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## A Critical and Comparative Instrument of Contemporary Public Law: Review of the French Yearbook of Public Law

- **ABSTRACT:** *The French Yearbook of Public Law aims to serve as an innovative publishing project for rethinking French public law in the global context, by overcoming the self-referentiality of its dogmatic tradition. Created under the editorship of Philippe Cossalter, the project is based on an authentic comparative vocation and an epistemologically ambitious methodology. The 2023 edition stands out for its rich dossier on climate change, approached from an interdisciplinary and multilevel perspective, as well as a comparative law section analysing normative transformations in European legal systems. The Yearbook closes with theoretically significant contributions on executive power and administrative procedure. The Yearbook thus establishes itself as a space for legal reflection capable of interrogating the challenges of the Anthropocene and reviving the transformative function of public law.*
- **KEYWORDS:** *French public law, legal comparison, climate change, environmental constitutionalism, Anthropocene, comparative law, governance, European administrative law, legal epistemology, democratic participation*

### 1. A research project between tradition and innovation

The *French Yearbook of Public Law*, based on the Chair of French Public Law at Saarland University (Lehrstuhl für französisches öffentliches Recht – LFOER), and edited by Professor Philippe Cossalter, emerged from a dual scholarly and political urgency: to overcome the traditional self-referentiality of French public law doctrine and to give it new meaning within the global legal debate. Edited by Cossalter with the support of scholars with a high comparatist profile such

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as Professors Jean-Bernard Auby, Giacinto della Cananea and Dominique Custos, the yearbook positions itself as a genuine editorial bridge between two worlds that often remain mutually indifferent: francophone public law and the English-speaking international community.

The Yearbook's underlying premise is clearly defined: French public law, in its dogmatic structure and jurisprudential developments, sometimes remains 'impervious' to the foreign gaze. This distance presents itself not only as linguistic – evidenced by the absence of English as a scholarly medium – but also cultural: the myth of the exemplariness of the French model as an isolated case continues to produce inevitable isolation. The *Yearbook* therefore aims to bridge precisely this distance, with a threefold objective: to provide English-speaking jurists with privileged access to French public law; to present the most pregnant developments in foreign public law to French jurists; and, finally, to promote a genuine *inter-legal* dialogue, nourished by a comparative methodological approach.

The project is grounded in a clear methodological intuition: legal comparison cannot be reduced to an exercise in exegesis and synthesis of norms, but must deeply interrogate models and categories. Hence the choice to employ the English language as a site of confluence – and sometimes conflict – between heterogeneous paradigms. The goal is not to uncritically export French law, nor to subsume it into the Anglo-Saxon mainstream, but to problematise both in a dialectic of mutual recognition. The operational headquarters of FYPL – the Lehrstuhl für französisches öffentliches Recht at the University of Saarland – thus takes on the appearance of a true laboratory of transition, in which the continental-style tradition is fearlessly exposed to the twists and turns of global law. The yearbook integrates brilliant researchers (such as Enrico Buono and Jasmin Hirry-Lesch) and invites jurists in the scholarly community to react and contribute, expanding the academic horizon through horizontal models of editorial cooperation.

However, we believe that the main merit of the initiative lies elsewhere: in understanding that the international opening of legal doctrine is achieved through the construction of conceptual tools that generate problematisations, and thus responsibilities. The *FYPL* is one such tool: a critical prism that is not just a publishing project, but a concrete step toward an epistemological re-establishment.

## **2. Public law and the climate crisis: the core of the 2023 Dossier**

The 2023 edition of the French Yearbook of Public Law is distinguished by an abundant dossier devoted to *Public Law and Climate Change*, flanked by sections featuring dense historical, methodological, and comparative contributions.

In his opening contribution ‘The Future of the French Model of Public Law in Europe’<sup>1</sup>, Sabino Cassese sets out with rigor and clarity the origins of the French administrative model, tracing its contemporary evolutions, including its adaptation to European influences. Updating a valuable 2011 contribution, the article reflects on the tension between institutional particularism and universalism of law. Against the backdrop of the crisis of French *grandeur juridique*, the author invites the jurist to recover what that model can still teach, namely the clear delimitation of categories, the rigor of procedures, and the centrality of administrative jurisdiction.

