

FACULTY OF LAW
Te Kauhanganui Tātai Ture

LAWS 526 – Comparative Constitutionalism

(40 points)

COURSE OUTLINE - 2014

1st and 2nd Trimesters

Course Coordinator

Joel I. Colón-Ríos – joel.colon-rios@vuw.ac.nz

Office 302 – Office Hours: (by appointment)

Course Blog: <http://comparativeconstitutionalism.blogspot.com>

The course administrator is Julie-Mary Boles de Boer, 463 6315, julie-mary.bolesdeboer@vuw.ac.nz.

Class Time and Location

The class meets on Thursdays, 5.40-7.30 pm, in GB G07.

Important Dates

The first trimester runs from 3 March to 6 June 2014, with a mid-trimester break from Friday 18 April (Good Friday) to Sunday 4 May.

The second trimester runs from Monday 14 July to Friday 17 October 2014, with a mid-trimester break from Monday 25 August to Sunday 7 September.

The course will meet from 7 March to 3 April, from 5 May to 5 June, and from 17 July to 14 August.

Withdrawal dates: Refer to www.victoria.ac.nz/home/admisenrol/payments/withdrawalsrefunds.

Communication and Notices

Other course information, eg lecture cancellations, will normally be posted on the noticeboard located in GB on the ground floor opposite the lifts and outside Lecture Theatres 1 & 2 as well as on Blackboard.

Please check Blackboard regularly. Also, as Blackboard adopts your Student Computing Service email as your default email address, please ensure you either check this email account regularly or arrange for any email to be forwarded automatically to an email account which you check regularly (for instructions on how to do this, see www.vuw.ac.nz/scs/support/faq.aspx#email).

Prescription and Course Content

An exploration of the theory and practice of constitutionalism in New Zealand and selected jurisdictions. A particular emphasis will be placed on comparisons between systems based on the principle of parliamentary sovereignty and systems based on entrenched constitutions, and on the ways these systems attempt to balance constitutionalism and democracy. The course will place a special emphasis on the ways in which

selected jurisdictions (New Zealand, the United States, the United Kingdom, Canada and several Latin American countries) attempt to balance these ideals. Constitutionalism is generally conceived as requiring some form of democracy, as providing the tools for peoples to govern themselves. By examining the ways in which different constitutional systems seek to realise the democratic ideal, we will be able to gain a better understanding of the relationship and tensions between constitutionalism and democracy.

Possible seminar topics include: popular participation in constitution-making and constitutional change; the constitutional role of the courts; the place of human rights (including environmental rights) in constitutional law; majority rule and representative government; the relationship between constitutionalism and international law; the enforcement of social and economic rights. Students will also be free to explore other topics related to the general theme of the course in their papers. Throughout the course students will be encouraged to reflect on the theory, practice and methodology of comparative public law.

The seminar will begin by a discussion of the following topics, led by the Lecturer:

- Week 1: Introduction
- Week 2: A Brief Introduction to Democracy and Constitutionalism
- Week 3: The Constitutionalism-Democracy Dilemma
- Week 4: The Theory and Practice of Constituent Power
- Week 5: Constitutional Change and its Limits

*After these four lectures (in which active student participation is expected), we will reconvene on 8 May 2014 for the first round of student presentations (**Seminar Paper 1**). These presentations will normally take place during 5 weeks and will cover some or all of the topics listed below (efforts will be made to accommodate each student's particular interests).*

- Topic 1: Making a New Constitution
- Topic 2: The Legitimacy of Judicial Review of Legislation
- Topic 3: Constitutionalism, Democracy, and the Enforcement of Positive Rights
- Topic 4: International Constitutionalism
- Topic 5: Student Selected

Students will be provided with a set of materials for each of the previous topics (these materials are contained in the course notes and are also listed below), but you are welcome to suggest alternative readings/topics in consultation with the Lecturer. Ideally, your first seminar paper will be on a topic that is related to your final paper, but this is not necessary. This first round of presentations will end on 10 October.

