

## Programa de Pós-graduação *Stricto Sensu* em Direito da Regulação Plano de Ensino

- **Disciplina:** Global Personal Data Regulations

- **Curso:** Mestrado

- **Tipo Disciplina:** Eletiva Comum

- **Carga Horária:** 45h (3 créditos)

- **Ementa:**

This course will be entirely taught in English and will require active student participation in English. The course will be a blend of lecture, discussion, and student presentations. Each class will have a tripartite structure. The first segment of every class will be dedicated to the discussion of the mandatory readings, providing an occasion to review the topics discussed in the previous class and anticipate the subject of the class of the day. The second segment of the class will feature a presentation by professor Belli, discussing the topic of the day. The third segment will be a presentation of the suggested readings of the day, delivered by one of the students. Questions, comments, and suggestions are always welcome in every segment.

The course will be structured in five modules: a) Introduction to Technology Regulation; b) Distinguishing Privacy and Data Protection; c) The European Data Protection Framework; d) Emerging Data Protection Frameworks; e) Emerging Issues.

Topics will include: I) The Regulatory Function of Technology; II) Surveillance Capitalism; III) Origin of Privacy and its Evolutions; IV) The Origin of Data Protection and its Evolutions; V) European Data Protection Law 1: Terminology and Principles; VI) European Data Protection Law 2: Rights, Rules and Supervisory Authorities; VII) Data Transfers vs Surveillance: A European Solution ?; VIII) The Evolution of Data Protection in Latin America; IX) LGPD vs GDPR: The Brazilian Data Protection Framework and its Specificities; X) The Right to be Forgotten in the EU and in Brazil; XI) The European Framework's Impact on Africa and the South African Data Protection Framework; XII) The Chinese Approach to Data Protection; XIII) The Indian Approach to Privacy and Data Protection; XIV) Cybersecurity and Data Protection: Convergence and Divergence in the BRICS Countries ; XV) Artificial Intelligence and Data Protection.

- **Objetivos:**

This course aims at providing an understanding of personal data protection and how this subject may vary across different national frameworks. Upon successful completion, students will be able to discuss critically the concepts of privacy and data protection, being able to analyse the specificities of national data protection frameworks considering principles, rules, rights, and obligations. Notably, students will be able to understand:

- a) The regulatory role of technology
- b) How personal data are collected and utilised by commercial entities
- c) The differences and juxtapositions between the right to privacy and the right to data protection.
- d) The principles relating to the lawful processing of personal data.
- e) The rights of the data subjects and how they are upheld.
- f) The rationale, objectives, and specificities of the European Union General Data Protection Regulation (GDPR).
- g) The rationale, objectives, and specificities of the Brazilian Data Protection Law (LGPD).
- h) The rationale, objectives, and specificities of the Chinese Data Protection Framework.
- i) The rationale, objectives, and scope of the South African Protection Personal Information Act (POPIA).

- j) The key features of the India Data Protection Debate.
- k) The differences and juxtapositions between data protection and cybersecurity
- l) How to identify commonalities and differences between data protection frameworks.
- m) How to apply the notions discussed during the course to frame emerging technological phenomena, such as Artificial Intelligence.

▪ **Temas e Bibliografia:**

**The Regulatory Function of Technology**

Lawrence Lessig. (1999). The Law of the Horse: What Cyberlaw Might Teach. Harvard Law Review. Vol. 113:501 <https://cyber.harvard.edu/works/lessig/finalhls.pdf>.

Luca Belli, Pedro Augusto Francisco & Nicolo Zingales. (2017). Law of the Land or Law of the Platform? Beware of the Privatisation of Regulation and Police, in Belli L & Zingales (Eds). Platform Regulations How Platforms are Regulated and How They Regulate Us. FGV Direito Rio (2017). <http://bibliotecadigital.fgv.br/dspace/handle/10438/19402>.

