

Course Title:	<i>Law and Public Policy</i>
Instructor:	Marie-Pierre Granger (PhD), Associate Professor
ECTS:	4 (2 CEU credits)
Term:	Fall term, Tuesday 8.50-10.30 CET
Module:	Mandatory Elective (MAPP)
Format:	in person
	Moodle CEU learning

Relation to other courses

'Law and Public Policy' is a foundational and introductory course. Taking a comparative perspective, it complements other law for public policy courses, which are more focused on international (human rights) law. It supports governance related courses, as well as courses on substantive policy areas involving legal aspects.

Background and Overall Aim of the Course

Law is a central feature of the policy process at all levels of governance. Understanding its main features and dynamics is therefore essential for public policy students. This course aims to equip them with the basic knowledge and skills necessary to access, understand and use law in developing and implementing effective and legitimate policies. It offers an introduction to core legal issues relevant to public policy. The focus is on *public law*, and in particular *administrative law*, but the course also integrates essential *constitutional and international law* aspects. The course takes a *comparative perspective*, drawing on legal instruments and processes developed in different policy settings, and social, economic and political contexts, and pays attention to the impact of *globalization and privatization*. It does so by combining theoretical insights and practical components. Throughout the course, students get to reflect on the relevance of law to public policy, in addressing pressing contemporary challenges. They gain exposure to, and develop familiarity with, relevant legal frameworks and the processes through which these are developed and applied. They explore various means of using law as a policy tool, with a special focus on regulation and litigation. Participants are, furthermore, encouraged to reflect on how law provides accountability frameworks, and its capacity to deliver on policy and social change. Students develop their legal (analytical and practical) skills through the course '*practical case*'.

Learning Outcomes

Content literacy

At the end of the course, the students should be aware of the diversity of, as well as similarities between, legal arrangements in various contexts and across different levels of governance; they should also have developed some understanding of key 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 the main remedies against the actions or inaction of public and private authorities engaged in public policy. They should, finally, be aware of the key academic and policy 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 principles, rules, procedures and institutions from various national and supranational legal systems, and to engage 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 have improved their critical thinking skills, and be able to communicate effectively in writing and orally to both legal and non-legal audience. They should have become more familiar with working with (legal) 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.

Learning Activities and Teaching Methods

The course includes preparatory activities and interactive seminars.

The interactive sessions are dedicated to presenting, contrasting and discussing comparative empirical materials (*wiki contributions*) produced by instructors and students (including one/two more detailed *student presentations* per class). The

interactive sessions therefore consist in a structured discussion of the practical case empirical findings, framed and informed by issues and perspectives raised in core readings, and other preparatory materials (eg podcasts, videos). They will also offer students the opportunity to ask questions and clarify points. The course also includes a *final poster session* presenting the key findings of the practical case and offerings policy recommendations.

Assessment

The final grade is compiled based on grades received for the following activities and assignments:

- general class preparation and participation (including Perusal annotations, quizzes, etc) (10%)
- written contributions to the practical case (weekly wiki contributions) (30%)
- practical case poster preparation and presentation (20%)
- final paper (40%), which builds on the previous assignments, and analyses key aspects of the law-policy interactions [1500-2000 words, excluding references]

Course Content and Readings

The course is organized around a central 'practical case', chosen to reflect contemporary challenges and issues in the interactions between law and public policy. In each class, we identify and discuss specific legal aspects which are of particular relevance to policy-making at various governance levels, with a central focus on international and regional human rights law, and constitutional and administrative law issues; we explore their concrete operationalization in the context of the practical case, drawing on *comparative* empirical materials. Students' understanding of key issues will be assessed through short quizzes and through their participation in interactive seminars discussions, bearing in mind students' diverse national and disciplinary backgrounds. Interactive seminar discussions are adjusted to address issues identified as most challenging for the students, and ensure that core concepts are well covered and explained. Prior to each class, students will be assigned core readings and other (eg audio-visual) materials, which expose core issues and concepts and recent instructions on how to approach the weekly practical case research and wiki contributions. This will provide a wealth of relevant empirical materials which we can use to illustrate and critically engage with core legal notions and processes.

