



Syllabus

Academic Year	2020/2021
Program	International Relations
course	Comparative Public Law
Term	I semester
Year	1
SSD	IUS/21 - Diritto pubblico comparato
Credits	6

INSTRUCTIONAL GOALS

The course aims at providing the students with the main instruments for the analysis of the evolution of contemporary constitutionalism on a global scale through a comparative legal method. The participants in the course will learn how to manage traditional – like constitutionalism, forms of state, forms of government – and new legal concepts – like legal transplants and borrowing, rule of law backsliding and democratic decay, European and international constitutionalism – featuring the study of comparative public law.

They will be introduced to the main debates surrounding the research and the scholarship inquiry into this field, in particular the tension between universalism and context-based studies, the opportunity to apply normative notions such as “constitutionalism”, devised in the framework of the Western legal tradition, worldwide, and the use of foreign law by law-makers, judges, and constitution-making operators.

The course will try to look at phenomena and public goods like the protection of fundamental rights, separation of powers, and the entrenchment of rule of law principles in general, in a multilevel perspective, that is looking at them not in isolation, within each domestic jurisdiction, but in their interplay amongst levels of government (national, supranational and international). By doing so the course aims to train the students to better understand the comparative constitutional dimensions of political and societal developments that by definition take place in multilevel settings (e.g. constitutional transitions, constitutional adjudication, conflicts of rights and amongst courts).

In particular, the course aims to allow the students to:

- understand the main legal problems and controversies characterizing comparative public law today;
- distill similarities and differences amongst constitutional systems from the perspective of the legal families (e.g. common law, civil law, Islamic law etc.), of the protection of the Constitution, and of the vertical and horizontal separation of powers;
- improve their ability to engage in a critical analysis of ongoing developments at international and domestic level by using legal and constitutional arguments;
- be able to assess the pros and cons of the implementation and enforcement of the law in context, depending on the features of a specific legal system and in compliance with the supranational and the international constraints

INTENDED LEARNING OUTCOMES

completion of a learning path.

Knowledge and understanding:

By the end of the course, students will be able to:

- show an advanced knowledge of legal scholarship in the field of comparative public law, of the main schools of thoughts and research strands
- detect legal problems connected to the enforcement of the law and propose concrete solutions to them based on a comparative methodology



- understand the complexity of today's legal systems, shaped by the interaction between the national (often even of a sub-national authorities), supranational and international levels of government

Applying knowledge and understanding:

Students will be able to apply the knowledge acquired during this course for their future professional activities, in particular in the following domains and fields:

- disentanglement of the legal aspects from the political, societal and economic aspects of international and domestic problems – e.g. constitutional implications of economic and political crises, treatment of vulnerable groups – also drawing on comparative legal research
- writing commentaries, briefs or case notes for policy-makers, private institutions and interest groups on issues like institution and constitution-building, relationship between legislatures and courts, judicial politics, treatment of minorities, limits to the action of the executive branch;
- based on the comparative legal methodology, offering ad hoc legal consultancy to NGOs active at international and at national level

Making judgements:

Through the selection of readings encompassing a wide arrange of different legal standpoints on the same subject-matter, the discussion of case law and legal texts from countries all over the world, and the participation in a simulation exercise (depending on the number of enrolled students), participants in the course will:

- be put in a position to carry out autonomous research, collect scholarly and institutional materials, also using legal databases, and to elaborate the information for an independent and original perspective;
- be equipped to provide a well-informed legal assessment of ongoing developments at national and international level;
- be enabled to critically engage with the main theories and notions of comparative public law and to tailor their evaluation based on the country/countries under investigation. To this end the work in group will further allow students to confront different ideas and to fine-tune their position

Communications Skills:

From the very beginning of the course the instructor and the teaching assistant will devote a specific attention to train the students to develop an appropriate use of the legal English and to compare the notions studied across the jurisdictions. Therefore, by the end of the course, the students will be able to:

- be aware of the similarities and differences of specific concepts across the countries (e.g. the meaning and use of the rule of law, of Constitution, of ruling/judgment/judicial decision, of law and legislation)
- manage the legal terminology to be used also for their subsequent professional paths;
- express the notions learnt with sufficient clarity and in an understandable manner in an international context

Moreover, through class presentations and group work every student will have the opportunity to speak in public and to be involved in discussions to the topics studied on a regular basis.

Learning skills:

Through this course students will acquire the following skills:

- ability to accomplish autonomous research and a doctrinal analysis of the different topics examined across time and space;
- through the experiential learning provided by means of case law and legal texts' analysis, simulation and discussions in class, their capacity to match theoretical concepts and notions with the empirical reality will be enhanced;
- ability to manage the comparative legal methodology for the selection and the investigation of different case studies in the Global North and South
- Improved expertise and competence in offering an independent and well-grounded legal assessment of international and legal developments supported by clear and sound arguments.



