic and non-economic justifications of regulations (public-interest theory), in the second class we will briefly identify the criticisms of this approach. From this criticism, the alternative approach – public choice theory – has emerged. We will then devote two classes to understanding and learning how to apply this theory to markets and regulations. Besides the slides, which will serve as the basis for the learning and discussion, you will be asked to read the mandatory reading materials and the discussion paper mentioned below.

#### Reading:

- Robert B. Ekelund, Rand W. Ressler, Robert D. Tollison (eds.) *Microeconomics: Private Markets and Public Choice* (Addison Wesley, 7 ed. 2006), Ch. 16, pp. 434-453. [Available on Google drive].
- Johan A. den Hertog, “Economic Theories of Regulation,” in *Regulation and Economics, Vol. 9, Encyclopedia of Law and Economics*, 2<sup>nd</sup> ed., Roger van den Bergh and Alessio Paccos Eds., (2012), 25-95. Read only pp. 21-35 of the paper, not the book [available on Google drive].

#### **“Food for thought” / a discussion paper:**

- Ginsburg, Tom. "Ways of Criticizing Public Choice: The Uses of Empiricism and Theory in Legal Scholarship." *U. Ill. L. Rev.* (2002): 1139.

#### Optional Reading:

- Mancur Olson, *The Logic of Collective Action: Public Goods and the Theory of Groups* (Harvard Economic Studies, 1965).
- Gordon Tullock, *The Selected Works of Gordon Tullock: Rent Seeking Society*, Vol. 5 (Liberty Fund Indianapolis, 2005), pp. 11-60.
- Mancur Olson, *The Logic of Collective Action: Public Goods and the Theory of Groups* (Harvard Economic Studies, 1965).
- Gordon Tullock, *The Selected Works of Gordon Tullock: Bureaucracy*, Vol. 6 (Liberty Fund, Inc., Indianapolis, 2005).
- Gordon Tullock, “The welfare costs of tariffs, monopolies, and theft,” *Economic Inquiry* 5(3) (1967), 224–232.
- Anthony Downs, *Inside Bureaucracy* (Little, Brown and Company, Boston, 1967).
- William A. Niskanen, Jr., *Bureaucracy and Representative Government* (Aldine Atherton, Chicago, 1971).
- William A. Niskanen, “The Peculiar Economics of Bureaucracy,” *The American Economic Review* 58 (2), (1968), 293-305.







### 3. Forms of Regulation (Lectures 4-5)

- Social and Economic Forms of Regulation
- Public and Private Interest Explanations for the Forms of Regulation

After learning the two main theories of regulations and understanding them thoroughly through different examples which will be discussed in the class, we will move to cover the types of the available forms of regulations. This is the tool kit of the regulator, and all those forms can be explained either through the public interest justifications, or the private interests that are promoting one type over the other. I will only cover the main forms in the class, and discuss the different groups of regulations (social regulations versus economic regulations). You are expected to read and learn about the other forms from the mandatory reading materials. Finally, at the end of lecture 5 we will discuss the explanation provided in the discussion paper you are expected to read, to the question why economic instruments are underutilised as compared to other forms of regulations despite their theoretical efficiency.

#### Reading:

- Anthony Ogus, *Regulation Legal Form and Economic Theory* (Oxford, Hart Publishing 2004), Selected pages from chapters III-IV: 126-132, 180-189, 204-213, 225-238, 265-271, 287-294, 318-327.
- Shapiro, Carl. "Investment, moral hazard, and occupational licensing." *Review of Economic Studies* 53.5 (1986): 843-862.
- Djankov, S., R. La Porta, F. Lopez-de-Silanes, A. Shleifer, "The Regulation of Entry," *Quarterly Journal of Economics* 117(1) (2002), 1-37.

#### ***"Food for thought" / discussion papers:***

- Buchanan and Tullock (1975) "Polluters' Profits And Political Response: Direct Controls Versus Taxes," *American Economic Review* 65(1) (1975), 139-147.

#### Optional Reading:

- Morris M. Kleiner, "Occupational Licensing," *Journal of Economic Perspectives* 14(4) (2000), 189-202.
- Morris M. Kleiner, Allison Marier, Kyoung Won Park and Coady Wing, "Relaxing Occupational Licensing Requirements: Analysing Wages and Prices for a Medical Service," *Journal of Law and Economics* 59 (2016), 261-291.