*We will reconvene on 17 July for the second round of presentations (**Seminar Paper 2**), which will normally be related to the individual research topic of each student. This second round of presentations will conclude on 14 August.¹*

Course Learning Objectives

At the conclusion of the course, students should be able to:

1. explain the key issues in comparative constitutionalism;
2. recognise the aims that are common to different theories and formulations of constitutionalism and democracy and how they are reflected in actual constitutional practice;
3. analyse the relationship between constitutionalism and democracy, and think critically about different attempts to solve the apparent tension between these two ideals;
4. demonstrate analytical, critical, and legal writing skills, after researching in depth a topic within the course prescription;
5. demonstrate the ability to lead and to participate effectively in seminars.

¹ This structure is subject to change depending on the number of students enrolled in the course.

Workload

Approximately 40 hours for your own seminar paper presentation. Master's research essays will take longer. Allow 2-3 hours for each seminar paper presentation of other students.

For a statement on the workload expected see Section 2.8 in the booklet *Information for Postgraduate Law Students* (2014 edition).

Assessment

Assessment items and workload per item		%	CLO(s)
1	Seminar 1 (papers will be marked 60:40 for content:presentation)	10%	2, 3, 5
2	Seminar 2 (papers will be marked 60:40 for content:presentation)	10%	1, 2, 3, 5
3	Participation in other seminars	10%	3, 4, 5
4	Research essay (15,000 words)	70%	1-4

Seminar Papers

The first seminar paper will normally consist in a discussion of one or more of the readings listed below under "Seminar Paper 1: Suggested Topics and Readings". These discussions should synthesise the author's main argument(s), and include a critical reflection on the strengths and weaknesses of those arguments (or, depending on the nature of the selected paper, a critical reflection on the topic in question). The second seminar paper will normally consist in an exploration of the topic selected by the student for their final research essay. This paper should identify the chosen topic of research, review some of the main literature on that topic, and contain an indication of the ideas/arguments to be developed in the research essay. At the end of both seminar papers, there should be a list of 3-4 questions for class discussion. Both seminar papers will be due a week before being discussed in class, and they will be distributed to all students at least three days before the paper is presented. You are encouraged to send me a draft of your seminar papers, and in most cases, I will provide you comments within 48 hours. For further guidance on seminar papers, you can consult Section 3.5 of the *Information for Postgraduate Law Students* booklet (2014 Edition).

Oral Presentations

This is an integral part of the seminar and should be well thought out by each presenter. The seminar paper must not be simply read out but should be used as a springboard for discussion. You should highlight the main arguments in a form which encourages debate and analysis. During your presentation, you should guide class discussion. Teaching aids, such as blackboards, whiteboards, overhead projectors and handouts may be used.

Class Participation

A large percentage of class time should be devoted to discussion. Because of the small size of the class, the success of each session will greatly depend on the amount of preparation and interest of each of us. In addition to your personal interest in getting a good participation grade, it is also in your collective interest as a class to complete the readings (including your colleagues' seminar papers) before the class meetings, attend all class meetings, and participate actively. I have made an effort to keep the required readings relatively short, in order to allow you to read the papers closely and to consider the weaknesses and strengths of the arguments presented by an author or court.

Final Research Essay

Normally, the final research essay should engage with one or more of the topics of the course (that is, those listed in the weekly programme and reflected in the course materials). If you are interested in a topic that, while related to the main themes of the course is not included in that list, please discuss it with me before you begin writing. I consider an excellent essay to be one that shows a critical and careful reflection of the relevant literature, offers a clear and persuasive argument, considers and responds to possible counter-arguments, and is well written (this includes spelling and grammatical errors). When writing your paper, think about the ways other authors (e.g. those whose work you read through the course) present their ideas and arguments. I strongly encourage you to submit outlines and rough drafts, and I will read them and provide comments generally within a week. Research essays should not be longer than 15,000 words (excluding abstract, tables, bibliography, non-substantive footnotes, and appendices).

Details of due dates, presentation details for both seminar and research papers and expectations in terms of supervision are set out in the booklet *Information for Postgraduate Law Students* (2014 edition).