In his contribution, ‘Conceptual and Linguistic Surprises in Comparative Administrative Law’, Jean-Bernard Auby<sup>2</sup> accompanies us amongst the ‘surprises’ of comparison in the field of administrative law, including seemingly identical concepts that conceal deep asymmetries. The entire contribution conveys, with an ironic gaze, an implicit defense of comparative methodology, to be understood as a critical tool capable of showing the cultural aporias and resistances one may encounter in translation and legal *transplants*.

The introduction of the dossier ‘Public Law and Climate Change’ is edited by Jean-Bernard Auby and Laurent Fonbaustier<sup>3</sup>, who clearly present the objective and methodological approach of the dossier. The authors both specify that the dossier aims to address the relationship between public law and the climate crisis, from a multilevel perspective and with an interdisciplinary slant. The approach of each section is therefore twofold: one functional, investigating how law can adapt to the crisis; the other conceptual, identifying which categories may hinder such adaptation.

In his contribution ‘Climate Change in International Law. The Paris Agreement. A Renewed Form of States’ Commitment?’, Sandrine Maljean-Dubois<sup>4</sup> advances a lucid analysis of the genesis and structure of the Paris Agreement. Born in a complex negotiating context of innovation, the author observes that this agreement transcends the rigidities of the Kyoto Protocol, skillfully combining flexibility and legal binding force, bottom-up and top-down approaches, hard and soft law. The contribution thus offers an effective reflection on the evolution of international law toward more adaptive and inclusive forms that can reinvent legal normativity in a transformative context such as the climate crisis.

Emilie Chevalier’s article ‘European Union law in times of climate crisis: change through continuity’<sup>5</sup> admirably investigates the repercussions of climate challenges on European Union administrative law. The author highlights a paradox: in the face of the disruptiveness of climate change, the Union’s legal

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1 Cassese, 2023.

2 Auby, 2023.

3 Auby and Fonbaustier, 2023.

4 Maljean-Dubois, 2023.

5 Chevalier, 2023.

architecture remains formally stable, while developing new tensions and adaptations that enhance its flexibility, albeit without rupture. While acknowledging the regulatory vitality of Union law, Chevalier lucidly questions the adequacy and effectiveness of its regulatory and governance instruments, reflecting more broadly on the limits of administrative law's resilience.

In his contribution 'Transnational Climate Change Law. A case for reimagining legal reasoning?', Yseult Marique<sup>6</sup> advances an original exploration of climate change law from a transnational perspective as a space for legal re-imagination. Highlighting the intertwining of legal systems, normative sources, and social practices, Marique's dense reflection invites a rethinking of legal reasoning as a practical, ethical, and regulatory tool for dealing with global emergencies, with necessary attention to the future of climate normativity.

Laurent Fonbaustier and Juliette Charriere's article 'Analysis of constitutional provisions concerning climate change'<sup>7</sup> provides a detailed overview, in comparative perspective, of the growing role of constitutional law in combating climate change. Indeed, the contribution lucidly reflects on the promises and frailties of climate constitutionalism. The normative force of the constitution and the high level of judicial protection it can guarantee, stands as a potentially adequate alternative. This innovative perspective is also presented in its limitations, which lie in the frequent vagueness of the provisions that increase dependence on bold interpretations by the courts.

Ivano Alogna, in his article 'Increasing Climate Litigation: A Global Inventory'<sup>8</sup> analyses the rise of climate litigation globally as a response to public policy inertia and a space for action and pressure. Through a rigorous analysis of emblematic case studies, the contribution acutely illustrates the growing prominence of courts in climate governance, an effective solution in the face of frequent public policy inertia.

Christian Huglo's contribution 'Climate change litigation: efficiency'<sup>9</sup> offers a clear and relevant summary of the challenges climate change poses to traditional legal concepts and categories. Building on a properly scientific analysis, Huglo highlights the complexities that arise in trying to translate mitigation and adaptation strategies into legal terms, which are often faced with political, ethical and economic limitations and inertia.

