

LW6159E: COMPARATIVE CONSTITUTIONAL LAW AND POLITICS

Effective Term

Semester B 2024/25

Part I Course Overview

Course Title

Comparative Constitutional Law and Politics

Subject Code

LW - Law

Course Number

6159E

Academic Unit

School of Law (FL)

College/School

School of Law (FL)

Course Duration

One Semester

Credit Units

3

Level

P5, P6 - Postgraduate Degree

Medium of Instruction

English

Medium of Assessment

English

Prerequisites

Nil

Precursors

Nil

Equivalent Courses

LW6159C and LW6159E are equivalent courses.

Exclusive Courses

Nil

Part II Course Details

Abstract

This course is basically designed for LLM students, and is also suitable for students from JD, JSD, MPhil and PhD programmes.

This course aims to provide students with knowledge on selected advanced legal issues and recent development in comparative constitutional law and politics, and develop their ability in finding out, understanding, and mastering the latest development in constitutional law and related political theory. It also teaches students methodology and skills in critical analysis of selected advanced legal issues of comparative constitutional law and comparative politics. The methodology and skills taught will have a wide application to problem solving generally, as well as to scholarly inquiry.

Course Intended Learning Outcomes (CILOs)

CILOs		Weighting (if app.)	DEC-A1	DEC-A2	DEC-A3
1	Critically identify and describe principles of advanced legal issues in comparative constitutional law and politics.		x	x	
2	Synthesize and apply their knowledge of the selected advanced issues and recent development of comparative constitutional law and politics in their legal practice and/or academic research.			x	x
3	Compare and analyse through guided research, current development in selected areas of constitutional law and politics.			x	x

A1: Attitude

Develop an attitude of discovery/innovation/creativity, as demonstrated by students possessing a strong sense of curiosity, asking questions actively, challenging assumptions or engaging in inquiry together with teachers.

A2: Ability

Develop the ability/skill needed to discover/innovate/create, as demonstrated by students possessing critical thinking skills to assess ideas, acquiring research skills, synthesizing knowledge across disciplines or applying academic knowledge to real-life problems.

A3: Accomplishments

Demonstrate accomplishment of discovery/innovation/creativity through producing /constructing creative works/new artefacts, effective solutions to real-life problems or new processes.

Learning and Teaching Activities (LTAs)

LTAs		Brief Description	CILO No.	Hours/week (if applicable)
1	Lectures + student seminars	Lecture Structured lectures will be delivered weekly by the lecturer. In addition, leading scholars and practitioners will be invited from time to time to give seminars on selected topics of which they have expertise. They will explain to students both recent development and academic debate on selected topics of comparative constitutional law and politics, and teach students how to think critically and conduct research. Student Seminars Student led and centred seminal discussion and peer commentary on pre-identified specific topics will follow after lecture. The lecturer will moderate the discussions and provide individual comments on presentations.	1, 2, 3	2+1

Assessment Tasks / Activities (ATs)

ATs		CILO No.	Weighting (%)	Remarks (e.g. Parameter for GenAI use)
1	Coursework	1, 2, 3	50	The use of Generative AI tools is not allowed.

Continuous Assessment (%)

50

Examination (%)

50

Examination Duration (Hours)

3

Additional Information for ATs

Examination: The use of Generative AI tools is not allowed.

Applicable to students admitted from Semester A 2022/23 to Summer Term 2024

Students must obtain a minimum mark of 50% in both coursework and examination and an overall mark of 50% in order to pass the course.

Applicable to students admitted before Semester A 2022/23 and in Semester A 2024/25 & thereafter

Students must obtain a minimum mark of 40% in both coursework and examination and an overall mark of 40% in order to pass the course.

Assessment Rubrics (AR)

Assessment Task

Coursework (for students admitted before Semester A 2022/23 and in Semester A 2024/25 & thereafter)

Criterion

This written assignment, consisting of 50% of the total marks, would need to be completed by each student. The purpose of this assignment is to assess the ability of students to understand, analyze and apply theories and doctrines of comparative constitutional law and politics, and develop their own thoughts and observations. The detailed requirements would be provided at later stage.

Excellent

(A+, A, A-) Strong evidence of original thinking; good organization, capacity to analyse and synthesize; superior grasp of subject matter; evidence of extensive knowledge base.

Good

(B+, B, B-) Evidence of grasp of subject, some evidence of critical capacity and analytic ability; reasonable understanding of issues; evidence of familiarity with literature.

Fair

(C+, C, C-) Student who is profiting from the university experience; understanding of the subject; ability to develop solutions to simple problems in the material.

Marginal

(D) Sufficient familiarity with the subject matter to enable the student to progress without repeating the course.