Master's research essays must be handed in to the Law School/Faculty Office by 4.00 pm on the due date. **All papers** must be submitted electronically to the Postgraduate Administrator, Jonathan Dempsey, by the due date, jonathan.dempsey@vuw.ac.nz.

Remember to use the *New Zealand Law Style Guide* (2nd ed) for all matters of style and citations, article references, statutory references: <http://www.lawfoundation.org.nz/style-guide/index.html> - or available for purchase from VicBooks.

Penalties

Penalties will be imposed for work that is handed in late or if there is a failure to hand in the required hard copy or e-copy of research essays. Penalties will also be applied for exceeding word limits.

Late work Major research papers handed in after the deadline will be subject to an automatic 5 percent minimum penalty and an additional 5 per cent will be deducted for each day or part-day thereafter. These penalties will apply unless prior permission has been granted or unless proof of **exceptional circumstances** can be produced. Failure to hand in the required hard copy or e-copy may incur a penalty of 5 per cent. Penalties may also be imposed for a failure to distribute seminar papers by the required time.

Word limits. Penalties will be imposed if the word limit is exceeded. One mark will be lost for each additional 50 words or part thereof. The word limit includes substantive material in footnotes – if the reader has to refer to the footnote to understand or appreciate a point made that is substantive.

Exceptional circumstances are those that cannot reasonably have been anticipated in advance and which justify the work being handed in late, do not include work demands, sporting events, overseas trips, holidays (surprise or otherwise) that your parents/partner decided to shout you or anything else that should or could have been worked around. If exceptional circumstances do arise you should make contact as soon as possible to arrange an extension. Unforeseen medical and personal emergencies **must** be supported by appropriate evidence.

Recommended Reading

Course Materials*

- **Week 1: Introduction to Comparative Constitutionalism and Overview of the Course**
 1. Wil Waluchow “Constitutionalism” in *Stanford Encyclopedia of Philosophy* (2007) <http://stanford.lib.rary.usyd.edu.au/entries/constitutionalism/> [1-8].
 2. Thomas Christiano “Democracy” in *Stanford Encyclopedia of Philosophy* (2007) <http://stanford.lib.rary.usyd.edu.au/entries/democracy/> [1-10].
 3. Mauricio García-Villegas “Law as Hope: Constitutions, Courts and Social Change in Latin America” (2004) <http://www.eurozine.com/authors/villegas.html> [1-7].

- **Week 2: The Constitutionalism-Democracy Dilemma**
 1. Stephen Holmes “Precommitment and the Paradox of Democracy” in Jon Elster and R Slagstad (eds) *Constitutionalism and Democracy* (Cambridge: Cambridge University Press, 1988) [195-207, 225-228].
 2. Richard Bellamy, “Introduction” in *Constitutionalism and Democracy* (Ashgate 2006) [xi-xxviii].
 3. Excerpt Reference re Secession of Quebec [1998] 2 SCR 217 [paragraphs 61-78] [1-5].

* **Assigned pages are in brackets** (note, however, that in some cases the entire article/chapter has been included in the course notes).

- **Week 3: The Theory and Practice of Constituent Power**
 1. Carl Schmitt, *Constitutional Theory* (Durham: Duke University Press, 2007) [“The Constituent Power”] [pp. 125-139].
 2. Martin Loughlin “Constituent Power Subverted: From English Constitutional Argument to British Constitutional Practice” in Martin Loughlin and Neil Walker, eds, *The Paradox of Constitutionalism* (Oxford University Press, 2007).
 3. Excerpt Constitutions of Ecuador (Art 444), Venezuela (Art 347), and Bolivia (Art 411) [1 page]
 4. Excerpt New Zealand Citizen Initiated Referenda Act 1993 [1 page].
- **Week 4: Constitutional Change and its Limits**
 1. Aharon Barak, “Unconstitutional Constitutional Amendments” (2011) 44 *Israel Law Review* 321-341.
 2. Joel I. Colón-Ríos, “Carl Schmitt and Constituent Power in Latin American Courts: The Cases of Colombia and Venezuela”, *Constellations: An International Journal of Critical and Democratic Theory*, Vol. 18. No. 3 (2011) [365-388].
 3. Denis Baranger, “The Language of Eternity: Judicial Review of the Amending Power in France (or the Absence Thereof)” (2011) 44 *Israel Law Review* 389-428.

