

Course title	<i>New perspectives in administrative law</i>
Duration	5 days (30 hours)
Dates	August 29 – September 4, 2017
Instructor	Prof. Thomas Perroud, Université Panthéon-Assas, Paris II
Course objectives	
The objective of the course is the analyse and discuss the current challenges the discipline of administrative law is undergoing in the world today.	
Course Description	
<p>Administrative law is undergoing profound changes in Europe and the world. In national laws, judicial review has changed in profound ways in recent years. A major change is also that administrative law is more and more conceived on a transnational basis: administrations are working in networks, public services are delivered on a cross border basis. This raises question about the accountability of the administration and the possible challenges to administrative action. European administrative law is also changing: agencification is an ancient phenomenon now, but recent cases have called for more oversight of the powers of the agencies (the control of discretion). Also, administrative law professors have called for the adoption of a European code of administrative procedure. Finally at global level new forms of rule-making are appearing through private bodies.</p> <p>The course will be devoted to discuss the latest developments in administrative law. Three kinds of developments will be studied:</p> <ul style="list-style-type: none"> - first on a comparative perspective we will try to understand how national administrative laws have evolved recently through the roles of fundamental rights, new public management, privatization and contracting out; - second, at a European level we will try to assess the developments of transnational relations in administrative law; - third, we will study several topics in global administrative law: private standards, regulatory competition, market design, etc. 	
Course Outline	
See the document attached with all the presentations.	
Educational Outcomes	
New knowledge of the discipline of administrative law and critical insights.	
Assignment	
<ul style="list-style-type: none"> - The course will be organized around presentation whose topic are enclosed here. I selected some documents and organized them in a DropBox but you are free to expand the presentation to other 	

legal systems or other writers.

- Each student will be required to make one presentation. The presentation will be the basis of the Essay that I will mark (see below). The presentation should last 30 min and should be sent to the whole class asap, so that we can have the most interesting discussion and debate possible. Please check the file “Timetable for presentations” in the Dropbox to know the dates for each presentation.
- Students can choose the presentation and hence the essay according to their wishes and inclination. However, we will follow the order of the presentations, at least concerning the 3 parts.
- The presentations will be 30 minutes long, followed by half an hour of debates and clarifications from me.

Please check the section “General note” below for more information about the essay.

Basic Bibliography	Please see the document attached to the syllabus. The reading material will be shared through Dropbox.
Course Prerequisites	Basic background in the public law of your country or other countries
Evaluation	Full attendance and active participation during classes represent compulsory course requirements. The essay will be assessed on a pass/fail or distinction basis. The oral presentation will be here to prepare the writing of the essay.
Language	English
Location	EPLO Headquarters, Athens
General note	<p>N.B. Due to the fact that class attendance is mandatory, participants will have limited time to work on their assignment during the week. Therefore, we strongly advise students to start to prepare their essays before the start of the program. Tuesday 5th September is a class-free day and student should use the time available to finalize and submit their works.</p> <p>Essay should be word-processed and should be maximum 2000 words long. The texts should be presented in: Times New Roman 11pt font, 1.5 spaced, text justified. All academic work should be referenced and cited. The paper must be submitted online to academy@eplo.eu by Tuesday, 5th September.</p> <p>For any additional assistance with the preparation of the essay, students may contact the Academy Secretariat at academy@eplo.eu.</p>

“New perspectives in administrative law”

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Reading list and essay questions

Problem of bias: as the course is taught in English, there will clearly be a special focus on common law countries. I could not enclose in the syllabus articles or books that only some could read. However, you are free to expand your presentation on other countries, including yours obviously.

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<u>Part 1 - The Comparative Perspective</u>	
Topic 1	Brexit and Administrative Law
Readings	<p>We need to make a discussion here on the Miller case and its implications for the relations between the executive and the legislative powers.</p> <p>https://www.supremecourt.uk/news/article-50-brexit-appeal.html</p> <p>The Supreme Court's Judgment in Miller: In Search of Constitutional Principle</p> <p>https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2952331</p>
Essay question	The consequences of Brexit on administrative law
Topic 2	The Attacks on Administrative Law and Judicial Review
Readings	<p>There are currently legal and scholarly attacks on administrative law. The best example is probably the book written by Philip Hamburger and entitled « Is Administrative Law Unlawful? ». Here you can find some reviews:</p> <p>http://www.administrativelawmatters.com/blog/2014/09/03/hamburgers-is-administrative-law-unlawful-with-spoilers/</p> <p>http://www.administrativelawmatters.com/blog/2016/09/21/the-historical-foundations-of-english-administrative-law-paul-craig-on-philip-hamburger/</p> <p>We would need a presentation of all the ideas for and against administrative law.</p> <p>- Trump and the attacks on agencies</p> <p>There are currently initiatives in the US to attack the regulatory State. We should discuss the deeper implications of such initiatives:</p> <p>http://yalejreg.com/nc/what-to-make-of-the-regulatory-accountability-acts-</p>

