

Law and Public Policy

(Budapest campus, Fall 2019)

Mandatory 'alternative' course

(2 credits) School of Public Policy, Fall Term

Course scheduling: Thursday (weekly), 13.30-15:10 (Room TBC, Budapest campus)

Faculty member

Marie-Pierre Granger, Associate Professor (SPP, IR, LEGS)

E-mail: grangerm@ceu.edu; web: http://www.ceu.hu/profiles/faculty/marie-pierre-f_granger; Skype: mariepgranger

School of Public Policy, Office: Okt.6 utca 7, 2nd floor, office 223 Tel: +36 1 328 3434

Office hours: Weds (14.00-16.00); Thurs (15.30-16.30) + upon request

Teaching assistant: Mirko Dukovic, SJD candidate, Legal Studies Department, <https://legal.ceu.edu/people/mirko-dukovic>; (dukovic_mirko@phd.ceu.edu)

Course Description

Despite challenges to the rule of law around the globe, and recent political attempts at curbing court powers, *law remains a central feature of the policy process*. Law not only serves as a *basis and framework for governance and policy-making*, it also offers *tools and opportunities for policy development and implementation*, as well as *accountability mechanisms*. Familiarity and understanding of relevant legal frameworks, mechanisms and dynamics is essential for public and private actors involved in policy-making.

The 2-credit course **Law and Public Policy** provides a basic introduction to core legal issues relevant to public policy. The focus is on administrative law, as the most frequent and concrete point of encounter between law and policy, but takes into account broader constitutional and international legal aspects, in different political and policy contexts. In that sense, it complements, without duplicating, other law-related courses offered at SPP which focus on international legal aspects (Introduction to Human Rights Law, International Humanitarian Law, Public International law, etc). It addresses the legal context and implications of concrete policy problems and actions, such as organizing a protest, running an NGO, licensing a new drug, organizing social housing, accrediting schools, regulating party financing, setting up a media portal, reforming health care provisions, privatizing utilities companies, running prisons, recognizing qualifications, collecting taxes, preventing discrimination in access to public services, reforming the pension system, setting and enforcing quality standards, etc. The course takes a firmly *comparative* perspective, drawing on legal instruments and processes developed in various parts of the world, and dedicates particular attention to the impact of *globalization* and *privatization*. It combines *theoretical insights* as well as more *practical components* (case study presentations; practical case).

Throughout the course, students get to reflect on the relevance of law to public policy, when addressing contemporary problems (eg refugee crisis, security challenges, social inclusion, etc). They will gain exposure to, and develop familiarity with, relevant legal frameworks and the processes through which these are developed and applied. Students will explore various means of using law as a policy tool, with a special focus on *regulation* and *litigation*. Covering key aspects of international, regional, and comparative constitutional and administrative law, the course provides students with the opportunity to identify, review and evaluate judicial and non-judicial mechanisms which impact on policy-outcomes, including alternative dispute resolutions mechanisms, judicial review, liability

regimes and interim and emergency relief. It also offers an insight into basic procedural and substantive principles such as transparency, due process, human rights, equal treatment, and proportionality, as they frame and support the activities of various policy actors. Students will also have the chance to sharpen their professional expertise, in the context of special sessions dedicated to public interest litigation and not-for-profit law. Throughout, the course participants will be encouraged to reflect on the role of law as providing accountability frameworks, but also discuss the limits of the law's capacity to produce policy and social change. The course concludes with a discussion of concrete recommendations addressing the challenges posed by the course 'practical case'.

Course goals

The course exposes the students enrolled in Master programs in public policy to essential aspects of law of particular relevance to public policy, so as to equip them with the basic skills necessary to access, understand and use law in developing and implementing legitimate and effective policies. Students will compare, analyze and assess the interaction between law and public policy in different governance and policy settings.

Prerequisites

There is no prerequisite for this course. It should however be stressed that it is *a course on Law for Public Policy rather than Public Policy for Law*. It is therefore particularly targeted at non-lawyers. It aims mainly at familiarizing students who have no legal background with legal aspects relevant to policy-making and implementation. Although the course explores at some length the interaction between legal and policy processes, it is NOT a course for lawyers who wish to sharpen their policy analysis skills. Students with legal background may take the course, but must be aware of the targeted audience and should be willing to adjust their expectations accordingly. Students with a legal background, and who have been trained in a specific legal system, may nonetheless find the comparative dimension of the course particularly novel and engaging.

Learning outcomes

Content literacy

At the end of the course, the students should be aware of the diversity, but also similarities, between legal arrangements at various levels of governance, and have developed some understanding of legal and judicial dynamics and their impact on policy. They should be familiar with the most important legal institutional set-ups and mechanisms, as well as procedural and substantive frameworks which impact on the development and implementation of policies in local, national, supranational and global governance regimes. They should be able to identify and assess legal accountability mechanisms, as well as detail relevant remedies against the actions or inaction of public and private authorities engaged in public policy. They should be familiar with key academic debates on the role of law in public policy.

Subject specific skills

At the end of the course, students should be able to identify, compare and evaluate the relevant rules and procedures from various national and supranational legal systems, and to apply them effectively in various policy contexts.

Cognitive skills

At the end of the course, students should be able to identify, synthesize, analyze and evaluate primary and secondary sources of law pertaining to public policy and be aware of the specifics of legal processes and reasoning.

Key academic transferable skills

At the end of the course, students should be able to communicate effectively in writing and orally to both legal and non-legal audience, and write in a (legal) analytical and critical way. They should have

become more familiar with working with practical cases, and be able to formulate strategic action notes and policy recommendations.

Interdisciplinary skills

At the end of the course, students should be familiar with the basic features of legal reasoning and legal research, as relevant to public policy.

Assessment

The final grade consists of class participation (10%), practical case/problem contribution, including wiki contribution and final poster session (30%), the case study presentation, including a written outline (20%), and the final paper (40%).

Participation (10%)

Students must attend classes and be punctual. Planned absence (eg for participation in a conference, etc) must be approved by course instructor in advance. In case of unplanned absences, students must provide a valid excuse as soon as possible to the instructor and the Student Affairs coordinator (eg medical certificate, etc). Students must actively prepare for classes, by doing the mandatory reading and any other required tasks, and engage in class discussions and activities, in a manner which is relevant and expose their understanding of core readings and issues and their ability to mobilize them in class discussions.

Practical case/problem contribution, including regular short contributions and poster session (20+10=30%)

Students must, on a weekly basis, carry out small independent research tasks, related to the course practical case, approaching it from the perspective of the country/jurisdiction of their choice, and addressing specific questions which are (partly) elaborated on in the core readings for each class. Student must upload their answers and/or reflections (1-2 paragraphs maximum) on the challenges they encountered in the process onto a dedicated 'wiki' site, and be ready to present and discuss them orally during class. Student can miss up to two weekly contributions, but should bear in mind that it may affect their final analysis of the case. In the last class, students will present their key findings and take-away points in a poster session (these may be presented in a video format [TBD]). The contributions will be reviewed regularly by the instructor and TA. Assessment based on the regularity and quality of contribution, as well as students' ability to reflect on informational and analytical challenges, and develop strategies to cope with them.

Case study presentation, including written outline (20%)

Each student must make a short case study presentation (10 minutes) which explores some of the core class questions and engage with issues raised in the core readings. Students can either present on a case which is connected to the topic of the course practical case, or choose another relevant topic and case. In both cases, this should be discussed in advance with the course instructor and TA. The presentation will be assessed based on the quality of the oral performance, as well as the relevance of the content (see feedback form). In the presentation, students must relate the case to concepts, processes or issues which are elaborated upon in the core readings, as well as to core seminar questions.

Final essay (40%)

Students should write a 1500-2000 words final paper on a topic of their choice, building on the course readings and discussions as well as personal research. The paper should address in an analytical and critical way the nature of interactions between law and public policy. Students are encouraged to build on either their case study presentation, or their work on the practical case; they develop on some of their prior research and findings, but should respect academic honesty rules.