Course core reference materials

Books

- Cane, P., Hofmann, H. C., Ip, E. C., & Lindseth, P. L. (Eds.). (2020). *The Oxford Handbook of Comparative Administrative Law*. Oxford University Press (this is the main reference point for this course, and an invaluable

source for conducting comparative research into administrative law and public policy – make sure to consult and refer to it when preparing for course assignments)

- Rose-Ackerman, S., & Lindseth, P. L. (Eds.). (2010). *Comparative administrative law*. Edward Elgar Publishing
- Bingham, T. (2011). *The rule of law*. Penguin UK.

Articles and chapters

- Kreis, A.M and Christensen R.K (2013) 'Law and public policy', *Journal of Policy Studies* 41:1, 538-552
- 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

Further background materials

- Interviews with leading comparative administrative law experts:
<https://www.wcl.american.edu/impact/initiatives-programs/international/news/looking-behind-the-scenes-insights-into-todays-practical-relevance-of-comparative-law/>

Detailed week-by-week syllabus

Seminar 1 - WHAT DOES LAW HAVE TO DO WITH PUBLIC POLICY? (interactive seminar)

Key questions: What is law? What is the rule of law? What is the role of law in public policy? What kind of policy problems can be solved by, and through, law? What can we learn from comparing laws? What are the main contemporary challenges facing (administrative) law?

Class preparation

1. Read select extracts from the required readings below [60 mins]

Required readings

- 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 [15 p]
- Dotan, Y 'The common real-life reference point methodology – The 'McDonalds' Index for comparative administrative law and public administration' in Cane, P., Hofmann, H. C., Ip, E. C., & Lindseth, P. L. (Eds.). (2021). *The Oxford Handbook of Comparative Administrative Law*. Oxford University Press, 990-1007, read p. 990-994, and 1001-1003 [7 p]
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Optional reading

- Kreis, A.M and Christensen R.K (2013) 'Law and public policy', *Journal of Policy Studies* 41:1 538-552 (section 'What is Law and Public Policy)
- Rosenbloom, D. H. & Gould J. B. (2021) Nonquantitative Research in Law and Public Administration: Approaches in the United States, *Public Performance & Management Review*, 44:5, 1031-1051, read p.1032-1037, and 1039-1044 [10 p]
- Lecture by Lord Bingham on the Rule of Law (2010)
<https://www.youtube.com/watch?v=XIMCCGD2TeM> [watch 0.00-16.12 mins]

Seminar 2 – CONSTITUTIONS AND CONSTITUTIONAL COURTS: FRAMING POLICY OPTIONS? (interactive seminar)

Key questions:

Can we change societies through constitutional law ('constitutional engineering')? Do constitutions consolidate the political and social status quo? Does the constitution matter at all? What makes constitutional courts important and legitimate policy actors?

Preparation for the class

1. Choose a country/jurisdiction which you will focus on for the practical case (wiki link on Moodle) [5 mins]
2. Watch the Institute for Democracy and Electoral Assistance (IDEA) video, 'What is a constitution?': <http://constitutionnet.org/video/what-constitution> [5 mins]
3. Read selected extract from required readings below [60 mins]
4. Research and write your contribution to the practical case wiki, following instructions (link on Moodle) [45 mins]

Required reading:

- D.S. Law 'Constitutions' (2010) in P. Case and H.M. Kritzer (ed), *The Oxford handbook on Empirical Legal Research* (OUP) 376-398, read pp 376-384 [12p]
- A. Stone Sweet 'Constitutional courts' (2012) M. Rosenfeld and A. Sajo *The Oxford Handbook of Comparative Constitutional Law* (OUP) 816-828 [12p]

Further reading:

- P. Shane 'Analysing constitutions' in Rhodes, R. A., Binder, S. A., & Rockman, B. A. (Eds.). (2008). *The Oxford handbook of political institutions*. Oxford University Press, 191-216, read p 191-202 [9p]
- IDEA, 'Primer - What is a constitution? Principles and concepts' (2017) <http://constitutionnet.org/sites/default/files/2017-10/what-is-a-constitution-primer.pdf>, read p.2-5 [3p]

Seminar 3 - INTERNATIONAL LAW AND MECHANISMS: CONSTRAINTS AND OPPORTUNITIES FOR DOMESTIC POLICY CHANGE (interactive seminar)

Key questions: What is international law? How is it produced and enforced? Can international/regional/supranational instruments trigger 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?