	<p>public-hearing-right-for-100m-rules/</p> <p>http://yalejreg.com/nc/the-regulatory-accountability-act-or-how-progressives-learned-to-stop-worrying-and-love-cost-benefit-analysis-by-jonathan-masur/</p> <p>http://thehill.com/blogs/pundits-blog/finance/321340-corruption-by-us-companies-just-got-easier</p> <p>You could see also the information on Donald Trump and the Environment Protection Agency.</p> <p>There are very interesting developments currently on the Regulatory Accountability Act in the US :</p> <p>https://www.theregreview.org/2017/05/18/walker-model-bipartisan-reform/</p> <p>And:</p> <p>https://www.theregreview.org/2017/05/18/funk-formal-rulemaking-halt-regulation/</p> <p>- Attacks on judicial review in the United Kingdom</p> <p>This Blog Post explains the purpose of the Cameron government and tries to clear all the myths around judicial review:</p> <p>https://ukconstitutionallaw.org/2013/01/10/var-da-bondy-and-maurice-sunkin-judicial-review-reform-who-is-afraid-of-judicial-review-debunking-the-myths-of-growth-and-abuse/</p>
Essay question	Current attacks on administrative law
Topic 3	Cost-Benefit Analysis
Readings	<p>Masur, Posner, Cost-Benefit Analysis and the Judicial Role: https://papers.ssrn.com/sol3/Papers.cfm?abstract_id=2915063</p> <p>In several legal systems there are regulatory oversight bodies in charge of assessing the quality of CBAs:</p> <p>Alemanno, Wiener, Comparing regulatory oversight bodies: the US Office of Information and Regulatory Affairs and the EU Regulatory Scrutiny Board (DropBox)</p> <p>Susan Rose-Ackerman and Thomas Perroud, Policy making and Public Law (DropBox)</p>

	<p>Auby, Perroud, Regulatory Impact Assessment (DropBox)</p> <p>I also enclosed a series of theoretical articles on CBA. They are very important to understand the deeper implications and foundations of this technique.</p>
Essay questions	<ul style="list-style-type: none"> - Is there a turn towards evidence-based judicial review? - Regulatory oversight bodies in comparative perspective
Topic 4	Robots, Algorhythm, Blockchain and the Administration
Readings	<p>Regulating by Robot: Administrative Decision Making in the Machine-Learning Era https://papers.ssrn.com/sol3/Papers.cfm?abstract_id=2928293</p> <p>Rise of the Digital Regulator https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2902238</p> <p>Algorithmic Decision-Making and Human Rights https://hrcessex.wordpress.com/2017/04/21/algorithmic-decision-making-and-human-rights/</p> <p>https://balkin.blogspot.fr/2016/02/the-emerging-law-of-algorithms-robots.html</p>
Essay question	The influence of new technologies on administrative law
Topic 5	Transparency and Participation
Readings	See the files in the DropBox.
Essay question	How to increase transparency and/or participation in public administration?
Topic 6	Agencies
Readings	See the file in the DropBox.
Essay question	How to make agencies accountable?
Topic 7	Privatization: le dossier de Yale
Readings	See the file entitled «Puzzles of State Identity, Privatization, And Constitutional Authority»
Essay questions	<ul style="list-style-type: none"> - The problems with the privatization of government functions - The limits of the privatization of government functions
Topic 8	Procedure and Administrative Law
Readings	We may contrast and compare here a few codes: the US one, the Renual experience on the European Code of Administrative Procedure and the new