Note that whilst the workload may appear substantial for a 2 credits course, all assignments build upon, and feed into, one another, therefore limiting the overall effort. Students will receive regular and timely feedback on each assignment, which they should take into account in later contributions.

For all assignment, students must comply with the [CEU policy on plagiarism](#). Late submission, unless agreed upon with the instructor in advance and based on exceptional circumstances, will result in a grade reduction, in accordance with the SPP guidance (one grade per 24h).

Syllabus

On-going activity (covering the whole term): practical case (explanations concerning the choice of the practical case on the first day of the course)

Throughout the course, students will build up background and more specific legal knowledge in order to assess the legal constraints and opportunities for policy development and implementation based on, and through, law in a chosen country/jurisdiction. This research feeds into the final 'practice' seminar, in which students present and discuss key findings and, where relevant, outline policy recommendations. At the beginning of the course, each student will choose a country from the perspective of which they will approach a specific 'practical case' designed around an important policy problem, for which law has some relevance. We will dedicate time in each session for individual students to discuss some of the week's finding.

Note – the references listed under 'Suggestions for presentations' are only there for inspiration. You are free, *and even encouraged*, to choose different cases, from your own country/personal/professional experience. The 'Global Administrative Law casebook (<http://www.iilj.org/gal/documents/GALCasebook2008.pdf>) is also a good source of case related to global governance. The works listed under further readings, organized around the course sessions, are for reference only.

The order of the sessions may be subject to change, to accommodate the availability of guest speakers.

Course core reference materials

Core book chapters (mandatory reading, prior to the start of the course, and main reference document throughout the course)

- [Bignami, F. \(2012\). 'Comparative Administrative Law' in M. Bussari and U. Matei \(eds\) *The Cambridge Companion to Comparative Law*. Cambridge University Press. 145-170](#)
- [Bell, J.S. \(2019\), 'Comparative administrative law', in Mathias Reimann and Reinhard Zimmerman \(eds\) . *The Oxford Handbook of Comparative Law* \(2nd ed, Oxford University Press\) 1251-1275](#)
- [Kreis, A.M and Christensen R.K \(2013\) 'Law and public policy', *Journal of Policy Studies* 41:1](#)

Core books and reference documents (for consultation)

- [Rose-Ackerman, S., P.L Linseth and B. Emerson, eds. \(2019\) *Comparative Administrative Law Research Handbooks in Comparative Law* \(2nd ed., Edward Elgar\).](#)
- [Ginsburg, T. and R. Dixon, eds., \(2011\). *Comparative constitutional law* \(Edward Elgar\)](#)
- [Cane, P., & , H. Kritzer \(Eds.\). \(2012\). *The Oxford handbook of empirical legal research* \(Oxford University Press\)](#)
- [Rosenfeld, M., & A. Sajó \(2012\). *The Oxford handbook of comparative constitutional law* \(Oxford University Press\)](#)
- [Reimann, M and Zimmermann, R. \(2019\) *Oxford Handbook of comparative law* \(2nd ed., Oxford University Press\)](#)
- [Tushnet, M. \(ed\) \(2017\) *Comparative Constitutional Law* \(Edward Elgar\)](#)

- Ginsburg, Tom, and Albert HY Chen, eds (2008). *Administrative law and governance in Asia: comparative perspectives* (Routledge)
- Government Legal Department (2016) 'A Judge Over Your Shoulders' (JOYS), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/538447/160708_JOYS_final.pdf,

INTRODUCTION

Seminar 1 – WHAT DOES LAW HAVE TO DO WITH PUBLIC POLICY? ARE COURTS POLICY ACTORS? (Thurs 19 Sept 2019, 13.30-15.10)

Course introduction:

- Interactions law, politics and public policy;
- role of courts as policy actors;
- core aspects of international and constitutional law;
- focus on administrative law;
- law in context, socio-legal and governance perspectives;
- comparative approach

Key questions: What is law? What is the role of law in public policy? Can policy problems can be solved by law, and if so, which ones? What makes courts important policy actors? What can we learn from comparing legal frameworks? What are the main contemporary challenges facing administrative law?

Mandatory reading

- Hirschl, R (2006) '[The Judicialization of Politics](#)', in R.E Goodin, *Oxford Handbook of Political Sciences* 253-275, in particular [section 1 \(p 254-258\) and 3 \(p.263-271\)](#)
- Zemans, F. K. (1983). '[Legal mobilization: The neglected role of the law in the political system](#)'. *American Political Science Review*, 77(3), 690-703, [read 692-696](#)
- Bell, J.S. (2019), '[Comparative administrative law](#)', in Mathias Reimann and Reinhard Zimmerman (eds) . *The Oxford Handbook of Comparative Law* (2nd ed, Oxford University Press) 1251-1275, [read section 1 and 2, p. 1251-1264](#)

Further reading

- Michaels (2019) '[The functional method in comparative law](#)' in Mathias Reimann and Reinhard Zimmerman (eds) . *The Oxford Handbook of Comparative Law* (2nd ed, Oxford University Press), p. 16-28
- Glenn, P (2019) 'Comparative Legal Families and Comparative Legal Traditions' in Mathias Reimann and Reinhard Zimmerman (eds) . *The Oxford Handbook of Comparative Law* (2nd ed, Oxford University Press) 436-437 ('legal families...')
- Barak-Erez, D. (2017) 'Three questions of privatization' in S. Rose-Ackerman, P.L Linseth and B. Emerson (eds.), *Comparative Administrative Law*, Research Handbooks in Comparative Law. Edward Elgar, 533-551
- Ginsburg, T. (2008) 'Judicialization of administrative governance: causes, consequences and limits'. 3 *NTU L. Rev.*1.
- Mc Conwill, M. and Hong Chui, W. (2007), 'Introduction and Overview', in Mc Conwill, M. and Hong Chui, W. (eds) *Research Methods for Law*, Edinburg University Press, p. 1-2, 3-7.
- Glendon, M.A. (1991), 'Rights Talk: The Impoverishment of Political Discourse' (NewYork:Free Press)

SOURCES

Seminar 2 – CONSTITUTIONS: FRAMING POLICY OPTIONS? (Thurs 26 Sept 2019, 13.30-15.10)

Constitutional law as a basis and framework for policy-making and implementation; constitutions as empowering and constraining instruments.

- What is a constitution? (written/unwritten, political/social, stability, etc.)
- Why make a constitution?
- Who makes the constitution? (constitution-making processes and constitutional amendments)
- Constitutional transplants: do constitutional ideas travel (well)?
- Are constitutions clear? If not, who decides on their actual meaning and implications, and how?

Key question: Can we change societies through constitutional law (constitutional engineering)? Or do constitutions consolidate the political and social status quo? Does the constitution matter?

Mandatory reading

- D.S. Law 'Constitutions' (2010) in P. Case and H.M. Kritzer (ed) , *The Oxford handbook on Empirical Legal Research* (OUP) 376-398.

Further recommended reading (for an understanding of the Hungarian constitutional context)

- Scheppele, K.L. and Kovacs, K (2017) 'Hungary's post-socialist administrative law regime; in S. Rose-Ackerman, P.L Linseth and B. Emerson, eds. (2017), *Comparative Administrative Law*, Research Handbooks in Comparative Law. Edward Elgar, 119-136 (to get familiar with the specific legal context of the country in which you are currently studying)

Further reading

- Böckenförde, M., Helding, N., and Wahiu, W. (2011), 'A practical guide to constitutiona-building' (IDEA), at <https://www.idea.int/sites/default/files/publications/a-practical-guide-to-constitution-building.pdf>
- Tushnet M. (2014), *Advanced Introduction to Comparative Constitutional Law* (Edward Elgar)
- Ginsburg T. (2017), 'Written constitutions and the administrative state: on the constitutional character of administrative law' in S.Rose-Ackerman, P.L Linseth and B. Emerson (eds.), *Comparative Administrative Law*, Research Handbooks in Comparative Law. Edward Elgar, 60-70.
- Von Bogdandy et al. (2016). 'Introduction: *Ius constitutionale commune* en America Latina: A Regional approach to transformative constitutionalism' in Armin von Bogdandy, Eduardo Ferrer, Mariela Morales & Flavia Piovesan (eds.) *Transformative Constitutionalism in Latin America: A New Latin American Ius Commune*, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2859583
- Fowkes J. (2016). 'Transformative Constitutionalism and the Global South: The View from South Africa' in Armin von Bogdandy, Eduardo Ferrer, Mariela Morales & Flavia Piovesan (eds.) *Transformative Constitutionalism in Latin America: A New Latin American Ius Commune* (Oxford University Press, Forthcoming). Available at SSRN: <https://ssrn.com/abstract=2847579>
- Jung, C., Hirschl, R. and Rosevear, E. (2014), 'Economic and Social Rights in National Constitutions', *American Journal of Comparative Law*, 62 (4), December, 1043–93

