



INTERVIEW WITH PROFESSOR XAVIER PHILIPPE ON CONTEMPORARY CHALLENGES TO THE PROTECTION OF HUMAN RIGHTS

INTERVIEWED

Xavier Philippe is Chair Professor at the University of Paris 1 – Pantheon – Sorbonne. Extraordinary Professor at Western Cape University – Cape Town, South Africa. Specialist in analysis and elaboration of constitutional processes with a focus on Transitional Justice. Has participated in the elaboration processes of South Africa’s, Tunisia’s and Myanmar’s new constitutions

INTERVIEWERS

Liziane Paixão Silva Oliveira

Post Doctor in Applied Social Sciences at University of Brasília (UnB). Law Doctor at Université d’ Aix-Marseille. Professor at Stricto Sensu Post Graduation Program of CEUB.

Hugo Abas Frazão

Doctor at Università di Pisa, Pisa, Italy; master in Constitutional Law at Pontifical Catholic University of São Paulo, São Paulo, SP, Brasil; ;professor and coordinator of Internationalization at the 1st Region’s Federal Judgeship School, Brasília, DF, Brasil; federal judge.

Ian Ferrare Meier

READ CEUB’s Editor-in-Chief. Professor in the Lato Sensu Postgraduate Program at CEUB. Researcher. Master’s student of Law and Public Policies at CEUB.

Luísa Cristina Vasconcelos Marimon Álvares

READ CEUB’s Editor-in-Chief. Lawyer. Post-graduate on New Tendencies on Public Law at CEUB. Undergraduate Philosophy student at UnB. Graduate in Law at CEUB.

Felipe Ribadeneira Kowalski

Undergraduate Law student at CEUB, interested in International Law. Since 2025, integrates the Supreme Federal Court Advising Office for International Issues, focusing on international legal cooperation and comparative legal systems analyses.



Interview with Professor Xavier Philippe on Comparative Constitutional Law^{1 2}

Interviewers:

Liziane Paixão Silva Oliveira³

Hugo Abas Frazão⁴

Ian Ferrare Meier⁵

Luísa Cristina Vasconcelos Marimon Álvares⁶

Felipe Ribadeneira Kowalski⁷

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¹ Chair Professor at the University of Paris 1 - Panthéon – Sorbonne. Extraordinary Professor at Western Cape University - Cape Town, South Africa. Specialist in analysis and elaboration of constitutional processes with a focus on Transitional Justice. Has participated in the elaboration processes of South Africa's, Tunisia's and Myanmar's new constitutions.

² The following interview is results from the participation of Professor Xavier Philippe, Chair Professor at the University of Paris 1 Panthéon-Sorbonne, in the “Brazil-France Colloquium: contemporary challenges for the protection of Human Rights,” held on February 28, 2025, at the University Center of Brasília (CEUB).

³ Post Doctor in Applied Social Sciences at University of Brasília (UnB). Law Doctor at Université d'Aix-Marseille. Professor at Stricto Sensu Post Graduation Program of CEUB. ORCID: <https://orcid.org/0000-0002-6266-6073>. E-mail: lizianepaixao@gmail.com.

⁴ Doctor at Università di Pisa, Pisa, Italy; master in Constitutional Law at Pontifical Catholic University of São Paulo, São Paulo, SP, Brasil; visiting scholar at Sciences Po Paris, Paris, France; visiting scholar at University of Edinburgh, Edinburgh, United Kingdom; visiting scholar at Università degli Studi di Teramo, Teramo, Italy; professor and coordinator of Internationalization at the 1st Region's Federal Judgeship School, Brasília, DF, Brasil; federal judge. ORCID: <https://orcid.org/0000-0003-1511-0010>. E-mail: hugo.frazao@trfl.jus.br.

⁵ READ CEUB's Editor-in-Chief. Professor at Lato Sensu Post Graduation Program of CEUB. Researcher at the Center of Law, Internet and Society at Brazilian Institute of Education, Development and Research (IDP). Coordination member at the Center of Compared Constitutional Studies at the University of Brasília (CECC UnB). Master's student on Law and Public Policies at CEUB. ORCID: <https://orcid.org/0009-0007-6407-3443>. E-mail: ianferrare@gmail.com.

⁶ READ CEUB's Editor-in-Chief. Lawyer. Post-graduate on New Tendencies on Public Law at CEUB. Undergraduate Philosophy student at UnB. Graduate in Law at CEUB. ORCID: <https://orcid.org/0009-0004-0654-3249>. E-mail: luisavma@gmail.com.

⁷ Undergraduate Law student at CEUB, interested in International Law. Since 2025, integrates the Supreme Federal Court Advising Office for International Issues, focusing on international legal cooperation and comparative legal systems analyses. Has represented CEUB on three editions of the JESSUP Moot Court international competition. Scholarship holder through CEUB's Scientific Initiation Program (PIC) on two opportunities. ORCID: <https://orcid.org/0009-0002-0317-7146>. E-mail: Felipe.Kowalski@sempreceub.com.