Failure

(F) Little evidence of familiarity with the subject matter; weakness in critical and analytic skills; limited, or irrelevant use of literature.

Assessment Task

Examination (for students admitted before Semester A 2022/23 and in Semester A 2024/25 & thereafter)

Criterion

The final examination will be 50% of the total marks. The examination aims to test whether students have fully understood basic concepts, theories, doctrines of comparative constitutional law, whether they can analyze major issues and institutions covered in the syllabus using the knowledge and skills learnt. The examination can be conducted either closed book or open book.

Excellent

(A+, A, A-) Strong evidence of original thinking; good organization, capacity to analyse and synthesize; superior grasp of subject matter; evidence of extensive knowledge base.

Good

(B+, B, B-) Evidence of grasp of subject, some evidence of critical capacity and analytic ability; reasonable understanding of issues; evidence of familiarity with literature.

Fair

(C+, C, C-) Student who is profiting from the university experience; understanding of the subject; ability to develop solutions to simple problems in the material.

Marginal

(D) Sufficient familiarity with the subject matter to enable the student to progress without repeating the course.

Failure

(F) Little evidence of familiarity with the subject matter; weakness in critical and analytic skills; limited, or irrelevant use of literature.

Assessment Task

Coursework (for students admitted from Semester A 2022/23 to Summer Term 2024)

Criterion

This written assignment, consisting of 50% of the total marks, would need to be completed by each student. The purpose of this assignment is to assess the ability of students to understand, analyze and apply theories and doctrines of comparative constitutional law and politics, and develop their own thoughts and observations. The detailed requirements would be provided at later stage.

Excellent

(A+, A, A-) High

Good

(B+, B) Significant

Marginal

(B-, C+, C) Moderate

Failure

(F) Inadequate

Assessment Task

Examination (for students admitted from Semester A 2022/23 to Summer Term 2024)

Criterion

The final examination will be 50% of the total marks. The examination aims to test whether students have fully understood basic concepts, theories, doctrines of comparative constitutional law, whether they can analyze major issues and institutions covered in the syllabus using the knowledge and skills learnt. The examination can be conducted either closed book or open book.

Excellent

(A+, A, A-) High

Good

(B+, B) Significant

Marginal

(B-, C+, C) Moderate

Failure

(F) Inadequate

Part III Other Information

Keyword Syllabus

- Constitutionalism, New Constitutionalism and Global Constitutionalism
- Constitutionalism and Exceptionalism
- Contemporary Constitutional Doctrines
- Federalism, Unitarism and Central-local Relationship Compared
- Constitutional Amendment
- Constitutional Courts Compared
- Constitutional Interpretation
- Political Determinants of Constitutional Adjudication
- Courts as Legislators
- Judicial Review and Control of the Executive
- Judicialisation of Politics
- Transitional Justice
- Autonomy Compared
- Accommodation of Religious Difference
- Human Rights, and Internal and International Politics

(Flexibility will be provided to the lecturer to decide on the topics for each academic year.)

Detailed Syllabus

Possible topics may include, but not limited to, the following:

- Constitutionalism, New Constitutionalism and Global Constitutionalism
 - Concepts
 - Forms and typology
 - New constitutionalism
 - Global constitutionalism
- Constitutionalism and Exceptionalism
 - American exceptionalism
 - Chinese exceptionalism
 - Constitutionalism in new democracies
- Contemporary Constitutional Doctrines
 - Constitutions compared
 - Constitutional democracy
 - Separation of powers revisited
- Federalism, Unitarism and Central-local Relationship Compared
 - Federalism compared
 - Hybrid form
 - Unitarism and Chinese practice
- Constitutional Amendment
 - Constitutional change and amendment
 - Political reform and constitutional response
- Constitutional Courts Compared
 - Adjudicative institutions compared
 - American and Japanese system
 - Western European system
 - French model
- Constitutional Interpretation
 - Doctrines: originalism - textualism, contextualism, "living tree/document/Constitution"
 - Approaches: traditional / common law, purposive