**Suggested readings:**

Luca Belli. Structural Power as a Critical Element of Digital Platforms' Private Sovereignty. In Edoardo Celeste, Clara Keller and Amélie Heldt (forthcoming). Constitutionalising Social Media. Hart. <http://bit.ly/BelliPrivateSovereignty> .

Commission Nationale Informatique et Libertés (CNIL). 2020. Shaping Choices in the Digital World. [https://linc.cnil.fr/sites/default/files/atoms/files/cnil\\_ip\\_report\\_06\\_shaping\\_choices\\_in\\_the\\_digital\\_world.pdf](https://linc.cnil.fr/sites/default/files/atoms/files/cnil_ip_report_06_shaping_choices_in_the_digital_world.pdf).

**Surveillance Capitalism**

Shoshana Zuboff (2015). Big Other: Surveillance Capitalism and the Prospects of an Information Civilization (April 4, 2015). Journal of Information Technology (2015) 30, 75–89. <https://ssrn.com/abstract=2594754>.

Wolfie Christl. (2017). How Companies Use Personal Data Against People Automated disadvantage, personalized persuasion, and the societal ramifications of the commercial use of personal information. Working paper by Cracked Labs, Vienna. <https://crackedlabs.org/en/data-against-people>.

**Suggested readings:**

Graham Greenleaf (2019). Elements of Zuboff's Surveillance Capitalism (July 8, 2019). (2019) 160 Privacy Laws & Business International Report 29-32, UNSW Law Research Paper No. 19-99. <https://ssrn.com/abstract=3479907>.

Shoshana Zuboff (2020). Caveat Usor: Surveillance Capitalism as Epistemic Inequality (February 2020). Zuboff, Shoshana, "Caveat Usor: Surveillance Capitalism as Epistemic Inequality," in Kevin Werbach ed., After the Digital Tornado, Cambridge University Press, Cambridge: 2020. <https://ssrn.com/abstract=3809169>.

**The Origin of Privacy and its Evolutions**

Samuel D. Warren; Louis D. Brandeis. The Right to Privacy. Harvard Law Review, Vol. 4, No. 5. (Dec. 15, 1890), pp. 193-220 <https://www.cs.cornell.edu/~shmat/courses/cs5436/warren-brandeis.pdf>.

Cannataci, JA. 'Privacy, Technology Law and religions across cultures', 2009(1) Journal of Information, Law & Technology (JILT). [https://warwick.ac.uk/fac/soc/law/elj/jilt/2009\\_1/cannataci/cannataci.pdf](https://warwick.ac.uk/fac/soc/law/elj/jilt/2009_1/cannataci/cannataci.pdf).

Solove, Daniel J. A taxonomy of privacy. University of Pennsylvania Law Review. v. 154, n. 3, 2006. <https://bit.ly/2RKAIR3>.

#### **Suggested readings:**

Ashna Ashesh and Bhairav Acharya. Locating Constructs of Privacy within Classical Hindu Law. CIS India. 29 December 2014. <https://cis-india.org/internet-governance/blog/loading-constructs-of-privacy-within-classical-hindu-law>.

Council of Europe. Guide on Article 8 of the European Convention on Human Rights Right to respect for private and family life, home and correspondence. 31 August 2020. [https://www.echr.coe.int/Documents/Guide\\_Art\\_8\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf).

### **The Origin of Data Protection and its Evolutions**

Lee A. Bygrave: Privacy and Data Protection in an International Perspective. Stockholm Institute for Scandinavian Law 2010. <https://www.scandinavianlaw.se/pdf/56-8.pdf>.

Gloria González Fuster and Hielke Hijmans The EU rights to privacy and personal data protection: 20 years in 10 questions. Discussion paper. VUB Brussels Privacy Hub. [https://brusselsprivacyhub.eu/events/20190513.Working\\_Paper\\_Gonza%CC%81lez\\_Fuster\\_Hijmans.pdf](https://brusselsprivacyhub.eu/events/20190513.Working_Paper_Gonza%CC%81lez_Fuster_Hijmans.pdf).