Seminar Paper 1: Topics and Readings

- **Topic 1: Making a New Constitution**
 1. Claude Klein and András Sajó, “Constitution-Making: Process and Substance” in *The Oxford Handbook of Comparative Constitutional Law* (Michel Rosenfeld & András Sajó eds) (Oxford: Oxford University Press, 2012) [416-441]
 2. Alex Frame “Lawyers and the Making of Constitutions: Making Constitutions in the South Pacific: Architects and Excavators” (2002) 33 *VUWLR* 699 [699-707].
 3. Helen Irving, “Drafting, Design and Gender” in *Comparative Constitutional Law* Tom Ginsburg & Rosalind Dixon eds) (Edward Elgar, 2011)[19-37].
 4. David Landau, “Constitution-Making Gone Wrong”, (forthcoming, 2013) *Alabama Law Review* [available in SSRN].
- **Topic 2: The Legitimacy of Judicial Review of Legislation**
 1. Jeremy Waldron, *Law and Disagreement* (New York: Oxford University Press, 1999) [282-312].
 2. Wil Waluchow, “Constitutions as Living-Trees: An Idiot Defends” (2005) 18 *Canadian Journal of Law and Jurisprudence* 207-247.
 3. Mark Tushnet, *The Rise of Weak-Form Judicial Review in Comparative Constitutional Law* Tom Ginsburg & Rosalind Dixon eds) (Edward Elgar, 2011)[321-333].
 4. Juliane Kokott & Martin Kasper, “Ensuring Constitutional Efficacy”, *The Oxford Handbook of Comparative Constitutional Law* (Michel Rosenfeld & András Sajó eds) (Oxford: Oxford University Press, 2012) [795-815].
- **Topic 3: Second and Third Generation Rights**
 1. Dennis M Davis, “Socio-Economic Rights: Has the Promise of Eradicating the Divide Between First and Second Generation Rights Been Fulfilled?”, in *Comparative Constitutional Law* Tom Ginsburg & Rosalind Dixon eds) (Edward Elgar, 2011)[519-331].
 2. David Landau, “The Reality of Social Rights Enforcement” (2012) 53(1) *Harvard International Law Journal* [1-81].
 3. David R. Boyd, *The Environmental Rights Revolution* (UBC Press 2012) [19-77].
 4. Excerpt *Lawson v. Housing New Zealand* [1997] 2 *NZLR* 474 [1-8].
 5. Excerpt *Francis Coralie Mullin v. The Administrator*, 191 SCR (2) 516 (1981) [1-2]
- **Topic 4: International Constitutionalism**
 1. David Schneiderman, *Constitutionalizing Economic Globalization: Investment Rules and Democracy's Promise* (Cambridge: Cambridge University Press, 2008) [1-17], [205-222].
 2. David Held “Democracy, the Nation-State and the Global System” in *Models of Democracy* (3rd ed, Stanford: Stanford University Press, 2006) [290-311].

3. Stephen Gardbaum, "Human Rights and International Constitutionalism" in Jeffrey L. Dunoff & Joel P. Trachtman, *Ruling the World? Constitutionalism, International Law, and Global Governance* (Cambridge: Cambridge University Press, 2009) [233-257].
 4. Neil Walker, "Postnational Constitutionalism and Postnational Public Law: A Tale of Two Neologisms" (August 29, 2012). Edinburgh School of Law Research Paper No. 2012/20.
- **Topic 5: Student Selected**
 1. Subject to Lecturer's approval, students may work on an article/chapter from the list below (materials for further reading).