- Political Determinants of Constitutional Adjudication
 - Role of the court
 - American and Japanese cases
 - Other jurisdictions compared
- Courts as legislators
 - Judicial activism
 - Judicial law-making
 - The case of the HKSAR
- Judicial Review and Control of the Executive
 - Function of judicial review at our times
 - Relationship of the executive and judicial reshaped
 - "Juristocracy" and judicial domination
 - Against judicial review
- Judicialisation of Politics
 - Bush v Gore as a global trend
 - Judicialisation of Mega-politics and the rise of political courts
 - Role of constitutional courts re-examined
 - Courts as tool of social control and political order: China case
- Transitional Justice
 - Regime change and the 3rd wave of democratisation
 - (Constitutional) Courts establishing justice
 - South Africa as example
- Autonomy Compared
 - Autonomous regimes compared
 - Trends of autonomy in the world
 - The HKSAR under the PRC: case study
- Accommodation of Religious Difference
 - Diversity as constitutional value
 - Constitutional Religious Clauses compared
 - Accommodation of diversified religions
- Human Rights, and Internal and International Politics
 - Human rights as law and politics
 - Human rights progress and domestic politics: case of China
 - Human rights dialogues between China and USA, Europe countries
- Summation and Reflections on comparative constitutional law
 - The epistemological and methodological matrix: past, present and future
 - Constitutional politics and constitutional theory
 - Debate of political constitutional law in China

Reading List

Compulsory Readings

Title	
1	Nil

Additional Readings

Title	
1	Text(s)
2	No fixed textbooks are to be identified. The following are the appropriate reference books.
3	Vicki Jackson & Mark Tushnet, Comparative Constitutional Law (2nd ed., Foundations Press, 2006)

4	Norman Dorsen et al., <i>Comparative Constitutionalism</i> (Thomson West, 2003)
5	Michel Rosenfeld & Andras Sajó, <i>The Oxford Handbook of Comparative Constitutional Law</i> (OUP, 2012)
6	Mark Tushnet et al., <i>Routledge Handbook of Constitutional Law</i> (Routledge, 2013)
7	Larry Alexander, <i>Constitutionalism: Philosophical Foundations</i> (CUP, 1998)
8	John H Garvey & T Alexander Aleinikoff, <i>Modern Constitutional Theory: A Reader</i> (3rd ed., West, 1994)
9	Sujit Choudhry, <i>The Migration of Constitutional Ideas</i> (CUP, 2006)
10	Martin Loughlin, <i>Public Law and Political Theory</i> (Clarendon Press, 1992)
11	Martin Loughlin, <i>The Idea of Public Law</i> (OUP, 2003)
12	Elisabeth Zoller, <i>Introduction to Public Law: A Comparative Study</i> (Martinus Nijhoff Publishers, 2008)
13	David W. Elliot, <i>Introduction to Public Law: Readings on the State, the Administrative Process and Basic Values</i> (6th ed., Captus Press, 2007)
14	Gabriele, Ganz, <i>Understanding Public Law</i> (3rd ed., Sweet & Maxwell, 2001)
15	John F. McEldowney, <i>Public Law</i> (2nd ed., Sweet & Maxwell, 1998)
16	Gregory Tardi, <i>The Theory and Practice of Political Law</i> (Carswell, 2011)
17	Ran Hirschl, <i>Towards Juristocracy</i> (Harvard, 2007)
18	Michael Perry, <i>The Constitution in the Courts: Law or Politics</i> (OUP, 1994)
19	Herbert Jacob et al., <i>Courts, Law and Politics</i> (Yale U Press, 1996)
20	Robert Badinter & Stephen Breyer, <i>Judges in Contemporary Democracy: An International Conversation</i> (NYU Press, 2004)
21	Brewer Carías & Allan-Randolph, <i>Constitutional Courts as Positive Legislators: A Comparative Law Study</i> (CUP, 2011)
22	David Robertson, <i>The Judge as Political Theorist: Contemporary Constitutional Review</i> (Princeton U Press, 2010)
23	Arne Mavcic <i>The Constitutional Review</i> (2nd ed., Vandepias Publishing LLC, 2013)
24	Chester James Antieau, <i>Adjudicating Constitutional Issues</i> (Oceana Publications Inc., 1985)
25	Yoram Dinstein (ed.), <i>Models of Autonomy</i> (New Brunswick: Transaction Books, 1981)
26	Thomas Benedikter <i>The World's Modern Autonomy Systems</i> (EU, 2009)
27	Peter Wesley Smith, <i>Constitutional and Administrative Law in Hong Kong</i> (China and Hong Kong Law Studies, Longman Asia Limited, 1994)
28	Yash Ghai, <i>Hong Kong's New Constitutional Order: The Resumption of Chinese Sovereignty and the Basic Law</i> (2nd ed., Hong Kong University Press, 1999)
29	Wang Shuwen(ed.), <i>Introduction to the Basic Law of the Hong Kong Special Administrative Region</i> (Law Press, Beijing, 2000)
30	Zhang Qianfan, <i>The Constitution of China</i> (Hart Publishing, 2012)
31	Reading Materials
32	The lecturer will collect and distribute reading materials prior to the lectures and seminars.