	French code.
Essay question	Are there common values in comparative administrative procedure law?
Topic 9	Contract and Public Services: The Rise and Fall of contracting out?
Readings	See the file with the documents
Essay questions	<ul style="list-style-type: none"> - What are the problems with contracting-out? - What is the future of contracting-out?
Topic 10	New Economy, Innovation and Regulation: Uber and Airbnb
Readings	<p>The aim of the presentation would be to compare and contrast the different responses to Uber and Airbnb around the world. Beware, the two raise very different questions.</p> <p>Italy: http://www.corriere.it/economia/17_maggio_03/antitrust-si-schiera-uber-taxi-rivolta-vergognoso-4be75e8e-3035-11e7-a298-52518e2719d0.shtml</p> <p>Like Uber, But for Local Governmental Policy: The Future of Local Regulation of the 'Sharing Economy' https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2549919</p> <p>In the United State, the litigation on Airbnb is summarized here: https://www.theregview.org/2016/10/18/seu-home-sharing-fight-regulators/</p> <p>And here: http://yalejreg.com/nc/assessing-airbnb-s-prospects-in-its-san-francisco-litigation-by-nancy-leong-and-ben-edelman/</p> <p>There are other cases in France, the UK and Germany for ex. Try to find them.</p> <p>For the topic “The future of occupational freedom” the reference materials are:</p> <ul style="list-style-type: none"> - Blevins, <i>License to Uber</i> - Bernstein, <i>The Due Process Right To Pursue a Lawful Occupation</i> - Neily, <i>Beating Rubber-Stamps into Gavels</i> - Shanor, <i>Business Licensing and Constitutional Liberty</i>
Essay question	<ul style="list-style-type: none"> - Is the new economy making regulation useless? - The future of occupational freedom?
Topic 11	New Public Management and Administrative Law: a reappraisal
	In this session we will try to assess the results of the New Public

	<p>Management reforms. We will try to understand what NPM is and what the consequences are.</p> <p>You will find in the relevant folder the book of C. Hood's and R. Dixon "A Government that Worked Better and Cost Less?: Evaluating Three Decades of Reform and Change in UK Central Government".</p> <p>We will also see and discuss Ken Loach's film entitled "I, Daniel Blake". Students are strongly encouraged to watch it.</p>
Essay question	The consequences of NPM on administrative law

<u>Part 2 – The European Perspective</u>	
Topic 12	Regulatory Competition in Europe
Readings	See the file in the DropBox
Essay question	The consequences of regulatory competition on administrative law in Europe
Topic 13	Lobbying and Conflicts of interest
Readings	See the file in the DropBox
Essay question	How to solve the problem of conflicts of interests in Europe?
Topic 14	The problem of delegation in the EU
Readings	<p>There needs to be here a critical analysis of the cases from Meroni and Romano to UK v Parliament and Council</p> <p>http://europeanlawblog.eu/2014/01/27/the-legal-limits-to-agencification-in-the-eu-case-c-27012-uk-v-parliament-and-council/</p> <p>Please note that the chapter from Hofmann and Turk is not up to date.</p>
Essay question	Delegation and accountability in Europe
Topic 15	Multilevel governance and Networks of Agencies
Readings	See the file in the DropBox.
Essay questions	<ul style="list-style-type: none"> - Multilevel governance and accountability in Europe - Networks of agencies and accountability in Europe
Topic 16	Comitology
Readings	See "Legal Challenges in EU administrative law".
Essay question	Is comitology accountable?

Part 3 – The Global Perspective	
Topic 17	The role of private standards
Readings	<p>Strauss, Private Standards Organizations and Public Law: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2194210</p> <p>See the book Global Administrative Law and EU Administrative Law See the files in the DropBox</p>
Essay question	Are private standard legitimate?
Topic 18	Investment treaties and economic regulation
Readings	<p>Here the purpose would be to analyse the new ways investment treaties can curtail State regulatory powers, can be a form of judicial review and the problems that it entails.</p>
Essay question	The consequences of investment treaties on administrative Law
Topic 19	Global Due Process
Readings	See the book by Giacinto della Cananea and the article.
Essay question	Are there limits to the globalization of due process?
Topic 20	Globalisation of Judicial Techniques
Readings	<p>See this article: Proportionality, General Principles of Law, and Investor-State Arbitration: A Response to Jose Alvarez https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2435307</p> <p>Proportionality Balancing and Global Constitutionalism https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1569344</p> <p>A Cosmopolitan Legal Order: Constitutional Pluralism and Rights Adjudication in Europe https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1913657</p>
Essay question	Is proportionality review universal?
Topic 21	The question of accountability
Readings	See the file in the DropBox.
Essay question	Is accountability possible in a globalized world (without a democracy)?