In a regulatory framework that often shows its structural inadequacy in the face of ecological emergency, Marta Torre-Schaub reflects with finesse on the role of the judge, who is called upon not only to apply the law, but to interpret it boldly in the face of the novelty of climate litigation as a cross-cutting legal phenomenon. The article 'Climate Change Litigation and Legitimacy of Judges

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6 Marique, 2023.

7 Charriere and Fonbaustier, 2023.

8 Alogna, 2023.

9 Huglo, 2023.

Toward a ‘wicked problem’: Empowerment, Discretion and Prudence<sup>10</sup> thus offers a dense interpretive reading of climate judgment, to be understood as an evolving space of environmental justice.

Laurent Fonbaustier and Renaud Braillet’s contribution with ‘Could national judges do more? State deficiencies in climate litigations and actions of judges’<sup>11</sup> acutely investigates the delicate balance between judicial power and the legislative function in a context of global climate emergency. Through the timely analysis of various pronouncements – especially those of constitutional courts – the authors highlight the propulsive role of judges who, while not substituting for the legislature, urge appropriate actions consistent with international climate obligations.

Remaining in the realm of climate governance, Delphine Misonne’s article ‘Global climate governance turning translocal’<sup>12</sup> sharply unmasks the inadequacy of centralist rhetoric, instead valuing imitative practices and networks among cities, local authorities and territories. What emerges, therefore, is a sophisticated reading of European climate law that becomes, for the sake of effectiveness, increasingly *trans-local* and networked, bypassing the gaps in the Paris Agreement and resorting to *de facto* binding bottom-up strategies.

Turning to the American context, Daniel Etsy’s contribution ‘America’s climate change policy: Federalism in action’<sup>13</sup> acutely reconstructs the climate change approach of American federalism, in which states and municipalities often intervene subsidiarily in the face of federal inaction with regulatory tools such as reduction targets, incentives and regional carbon prices. Accordingly, Etsy points out the risks of adopting these instruments in terms of unequal and intermittent climate governance.

By contrast, even in the heart of Europe’s most centralised state, France, local climate law seems to break against certain contradictions. This is what Camille Mialot points out in his article ‘Local policies on climate change in a centralized state: The Example of France’<sup>14</sup>, in which he rigorously traces the regulatory gaps and policy failures against pollution and artificialisation in the face of inertia among the various levels of government and territorial fragmentation.

As for the relationship between climate and democracy, in his article ‘Subjective Rights in Relation to Climate Change’, Alfredo Fioritto<sup>15</sup> questions the compatibility of subjective rights and climate imperatives that question their relevance. The answer the author offers is positive: subjective rights can survive if they are reinterpreted within an evolutionary perspective that adapts to the needs

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10 Torre-Schaub, 2023.

11 Fonbaustier and Braillet, 2023.

12 Misonne, 2023.

13 Etsy, 2023.

14 Mialot, 2023.

15 Fioritto, 2023.

of the community, in the context of ecological crisis. Fioritto then puts forward the innovative proposal of raising the Italian category of legitimate interests as a privileged legal device for rethinking individual law from an ecological and relational perspective.

Emmanuel Slautsky's contribution, 'Overcoming Short-Termism in Democratic Decision-Making in the Face of Climate Change: a Public Law Approach'<sup>16</sup> continues along the theme of rethinking legal institutions from an ecological perspective. The author acutely suggests an institutional regeneration of public law, advancing evolutionary and innovative proposals that overcome short-term decision-making to revive democracy as a pillar of intergenerational responsibility.

In the vein of regenerating democracy in a context of climate emergency, Delphine Hedary's contribution 'The Citizens' Climate Convention: A new approach to participatory democracy, and its effectiveness on changing public policy'<sup>17</sup> rigorously and clearly lays out the case study of the French Citizens' Climate Convention, analysing its operation and normative scope, and investigating its effectiveness in guaranteeing citizens' concrete influence in decision-making.