- Mark Tushnet (2015), 'Authoritarian Constitutionalism', *Cornell Law Review*, 100 (2), 391–461
- G. Frankenberg 'Chapter 8. Comparative constitutional law' in M. Bussari and U. Matei (eds) *The Cambridge Companion to Comparative Law* (Cambridge University Press, 2012) 171-191
- Mubangizi, J. C. (2006). The Constitutional Protection of Socio-Economic Rights in selected African countries: a comparative evaluation. *African Journal of Legal Studies*, 2(1), 1-19.

Presentation

Present a (controversial) case of constitution-making, constitutional amendment, or constitutional interpretation (by a court) aimed at preventing, forcing or provoking policy or social change, and discuss it in light of the issues addressed in the core reading and additional sources.

Seminar 3 – INTERNATIONAL LAW: CONSTRAINTS AND OPPORTUNITIES FOR DOMESTIC POLICY CHANGE (Thurs 3 Oct 2019, 13.30-15.10)

Introduction to the role of international, regional, supranational law in framing and enabling policies

Focus on international and regional human rights instruments (in particular the European Convention on Human Rights), and European Union law.

International and regional instruments as constraints on policy-making and lever for policy-change.

The reach and limits of international and supranational law.

The openness/closeness of domestic legal and policy regime to international legal influence.

The role of international and supranational courts.

Legal mobilization and strategic use of international law instruments (strategic litigation, rights-based advocacy...)

Key questions: What is international law, who makes it and how? Can international/regional/supranational law produce actual policy change? If so, how? Through which mechanisms? Are there limits to how much (domestic) policy change can result from international law instruments? What roles do international organizations, and international and domestic courts play in the process?

Mandatory reading

- T. Ginsburg and G. Shaffer (2010), '[How does International Law Work?](#)' In P. Case and H.M. Kritzer (ed), *The Oxford handbook on Empirical Legal Research* (OUP), 756-780.

Recommended reading

- Sandholz, W. and Whytock, C.W. (2017), 'The politics of international law' *Research Handbook on the politics of international law*, 1-24, **read only 1-14**

Further reading

- Shelton, D. (2006). Normative Hierarchy in International Law. *The American Journal of International Law*, 100(2), 291-323; <http://www.jstor.org/stable/3651149>
- Anagnostou, D. (2010). 'Does European human rights law matter? Implementation and domestic impact of Strasbourg Court judgments on minority-related policies.' *The International Journal of Human Rights* 14.5 (2010): 721-743.
- Risse, T., & Sikkink, K. (1999). The socialization of international human rights norms into domestic practices: introduction. *Cambridge Studies in International Relations*, 66, 1-38
- Lutz, E. L., & Sikkink, K. (2000). International human rights law and practice in Latin America. *International Organization*, 54(03), 633-659.

- Cichowski, R.A., 2006. 'Courts, rights, and democratic participation'. *Comparative Political Studies*, 39(1), pp.50-75.
- Simmons, B.A. (2009) *Mobilizing for human rights: international law in domestic politics*. (Cambridge University Press), Ch. 9 – 349-380
- Stone Sweet, and H. Keller (2008) "Assessing the Impact of the ECHR on National Legal Systems" (2008). *Faculty Scholarship Series.*, Paper 88., http://digitalcommons.law.yale.edu/fss_papers/88, Read p. 677-689, 695-701.

Presentation

Identify a case study which illustrates the impact of international or regional instruments or court decisions on policy making at national level, or at least attempts (even if failed ones) at leveraging international legal instruments to trigger or prevent policy reform. Reflect on the case, in the light of the core reading(s).

Seminar 4 LAWS AND REGULATIONS (Thurs 10 Oct 2019, 13.30-15.10)

Introduction to the diversity of legal instruments commonly referred to as law(s) in lay language, and as sources of law in legal jargon. Discussion of the notion of hierarchy of norms and legal pluralism. Emphasis placed on differences between acts resulting from legislative and those which are the outcome of regulatory processes, between binding and non-binding acts, between general (rule-making) and individual (adjudication) measures.

- Overview of legislative/parliamentary, executive, regulatory, and administrative processes which lead to the production of 'laws'.
- Regulation: role of ministries/government) and independent regulatory agencies; regulatory modes (command-and-control, self-regulation, co-regulation, market-based regulation, etc.) and processes (participation, consultation, hearings, 'notice-and-comment', notification, information, publication...)
- General v individual 'normative' acts; 'Rule-making' v 'adjudication'.
- Legislating/regulating in the shadow of courts.

Key questions: What are the differences between parliamentary laws, statutes, primary/secondary legislation, orders, regulations, decrees, ordinances, administrative decisions, and other forms of legally binding acts? What is soft law? Who makes those 'laws'? How? How do they relate to one another? How are they used to change, develop, or implement policies? What are the particular challenges of regulation beyond the state (private/supranational/global regulatory regimes)

Mandatory reading

- Bell, J.S. (2019), '[Comparative administrative law](#)', in Mathias Reimann and Reinhard Zimmerman (eds) . *Oxford Handbook of Comparative Law* (2nd ed, Oxford University Press) 1251-1275; [read 1267-1268](#) (administrative procedures)
- Kingsbury, B., Krisch, N., & Stewart, R. B. (2005). '[The emergence of global administrative law](#)', 68 (3/4) *Law and contemporary problems* 15-61, [read from p. 15-37](#)
- Médecins sans frontières '[The practical guide to humanitarian law](#)', 'Hierarchies of norms': <https://guide-humanitarian-law.org/content/article/3/hierarchy-of-norms/>
- Carey, M.P. '[The Federal Rule-Making Process: An Overview](#)' <https://fas.org/sgp/crs/misc/RL32240.pdf>, chart p. 2.

Further reading

- Wim Voermans, Hans-Martien ten Napel & Reijer Passchier (2015) Combining efficiency and transparency in legislative processes, *The Theory and Practice of Legislation*, 3:3, 279-294, DOI: [10.1080/20508840.2015.1133398](https://doi.org/10.1080/20508840.2015.1133398), section 4: Highlights of the study – Bird's eye view
- Zander, Michael (2015). *The law-making process*. Bloomsbury Publishing, 2015.
- Pizzorusso, A., & Capotorti, F. (1988). *Law in the making: a comparative survey*. Springer-verlag.
- Barnes, J (2017), 'Three generations of administrative procedure' in S. Rose-Ackerman, P.L Linseth and B. Emerson (eds.), *Comparative Administrative Law*, Research Handbooks in Comparative Law. Edward Elgar, 302-317
- Rose-Ackerman S. (2017) 'Citizens and technocrats: an essay on trust, public participation and government legitimacy' in S. Rose-Ackerman, P.L Linseth and B. Emerson (eds.), *Comparative Administrative Law*, Research Handbooks in Comparative Law. Edward Elgar, 251-267, read from 251-261
- Teubner, G (1997). 'Legal pluralism in the World Society' in Teubner, G. (eds) *Global Law Without a State*. Brookfield: Dartmouth 1997, 3-28
- Ladeur, K.H (1999) 'The theory of autopoiesis as an approach for a better understanding of postmodern law: from the hierarchy of norms to the heterarchy of changing patterns of legal, EU Working Paper, relationships' https://cadmus.eui.eu/bitstream/handle/1814/148/law99_3.pdf?sequence=1
- Maggetti, M. (2009). The role of independent regulatory agencies in policy-making: a comparative analysis. *16(3) Journal of European Public Policy*, 450-470.
- Furlong, S. R., & Kerwin, C. M. (2004). Interest group participation in rule making: A decade of change. *Journal of Public Administration Research and Theory*, 15(3), 353-370.
- Custos, D. (2017) The French Code of Administrative Procedure: An Assessment' in S.Rose-Ackerman, P.L Linseth and B. Emerson (eds.), *Comparative Administrative Law*, Research Handbooks in Comparative Law. Edward Elgar, 284-300.
- Rose-Ackerman, S (2012) 'The regulatory state' in Rosenfeld, M., & A. Sajó (2012). *The Oxford handbook of comparative constitutional law*. Oxford University Press 671-684.

