Best of the Supremes: past and future of the highest courts in United States and Portugal

Responsible Academic staff
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Teaching Language
English

Syllabus

After the recent controversial process of appointing a new Supreme Court Justice for the Supreme Court of the United States (SCOTUS) and following the major role that the decisions of the Portuguese Constitutional Court (PCC) took during the years of austerity and "crisis", both Courts are being discussed and studied around the world, calling the attention of jurists - and even laymen - to their case law and importance of those supreme courts.

This intensive course comprehends a set of modules on both the SCOTUS and PCC history, focusing on their origins, most important decisions, judicial activism, functioning and on what can we expect for the near and distant future in both legal systems.

- The first modules will be dedicated to the origins of the SCOTUS, the US Constitution, especially Marbury v. Madison and the relevance of Chief Justice John Marshall, as well as the older cases that shaped this court (but also referring to the much recent creation of the PCC, already in the twentieth century, and its context).
- Then we will follow to the respective methods of decision, interpretation, creation of law, functioning of the courts and some of the main cases decided from the 19th to the 21st century.
- Finally, we will discuss what we can expect in the present and in the future, especially as regards the new Justice Neil Gorsuch, referring to the positions he has been defending (both as an academic and as a federal judge) and the position he will occupy in the balance of the court, with the remaining eight "Supremes": Roberts, Thomas, Alito, Kennedy, Breyer, Kagan and Sotomayor, as well as the vacancy that will be occupied (explaining the relevance of discussions on originalism from Scalia, and also other discussions, namely on Judge Garland nomination last year and the relevance that SCOTUS has in the legal debate in the US today).

In the same way, we will debate on the composition and functioning of the PCC (presenting its thirteen justices: Costa Andrade, Caupers, Samentão e Castro, Ramos Monteiro, Vaz Ventura, Almeida Ribeiro, Fernandes Costa, Teles Pereira, Rodrigues Ribeiro, Sotomayor, Mata-Mouros, Rangel Mesquita and Machete), the different, but growing, personalization of its decisions, and also the rising importance of the rapporteur and votes against the decision. We will finally discuss the functioning of the PCC as a European Union law court.

In the end, we pretend to enable an understanding of these Supreme Courts through the characterization and comparison of the legal systems of the United States of America and Portugal to concede a better understanding of the problems and subjects being discussed on and about these highest courts, trying to contribute to the legal-cultural and technical-juridical enrichment of those who, today students, will be tomorrow jurists, in an increasingly globalized world in which international contacts multiply. As always, Comparative Law breaks ideas of legal isolation, broadens horizons, and strengthens the critical spirit.
Assessment

This course will be a mixture of lecture, discussion and experiential learning. Students will be expected to participate very actively in class. The grade will be based on a closed-book final exam which will take place after the intensive course. The exam will be based on material done in class or set as homework.

Bibliography

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- Joaquim Cardoso da Costa, “Tribunal Constitucional e debate público”, in *40 Anos de políticas de justiça em Portugal*, Almedina, 2017, pp. 113-141;
- Jorge Reis Novais, *Em defesa do Tribunal Constitucional*, Coimbra: Almedina, 2014;
- Kristin M. McGaver, Getting back to basics: recognizing and understanding the swing voter on the Supreme Court of the United States”, in *Minnesota Law Review*, Minneapolis, v.101 n.3 (February 2017), pp. 1247-1286;
- Maria dos Prazeres Pizarro Beleza, “Tutela judicial efectiva e acesso dos cidadãos ao Tribunal Constitucional”, in *Julgar*, Lisboa, n.º 29 (Maio-Ago. 2016), pp. 61-75;
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<td>Rui Moura Ramos</td>
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<td>in Estudos em memória do Conselheiro Luís Nunes de Almeida, Coimbra Editora, 2007, pp. 781-826</td>
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<td>Tom Rosenstiel</td>
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