#### **Suggested readings:**

Privacy International. The Keys to Data Protection. A Guide for Policy Engagement on Data Protection. 2018. <https://www.privacyinternational.org/sites/default/files/2018-09/Data%20Protection%20COMPLETE.pdf>.

Dorota Mokrosinska (2018). Privacy and Autonomy: On Some Misconceptions Concerning the Political Dimensions of Privacy. Law and Philosophy (2018) 37: 117–143. <https://link.springer.com/content/pdf/10.1007%2Fs10982-017-9307-3.pdf>

### **European Data Protection Law 1: Terminology and Principles**

Juliane Kokott, Christoph Sobotta. (2013). The distinction between privacy and data protection in the jurisprudence of the CJEU and the ECtHR. International Data Privacy Law, Volume 3, Issue 4. Pages 222–228, <https://doi.org/10.1093/idpl/ipt017>.

Peter Hustinx. (2013). EU Data Protection Law: The Review of Directive 95/46/EC and the Proposed General Data Protection Regulation. In "Collected Courses of the European University Institute's Academy of European Law, 24th Session on European Union Law, 1-12 July 2013. [https://edps.europa.eu/sites/default/files/publication/14-09-15\\_article\\_eui\\_en.pdf](https://edps.europa.eu/sites/default/files/publication/14-09-15_article_eui_en.pdf).

#### **Suggested readings:**

Council of Europe. The Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No. 108) <https://rm.coe.int/convention-108-convention-for-the-protection-of-individuals-with-regar/16808b36f1>.

European Union Agency for Fundamental Rights and Council of Europe Handbook on European data protection law. 2018 <https://fra.europa.eu/en/publication/2018/handbook-european-data-protection-law-2018-edition>.

## European Data Protection Law 2: Rights, Rules and Supervisory Authorities

Thomas Streinz. The Evolution of European Data Law. Draft, forthcoming in Paul Craig and Gráinne de Búrca (eds), *The Evolution of EU Law* (Oxford University Press, 3rd ed 2021) chapter 29. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3762971](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3762971).

Brian Daigle and Mahnaz Khan. The EU General Data Protection Regulation: An Analysis of Enforcement Trends by EU Data Protection Authorities. *United States International Trade Commission Journal of International Commerce and Economics* June 2020. [https://www.usitc.gov/publications/332/journals/jice\\_gdpr\\_enforcement.pdf](https://www.usitc.gov/publications/332/journals/jice_gdpr_enforcement.pdf).

### Suggested readings:

Chris Jay Hoofnagle, Bart van der Sloot, and Frederik Zuiderveen Borgesius. (2018) *The European Union General Data Protection Regulation: What It Is And What It Means* (September 24, 2018). UC Berkeley Public Law Research Paper. <http://dx.doi.org/10.2139/ssrn.3254511>.

Bureau Européen des Unions de Consommateurs (BEUC) (2020). *The Long and Winding Road: Two years of the GDPR: A cross-border data protection enforcement case from a consumer perspective*. [https://www.beuc.eu/publications/beuc-x-2020-074\\_two\\_years\\_of\\_the\\_gdpr\\_a\\_cross-border\\_data\\_protection\\_enforcement\\_case\\_from\\_a\\_consumer\\_perspective.pdf](https://www.beuc.eu/publications/beuc-x-2020-074_two_years_of_the_gdpr_a_cross-border_data_protection_enforcement_case_from_a_consumer_perspective.pdf).

## Data Transfers vs Surveillance: A European Solution?

Svetlana Yakovleva. Personal Data Transfers in International Trade and EU Law: A Tale of Two 'Necessities'. *Journal of World Investment & Trade* (2020) 1–39. [https://www.ivir.nl/publicaties/download/JWIT\\_2020.pdf](https://www.ivir.nl/publicaties/download/JWIT_2020.pdf).

Nancy LowranceLynn GoldsteinMartin Abrams (2021). *Addressing Human Resources Data FlowsIn light of European Data Protection Board Recommendations*. The Information Accountability Foundation. <https://b1f.827.myftpupload.com/wp-content/uploads/2021/03/Schrems-II-and-HR-Data.pdf>.

