

Topics in Comparative Constitutionalism

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Michaelmas Term Seminar Series

15.00-17.00 on Fridays weeks 3-8

Law Boardroom, Faculty of Law

In this seminar series, we will discuss some key topics in comparative constitutionalism, drawing out some of the theoretical questions which underpin them.

The seminars will be led by Aileen Kavanagh who is joined by a visiting speaker. Each seminar will start with a short presentation by each of the speakers, followed by a roundtable discussion. The seminars will look closely at just two or three readings, mostly from recently published work or work-in-progress by the speakers. The readings are hyperlinked below so that people can read them in advance and join in the roundtable discussion. The speakers will assume that most people are familiar with the papers.

The seminar is not associated with any particular course or examination, but **all are welcome** to attend. The seminar may be of interest to graduate students in the Law Faculty, especially BCL/MJur students taking Constitutional Theory, Comparative Human Rights and Comparative Public Law, or to research students working in the areas of constitutional law, constitutional theory or comparative constitutional law.

Seminar Programme

Friday Week 3 (27th October) **Situating the Strike-Down Power** (with **Chintan Chandrachud**)

Friday Week 5 (10th November) **Separation of Powers and Constitutional Review** (with **Dimitrios Kyritsis**)

Friday Week 8 (1st December) **Separation of Powers** (with **Eoin Carolan**)

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Outline and Reading List

Seminar 1: Situating the Strike-Down Power (with Chintan Chandrachud)

In both theoretical and comparative law scholarship on constitutional judicial review, there is much focus on the judicial strike-down power. In theoretical debates about the justification for constitutional judicial review, it is often suggested that it is unjustifiable in a democracy for judges to have the power to strike down legislation enacted by a democratically elected legislature. In comparative constitutional law, it is often thought that the strike-down power is the emblem of so-called 'strong-form review' and, therefore, worrying from a democratic point of view. By examining the constitutional systems of the United Kingdom, United States and India, we will explore the nature and significance of the strike-down power in these systems, questioning whether it really is the strongest tool in the judicial toolkit.

*Chintan Chandrachud, '[Judicial Review in the Shadow of Remedies](#)', Chapter 4 of Chintan Chandrachud, *Balanced Constitutionalism* (OUP, 2016)

*Aileen Kavanagh, '[Situating the Strike-Down](#)' (draft paper)

Seminar 2: Separation of Powers and Constitutional Review (with Dimitrios Kyritsis)

This seminar will engage with the topic of the separation of powers. It will contrast Dimitrios Kyritsis's understanding of that doctrine as presented in his new book *Where Our Protection Lies: Separation of Powers and Constitutional Review* (OUP, 2017) with an influential paper by Jeremy Waldron.

*Dimitrios Kyritsis, *Our Protection Lies: Separation of Powers and Constitutional Review* (OUP, 2017), Chapter 2 and first two sections of Chapter 4 (available on Oxford SOLO)

*Jeremy Waldron, '[Separation of Powers in Thought and Practice](#)' [2013] BCL Rev 433

Seminar 3: Separation of Powers

This seminar will continue with an analysis of the separation of powers, contrasting Aileen Kavanagh's paper below with the ideas presented in Eoin Carolan's influential book *The New Separation of Powers* (OUP 2009).

*Aileen Kavanagh, '[The Constitutional Separation of Powers](#)' in Dyzenhaus & Thorburn (eds) *Philosophical Foundations of Constitutional Law* (OUP 2015)

*Eoin Carolan, Paper to be circulated one week before the seminar.