[Interviewers] — Professor Xavier Philippe, before we begin, we would like to express our sincerest gratitude for agreeing to grant us this interview. For the *Revista de Egressos e Acadêmicos de Direito do CEUB*, it is a privilege to be able to speak with a Tenured Professor from Sorbonne and to share with our readers reflections that are so enriching for legal education.

Xavier Philippe — It's my pleasure to make this modest contribution.

[Interviewers] — Professor, you stress that Comparative Constitutional Law is a tool for inspiration. Could you expand a bit more on this idea?

Xavier Philippe — Of course. Contrary to popular belief, Comparative Law is not meant for “copying” foreign models, but rather to broaden our horizons. When drafting or interpreting constitutions, we have a need for ideas, experiences and references that'll help us solve local and contextual problems. The knowledge of other systems must be understood as a source of inspiration, not as a set of models to be reproduced. Writing a constitution must not be seen as an exercise of isolation, but as a dialogue. Inspiration is not imitation, but rather discovery of possibilities, of paths others have already tried to tread, in which each experience adapts to its own context, either by drawing inspiration or deviating from them.

[Interviewers] — You were directly involved in the drafting of the South African constitution. What were the most significant lessons from that experience?

Xavier Philippe — The 1996 South African Constitution was born from rejection of a regime of institutionalized oppression: the Apartheid. There was a need for new text that not only legally organized the state but also symbolized a new era. Working with the South Africans meant comprehending, from the outside, that constitutionalism is also a process of collective healing. The Constitution had to protect rights, but it also had to create a new language – one of protection of fundamental rights – so that the country recognized itself as a nation founded on values.

[Interviewers] — How should the proceedings of writing a new constitution be conducted so it can be legitimate?

Xavier Philippe — Legitimacy is born from participation. Society must recognize itself in the text, kind of like a mirror. It's about listening to a plurality of voices, coming from

different regions, genders, and social classes. I've worked on constitutional projects where the members of the constituent assembly were not lawyers, but rather from all career paths of life: teachers, engineers, plumbers, and farmers. It is important to recognize this diversity. First, it is necessary to train these people, to involve them in a position where they can act and participate in the drafting of the Constitution. Then, they must be put in a position to become true protagonists. The Constitution must reflect the soul of a people or of several peoples, of a nation. The experts are there just to give technical advice.

[Interviewers] — Professor, now on the use of foreign decisions in courts, do you believe that constitutional courts should draw inspiration from foreign decisions? Are there risks in this type of behavior?

Xavier Philippe — Yes, there are risks in blindly copying a solution applied in another context. But the justified use of foreign precedents can be extremely beneficial and enriching. Courts such as the Supreme Federal Court (STF) or Germany's Federal Constitutional Court have been in dialogue with other jurisdictions for decades. The internet and other databases, and electronic means of knowing what is being done elsewhere in general, have expanded this access. Today, a Brazilian judge can read the case files of a relevant decision issued in Colombia, France, or the United States. This creates a space for global jurisprudence, which must be used responsibly.

[Interviewers] — How can we balance national specificity with global challenges in constitutionalism?

Xavier Philippe — The Law is a historical and cultural product. You cannot simply import solutions from abroad. However, we face common problems such as climate change, the risks of artificial intelligence systems, and democratic crises. We must recognize these challenges as global and seek approaches that integrate them without losing national legal identities. It is not about standardization, but about cooperating and learning from diversity.

[Interviewers] — Do you believe that constitutionalism could still be a tool for social transformation?

Xavier Philippe — Without a doubt. The Constitution is, primarily, a project for the future, it organises the present, but projects our society within a logic of something still in construction. That demands creativity, active listening and courage. In developing countries,

particularly, the Constitution can't be a mere technical text, it must be a tool for justice, inclusion and hope, an instrument for society's transformation.

[Interviewers] — Professor, as we head towards the end of our interview, we have one last question. What is the main message you would like to give to law students?

Xavier Philippe — The Law is a universal language. Thanks to it, you can transform your communities, your countries, and even the world. Do not be afraid to face the challenges before you with an ample perspective, of crossing frontiers and seeking references in other places. Keep your modesty and learn with others without judging them from your perspective. The world needs jurists committed to democracy, human rights and dignity. And that does not start just when you begin your studies, but also with passion. Nothing great can be done devoid of passion.

[Interviewers] — Professor, on behalf of the Revista de Egressos e Acadêmicos de Direito do CEUB ,we profoundly thank you for your time and contribution.

Xavier Philippe —Thank you. It is an honor for me to be able to speak and share a little of what I have learned throughout this long journey of life. We must never forget that behind the rules of law, there are women and men, faces that place their trust in us. Let us be worthy of them!

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Translators and translation reviewers' names: Pedro Galuppo e Ester Azevedo Lira

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