Course Objective:

The course aims to facilitate new or advanced research into the phenomenon of public law. Public law here refers to the law that governs the creation and perpetuation of the state. Paradigmatic examples include, of course, constitutional law and administrative law. But can go far beyond that. For example, the European Union uses competition law as a way of defining and constructing its ‘state’; the early United States used contract law. Arguably, the French Code Napoleon can be seen as having a public law component, as one of its foundational purposes was to give identity to the post-Revolutionary French state.

Seen in this light, aspects of public law can be seek to vest in many legal areas that are not normally thought of as ‘public law’. Recognizing these implications can have important real-world implications, as it can allows us to see more clearly how legislative and doctrinal changes to seemingly private areas of law can have significant consequences for the legitimacy and capacity of ‘the state’ itself.

We will also explore the ‘public law’ of non-state institutions as well. Many institutes other than the state use law to construct and perpetuate themselves, and give themselves identity. In this sense, they have ‘public law’ aspects as well. And like states, this aspect can implicate regulatory strategies that are commonly seen to be straight-forwardly technocratic. To definitive examples are the EU, the Internet, and the regime of international trade. All of these sport governance structures that can be analogized to public law, and whose implication extend beyond mere technocratic regulation.

Teaching style:

Teaching style is fluid, and depends on the size of the class. Each class session will generally be divided into two parts, a more ‘lecture’ part, which focuses on the conveyance of information; and a discussion part, which focuses on class discussion obviously. If the class is small enough, the discussion part will be extemporaneous. But if the class is too big, students will be required to write and submit comments and questions in advance (via IVLE).

In addition, considerable class time will be devoted to aiding the student in conducting their own research. The instructor will with each student individually at least twice to discuss their research progress. For smaller classes, students will present a preliminary progress report before the class. Specific lectures will address how to identify a possible research topic; how to go about researching that topic once you have identified it; and how to organize a research paper that would be suitable for publication. Students will be asked to keep a research log, which will serve as the basis for one-on-one meetings with the instructor.
Tentative syllabus:

1. Meet and greet
3. Public-law metaphors: The paradoxical relationship between the state and law
   - Consent
   - Separation of powers
   - Rule of law
4. Law and vs. politics
5. Visions of constitutionalism
6. The tools of the State
   - dominium vs. universitas
   - despotic power vs. infrastructural power
   - imperium vs. dominium
   - state vs. state-less societies

   * * * Recess Week * * *

7. Consultation week
8. Territory and geography
9. States and markets: the ‘economic constitution’ and ‘indirect dominium’
10. Public law in private law:
    - Competition law
    - Contract law
    - Property
11. Citizenship
12. Public law beyond the state

Mode of assessment:

Research Paper - 70%
Class Performance - 30%;