The formation of the European Community in 1958 (now called European Union) has been at the heart of a ‘body politic’ – currently composed of 27 Member States with more than 500 million people – which is not yet a federal state but has nevertheless many characteristics of one.

From the beginning, the EU of (then) six states had more in common with the ‘more perfect Union’ into which the American Confederation of (then) 13 states was transformed in 1788 through the ratification of the U.S. Constitution than with the initial Confederation itself. From the viewpoint of democratic governance (not, however, with respect to military power or foreign policy), the EU resembles more a fully-fledged ‘citizen state’ than a loose union of states.

An important point in this regard is the existence, within the EU, of a huge body of European legislation which is directly or indirectly (through compulsory implementation) applicable in all of the Member States. As a result, the legal order of each Member State has at least two layers of legislation. Moreover, since most of the Member States are active members of the international community and accept the direct effect of many international treaties (most importantly the European Convention of Human Rights) and of international customary law, international law constitutes another level which comes on top of the other two (or more) layers of governance. What holds true for the legislative (and treaty making) branch of power is also valid for the executive rule- and judicial decision-making powers: they, too, produce regulations and judicial acts at different levels of the EU’s plural legal order.

The purpose of this class is to explore and explain the various aspects of multi-layered legislation, regulation, and judicial activity, and to assess the democratic legitimacy of the whole process of governance. The underlying aim is to identify differences and similarities between Europe and the U.S. This can only be achieved through an active dialogue between students and instructor. Participants will be required to find and draw EU-U.S. parallels for each subject set out below.

The following subjects will be discussed:

1. Genesis of European multi-layered governance (history, sources, pillars, layers); pluralism of – and interaction between – legal sources; protection of fundamental rights and freedoms at different levels

2. European (quasi-)federalism – from nation-state to citizen-state; devolutive federalism (at state level) v. associative co-federalism (at EU level); Europeanisation v. internationalization (globalization)

3. Separation of powers v. division and mix of power; legitimacy and democracy in a multilevel society; civic and civil society
4. Codification v. convergence; unification v. harmonization; the ‘Community method’ v. methods of new governance; osmosis of private and public law

5. Hierarchy of legal orders v. quality of protection (Solange); subsidiarity; good citizenship; social responsibility of private actors

6. Legislative and executive regulation; judicial decision-making and self-regulation from a multilevel perspective

7. Multi-level banking and financial markets regulation; international transport law

8. The emergence of a common European law in the area of torts: state liability

9. Legal education and practicing law in a multi-level perspective