Presentation

Identify a case of legislative or regulatory (rule-making) process through which a particularly controversial policy was designed/implemented (if there is one presentation, focus on rule-making; if there are two presentations, each presenter focuses on one particular mode of law-making). You may decide to choose a particularly contested or problematic case. You may choose one of the cases presented in the readings below, but you are encouraged to pick your own. Reflect on the case study, having in mind the core reading(s).

Suggestions for case study presentations (only indicative)

- G. Jaffe (2004). 'Regulating transgenic crops: a comparative analysis of different regulatory processes'. *Transgenic Research*, 13(1), 5-19.
- M. D'Alberti (2010), 'Administrative law and the public regulations of markets in the global age' in S. Rose-Ackerman and P.Linseth (eds), *Comparative Administrative law* (Edward Elgar Publishing), 63-77; Weber (2010). 'New governance, financial regulation, and the challenges to legitimacy: The example of the internal approach to capital adequacy regulation' 63:2 *Administrative Law Review* 783-869, 87p
- Dingwerth, K. (2005). The democratic legitimacy of public-private rule making: What can we learn from the World Commission on Dams?. *Global Governance: A Review of Multilateralism and International Organizations*, 11(1), 65-83.

- F. Bignami. 'Designing Administrative Law: Free trade v Accountability Networks', I connect: <http://www.iconnectblog.com/2012/10/designing-administrative-law-free-trade-vs-accountability-networks/>
- P. Day, & R. Klein (1987). The regulation of nursing homes: a comparative perspective. *The Milbank Quarterly*, 303-347.
- E. Meidinger (2006). The administrative law of global private-public regulation: the case of forestry. *European Journal of International Law*, 17(1), 47-8
- Yeh, Jiunn-rong (2010) 'Experimenting with independent commissions in new democracies with a civil law tradition: the case of Taiwan' in Rose-Ackerman, S., & Lindseth, P. L. (Eds.). (2010). *Comparative administrative law*. Edward Elgar Publishing, 246.
- P.L. Strauss. (2011) 'Possible controls over the bending of regulatory science' in Anthony et al, *Values in global administrative law* (Hart) 125.
- M. Zander (2015) *The Law making Process*, Oxford University Press, Chap. 1 and 2.
- Custos, D (2019). 'The French Code of Administrative Procedure' in

Seminar 5 – PRECEDENT AND CASE LAW (MONDAY 14 Oct 2019, 17.20-19.00, room TBC)

Introduction to case law as a source of law; differences between common law/civil law systems; basic elements of the judicial process; legal reasoning (eg precedent, interpretation).

Judge as the 'bouche de la loi' or 'legislator'?

Specific features of the judicial process (triadic, legal representation, standing issues, participation of third parties, concrete situation, facts and issues of the case, duty to decide, etc), and legal reasoning.

Key question: Do judges make law when they interpret and apply it? Do judges decide in the same way as other policy actors? What are the key difference between judicial and other law-making processes? Which actors does the judicial process empower?

Mandatory reading

- McGuire, K.T. (2008) 'The judicial process and public policy' in Sarah A. Binder, R. A. W. Rhodes, and Bert A. Rockman (eds) *The Oxford Handbook of Political Institutions*.
- Ellsworth, Phoebe C. (2005), 'Legal Reasoning.' In K. J. Holyoak and R. G. Morrison Jr. (eds), *The Cambridge Handbook of Thinking and Reasoning*, New York: Cambridge Univ. Press, 685-704, **read at least until p. 696**

Further reading

- Michal Bobek (2008), 'The Fortress of Judicial Independence and the Mental Transitions of the Central European Judiciaries'. 14: 1 *European Public Law* 99-123
- Von Bogdandy, A., & Venzke, I. (2011). Beyond dispute: International judicial institutions as lawmakers. 12:5 *German Law Journal* 979-1003, read till 997.
- Galanter, M. (1974). Why the "haves" come out ahead: Speculations on the limits of legal change. *Law & society review*, 9(1), 95-160.
- Bobek, Michal. *Comparative reasoning in European supreme courts*. OUP Oxford, 2013.
- P.M. Perell, 'Stare decisis and techniques of legal reasoning and argument' (1987) 2:2,3 *Legal Research* <http://legalresearch.org/writing-analysis/stare-decisis-techniques/>

- Bloom, L. H. (2009). *Methods of interpretation: how the Supreme Court reads the Constitution*. Oxford University Press on Demand.
- L.M Eig, 'Statutory Interpretation: General Principles and Recent Trends' (CRS report for Congress, 2011), Executive summary + introduction, p 1-2. <https://www.fas.org/sgp/crs/misc/97-589.pdf>
- Article 31 of the 1969 Vienna Convention on the Law of Treaties (<https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>)
- E. Margolis, 'Closing the floodgates: making persuasive policy arguments in appellate briefs' *Montana Law review* 62:1 (2001), read introduction and conclusions, <http://scholarship.law.umt.edu/cgi/viewcontent.cgi?article=2179&context=mlr>
- *American Journal of Comparative Law*, 59 (2), Spring, 463-90
- Tushnet, Mark. *Weak courts, strong rights: Judicial review and social welfare rights in comparative constitutional law*. Princeton University Press, 2009. Ch. 1 – Why comparative constitutional law
- Katharine Clark and Matthew Connolly, 'A guide to reading, interpreting and applying statutes' (The Writing Center at GULC, 2006)
- Shapiro, M., & Sweet, A. S. (2002). *On law, politics, and judicialization*. Oxford University Press.

<https://www.law.georgetown.edu/academics/academic-programs/legal-writing-scholarship/writing-center/upload/statutoryinterpretation.pdf>

Presentation

Present a case in which the court made a decision which set or changed a precedent, or introduced a new rule/principles which had important implications for policy, using extensive or daring methods of interpretation. Make sure you dedicate some attention in your presentation to important aspects of the judicial process and legal reasoning involved, with reference to relevant aspects of the core readings.

MECHANISMS

Seminar 6 – JUDICIAL REVIEW (Thurs 17 Oct 2019, 13.30-15.10)

Introduction to different types of 'judicial review' in the broad sense, including review of the legality of legal acts and other forms of judicial remedies against public authorities' acts or inactions or that of private actors performing public functions.

Distinction between 'constitutional' (judicial) review of legislation and 'administrative' judicial review of administrative decisions; between actions seeking annulment of legal acts and other forms of remedies (injunctions, tort compensation)

Institutional aspects: constitutional courts, supreme courts, ordinary courts, administrative courts, specialized courts and tribunals.

Admissibility v substance (merits).