Preparation for the class

1. Read the book chapter below [40 mins]
2. Research and write your contribution to the practical case wiki, following instructions (link on Moodle) [45 mins]

Required 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 [24p]
- Krommendijk, J. (2015) 'The domestic effectiveness of international human rights monitoring in established democracies. The case of the UN human rights treaty bodies'. *Rev Int Organ* **10**, 489–512, read table p 491 and

conclusions p.508-509 [2 p]

Seminar 4 – ‘LAWS AND REGULATIONS’ (Interactive seminar)

Key questions: What are the differences between primary and secondary legislation, parliamentary laws, statutes, executive orders, regulations, decrees, ordinances, administrative decisions, and other forms of legally binding instruments? What is the difference between ‘hard law’ and ‘soft law’? Who makes those ‘laws’, and through which procedures? How do these different ‘laws’ relate to one another? How are they used to introduce, change, or implement policies? What are the particular challenges of ‘regulation beyond the state’?

Preparation for the class

1. Read extracts from the required readings below [60 mins]
2. Research and write your contribution to the practical case wiki, following instructions (link on Moodle) [45 mins]

Required reading (selected extracts)

- Médecins sans frontières ‘The practical guide to humanitarian law’, ‘Hierarchies of norms’: <https://guide-humanitarian-law.org/content/article/3/hierarchy-of-norms/> [1p]
- KM Stack, ‘Rule-making regimes in the Modern state’ in Cane, P., Hofmann, H. C., Ip, E. C., & Lindseth, P. L. (Eds.). (2021). *The Oxford Handbook of Comparative Administrative Law*. Oxford University Press, 552-574 [22p]
- J Barnes, ‘Administrative procedure’ in Cane, P., Hofmann, H. C., Ip, E. C., & Lindseth, P. L. (Eds.). (2021). *The Oxford Handbook of Comparative Administrative Law*. Oxford University Press, 830-855, read p. 845-849 [4p]

Further reading

- 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 [17p]

Seminar 5 - CASE LAW AND PRECEDENT (Interactive seminar)

Key questions: Are judicial decisions formal sources of law? What is precedent, and how does it actually work? Do judges make law when they interpret and apply it? Do judges decide in the same way as other policy actors? Which actors does the judicial process empower?

Preparation for the class

1. Read extracts from the required readings below [60 mins]
2. Research and write your contribution to the practical case wiki, following instructions (link on Moodle) [45 mins]

Required 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* [40 mins]
- 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) [13p] [15 mins]
- P. Shane 'Analysing constitutions' in Rhodes, R. A., Binder, S. A., & Rockman, B. A. (Eds.). (2008). *The Oxford handbook of political institutions*. Oxford University Press, 191-216, read p203-207 [4p] [15 mins]

Further materials

- 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
- Movie 'On the basis of sex' (how to set a precedent).

Seminar 6 - NON-JUDICIAL MEANS OF REDRESS (interactive seminar)

Key questions: What are alternative bodies and mechanisms which can help address legal violations without litigating? What are their advantages and drawbacks compared to litigation?

Preparation for the class

1. Read required reading below [80 mins]
2. Research and write your contribution to the practical case wiki, following instructions (link on Moodle) [30 mins]

Required reading:

- Harden I, 'Ombudsmen and complaint-handling procedures' in Cane, P., Hofmann, H. C., Ip, E. C., & Lindseth, P. L. (Eds.). (2021). *The Oxford Handbook of Comparative Administrative Law*. Oxford University Press, 770-789, read till p 786 [16 p]
- Bradley, K 'Tribunals and Adjudication' in Cane, P., Hofmann, H. C., Ip, E. C., & Lindseth, P. L. (Eds.). (2021). *The Oxford Handbook of Comparative Administrative Law*. Oxford University Press, 747-769, till p 767 [20p]

Further reading

- Dragos, D. C., & Neamtu, B. (Eds.). (2014). *Alternative dispute resolution in European administrative law*. Springer Berlin Heidelberg
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Seminar 7 - JUDICIAL REDRESS (interactive seminar)

Key questions: What is a cause of action and what is a judicial remedy? What is judicial review? What are the different forms of judicial review? What do we mean by suing for damages? Who has standing to sue? What is the difference between admissibility and merits? What are the grounds for review? What is judicial deference?