### Suggested readings:

CJEU. Maximillian Schrems v Data Protection Commissioner. 6 October 2015. Case C-362/14. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62014CJ0362>.

CJEU. Data Protection Commissioner v Facebook Ireland Limited and Maximillian Schrems. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62018CJ0311>.

Theodore Christakis. Squaring the Circle? International Surveillance, Underwater Cables and EU-US Adequacy Negotiations (Part 1) 12 April 2021. *European Law Blog*. <https://europeanlawblog.eu/2021/04/12/squaring-the-circle-international-surveillance-underwater-cables-and-eu-us-adequacy-negotiations-part1/>.

(Part 2) <https://europeanlawblog.eu/2021/04/13/squaring-the-circle-international-surveillance-underwater-cables-and-eu-us-adequacy-negotiations-part2/>.

## The Evolution of Data Protection in Latin America

Eduardo Bertoni. *Convention 108 and the GDPR: Trends and perspectives in Latin America*. *Computer Law & Security Review*. Volume 40, April 2021. <https://doi.org/10.1016/j.clsr.2020.105516>.

Lorenzo Villegas Carrasquilla. (2012). *Personal data protection in Latin America: retention and processing of personal data in the Internet sphere*. In Eduardo Bertoni *Hacia una Internet libre de*

censuraPropuestas para América Latina. [https://www.palermo.edu/cele/pdf/english/Internet-Free-of-Censorship/05-Personal\\_data\\_protection\\_Latin\\_America\\_Villegas\\_Carrasquilla.pdf](https://www.palermo.edu/cele/pdf/english/Internet-Free-of-Censorship/05-Personal_data_protection_Latin_America_Villegas_Carrasquilla.pdf).

#### **Suggested readings:**

Luca Belli, Nicolo Zingales. Data protection and social emergency in Latin America: COVID-19, a stress test for democracy, innovation, and regulation. International Data Privacy Law, Volume 11, Issue 1, February 2021. <https://doi.org/10.1093/idpl/ipab006>.

Taís Fernanda Blauth, Oskar Josef Gstrein. Data-driven measures to mitigate the impact of COVID-19 in South America: how do regional programmes compare to best practice. International Data Privacy Law, Volume 11, Issue 1, February 2021. <https://doi.org/10.1093/idpl/ipab002>.

#### **LGPD vs GDPR: The Brazilian Data Protection Framework and its Specificities**

Alexis Kateifides et al. Comparing privacy laws: GDPR v. LGPD. OneTrust Data Guidance. September 2020. [https://www.dataguidance.com/sites/default/files/gdpr\\_lgpd\\_report.pdf](https://www.dataguidance.com/sites/default/files/gdpr_lgpd_report.pdf).

Bruno Bioni, Mariana Rielli, Marina Kitayama Legitimat Interests Under the Brazilian General Data Protection Law: General Framework and Concrete Examples. Data Privacy Brasil. [https://fpf.org/wp-content/uploads/2021/05/LI-under-LGPD\\_Data-Privacy-Brasil-Research-Association.pdf](https://fpf.org/wp-content/uploads/2021/05/LI-under-LGPD_Data-Privacy-Brasil-Research-Association.pdf).

Gabriela Zanfir-Fortuna, Teresa Troester-Falk, and Meaghan McCluskey. Processing Personal Data on the Basis of Legitimate Interests under the GDPR. Future of Privacy Forum. [https://www.ejtn.eu/PageFiles/17861/Deciphering\\_Legitimate\\_Interests\\_Under\\_the\\_GDPR%20\(1\).pdf](https://www.ejtn.eu/PageFiles/17861/Deciphering_Legitimate_Interests_Under_the_GDPR%20(1).pdf).

#### **Suggested readings:**

CyberBRICS. The Brazilian General Data Protection Law (LGPD) – Unofficial English Version. 2020. <https://cyberbrics.info/wp-content/uploads/2020/02/The-Brazilian-LGPD-English-Version.pdf>.