Extended Bibliography

The following list includes some materials for further readings. They provide other perspectives and analysis on the main topics of the course and may be helpful in the preparation of assignments, as well as for general class discussion. In addition to this list, students might want to consult the following textbooks, which have been placed on reserve in the Law Library, for additional background information and foreign materials:

1. Norman Dorsen et al *Comparative Constitutionalism* (Thomson West, 2003).
2. Vicky Jackson and Mark Tushnet *Comparative Constitutional Law* (New York: Foundation Press, 2006).
3. Raymond Miller (ed) *New Zealand Government and Politics* (5th ed, Oxford University Press, 2010).
4. Geoffrey Palmer and Mathew Palmer *Bridled Power: New Zealand's Constitution and Government* (Oxford University Press, 2004).

Materials for further reading:

1. Giovanni Sartori "Constitutionalism: A Preliminary Discussion" (1962) 56(4) *The American Political Science Review* 853-864.
2. Andrew Sharp "Constitutionalism" in Raymond Miller (ed) *New Zealand Governments and Politics* (Oxford University Press, 2006) 103-112.
3. Jo Eric Khushal Murkens 'The Quest for Constitutionalism in UK Public Law Discourse' (2009) 29 *Oxford Journal of Legal Studies* 427-455.
4. Amy Gutmann "Democracy" in Robert E Goodin & Philip Pettit (eds) *A Companion to Contemporary Political Philosophy* (Blackwell Publishers, 1997) [411-421].
5. * Robert A Dahl *Democracy and its Critics* (New Haven: Yale University Press, 1989) ch 10 ("Majority Rule and the Democratic Process") [135-153].
6. Jeremy Waldron, 'Representative Lawmaking' (2009) 89 *Boston University Law Review* 335-355.
7. Richard Mulgan "The Meaning of Democracy" in *Democracy and Power in New Zealand: A Study of New Zealand Politics* (Oxford University Press, 1984) [9-14].
8. Claude Ake "Dangerous Liaisons: The Interface of Globalization and Democracy" in Alex Hadenius (ed), *Democracy's Victory and Crisis* (Cambridge: Cambridge University Press, 1997) 282-287.
9. Andras Sajó "The Taming of Democracy" in *Limiting Government: An Introduction to Constitutionalism* (Central European University Press, 1999) [50-68].
10. Stephen Levine "Parliamentary Democracy in New Zealand" (2004) 57(3) *Parliamentary Affairs* 646-665.
11. James Tully "The Unfreedom of the Moderns in Comparison to their Ideals of Constitutional Democracy" (2002) 65(2) *The Modern Law Review* 204-228.
12. Neil Walker, "Constitutionalism and the Incompleteness of Democracy", University of Edinburgh, School of Law, Working Paper Series, No 2010/25.
13. Vernon Bogdanor, "12. Towards a Popular Constitutional State: Democracy and Participation" in *The New British Constitution* (Hart Publishing, 2009).
14. * Andreas Kalyvas, "Popular Sovereignty, Democracy, and the Constituent Power" (2005) *Constellations*, Vol. 12, No. 2 [pp. 223-244]
15. Emmanuel Sieyès *What is the Third State?* (New York: Praeger Publishers, 1963) ch V 119-139.