Admissibility: notion of reviewable acts, standing criteria, time limits, etc

Merits: grounds for review (eg human rights), principles (e.g proportionality)

Remedies: invalidation of the contested act + prohibiting, mandatory and quashing

orders, injunctions, declarations, damages, interim or emergency reliefs, etc
Standards, scope, intensity of control (close scrutiny v deference)

Mandatory reading

- M. Tushnet (2019) '[Comparative constitutional law](#)' in Mathias Reimann and Reinhard Zimmerman (eds) . *The Oxford Handbook of Comparative Law* (2nd ed, Oxford University Press) 1194-1221, [read p. 1208-1213](#).
- Bell, J.S. (2019), '[Comparative administrative law](#)', in Mathias Reimann and Reinhard Zimmerman (eds) . *Oxford Handbook of Comparative Law* (2nd ed, Oxford University Press) 1251-1275; [read 1268-1272](#) (comparative legal redress)
- Bignami, F. (2012). '[Comparative Administrative Law](#)'. *The Cambridge Companion to Comparative Law* (Cambridge University Press, 2012) 145-170 (174-155) – [Section 3.1 Systems of Judicial review](#)
- European Parliament (2012), 'Standing up for your right(s) in Europe: A Comparative study on Legal Standing (Locus Standi) before the EU and Member States' Courts' (DG INTERNAL POLICIES PE 462.478), [read pp 65-69](#)
<http://www.europarl.europa.eu/committees/fr/studiesdownload.html?languageDocument=EN&file=75651>
- Van Gerven, W., Lever, J. and Larouche, P (2000), *Cases, Materials and Text on National, Supranational and International Tort Law*, 358-394 ([comparative overview 388-394](#))

Further reading

- For an overview of judicial mechanisms in European states, see <http://www.aca-europe.eu/index.php/en/tour-d-europe-en>
- Dari-Mattiacci, G., Garoupa, N., & Gomez-Pomar, F. (2010). 'State liability' *European Review of Private Law*, 18(4), 2010-01, in particular p.3-18
- Cees Van Dam, *European tort law* (Oxford, Oxford University Press, 2013)
- Asimow, M. and Y. Dotan (2017) 'Judicial review of agency action in the US and Israel- the choice between open and closed review' in S. Rose-Ackerman, P.L Linseth and B. Emerson (eds.), *Comparative Administrative Law*, Research Handbooks in Comparative Law. Edward Elgar, 446-461.
- Craig, P. (2017) 'Judicial review of questions of law – A comparative perspective' in S.Rose-Ackerman, P.L Linseth and B. Emerson (eds.), *Comparative Administrative Law*, Research Handbooks in Comparative Law. Edward Elgar, 393-404

Presentation

Identify and present a successful or failed attempt a challenging a legislative acts, regulatory measures or an individual decision, and expose the sequence, nature and context of the decision-making process. If there are two presentations in the class, one should present a case of constitutional review, the other a case of administrative judicial review. If there are three presentations in the class, one should present a case in which parties brought an action in compensation (damages) against a public authority or a private actor performing public functions, or sought interim/emergency relief. Present the core aspects, referring back to the core reading where relevant.

Suggestions for presentations (indicative)

- Alemanno, A., & Mahieu, S. (2008). The European Food Safety Authority before European Courts - Some reflections on the judicial review of EFSA scientific opinions and administrative acts. *European Food and Feed Law Review*, 5.
- Bernatt, M. (2010). The Control of Polish Courts Over the Infringements of Procedural Rules by the National Competition Authority: Case Comment to the Judgement of the Supreme Court of 19 August 2009-Marquard Media Polska (Ref. No. Iii SK 5/09). *Yearbook of Antitrust and Regulatory Studies*, 2010.
- Huang (2010). 'Judicial deference to agency discretion in new democracies: observations on constitutional decisions in Poland, Taiwan and South Africa' in S.Rose-Ackerman, P.L Linseth and B. Emerson (eds.), *Comparative Administrative Law*, Research Handbooks in Comparative Law. Edward Elgar, 478-496.
- Kadomatsu, N. (2017) 'The legal management of urban space in Japan' and the role of the judiciary in S.Rose-Ackerman, P.L Linseth and B. Emerson (eds.), *Comparative Administrative Law*, Research Handbooks in Comparative Law. Edward Elgar, 497-512
- Kayden, J. S. (1991). Land-Use Regulations, Rationality, and Judicial Review: The RSVP in the Nollan Invitation (Part I). *Urb. Law.*, 23, 301.
- Krommendijk, J. 'The seal product cases: the ECJ's silence on admissibility in Inuit Tapiriit Kanatami II' - See more at: <http://europeanlawblog.eu/?p=2843#sthash.dHJnzq2G.dpuf>
- Lewis, X. (2006). Standing of Private Plaintiffs to Annul Generally Applicable European Community Measures: if the System is Broken, where Should it be Fixed. *Fordham Int'l LJ*, 30, 1496.
- McDonald, B. P. (2005). Government Regulation or Other Abridgements of Scientific Research: The Proper Scope of Judicial Review under the First Amendment. *Emory LJ*, 54, 979.
- Melnick, R. S. (1983). *Regulation and the courts: The case of the Clean Air Act*. Brookings Institution Press.
- Stewart, R. B. (1976). Development of Administrative and Quasi-Constitutional Law in Judicial Review of Environmental Decision-making: Lessons from the Clean Air Act, The. *Iowa L. Rev.*, 62, 713.
- Tobler, C. (1999). Standard of Judicial Review of Administrative Agencies in the US and EU: Accountability and Reasonable Agency Action, The. *BC Int'l & Comp. L. Rev.*, 22, 213.
- Türk, A. H. (2013). Oversight of Administrative Rulemaking: Judicial Review. *European Law Journal*, 19(1), 126-142.
- Young, M. K. (1984). Judicial review of administrative guidance: governmentally encouraged consensual dispute resolution in Japan. *Columbia Law Review*, 84(4), 923-983.
- Australian rating agency case (Bathurst Regional Council v Local Government Financial Services Pty Ltd (No 5) [2012] FCA 1200 (5 November 2012)
- Bussani, M. (2010). Credit Rating Agencies' Accountability: Short Notes on a Global Issue. *Global Jurist*, 10(1).
- Reyes, Litigious climate harming public services says think tank, Law Gazette, 10 Sept 2012, at <http://www.lawgazette.co.uk/news/litigious-climate-harming-public-services-says-thinktank>

Optional Guest lecture: Ivan Gregoriev, Higher School of Economics, St Petesburg (TBC, between 10-14 October 2019): judicial politics in authoritarian regimes.

Seminar 7 – SOLVING DISPUTES WITHOUT COURTS: ALTERNATIVE DISPUTE RESOLUTION (ADR) (Thurs 24 Oct 2019, 13.30-15.10)

Introduction to non-judicial mechanisms to enforce legal norms against public authorities and private actors performing public functions.

Informal modes: protests, civil disobedience, strikes

Formal means: petition to parliaments and parliamentary questions, administrative appeals, complaints to administrative hierarchy, complaint to Ombudsmen, complaint to supervisory and monitoring bodies, appeal to a 'tribunal', Alternative Dispute Resolution (ADR) such as mediation, arbitration, conciliation, etc...

Mandatory reading

- Dragos, D. C., & Neamtu, B. (Eds.). (2014). *Alternative dispute resolution in European administrative law*. Springer Berlin Heidelberg, Chapters 17 (administrative appeals), 18 (ombudsmen) and 19 (mediation)
- For an overview of judicial and non-judicial mechanisms in European states, see <http://www.aca-europe.eu/index.php/en/tour-d-europe-en>

Further reading

- For an overview of judicial and non-judicial mechanisms in European states, see <http://www.aca-europe.eu/index.php/en/tour-d-europe-en>
- Dodson, M., & Jackson, D. (2004). 'Horizontal accountability in transitional democracies: the human rights ombudsman in El Salvador and Guatemala'. *Latin American Politics and Society*, 46(4), 1-27.
- Ugglia, F. (2004). The Ombudsman in Latin America. *Journal of Latin American Studies*, 36(03), 423-450.
- T. Raymond, 'Alternative Dispute Resolution in the Human Rights and Anti-Discrimination Law Context: Reflections on Theory, Practice and Skills (2006), available at: <https://www.humanrights.gov.au/our-work/complaint-information-service/publications/alternative-dispute-resolution-human-rights-and>
- EQUINET, 'Equality bodies, current challenges: an EQUINET perspective' P. 16-20 http://www.equineteurope.org/IMG/pdf/Current_Challenges_Perspective_MERGED_EN.pdf
- Menkel-Meadow, C. (2004). 'From Legal Disputes to Conflict Resolution and Human Problem Solving: Legal Dispute Resolution in a Multidisciplinary Context'. *Journal of Legal Education*, 54(1), 7-29.
- S. Boyron, 'Mediation in Administrative Law: The Identification of Conflicting Paradigms' (2007) 13 *European Public Law*, Issue 2, pp. 263–288
- Gretchen Helmke and Steven Levitsky (2004). 'Informal Institutions and Comparative Politics: A Research Agenda.' *Perspectives on Politics*, 2, pp 725-740. doi:10.1017/S1537592704040472.
- Hertogh, M. (2001). Coercion, cooperation, and control: Understanding the policy impact of administrative courts and the ombudsman in the Netherlands. *Law & Policy*, 23(1), 47-67.
- H. Akkink, 'The Ombudsman as the Fourth Power: On the Foundations of Ombudsman Law in Comparative Perspective' in Stroick and van der Linen (eds) *Judicial lawmaking and administrative law* (Intersentia, 2005)

Presentation:

Identify and present a situation in which individuals, companies or NGOs used non-judicial mechanisms to trigger policy or organizational change, implement policies or improve governance, preferably beyond an individual case. You may choose one of the cases presented in the readings below, but you are encouraged to find your own. Present the issues, referring back to the core reading where relevant.