Preparation for the class

1. Read extracts from the required readings below [70 mins]
2. Watch David Allan Green's opinion for the Financial Time 'How the government's want to limit judicial review' (21 August 2020): <https://www.youtube.com/watch?v=ERkU9FW5sEM>
3. Research and write your contribution to the practical case wiki, following instructions (link on Moodle) [40 mins]

Required readings (selected extracts)

- Bignami, F. (2012). 'Comparative Administrative Law'. *The Cambridge Companion to Comparative Law* (Cambridge University Press, 2012) 145-170 – Section 3.1 Systems of Judicial review [6p]
- 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) [4p]
- Thio, L.A. (2020) 'Courts and judicial review' Cane, P., Hofmann, H. C., Ip, E. C., & Lindseth, P. L. (Eds.). (2021). *The Oxford Handbook of Comparative Administrative Law*. Oxford University Press, 721-746 [22p]
- Fairgrieve, D ' Civil and criminal liability' in Cane, P., Hofmann, H. C., Ip, E. C., & Lindseth, P. L. (Eds.). (2020). *The Oxford Handbook of Comparative Administrative Law*. Oxford University Press, read at least 813-815 [2p]

Further 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 [5p]
- Van Gerven, W., Lever, J. and Larouche, P (2000), *Cases, Materials and Text on National, Supranational and International Tort Law*, 358-394 (red comparative overview 388-394)
- Contributions in Delaney, E. F., & Dixon, R. (Eds.). (2018). *Comparative judicial review*. Edward Elgar Publishing.

Seminar 8 – 'DUE PROCESS' (interactive seminar)

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 extend do procedural guarantees constrain policy actions?

Preparation for the class

1. Read selected extracts from required reading below [30 mins]
2. Research and write your contribution to the practical case wiki, following instructions (link on Moodle) [30 mins]

Required reading (selected extracts)

- 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.[8p]
- 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 [2p]

Further reading

- 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 [9 p]

Seminar 9 - RIGHTS (interactive seminar)

Key questions: Which substantive rights must be respected and promoted when developing law and policies? To what extent do they constrain policy choices and implementation? How do they support the promotion of particular policy goals?

Preparation for the class

1. Read required reading below [20-50 mins]
2. Research and write your contribution to the practical case wiki, following instructions (link on Moodle) [30 mins]

Required reading (selected extracts)

- 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 [7p]
- Bignami, F. (2012). 'Comparative Administrative Law'. *The Cambridge Companion to Comparative Law* (Cambridge University Press, 2012) 145-170 –Section 3.2.2 Substance Principles [5p]

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Recommended further reading

- Bignami, F (2020), 'Material liberty and the administrative state: market and social rights in American and German law' in Cane, P., Hofmann, H. C., Ip, E. C., & Lindseth, P. L. (Eds.). (2020). *The Oxford Handbook of Comparative Administrative Law*. Oxford University Press, 957-987

Further reading

- Government Legal Department (2016) 'A Judge Over Your Shoulders' (JOYS), 957-987 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/538447/160708_JOYS_final.pdf, p. 39-48 [9p]

Seminar 10 - BALANCING RIGHTS AND INTERESTS (interactive seminar)

Key-question: When is a legal or policy measure proportionate? How much does proportionality reasoning constrain legislator? Does it empower judges or limit their discretion? Is proportionality suitable to balance competing interests? Which other techniques are used judges to decide between competing rights, interests, objectives, levels and modes of action?

Preparation for the class

1. Read required reading below [40 mins]
2. Research and write your contribution to the practical case wiki, following instructions (link on Moodle) [30 mins]

Mandatory reading

- Matthews, J (2020) 'Reasonableness and proportionality' in Cane, P., Hofmann, H. C., Ip, E. C., & Lindseth, P. L. (Eds.). (2020). *The Oxford Handbook of Comparative Administrative Law*. Oxford University Press, 917-933 [15p]

Seminar 11 and 12 – FINAL 'BREAKFAST' POSTER SESSIONS: LESSONS FROM THE PRACTICAL CASE

Poster presentations. Discussion. Take away points. Feedback.

Preparation for the class

1. Read a couple of methodological guides on how to prepare a good poster
2. Prepare a poster outlining key findings of your research on the course practical case and outline key policy recommendations
3. Share your poster on the course forum (before Sunday 12 pm)
4. Prepare your poster presentation

Recommended reading

- Erren, T. C. & Bourne, P.E. (2007). Ten simple rules for a good poster presentation. PLoS Computational Biology, 3(5). 777-778. <https://journals.plos.org/ploscompbiol/article/file?id=info%3Adoi/10.1371/journal.pcbi.0030102&type=printable>
- Monash university: 'Poster presentation' <https://www.monash.edu/rlo/research-writing-assignments/assignment-types/poster-presentation>