Pre-requisites	Students are expected to be familiar with the basic concepts of Public Law.
Course content	<p>The course will focus on some of the main issues and problems of contemporary constitutionalism. After a methodological introduction, it will start with an overview of the constitutional cycles. In this context, the key features of the contemporary constitutional State will be discussed, with particular reference to the instruments that ensure constitutional effectiveness and entrenchment, such as constitutional rigidity, reinforced amendment processes and constitutional review of legislation. This will also entail a reflection on the extent to which these classic notions can be referred to countries outside the Western legal tradition, as to include Africa and Asia.</p> <p>After an investigation into the instruments for the enforcement of the horizontal separation of powers, mechanisms of checks and balances, of the main forms of Government and of their practical evolution, the analysis will move to the vertical separation of powers and to federalizing processes.</p> <p>The study of the federal or quasi-federal arrangements will encompass countries like the US, Canada, Germany, India, the UK, Spain and the EU itself and will also include the treatment of the controversial issue of the separatist claims, through the analysis of secessionist attempts and of the constitutional implications of Brexit. The vertical separation of powers will also entail the analysis of the mechanisms of interaction between domestic and supranational/international sources of the law and courts, looking in particular at the European and the Latin America contexts and at the cases of conflicts of rights and of courts that the supranational governance may trigger.</p> <p>The course will then deal, from a multilevel perspective, with the topic of constitutional transitions, with reference to the European context (i.e. referred to the countries of the Council of Europe) and the to the MENA region, after the Arab Spring. Linked to this is the analysis of the current problematic trends of rule of law backsliding and democratic decay affecting several constitutional democracies nowadays, within and beyond Europe (e.g. Brazil, Chile, Hungary, Poland, Turkey).</p>
Reference Books	<p>Mandatory readings:</p> <p>1) The main textbook of the course is the following: M. Rosenfeld, A. Sajò (eds.), The Oxford Handbook of Comparative Constitutional Law, Oxford University Press, Oxford, 2012 (selected chapters: 2, 4, 9, 20, 23, 27, 29, 30, 34, 37, 38, 57, 59, 63)</p> <p>2) Scholarly materials selected for specific classes:</p> <ul style="list-style-type: none">- on the comparative legal method, R. Hirschl, Comparative methodologies, in R. Masterman and R. Schütze (eds.), <i>The Cambridge Companion to Comparative Constitutional Law</i>, Cambridge University Press, 2019, pp. 11-39- on legal families, P. de Cruz, Comparative Law in a Changing World, Cavendish, 2007, chapter 2- on constitutionalism, R. Schütze, <i>Constitutionalism(s)</i>, in R. Masterman and R. Schütze (eds.), <i>The Cambridge Companion to Comparative Constitutional Law</i>, cit., pp. 40-65- on constitutionalism, Q. Zang, <i>The Constitution of China</i>, in R. Masterman and R. Schütze (eds.), <i>The Cambridge Companion to Comparative Constitutional Law</i>, Cambridge University Press, 2019, pp. 171-197- on federalism, R. Bifulco, Federalism, in R. Masterman and R. Schütze (eds.), <i>The Cambridge Companion to Comparative Constitutional Law</i>, Cambridge University Press, 2019, pp. 312-330- on the rule of law backsliding, L. Pech and K. L. Scheppele, liberalism Within: Rule of Law Backsliding in the EU, in <i>Cambridge Yearbook of European Legal Studies</i>, 19 (2017), pp. 3-47- on Brexit, A. Young, The constitutional implications of Brexit, in <i>European Public Law</i>, 23(4) 2017, pp. 757-786
Teaching Methods	<p>The teaching of this course will be based on a mix of "classical" frontal lectures, typically in the first part of each class, followed by discussion of case studies provided by the instructor in the second part of the class. Indeed, at the beginning of the course students will split into groups of three-four components in charge of preparing on and presenting a relevant case-law/legal texts from different jurisdictions (i.e. EU Member States, Bosnia and Herzegovina, Canada, India, Russia, South Africa, Tunisia, Turkey, US as well as from the Court of Justice of the EU, the European Court of Human Rights and the Inter-American Court of Human Rights).</p> <p>This exercise by the students will make them aware to the strengths and weaknesses of the mechanisms of law enforcement and on the problems that might arise when applying the law in context. These presentations, introduced by a group of students, will then offer the opportunity for the entire class to engage in a discussion and in a Q&A with the instructor on the most relevant problems linked to the topic of each class.</p> <p>Additionally, with a view to strengthen the process of experiential learning, one session during the course may be devoted to a simulation, which would place the students in a position of legal "problem-solvers", e.g. acting as judges of a court, plaintiffs and appellants before a court, and attorneys or as legal experts or consultants, for example in the framework of the Venice Commission.</p>



Assessment

The assessment will be based on an intermediate written test on the first part of the course – based on open questions - and on the final oral exam on the remaining topics of the course. The intermediate test will count for half of the final grade. In case the grade of the intermediate test is insufficient, it is possible to re-take the whole exam orally.

Moreover, students are requested to present case-law and legal texts, selected by the instructor, in group of three-four components. The good individual performance at the presentation will be taken into account for the final grade, besides the active participation in class, which may also include a simulation session on how to solve a specific legal problem linked to the course' contents (e.g. through a moot court exercise).