Suggested reading for presentations (indicative)

- De Witte, B. (2012). New institutions for promoting equality in Europe: legal transfers, national bricolage and European governance. *American Journal of Comparative Law*, 60(1), 49-74.
- Ruggiero, R. (2013). Ombudspersons for children in selected decentralised European States: implementing the CRC in Belgium, Spain and the United Kingdom. *Interdisciplinary Journal of Family Studies*, 18(2).
- Flekkøy MG, 'The Ombudsman for Children – Conception and development' in B. Franklin (ed) *The New Handbook of Children's Rights – Comparative policy and practice* (Routledge 2002) 404
- Fombad, C. M., (2001). 'The enhancement of good governance in Botswana: a critical assessment of the Ombudsman Act, 1995'. *Journal of Southern African Studies*, 27(1), 57-77.
- Gergory and Giddins *Righting Wrongs – The Ombudsman in six continents* (IOS Press 2000)
- Hertogh, M. (2001), Coercion, Cooperation, and Control: Understanding the Policy Impact of Administrative Courts and the Ombudsman in the Netherlands. *Law & Policy*, 23: 47–67.
- McKenney and Fallrsberg (eds) *Protecting Patients' Right – A comparative study of Ombudsman in Healthcare* (Radcliff medical Press, 2004)
- O'Leary, R. and Raines, S. S. (2001), Lessons Learned from Two Decades of Alternative Dispute Resolution Programs and Processes at the U.S. Environmental Protection Agency. *Public Administration Review*, 61: 682–692.
- Serrano, F. (2007). 'The Taxpayer's Rights and the Role of the Tax Ombudsman: an Analysis from a Spanish and Comparative Law Perspective'. *Intertax*, 35(5), 331-340.
- Zui-xin, Z. H. U. (2006). 'On Administrative Mediation System in Social Transition' [J]. *Administrative Law Review*, 2, 012.

RIGHTS

Seminar 8 – DUE PROCESS (MONDAY 4th Nov 2019, 17.20-19.00, room TBC)

Introduction to core procedural rights and principles which frame the making and implementation of public policies.

Right to good administration, (procedural) 'Due Process' (rights of the defense, right to a hearing...), duty to give reasons, transparency, access to document, participation, etc.

Role of international and constitutional sources of rights.

Role of various actors, including NGOs and courts, in developing and protecting rights.

Key questions: To what extent do core procedural principles constraint public policy? Do they have

impact on policy substance? Do they favor/undermine particular actors? Do they help holding policy actors accountable? To what extent do procedural guarantees constrain policy actions?

Mandatory reading

- Besson, S. (2019) 'Comparative law and human Rights' in Mathias Reimann and Reinhard Zimmerman (eds) . *The Oxford Handbook of Comparative Law* (2nd ed, Oxford University Press), 1223-1249, [read 1223-1230](#).
- Bignami, F. (2012). '[Comparative Administrative Law](#)'. *The Cambridge Companion to Comparative Law* (Cambridge University Press, 2012) 145-170 (174-155) – [Section 3.2.1 Procedural Principles](#)
- Government Legal Department (2016) 'A Judge Over Your Shoulders' (JOYS), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/538447/160708_JOYS_final.pdf, [p. 39-48](#)

Further reading

- Cassese, S (2011) 'A Global Due Process of Law' in Anthony et al., *Values in global administrative law*. Hart)
- Brake, B., & Katzenstein, P. (2013). 'Lost in Translation? Nonstate Actors and the Transnational Movement of Procedural Law'. *International Organization*, 67(4), 725-757.

Presentation

- Identify and present a case study where failure comply with a procedural or substantive right/principle in the adoption of legislative, regulatory or individual measures (and litigation about it) had important institutional and policy implications. Reflect on it in light of the core readings.

Suggested readings for presentation (indicative)

- Ginsburg and Scheinin (2011), 'Judicial Power, Due Process and Evidence in the Security Council 1267 Terrorist Sanction Regime: The Kadi II Conundrum', at EUI Working Paper, RSCAS 2011/44, at http://cadmus.eui.eu/bitstream/handle/1814/18238/RSCAS_2011_44.pdf?sequence=1
- Reich, J. (2008). 'Due process and sanctions targeted against individuals pursuant to resolution 1267' (1999). *Yale Journal of International Law*, 33(2), 505.
- Cases in Rose-Ackerman, Susan, Stefanie Egidy, and James Fowkes. *Due Process of Lawmaking*. (Cambridge University Press, 2015)
- Emanuel, E. J. (1997). 'The future of euthanasia and physician-assisted suicide: beyond rights talk to informed public policy'. *Minn. L. Rev.*, 82, 983.
- Cole, David. "Judging the Next Emergency: Judicial Review and Individual Rights in Times of Crisis." *Michigan Law Review* 101.8 (2004);
- Roach, Kent. "Three Year Review of Canada's Anti-Terrorism Act: The Need for Greater Restraint and Fairness, Non-Discrimination, and Special Advocates, The." *UNBLJ* 54 (2005): 308.
- Bracha, B. (2001). 'Constitutional Upgrading of Human Rights in Israel: The Impact on Administrative Law'. *U. Pa. J. Const. L.*, 3, 581.
- Gross, E. (2001). 'Human Rights, Terrorism and The Problem of Administrative Detention in Israel: Does a Democracy Have the Right to Hold Terrorists as Bargaining Chips'. *Ariz. J. Int'l & Comp. L.*, 18, 721.

- Yamin, A. E., & Gloppen, S. (Eds.). (2011). *Litigating health rights: Can courts bring more justice to health?* (Vol. 3). Harvard University Press.

Seminar 9 –SUBSTANTIVE RIGHTS (Thurs 7 Nov 2019, 13.30-15.10)

Introduction to key substantive rights and principles: non-discrimination & human rights

Mandatory reading

- Besson, S. (2019) 'Comparative law and human Rights' in Mathias Reimann and Reinhard Zimmerman (eds) . *The Oxford Handbook of Comparative Law* (2nd ed, Oxford University Press), 1223-1249, **read 1223-1230**,
- Bignami, F. (2012). 'Comparative Administrative Law'. *The Cambridge Companion to Comparative Law* (Cambridge University Press, 2012) 145-170 (174-155) –**Section 3.2.2 Substance Principles**
- Government Legal Department (2016) 'A Judge Over Your Shoulders' (JOYS), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/538447/160708_JOYS_final.pdf, **p. 39-48**

Further reading

- Guiraudon, V. (2009). 'Equality in the making: implementing European non-discrimination law'. *Citizenship Studies*, 13(5), 527-549.
- Scheingold, S. A. (2010). *The politics of rights: Lawyers, public policy, and political change*. University of Michigan Press.
- Fredman S. F. (2008). *Human rights transformed: positive rights and positive duties*. OUP Oxford.
- Tushnet, M. (2009). *Weak courts, strong rights: judicial review and social welfare rights in comparative constitutional law*. Princeton University Press.

