

GUIDELINES TO ANALYSING AND PRESENTING CONSTITUTIONAL SYSTEMS

1. Modern constitutionalism, which began in the 18th century in Europe and North America, has never been without variations. However, as is often understood, its common core elements, more or less uniform throughout the world, include constitutional supremacy, rule of law, separation of powers, checks and balances, popular sovereignty, democracy and the protection of fundamental rights and freedoms.

- *Constitutional supremacy* requires that the government conform to constitutional prescriptions;
- *The rule of law* demands the government to rule and be ruled by law;
- The commitments to *separation of powers* and *checks and balances* exist to ensure that the government's powers remain limited;
- *The principle of popular sovereignty* establishes a thick version of democratic basis for a modern constitution, while, relatedly, *the principle of democracy* entails a government based on the consent of the governed;
- At the centre of all these tenets and features is *a core of fundamental rights and freedoms* that bar government from intrusion;

Therefore, presenting a constitution requires to analyse how far constitutionalism, in the specific context of the examined country, has fully embraced and embodied these generic elements of modern liberal-democratic constitutionalism.

2. When analysing the experiences of new global democracies in the 1990s, three distinctive features frequently appear in transitional constitutionalism to which a particular attention should be paid.

- a) Democracies typically engage in *transitory constitutional measures* in preparation for, complementary with, or even in lieu of formal constitution making or revision;
- b) Extraordinary constitutional politics often trigger or necessitate *unconventional constitutional adjudication*;
- c) Democracies may enact *quasi-constitutional statutes* as short-term solutions or expedient responses to the difficulty of constitutional revisions;

3. Constitutionalism, driven by globalisation, has developed beyond nation states to present both internationalisation of constitutional laws and constitutionalisation of international laws. These new phenomena consist primarily of the three following distinctive features of a transnational perspective that must be taken into consideration.

- a) The *incorporation of international treaties* (in particular, human rights treaties) into the domestic legal order [for example: the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), the Convention on the Rights of Person with Disabilities (CRPD)...];
- b) The *engagement of transnational judicial dialogues* (do courts adopt a monistic or a dualist view on the relationship between domestic and international laws?);
- c) The *global convergence of institutions* (are constitutional courts, human rights commissions, independent auditors and independent regulatory commissions truly empowered?);

Delivering a presentation on any constitutional system requires to highlight (even in the case of their non-existence) constitutional features common to either liberal-democratic constitutionalism or transitional and transnational constitutionalism.

Based on the previous elements (p.1), your presentation should therefore:

→ Focus on ***constitutional text*** (see the website for direct links) to introduce the structural and representational discourse on the government system and political powers, otherwise:

- ✓ Describe the general architecture of the text (how many Parts? Articles? Schedules? Declarations? Preamble?)
- ✓ Describe the Executive, the Legislative and the Judiciary (who are the actors? how are they put in office? how long? what are their prerogatives/powers?)
- ✓ Describe the law making process (especially budget law), the Constitution amending process (is there a requirement for a special majority? a popular vote? a referendum?)
- ✓ Describe how the Executive and the Legislative interact (in a cooperative or a confrontational way) through impeachment or non-confidence vote or dissolution
- ✓ Describe the central-local relations (is there a multi-level governance? how far does devolution go?)

→ Focus on ***judicial review and the guarantees of fundamental rights and freedoms***, otherwise:

- ✓ Describe the nature of these fundamental rights and freedoms (civil and political, socio-economic, religious, linguistic...) and how they are mentioned (in a Bill of Rights? in the Constitution itself?)
- ✓ Describe the actors in charge of judicial review (a Supreme court? a Constitutional court? who are the judges? what are their prerogatives?)
- ✓ Describe the judicial strategy and the level of activism of the court (is there a pro-dialogue approach? how far are foreign and international laws referred to in constitutional adjudication?)

→ Focus also on ***constitutional context*** (or momentum). The sources in which transformative constitutions are articulated are formed not only through the constitution, statutes and court decisions (jurisprudence), but also through a region's political history, social movements, actions and initiatives undertaken by governmental and non-governmental actors;

→ And conclude with a discussion of the ***challenges and prospects*** of your case-country's constitutionalism that lie ahead.

☞ Please note:

- that you are free to present in the most accurate order according to your own research and understanding of the constitutional system you are dealing with (some of the above elements may be skipped if not relevant and others may be introduced);
- that a hand-out (no more than two A4 size pages) with the most fundamental information, particularly the main actors and their prerogatives, some key-elements of constitutional history and some of the challenges and prospects ahead, will be very much appreciated by all your classmates...
- that your presentation will be a collective one prepared with Powerpoint (file to be sent to courron[at]nanzan-u.ac.jp).