16. Renato Cristi “The Metaphysics of Constituent Power: Schmitt and the Genesis of Chile's 1980 Constitution” (2000) 21 *Cardozo Law Review* 1748-1775.
17. Ulrich K. Preuss “The Exercise of Constituent Power in Central and Eastern Europe” in Martin Loughlin and Neil Walker (eds) *The Paradox of Constitutionalism: Constituent Power and Constitutional Form* (Oxford: Oxford University Press, 2008) 211-228.
18. Adam Tomkins “The Rule of Law in Blair’s Britain” (2007) 26 U. Queensland LJ 255
19. John Parkinson “Decision-Making by Referendum” in Raymond Miller (ed) *New Zealand Government and Politics* (Oxford University Press, 2010) 571-584.
20. Geoffrey Palmer “The Hazards of Making Constitutions: Some Reflections on Comparative Constitutional Law” (2002) 33 *VUWLR* 631-659.
21. Andrew Arato “Redeeming the Still Redeemable: Post Sovereign Constitution Making” (2009) 22 *International Journal of Politics, Culture, and Society* 427-443.
22. David Landau, “Constitution-Making Gone Wrong”, *Alabama Law Review* (forthcoming, 2013) [available in SSRN].
23. Zachary Elkins, Tom Ginsburg, and James Melton, “Baghdad, Tokyo, Kabul...Constitution-Making in Occupied States”, 49 *William and Mary Law Review* 1 (2008).
24. Noah Feldman “Imposed Constitutionalism” (2005) 37 *Connecticut Law Review* 857-889.
25. Renata Segura y Ana María Bejarano “!Ni una Asamblea más sin Nosotros! Exclusion, Inclusion, and the Politics of Constitution-Making in the Andes” (2004) 11(2) *Constellations* 218-236.
26. John Rawls *Political Liberalism* (New York: Columbia University Press, 2005) 231-240.
27. Carl Schmitt *Constitutional Theory* (Durham: Duke University Press, 2007) [“The Positive Concept of the Constitution”] 75-82.
28. Richard Albert “Nonconstitutional Amendments” (2009) 22(1) *Canadian Journal of Law and Jurisprudence* 5-47.
29. Andrew Harding, Peter Leyland, and Tania Groppi, “Constitutional Courts: Forms, Functions and Practice in Comparative Perspective” in *Constitutional Courts: A Comparative Study* (Andrew Harding and Peter Leyland) (Wildy, Simmonds & Hill Publishing) (2009) [3-27].
30. Gary Jeffrey Jacobsohn “An Unconstitutional Constitution? A Comparative Perspective” *International Journal of Constitutional Law* (2006) 4(3) [460-497].
31. Walter Murphy “An Ordering of Constitutional Values” (1980) 53 *S Cal L Rev* 703 [745-760].
32. Excerpt *Southwest Case 1 BverGE 14* (1951) [Germany] (translated in Walter Murphy and Joseph Tanenhaus (eds) *Comparative Constitutional Law: Cases and Commentaries* (St Martin Press, 1977) 208-212.
33. Yaniv Roznai and Serkan Yolcu, “An Unconstitutional Constitutional Amendment – The Turkish Perspective: A Comment on the Turkish Constitutional Court’s Headscarf Decision” (2012) 10(1) *International Journal of Constitutional Law* 175-207.
34. Yaniv Roznai, “Unconstitutional Constitutional Amendments: The Migration of a Constitutional Idea” (2013) 61 *American Journal of Comparative Law* 657-719.
35. Richard Albert, “The Expressive Function of Constitutional Amendment Rules” (2013) 59 *McGill Law Journal* ____.
36. Bruce V. Harris “Constitutional Change” in Raymond Miller (ed) *New Zealand Government and Politics* (Oxford University Press, 2006) 115-127.
37. Stephen Gardbaum “The New Commonwealth Model of Constitutionalism” (2001) 49 *Am J Comp L* 707-760.
38. Stephen Gardbaum “Reassessing the New Commonwealth Model of Constitutionalism”(2010) 8(2) *International Journal of Constitutional Law* 1-40.
39. Stephen Gardbaum’s , “What is the New Commonwealth Model and What is New About It?” in Stephen Gardbaum, *The New Commonwealth Model of Constitutionalism: Theory and Practice* (Cambridge University Press, 2013) [21-46]
40. Paul Rishworth “The Inevitability of Judicial Review under ‘Interpretive’ Bills of Rights: Canada’s Legacy to New Zealand and Commonwealth Constitutionalism?” in Grant Huscroft and Ian Brodie (eds) *Constitutionalism in the Charter Era* (Toronto: Lexis Nexis Canada, 2004) 233-267.
41. Grant Huscroft and Paul Rishworth “You Say you Want a Revolution’: Bills of Rights in the Age of Human Rights” in David Dyzenhaus et al (eds) *A Simple Common Lawyer: Essays in Honour of Michael Taggart* (Oxford: Hart Publishing, 2009) [137-150].