Key questions: To what extent do core fundamental/human rights shape public policy? To what extent does framing an issue as a legal right issue affect the policy process? What are the pros and cons of framing policy issues in terms of human rights?

Presentation

- **Identify and present a case study where failure comply with a substantive right/principle in the adoption of legislative, regulatory or individual measures (and litigation about it) had important institutional and policy implications. Reflect on it in light of the core readings.**

Suggested reading for presentation

Vanhala, L. (2006). Fighting discrimination through litigation in the UK: the social model of disability and the EU anti-discrimination directive. *Disability & Society*, 21(5), 551-565.

Ferraz, O. L. M. (2010). Harming the poor through social rights litigation: lessons from Brazil. *Tex. L. Rev.*, 89, 1643.

Gloppen, S. (2008). Litigation as a strategy to hold governments accountable for implementing the right to health. *Health and human rights*, 21-36.

Scheingold, S. A. (2010). *The politics of rights: Lawyers, public policy, and political change*. University of Michigan Press.

Bracha, B. (2001). 'Constitutional Upgrading of Human Rights in Israel: The Impact on Administrative Law'. *U. Pa. J. Const. L.*, 3, 581.

- Burstein, P. (1991). Legal mobilization as a social movement tactic: the struggle for equal employment opportunity. *American Journal of Sociology*, 96(5), 1201-1225.

Seminar 10 - BALANCING RIGHTS AND INTERESTS IN POLICY-MAKING AND IMPLEMENTATION (Thurs 21 Nov 2019, 13.30-15.10)

Introduction to legal 'devices' which are used to balance competing rights, values and interests in policy-making and implementation.

Tensions: individual right v. individual right, individual rights v public interest, collective v individual rights; right v democratic representation

Discussion of proportionality and other principles (reasonableness, deference, precaution, margin of appreciation, subsidiarity, etc...).

Key-question: When is a measure proportionate? How much does proportionality reasoning constrain and empower judges? Is proportionality suitable to balance competing interests? Which other techniques are used judges to decide between competing rights, interests, objectives, levels of action?

Mandatory reading

- Matthews, Jude (2017) 'Proportionality review in administrative law' in S.Rose-Ackerman, P.L Linseth and B. Emerson (eds.), *Comparative Administrative Law*, Research Handbooks in Comparative Law. Edward Elgar, 405-418.

Further reading

Moshe Cohen-Eliya and Iddo Porat (2011), 'Proportionality and the Culture of Justification', 59(2) *The American Journal of Comparative Law* 463-490.

Presentation

Identify a case where the balancing between different rights and interests was particularly delicate or controversial; assess it in the light of the core reading, and outline its implications for past or future policies.

BRINGING LAW AND PUBLIC POLICY TOGETHER

Seminar 11: PUBLIC INTEREST LITIGATION – ACTORS AND PROCESSES (Thurs 28 Nov 2019, 13.30-15.10)

Guest speakers: Atanas Politov, Europe Director of Pro Bono, Dentons Law Firm; Tamas Barabás, Senior Legal Officer, PILNET

Relations between courts, political organs (government, legislator...) and 'technical' organs (regulators, agencies, central banks, etc).

Multi-level dimensions.

Issues: standing rules, legal aid regimes, availability of class-action, court and lawyers' fee-systems, legal profession (pro-bono regime), legal education (critical lawyer, law clinics, etc), litigation strategies (test case, repeat-players), participation through amicus curiae.

Objective (interest)/subjective (rights) procedures.

Types of actions: annulment/judicial review, compensation (tort), injunction, interim relief, interpretation, etc.

Mandatory reading

- Cummings, S. L., & Rhode, D. (2008). 'Public interest litigation: Insights from theory and practice'. *Fordham Urban Law Journal*, 36, 09-19.
- Rekosh, E. (2008). Constructing public interest law: Transnational collaboration and exchange in Central and Eastern Europe. *UCLA J. Int'l L. & Foreign Aff.*, 13, 55.
- McCann, M. (2008) 'Litigation and legal mobilization' in Gregory A. Caldeira, R. Daniel Kelemen, and Keith E. Whittington (eds), *The Oxford Handbook of Law and Politics*

Further reading

- Feldman, D. (1992). Public interest litigation and constitutional theory in Comparative Perspective. *The Modern Law Review*, 55(1), 44-72.
- Bhagwati, P. N. (1984). Judicial activism and public interest litigation. *Colum. J. Transnat'l L.*, 23, 561.
- Cassels, J. (1989). Judicial Activism and Public Interest Litigation in India: Attempting the Impossible?. *The American Journal of Comparative Law*, 37(3), 495-519.

Presentation:

Identify a successful or failed attempts at mobilizing court to pursue public interests objectives. Reflect critically on it in the light of the core reading.

Suggested reading for presentation (indicative)

- Vanhala, L. (2012). Legal opportunity structures and the paradox of legal mobilization by the environmental movement in the UK. *Law & Society Review*, 46(3), 523-556.
- Hassan, P., & Azfar, A. (2003). Securing environmental rights through public interest litigation in South Asia. *Va. Env'tl. LJ*, 22, 215
- Alter, K. J., & Vargas, J. (2000). Explaining Variation in the Use of European Litigation Strategies European Community Law and British Gender Equality Policy. *Comparative Political Studies*, 33(4), 452-482.
- Cassels, J. (1989). Judicial Activism and Public Interest Litigation in India: Attempting the Impossible?. *The American Journal of Comparative Law*, 37(3), 495-519.
- Cunningham, C. D. (1987). Public interest litigation in Indian Supreme Court: a study in the light of American experience. *J. INDIAN L. INST.*, 29, 494.
- Dembowski, H. (2000). *Taking the State to Court: Public Interest Litigation and the public sphere in India*. Oxford University Press.
- Epp, C. R. (1998). *The rights revolution: Lawyers, activists, and supreme courts in comparative perspective* (pp. 5-6). Chicago: University of Chicago Press (case studies)
- Ginsburg, T. (2003). *Judicial review in new democracies: Constitutional courts in Asian cases*. Cambridge University Press.
- Harris, B. (1999). Representing homeless families: repeat player implementation strategies. *Law & society review*, 33(4), 911-939.
- Rawlings, R. (1993). Eurolaw Game: Some Deductions from a Saga, *The. JL & Soc'y*, 20, 309.
- Razzaque, J. (2004). *Public interest environmental litigation in India, Pakistan, and Bangladesh* (Vol. 7). Kluwer Law International
- Sabel, C. F., & Simon, W. H. (2004). Destabilization rights: How public law litigation succeeds. *Harvard Law Review*, 1015-1101 (case studies)
- Sturm, S. P. (1990). Normative Theory of Public Law Remedies, *A. Geo. LJ*, 79, 1355.

- Tushnet, M. (2009). *Weak courts, strong rights: judicial review and social welfare rights in comparative constitutional law*. Princeton University Press.

Presentation (only if no guest lecture)

Identify and present a case of successful public interest litigation, which achieved significant policy change. Alternatively, identify a failed attempt at public interest litigation, which did not secure the intended policy change. You may choose one of the cases presented in the readings below, but can also pick your own. Try to identify the dynamics of success or failure, and explore the differences between strategic litigation and other avenues for triggering policy-change. Present the issues, referring back to the core reading where relevant.

Suggestions for case studies presentation (indicative)

M Harding, A.O. Connell and M. Stewart, *Not-for-profit Law – Theoretical and comparative perspectives* (Cambridge University Press, 2014)

Special seminar 12: LESSONS FROM THE PRACTICAL CASE (Thurs 5 Dec 2019, 13.30-15.10)

In this final seminar, each student will reflect back on the research which they carried out to address the practical case, as instructed throughout the course. They should come up with take-away points, engaging both their 'empirical' findings and relevant course readings.

Key questions to address in the posted session and presentation:: Did law impose constraints or provided opportunities for policy-making in this case? Could it be any different? How? What would be your key policy recommendations to improve the capacity of law to act as a more effective policy or accountability mechanisms?

