



Sciences Po
Bordeaux

3A – BEP-LUISS – BEP-HKG

COMPARATIVE PUBLIC LAW

Syllabus

Mme Anna Maria LECIS COCCO ORTU

a.m.lecis@sciencespobordeaux.fr

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INTRODUCTION TO COMPARATIVE PUBLIC LAW: HISTORY, METHODOLOGY AND PERSPECTIVES

- a) History
- b) Methodology
- c) Perspectives

I. INSTITUTIONS

- 1. The concept of “State”. Classifications of States
- 3. Parliamentary and Presidential forms of government: archetypes, models, evolutions
- 4. Judicial review of legislation: archetypes, models, hybridizations

II. RIGHTS

- 1. Contents of constitutions: from a “neutral concept” to a substantial concept
- 2. Human rights and fundamental rights: theories, classifications, and mechanisms of protection
- 3. Interpreting constitutions

III. TRENDS

- 1. Judicial dialogue and transjudicial communication
- 2. Constitutionalization of international law and internationalization of constitutional law: towards a theory of constitutional pluralism?
- 3. New challenges for constitutionalism: populism, democracy vs constitutionalism, democratic regression

Class Schedule

This schedule may be subject to modification. An update version, eventually including the required readings for each class, will be uploaded on Moodle. Students are required to regularly access the Moodle page of the course.

Week 1: Introduction.

Week 2: I. Institutions. The concept of State. Classifications of States.

Week 3: Parliamentary and Presidential forms of government: archetype, models, evolutions. First part.

Week 4: Parliamentary and Presidential forms of government: archetype, models, evolutions. Second part.

Week 5: Judicial review of legislation: archetypes, models, hybridizations.

Week 6: II. Rights. Contents of constitutions.

Week 7: Human rights and fundamental rights: theories, classifications, and mechanisms of protection.

Week 8: Interpreting constitutions.

Week 9: III. Trends. Judicial dialogue or transjudicial communication.

Week 10: Constitutionalization of international law and internationalization of constitutional law: towards a theory of constitutional pluralism?

Week 11: New challenges for constitutionalism.

Week 12: Conclusions.

Aims of the course

The main purpose of this course is to make students familiar with the concepts and methods of comparative public law, in order to give them some tools to analyze existing juridical systems and also to challenge existing definitions and classifications. Comparing different approaches to separation of powers, federalism, judicial review, rights, etc. the course also aims to give an understanding on how different constitutional orders have addressed some common and defining issues in public law and contemporary democracies and how they could face some contemporary challenges.

Organization of the course

- This course will take the form of a traditional lecture, following the frontal teaching model. Nonetheless active participation is highly recommended, since some time will be left to discussion during classes.
- Students will be evaluated on the final paper, but the grade could be upgraded in the light of participation (half to one point max).
- Further teaching materials and readings can be suggested during class or in the Moodle page.

Essential bibliography

BOOKS:

M. Rosenfeld, A. Sajò (eds.), *Oxford Handbook of Comparative Constitutional Law*, Oxford University Press, Oxford, 2012

M. Tushnet, T. Fleiner and C. Saunders (eds), *Routledge Handbook of Constitutional Law*, Routledge, 2013

R. Hirshl, *Comparative matters*, Oxford University Press, Oxford, 2014

ARTICLES AND BOOK CHAPTERS:

Robert Alexy, 'Constitutional Rights, Balancing, and Rationality', *Ration Juris*, 16, 2003, 131-140

Mauro Cappelletti, 'Judicial Review in Comparative Perspective', in *The Judicial Process in Comparative Perspective*, (Oxford University Press, 1989), 117-149

Tom Ginsburg, 'Why Judicial Review?', in *Judicial Review in New Democracies: Constitutional Courts in Asian Cases*, (Cambridge University Press, 2003), 21-33

Ran Hirschl, 'The Question of Case Selection in Comparative Constitutional Law', *American Journal of Comparative Law*, 53, 2005, 125-155

Vicki C. Jackson, 'Constitutional Comparisons: Convergence, Resistance, Engagement', *Harvard Law Review*, 109, 2005, 109-128

Mark Tushnet, 'The Possibilities of Comparative Constitutional Law', *Yale Law Journal*, 108, 1999, 1225-1306