The dossier concludes with a dense and ambitious essay by Auby and Fonbaustier<sup>18</sup>, introduced by a crucial question: can public law consider itself up to the challenges posed by the Anthropocene? In a veritable *call to arms*, the editors sharply acknowledge that it not only requires time to adapt tools and institutions, but also to come to terms with a systemic crisis that overwhelms law in a broad sense. In a much-needed warning, the authors lucidly call for a rewriting of public law in light of the ecological emergency and not just as a regulatory tool, but as an agent of ontological, and therefore institutional as much as cultural, transformation.

### 3. European public law to the test of comparison

The *French Yearbook of Public Law* also devotes an entire section to comparative law, pointing to the most recent and innovative developments in the major European legal systems. The intent stated in the introduction is clear: it is intended to provide a reasoned map of the main constitutional, legislative and jurisprudential developments in France, Spain, Italy, Germany and the United Kingdom. The authors have skilfully manage to dodge the risks of mere exegesis and informative appendix, managing to provide the reader with a truly heuristic device that allows them to access a dynamic legal geography of the relationships between administration, courts and fundamental freedoms. The objective is fully achieved, through an

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<sup>16</sup> Slautsky, 2023.

<sup>17</sup> Hedary, 2023.

<sup>18</sup> Auby and Fonbaustier, 2023.

expository coherence that combines narrative clarity and high analytical rigor. Administrative law is thus read as a mirror of normative transformations in the framework of multilevel constitutionalism on the one hand, and in the time of pandemic and ecological crisis on the other. Proficiently combining positive data with theoretical framing, this section represents one of the most valuable and systematic components of the entire volume. It is a valuable tool for comparatists interested in contrasting models of administration and administrative justice in a Europe exposed to the well-known vulnerabilities of our time.

The ‘Miscellaneous’ section closes the Yearbook with two valuable contributions by Giacinto della Cananea.

The first one is a brilliant and accurate review of the volume ‘Democracy and Executive Power’ by Susan Rose-Ackerman<sup>19</sup>, a fundamental text for those who intend to analyse the decision-making processes of public administrations within contemporary democracies. Indeed, this book brings together years of reflection on the deep nexus between legality, democracy and executive power. ‘Democracy and Executive Power’ defends a vision of executive power as a dynamic space, not to be feared: a power that can legally structure itself in a manner consistent with its democratic accountability. With lucid and critical comparative approach, Rose-Ackerman traverses the United States, the United Kingdom, France and Germany, weaving together the major themes of the complex relationship between law and politics, procedure and participation, judge and administration. Continuing along the path of such reflection is della Cananea’s second contribution, ‘A Comparative Research on the Common Core of Administrative Laws in Europe’<sup>20</sup>, a fine contribution that aims to investigate, from a comparative perspective, assonances and dissonances between administrative legal experiences in the European context, with a particular focus on administrative procedure.

#### 4. A (new) legal grammar of transformation

In a context in which public law is called upon to confront against the vulnerabilities of our time, the *French Yearbook of Public Law* emerges as a necessary critical device, a laboratory of legal reflection, and an exercise in epistemic openness. Its function goes beyond the mere collection of contributions of high scholarly authority, neither in the meritorious effort of linguistic translation, nor cultural dissemination of French law to the English-speaking world. Its most significant merit is to offer the jurist a space for innovative thinking, in which comparison is not the goal or an end, but a suitable means to interrogate the resilience of

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<sup>19</sup> della Cananea, 2023a.

<sup>20</sup> della Cananea, 2023b.

traditional normative models, the potential plasticity of categories, and the aptitude of law to confront the instability of the present.

Against the backdrop of crises that transcend the boundaries of individual legal systems – the climate crisis, the fragmentation of institutions, the erosion of democracies – the yearbook assumes a role of vigilance and proposal at once: it does not merely document and describe change, but invites people to manage and engage with it through innovative legal instruments that are both transnational and inclusive.

The purpose of the *French Yearbook of Public Law* is as ambitious as it is imperative: to rescue public law from the temptation of disciplinary closure and to return it to an evolutionary function capable of generating new grammars of legality. With an awareness of the necessity of this goal, the *Yearbook's* authors and editors have succeeded not only in formulating his vision, but in making it a reality, demonstrating that even in law it is possible for thinking to take on the task and responsibility of transforming the world, rather than merely explaining it.



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