



# *Session 11*

## *Constitutional law 2*

# *Tools for comparison*

Developed by the [University of Bern](#)

## A Textual analysis:

- seen as the first step towards in-depth analysis of single institutes (micro-comparison)
- emphasizes the contemporary focus of a given socio-political system.
- seeks to highlight:
  - The most fundamental elements of the actual sociopolitical order.
  - The adjustments to sociopolitical reality by amendments.
  - The change in the instruments of constitutional law.

## B Typological analysis (fifth method):

- aims at outlining typological similarities in texts to generate general theories about constitutional concepts.
- outlining typological differences to contrast competing approaches.

## C Text-stages-analysis:

- comparative analysis of a specific topic (micro-comparison) acknowledging the historical dimension of constitutions.
- assumes that advances in constitutionalism can be expressed in the documents themselves.

ACTIVITY: in teams of 3-4 students choose one pair of constitutions for comparison and present your findings:

1. Japan - Croatia
2. North Korea - Brazil
3. Cuba - Thailand
4. PR China – RO China (Taiwan)
5. Greece - Turkey

## *Drawbacks of textual analyses*

- Highly incomplete: hint at the actual practice in a legal system; cannot reveal everything about extra-constitutional organizations and processes.
- Misleading: where constitutional practice has departed from the procedure suggested by the text.
- Indeterminate: regarding different possible interpretations of specific provisions in the very same text or even different schools of interpretation among the scholars of constitutional law.
- Ineffective: when text and practice differ greatly where the rule of law is not strictly enforced or the constitution suspended or dishonored.
- Unnecessary: in the sense that a state is perfectly viable without one.

## *Substantive Comparison*

- Reliance not on the constitutional texts, but on constitutional practice as exemplified by political and judicial decisions in the respective countries.
- Helps generate hypotheses about the structures of governance and their effects in different settings.