Luca Belli & Nicolo Zingales. Brazilian Data Protection under Covid-19: Legal Certainty is the Main Casualty. <https://cyberbrics.info/brazilian-data-protection-under-covid-19-legal-certainty-is-the-main-casualty/>.

Danilo Doneda. The new Brazilian Data Protection Law and MP8691. [https://www.privacysecurityacademy.com/wp-content/uploads/2019/03/The-New-Data-Protection-Law-and-MP869\\_Danilo-Doneda.pdf](https://www.privacysecurityacademy.com/wp-content/uploads/2019/03/The-New-Data-Protection-Law-and-MP869_Danilo-Doneda.pdf).

#### **The Right to be Forgotten in the EU and in Brazil**

Robert C. Post. Data Privacy and Dignitary Privacy: Google Spain, the Right to Be Forgotten, and the Construction of the Public Sphere. Duke Law Journal. Vol. 67:98. 2018. <https://www.law.berkeley.edu/wp-content/uploads/2018/08/Right-to-be-Forgotten.pdf>.

Daphne Keller Europe's "Right to Be Forgotten" in Latin America. In "Towards an Internet Free of Censorship II Perspectives in Latin America". Chapter 5. [https://www.palermo.edu/cele/pdf/investigaciones/Towards\\_an\\_Internet\\_Free\\_of\\_Censorship\\_II\\_10-03\\_FINAL.pdf](https://www.palermo.edu/cele/pdf/investigaciones/Towards_an_Internet_Free_of_Censorship_II_10-03_FINAL.pdf).

#### **Suggested readings:**

Google Spain SL and Google Inc. v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González. 13 May 2014. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62012CJ0131>.

Luca Belli. The right to be forgotten is not compatible with the Brazilian Constitution. Or is it? Future of Privacy Forum. <https://fpf.org/blog/the-right-to-be-forgotten-is-not-compatible-with-the-brazilian-constitution-or-is-it/>

### **The European Framework's Impact on Africa and the South African Data Protection Framework**

Jonathan Burchell. The Legal Protection of Privacy in South Africa: A Transplantable Hybrid. Electronic Journal of Comparative Law. vol. 13.1 (March 2009). <https://www.ejcl.org/131/art131-2.pdf>.

Naude, A and Papadopoulos, Sylvia, (2016). Data Protection in South Africa: The Protection of Personal Information Act 4 of 2013 in Light of Recent International Developments (1). Journal of Contemporary Roman-Dutch Law, Vol. 79, p. 51-68, 2016, Available at SSRN: <https://ssrn.com/abstract=2835387>.

#### **Suggested readings:**

OneTrust. Comparing privacy laws: GDPR v. POPIA. One Trust Data Guidance. 2019. [https://www.dataguidance.com/sites/default/files/onetrustdataguidance\\_comparingprivacylaws\\_gdprvpopia.pdf](https://www.dataguidance.com/sites/default/files/onetrustdataguidance_comparingprivacylaws_gdprvpopia.pdf).

Protection of Personal Information Act (POPI Act) <https://popia.co.za/>.

### **The Chinese Data Protection Framework**

Bo Zhao, Yang Feng. Mapping the development of China's data protection law: Major actors, core values, and shifting power relations. Computer Law & Security Review. Volume 40, April 2021 <https://www.sciencedirect.com/science/article/pii/S0267364920301035>.

Emmanuel Pernot-Leplay, China's Approach on Data Privacy Law: A Third Way Between the U.S. and the E.U.?, 8 PENN. ST. J.L. & INT'L AFF. 49 (2020). Available at: <https://elibrary.law.psu.edu/jlia/vol8/iss1/6>.

#### **Suggested readings:**

Alexa Lee et al. China's Draft Privacy Law Adds Platform Self-Governance, Solidifies CAC's Role. DigiChina. 3 May 2021. <https://digichina.stanford.edu/news/chinas-draft-privacy-law-adds-platform-self-governance-solidifies-cacs-role?s=03>.