42. Ronald Dworkin *Freedom's Law: The Moral Reading of the American Constitution* (Cambridge: Harvard University Press, 1996) [15-35].
43. Jason Varuhas “Courts in the Service of Democracy: Why Courts Should Have a Constitutional (But Not Supreme) Role in Westminster Legal System” (2009) NZLR 481-518.
44. Allan C. Hutchinson “The 'Hard Core' Case Against Judicial Review” (2008) 121 *Harv L Rev* 57.
45. Alec Stone Sweet “The Politics of Constitutional Review in France and Europe” (2007) 5(1) *International Journal of Constitutional Law* 69-92.
46. *Constitutional Courts: A Comparative Study* (Andrew Harding and Peter Leyland) (Wildy, Simmonds & Hill Publishing) (2009).
47. Cheryl Saunders “Protecting Rights in Common Law Constitutional Systems: A Framework for a Comparative Study” (2002) 33 VUWLR 507-536.
48. Kent Roach “Dialogic Review and its Critics” (2004) 23 *Supreme Court Law Review (2nd)* 49-104.
49. Ran Hirschl “Resituating the Judicialization of Politics: *Bush v. Gore* as a Global Trend” (2002) 15 *Canadian Journal of Law & Jurisprudence* 191-218.
50. Bruce Ackerman “Higher Lawmaking” in Sanford Levinson (ed) *Responding to Imperfection: Theory and Practice of Constitutional Amendment* (Princeton University Press, 1995) 63-87.
51. Sujit Choudhry “Ackerman's Higher Lawmaking in Comparative Constitutional Perspective: Constitutional Moments as Constitutional Failures?” (2008) 6(2) *International Journal of Constitutional Law* 193-230.
52. Frank I Michelman “Socioeconomic Rights in Constitutional Law: Explaining America Away” (2008) 6(3) *International Journal of Constitutional Law* 663-686.
53. Roberto Gargarella “Theories of Democracy, the Judiciary and Social Rights” in Roberto Gargarella et al (eds) *Courts and Social Transformation in New Democracies* (Ashgate, 2006) [13-29].
54. Dennis M Davis, “Socioeconomic Rights: Do They Deliver the Goods” (2008) 6(3) *International Journal of Constitutional Law* [687-711].
55. “Ellie Palmer “The Role of Courts in the Domestic Protection of Socio-Economic Rights: The Unwritten Constitution of the UK” in Fons Coomans (ed) *Justiciability of Economic and Social Rights: Experiences from Domestic Systems* (Antwerp – Oxford: Intersentia, 2006) [129-171].
56. Malcolm Langford “The Justiciability of Social Rights: From Practice to Theory” in Malcolm Langford (ed) *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law* (Cambridge: Cambridge University Press, 2008).
57. S. Muralidhar “Judicial Enforcement of Economic and Social Rights: The Indian Scenario” in Fons Coomans (ed) *Justiciability of Economic and Social Rights: Experiences from Domestic Systems* (Antwerp – Oxford: Intersentia, 2006) 237-267.
58. Rodrigo Uprimny Yepes “The Enforcement of Social Rights by the Colombian Constitutional Court: Cases and Debates” in Roberto Gargarella et al (eds) *Courts and Social Transformation in New Democracies* (Ashgate, 2006) 127-151.
59. S. Muralidhar “Judicial Enforcement of Economic and Social Rights: The Indian Scenario” in Fons Coomans (ed) *Justiciability of Economic and Social Rights: Experiences from Domestic Systems* (Antwerp – Oxford: Intersentia, 2006) 237-267.
60. Neil Walker “Taking Constitutionalism Beyond the State” (2008) 56 *Political Studies* 519-543
61. Ming-Sung Kuo “Between Law and Language: When Constitutionalism goes Plural in a Globalising World” (2010) 73 *Modern Law Review* 858-882.
62. * Mark Tushnet “Some Reflections on Method in Comparative Constitutional Law” in Sujit Choudhry (ed) *The Migration of Constitutional Ideas* (Cambridge: Cambridge University Press, 2006) 66-83.
63. Vicki Jackson, “Introduction: Constitutional Cosmology – Convergence, Resistance, and Engagement” in *Constitutional Engagement in a Transnational Era* (Oxford University Press, 2010) [1-15].
64. Vicki Jackson, “9. Constitutions as Mediating Institutions, Transnational Constitutional Values, and Engagement in Twenty-First Century Constitutional Interpretation” in *Constitutional Engagement in a Transnational Era* (Oxford University Press, 2010) [255-285].