## 4. Risk Regulations and Cost-Benefit Analysis (Lecture 6)

- Introduction to Risk Regulation
- CBA: Methods and Problems

After we covered the theories of regulations and the forms used to regulate different markets, in lecture 6 we will turn to a specific group of regulations – risk regulations. In this lecture we will discuss what makes those regulations special, how are they justified from a public perspective, and which private parties are promoting them. In addition, we will discuss the problem in assessing different risks (introducing the concept of behavioural biases). Finally we will learn about the Cost-Benefit Analysis, its methods and criticisms.

### Reading:

- Alessandra Arcuri, “Risk Regulation” in Encyclopedia of Law and Economics, (eds.) Paccas, A.M. Van den Bergh, R.J. Van den Bergh, Cheltenham, p. 303-338, Edward Elgar Publishing, 2012; also available on SSRN: <http://ssrn.com/abstract=1931592>.

### **“Food for thought” / a discussion paper:**

- Shavell, Steven. "Liability for harm versus regulation of safety." *Journal of Legal Studies* 13.2 (1984): 357-374.

### Optional Reading:

- Cass R. Sunstein, *Laws of Fear*, Cambridge University Press (2005), pp. 129-148 (chapter 6). [Available on Google Docs].
- Paul Slovic, “Beyond numbers: A Broader Perspective on Risk Perception and risk Communication”, in *Acceptable Evidence - Science and value in risk Management*, D. G. Mayo and Hollander, R.D., Eds. (NY, 1991), pp. 48-65. [Available on Google Docs].
- Erik A. Posner and Cass R. Sunstein, “Dollars and Deaths”, *The University of Chicago Law Review* 72(2) (2005), pp. 537-598.
- Timur Kuran and Cass R. Sunstein (1999) ‘Availability Cascades and Risk Regulation,’ *Stanford Law Review* 51(4) (1999), 683-768.







### 5. Behavioural Law & Economics and “Soft” Regulation (Lecture 7)

- Introduction to Nudging
- Libertarian Paternalism
- Nudging and Public Choice

In recent years, there is a growing understanding that even though the traditional theories and regulations rely on the concept of rational choice, people in fact have bounded rationality. Insights from social sciences demonstrate that people often deviate from rational choice theory predictions, but in a systematic manner. The reason is the heuristics and biases they are subject to. In this lecture, I will explain the biases and how governments around the world started utilising them to improve regulations. However, we will also discuss the criticisms against this approach. Through the lecture I will provide different examples of behaviourally-informed policies.

#### Reading:

- Thaler, R., and C. Sunstein. "Libertarian Paternalism," *American Economic Review* (Papers and Proceedings), 93(2) (2003), 175-179.
- Cass R. Sunstein and Richard H. Thaler. "Libertarian Paternalism is Not an Oxymoron," *University of Chicago Law Review* 70(4) (2003), read only the introduction pp. 1159-1167.

#### Optional Reading:

- W. Kip Viscusi & Ted Gayer, "Behavioral Public Choice: The Behavioral Paradox of Government Policy," *Harvard Journal of Law & Public Policy* 38(3), (2015), 973-1007.
- Hendrik Bruns, Elena Kantorowicz-Reznichenko, Katharina Klement, Marijane Luisrto Jonsson and Bilel Rahali, "Can Nudges be Transparent and Yet Effective?" *Journal of Economic Psychology* 65 (2018), 41-59.
- Richard H. Thaler and Cass R. Sunstein, *Nudge: Improving Decisions about Health, Wealth, and Happiness*, (Yale University Press, 2008).
- Cass R. Sunstein, *Simple: The Future of Government* (Simon & Schuster, 2012).
- Alberto Alemanno (Editor), Anne-Lise Sibony (eds.), *Nudge and the Law: A European Perspective* (Hart Publishing, 2015).





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### **6. Group work (Class 8)**

In class 8, you will receive from me a description of a broad topic, and in 4 groups, will need to prepare arguments in favour or against regulations. All the information will be provided in class and some preparatory materials will be sent to you in advance.

### **7. Class Presentations (Classes 9-11)**

Classes 9-11 will be devoted to group presentations in class. The information is provided in section 4 – methods of assessment - of this syllabus, and further explanation will be provided in class.

Furthermore, I will use this time to discuss the exam, explain you the structure, what you can expect from it, and how to prepare for the final exam.

**Good Luck!**