FURTHER REFERENCES

BOOKS

- Ackerman and Lindseth, *Comparative Administrative Law* (Edward Elgar Publishing, 2019, 2nd ed)
- Adler (ed), *Administrative Justice in Context* (Hart, 2010)
- Anthony, Auby, Morison and Zwart (eds) *Values in Global Administrative Law* (Hart, 2011)
- Beatty, David M. *Human rights and judicial review: a comparative perspective*. Vol. 34. Martinus Nijhoff Publishers, 1994.
- Bell, Boyron, and Whittaker, *Principles of French Law* (Oxford University Press, 1998), Ch. 4 and Ch. 6.
- Breyer, Stephen. "Judicial Review of Questions of Law and Policy." *Admin. L. Rev.* 38 (1986): 363.
- Brown, Bell, and Gallabert, *French Administrative Law* (Oxford University Press, 1998)
- Bussari and Matei (eds) *The Cambridge Companion to Comparative Law* (Cambridge University Press, 2012) 145-170

- Cane and McDonald, *Principles of Administrative Law: Legal Regulation of Governance* (Melbourne: Oxford University Press, 2008)
- Cane, P. (2011). *Administrative law* (Oxford University Press)
- Cane, *Administrative Tribunals and Adjudication* (Hart, 2009)
- Caranta and Gerbrandy (eds), *Traditions and Change in European Administrative law* (Europa Law Publishing, 2011)
- Case and Kritzer (ed) , *The Oxford handbook on Empirical Legal Research* (OUP) Craig & Tomkins, *Executive and public law* (Oxford University Press, 2006)
- Craig, *EU Administrative Law* (Oxford University Press, 2006)
- Freckmann and Wegerich, *The German Legal System* (Sweet & Maxwell, 1999)
- Galligan and Smilov, *Administrative Law in Central and Eastern Europe 1996-1998* (CEU Press, 1999)
- Galligan, *Due Process Rights in Administrative law* (Clarendon press, Oxford 1996)
- Galligan, Langan II, and Nicandrou (eds), *Administrative Justice in the New European Democracies: Case Studies of Administrative Law and Process in Bulgaria, Estonia, Hungary, Poland and Ukraine* (COLPI, OSI, 1998).
- Global Administrative Law Project (GAL), *Global Administrative Law: cases, materials, issues* (2008), published online at <http://www.iilj.org/GAL/documents/GALCasebook2008.pdf>
- Goodnow, *Comparative administrative law: an analysis of the administrative systems, national and local, of the United States, England, France, and Germany* (2006).
- Ginsburg, T. and Dixon, R. eds., 2011. *Comparative constitutional law*. Edward Elgar Publishing
- Harlow and Rawlings, *Law and Administration* (Cambridge University Press 2009)
- Ely, John Hart. *Democracy and distrust: A theory of judicial review*. Harvard University Press, 1980.
- Herlitz, *Elements of Nordic Public Law*, (1969; originally published in Swedish, 1959).
- Huddleston and Dressang, *The Public Administration Workbook* (Pearson Longman, 2007), Ch. 5 Administrative Law
- Jans, de Lange, Prechal and Widdershoven, *Europeanization of Public Law* (European Law Publishing, 2007).
- Künnecke, *Tradition and Change in Administrative Law, An Anglo-German Comparison* (Springer, 2007)
- Ladeur, *The Europeanisation of Administrative Law: transforming national decision-making procedures* (Ashgate, 2003).
- LeMay, *Public Administration – Clashing Values in the Administration of Public Policy* (Thomson, 2006) Ch. 16 Administrative Law and the Control of Public Agencies
- Leyland, and Anthony, *Textbook on Administrative Law* (6th ed., OUP, 2009)
- Majone, Giandomenico. *Regulating Europe*. Routledge, 1996.
- Neville Brown and Garner, *French Administrative Law*, 3rd ed. (1983).
- Pearson, Harlow and Taggart, *Administrative Law in a Changing State* (Hart, 2008)

- Peters and Pierre, *Handbook of Public Administration* (Sage, 2003), Section 6 Law and Administration
- Pierce, *Administrative Law Treatise*, 5th. Ed. (2010)
- Reimann, M. and Zimmerman, R. (eds) . *The Oxford Handbook of Comparative Law* (2nd ed, Oxford University Press)
- Rose-Ackerman, Susan, Stefanie Egidy, and James Fowkes. *Due Process of Lawmaking*. (Cambridge University Press, 2015)
- Rosenfeld and Sajo, *The Oxford Handbook of Comparative Constitutional Law* (OUP) p. 217-232.
- Ruffert (ed), *Legitimacy in European Administrative Law: reform and Reconstruction* (Europa Law Publishing, 2011)
- Ruffert (ed.), *The Transformation of Administrative Law in Europe* (European Law Publishing, 2007)
- Schwartz and Wade, *Legal Control of Government: Administrative Law in Britain and the United States* (Oxford: Clarendon Press, 1972).
- Schwartz, *French Administrative Law and the Common-Law World* (1954).
- Schwarze, *European Administrative Law* (Sweet & Maxwell, 2006)
- Seerden (ed.), *Administrative Law of the European Union, its Member States and the United-States: A Comparative Analysis* (2nd ed., Intersentia, 2007)
- Steiner, *French Law: A comparative approach* (OUP, 2010), CH. 12
- Taggart (ed), *The Province of Administrative Law* (Oxford: Hart Publishing, 1997)
- Wade and Forsyth, *Administrative Law* (2004)
- Bell, John. *Judiciaries within Europe: a comparative review*. Vol. 47. Cambridge University Press, 2006.
- Zander, Michael (2015). *The law-making process*. Bloomsbury Publishing, 2015.
- Ziamou, *Rulemaking, participation and the limits of public law in the USA and Europe* (Ashgate, 2001)

JOURNALS

Administrative Law Review (US), European Public Law , Public law , Journal of public policy, Journal of European Public Policy, Review of European Administrative Law, Administrative Law Journal, International Organisation Law Review, Law and Contemporary Problems, GAL Working Paper Series; Public Administration; Plus, of course, all general law and public policy reviews.

WEB RESOURCES

- Comparative Law Initiative, Yale Law School, <http://www.law.yale.edu/academics/compadminblog.htm>
- Comparative administrative law blog: <http://blogs.law.yale.edu/blogs/compadlaw/>
- International Centre for the Not-for-Profit Law: <http://www.icnl.org/research/trends/>
- EU – Europa Justice site: http://ec.europa.eu/justice/index_en.htm
- US Administrative Conference: <http://www.acus.gov/>

- Global administrative law (GAL) project, Institute for International Law and Justice, New York University (including link to working paper series): <http://www.iilj.org/GAL/>
- Research Network on EU Administrative Law (ReNEUAL): <http://www.reneual.eu/>
- Association des Conseils d'Etats et Hautes Juridictions Administratives (access to reports of international congresses on comparative administrative law): <http://www.aihja.org/docutheque>
- Association des Conseils d'Etats (access to administrative courts decisions database): http://www.aca-europe.eu/fr/jurisprudence/jurisprudence_fr.html
- (US) Administrative Law Research Tutorial, Georgetown University: <http://www.ll.georgetown.edu/tutorials/admin/index.cfm>
- Bibliography on Global Administrative Law: <http://www.iilj.org/GAL/documents/GALBibliographyMDeBellisJune2006.pdf>
- Seminar on the Emergence of Global Administrative law (publications: <http://www.iilj.org/GAL/LCPSymp.asp>)
- Her Majesty's Court's Service, Note of Guidance for applying for judicial review (UK), <http://www.hmcourts-service.gov.uk/cms/1220.htm>
- French law database (in French, but some documents available in English): <http://www.legifrance.gouv.fr/>
- Webpage of information in English about the German Federal Administrative Court (Bundesverwaltungsgericht) http://www.bverwg.de/enid/Aktuelles/Information_in_English_g0.html
- German statutes in English: <http://www.iuscomp.org/gla/statutes/statutes.htm>
- European Group for Public Administration, Law and Public Administration Theme, http://www.ias-iisa.org/egpa/e/study_groups/law/Pages/theme.aspx