65. Mattias Kumm, “The Cosmopolitan Turn in Constitutionalism: On the Relationship between Constitutionalism in and beyond the State” in Jeffrey L. Dunoff and Joel P. Trachtman, eds, *Ruling the World? Constitutionalism, International Law and Global Governance* (Cambridge University Press, 2009) [258-273].
66. Samantha Besson, “Whose Constitution(s)? International Law, Constitutionalism and Democracy” in Jeffrey L. Dunoff and Joel P. Trachtman, eds, *Ruling the World? Constitutionalism, International Law and Global Governance* (Cambridge University Press, 2009) [381-407].
67. Rosalind Dixon and Eric A. Posner, “The Limits of Constitutional Convergence” (2010) *U of Chicago, Public Law Working Paper No. 329* [1-20].
68. Jeffrey Goldsworthy “Questioning the Migration of Constitutional Ideas: Rights, Constitutionalism and the Limits of Convergence” in Sujit Choudhry (ed) *The Migration of Constitutional Ideas* (Cambridge: Cambridge University Press, 2006) [115-141].

Topic Selection

A number of students, especially those from other jurisdictions, prefer to do comparative research and choose a topic which enables them to compare their own country’s approach to an issue with the approach of another country. Where appropriate to the topic the Faculty’s expectation is that one of the comparator countries should be New Zealand. This is to encourage students studying at Victoria to engage with the laws of New Zealand. If your topic involves comparative work you should speak to the course coordinator to discuss whether New Zealand content is or is not appropriate.

Overlap in Research Work

It is expected that each piece of work submitted as part of the requirements for an LLB(Hons), LLM or GCertLaw is not only your own work but also does not contain more than very limited material from other papers you have submitted in completion of your degree. Some overlap is permissible, at the discretion of the Director of Postgraduate Studies; however, it is your responsibility to ensure that unacceptable overlap does not occur.

Attendance

Apart from exceptional circumstances, you are expected to attend all seminars. Pressure of other work is not generally considered an acceptable reason for absence. Where attendance is impossible (for example due to short-term overseas work) you may be requested to present additional seminars, or essays on any topics which have been missed. Inadequate attendance will result in failure to fulfil the mandatory course requirements (terms). Any difficulties should be discussed with the Director of Postgraduate Studies.

Class Representative

The class representative provides a useful way to communicate feedback to the teaching staff during the course. A class representative will be selected at the first lecture of the course.

Other Important Information

There is other important information that students must familiarise themselves with, including:

- Academic Integrity and Plagiarism: www.victoria.ac.nz/home/study/plagiarism
- Academic Progress: www.victoria.ac.nz/home/study/academic-progress (including restrictions and non-engagement)
- Dates and deadlines: www.victoria.ac.nz/home/study/dates
- Grades: www.victoria.ac.nz/home/study/exams-and-assessments/grades
- Resolving academic issues: www.victoria.ac.nz/home/about/avcacademic/publications2#grievances
- Statutes and policies including the Student Conduct Statute: www.victoria.ac.nz/home/about/policy
- Student support: www.victoria.ac.nz/home/viclife/student-service
- Students with disabilities: www.victoria.ac.nz/st_services/disability
- Student Charter: www.victoria.ac.nz/home/viclife/student-charter
- Student Contract: www.victoria.ac.nz/home/admisenrol/enrol/studentcontract

- Turnitin: www.cad.vuw.ac.nz/wiki/index.php/Turnitin
- University structure: www.victoria.ac.nz/home/about
- VUWSA: www.vuwsa.org.nz

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