Yan Luo, Zhijing Yu and Vicky Liu (June 11, 2021) China Enacts Data Security Law. <https://www.insideprivacy.com/cybersecurity-2/china-enacts-data-security-law/>.

### **The Indian Approach to Privacy and Data Protection**

Greenleaf, Graham, Data Protection: A Necessary Part of India's Fundamental Inalienable Right of Privacy – Submission on the White Paper of the Committee of Experts on a Data Protection Framework for India (January 31, 2018). UNSW Law Research Paper No. 18-6. <http://dx.doi.org/10.2139/ssrn.3102810>.

Saharsh Saxena (2019). Right to Privacy and The Personal Data Protection Bill of 2019: A Critique. India Law Journal. <https://indialawjournal.org/right-to-privacy-and-personal-data-protection-bill-2019.php>.

Pallavi Bedi. Comparison of the Personal Data Protection Bill with the General Data Protection Regulation and the California Consumer Protection Act. CIS India. 21 February 2020. <https://cis-india.org/internet-governance/blog/comparison-of-the-personal-data-protection-bill-with-the-general-data-protection-regulation-and-the-california-consumer-protection-act-2>.



**Suggested readings:**

Supreme Court of India. Justice K.S.Puttaswamy (Retired). vs Union of India And Ors., 2017. <https://bnblegal.com/landmark/justice-k-s-puttaswamy-ret-d-anr-v-union-india-ors/>.

AccessNow (2018). Assessing India's proposed dataprotection framework: What the Srikrishna Committee could learn from Europe's experience. <https://www.accessnow.org/cms/assets/uploads/2018/09/Assessing-India%E2%80%99s-proposed-data-protection-framework-final.pdf>.

**Cybersecurity and Data Protection: Convergence and Divergence in the BRICS Countries**

Luca Belli. Data Protection in the BRICS Countries: Enhanced Cooperation and Convergence towards Legal Interoperability. New Media Journal. <https://cyberbrics.info/data-protection-in-the-brics-countries-enhanced-cooperation-and-convergence-towards-legal-interoperability/>.

Luca Belli. (2021). CyberBRICS: A Multidimensional Approach to Cybersecurity for the BRICS in Belli, Luca (Ed.). (2021). CyberBRICS: CyberBRICS: Cybersecurity Regulations in the BRICS Countries. Springer. <https://cyberbrics.info/cyberbrics-cybersecurity-regulations-in-the-brics-countries-full-ebook/>.

**Suggested readings:**

Luca Belli (2021). Cybersecurity convergence in the BRICS countries: from national priorities to international cooperation. Directions Blog EU Commission.

Veale, M. & Brown, I. (2020). Concepts of the digital society: Cybersecurity. Internet Policy Review, 9(4). <https://doi.org/10.14763/2020.4.1533>.

**Artificial Intelligence and Data Protection**

Giovanni Sartor & Francesca Lagioia. (2020). The impact of the General Data Protection Regulation (GDPR) on artificial intelligence. European Parliament Panel for the Future of Science and Technology. [https://www.europarl.europa.eu/stoa/en/document/EPRS\\_STU\(2020\)641530](https://www.europarl.europa.eu/stoa/en/document/EPRS_STU(2020)641530).

Niels van Dijk and Simone Casiraghi. The "Ethification" of Privacy and Data Protection in the European Union: The Case of Artificial Intelligence. BRUSSELS PRIVACY HUB WORKING PAPER VOL. 6, N° 22, MAY 2020 <https://brusselsprivacyhub.eu/publications/BPH-Working-Paper-VOL6-N22.pdf>.

**Suggested readings:**

Norwegian Data Protection Authority (January 2018) Artificial intelligence and privacy Report. <https://www.datatilsynet.no/globalassets/global/english/ai-and-privacy.pdf>.

Information Commissioner's Office. Big data, artificial intelligence, machine learning and data protection. 2017 <https://ico.org.uk/media/for-organisations/documents/2013559/big-data-ai-ml-and-data-protection.pdf>.