

**GVPT 439A**

**COMPARATIVE CONSTITUTIONAL LAW**

**Spring 2017**

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Office hours: Tu, Th 4: 30-6 PM and by appointment

This course is an introduction to constitutional law, not to constitutional law of any particular country, but to constitutional law in general. I will ask you to imagine that the course serves as an introduction for a program training global advisors in constitutional design.

**Class Schedule:** Tu, Th 11-12:15 in Lefrak 1201

**Course Requirements:**

**I. Class Project**

The class project this semester will be to develop a briefing book for advisors to constitutional conventions. Each student will prepare a briefing paper (2500-3000 words) on a key constitutional issue of their choice. Possible issues include:

Should some constitutional provisions be unamendable?

What should be the constitutional role of referenda?

What is asymmetric federalism, and what are its best uses?

Islam and constitutionalism

Bill of Rights: what counts as best international practice?

Protection of minority rights

The right of self-determination and of secession.

Best way to limit rights

Constitutional lessons from fragile states: Bosnia and Herzegovina, Ethiopia, Sudan, Iraq.

Constitutional lessons from the European Union.

What is subsidiarity, and why does it matter? How can it be made legally effective?

You are welcome to write on another issue, these are only examples. But if you do want to write on another issue, please talk to me first, to make sure it would fit in our briefing book. A one page abstract of the briefing paper, with a list of sources, is due on April 6. A final draft will be due in class on May 11.

**II. Exams**

A midterm (March 30) and a final exam (Saturday, May 13, 8-10 AM).

**Course Grading:**

The grades will be determined **roughly** as follows: 1/3 for the paper, 1/6 for the midterm, 1/2 for the final exam. Class participation can influence your grade (positively or negatively) by up to half a grade.

### **Policies:**

University-wide course related policies are found at:  
<http://www.ugst.umd.edu/courserelatedpolicies.html>

### **Main Books:**

Beatty, David, The Ultimate Rule of Law

Dorsen, Norman et al., eds. Comparative Constitutionalism

Dunoff, Jeffrey and Joel Trachtman, eds., Ruling the World?

Karmis, Dimitrios and Wayne Norman, eds., Theories of Federalism

Kommers, Donald, The Constitutional Jurisprudence of the Federal Republic of Germany.

All the readings will also be available on line. There is no need to buy these books, and I have not ordered them for the bookstores.

## **Tentative Course Outline**

### **NO CLASS ON JANUARY 26**

1. Introduction and Overview (January 31)

### **I. Constitutions and Constitutionalism**

- 2, 3. Constitutionalism and the Rule of Law (February 2, 7)

Dorsen: pp. 10-30 ELMS e-reserve (also file: "Constitutionalism")

*Princess Soraya Case* (Germany), *Retroactive Criminal Legislation Case* (Hungary)

4. Constitution of the United Kingdom (February 9)

Dorsen: pp. 30-39 ELMS e-reserve

5. Constitution of Germany (February 14)

Kommers, Chapter 2 "The Basic Law and Its Interpretation," pp 30-60. ELMS e-reserve

### **II. What We Do with Constitutions**

6. Making and amending a constitution (February 16)

Dorsen: pp. 71-76, 82-86. ELMS e-reserve

*Certification of the Constitution of the Republic of South Africa* (South Africa)

Dorsen, pp. 89-96. ELMS e-reserve

*Klass Case* (Germany)

7. Enforcing a constitution (February 21)

Dorsen, pp. 99-125. ELMS e-reserve

*United Mizrahi Bank v. Migdal Village* (Israel)

8. Suspending a constitution: the state of emergency (February 23)

John Ferejohn and Pasquale Pasquino, "The law of exception: A typology of emergency powers" International Journal of Constitutional Law, 2 (2004): 210-39 ELMS file

9, 10. Reasoning with the constitution: interpretation and proportionality (February 28, March 2)

David Beatty, *The Ultimate Rule of Law*. Chapter 1 "Forms and Limits..." (pp. 1-35) ELMS e-reserve

Bernhard Schlink, "Proportionality in Constitutional Law: Why Everywhere but Here?" Duke Journal of Comparative and International Law, 22: 291-302. ELMS file.

### **III. Divided and Balanced Constitutions**

11, 12. Separation of powers (March 7, 9)

Bruce Ackerman, "The New Separation of Powers" Harvard Law Review, 113 (2000): 642-729. ELMS file

13, 14. Federalism (March 14, 16)

Chapters by Watts, Stepan, Kymlicka, and Requejo in Karmis and Norman, Theories of Federalism. ELMS e-reserve

### **SPRING BREAK**

15. Constitutions for divided societies (March 28)

Donald Horowitz, "Conciliatory Institutions and And Constitutional Processes in Post Conflict States" William and Mary Law Review, 49 (March 2008): 1213-48 ELMS file

Arend Lijphart, "Constitutional Design for Divided Societies," Journal of Democracy, 15.2 (2004): 96-109. ELMS file

### **MIDTERM (March 30)**

#### **IV. Human Rights**

16, 17. Global System of Human Rights (April 4, 6)

"Declaration of the Rights of Man and Citizen" (1789) ELMS file

"Universal Declaration of Human Rights" (1948) aka UDHR. ELMS file

Both texts also in The Avalon Project: [www.yale.edu/lawweb/avalon](http://www.yale.edu/lawweb/avalon)

James Nickel, "Human Rights" Stanford Encyclopedia of Philosophy online

18. Human dignity (April 11)

Andrew Clapham, Human Rights Obligations of Non-State Actors, Section 11.1 (“Dignity”) ELMS file

19. Equality before the law (April 13)

Dorsen: pp. 617-23, 626-32, 644-61. ELMS e-reserve

*Andrews v. Law Society of British Columbia* (Canada)

20. Freedom of expression (April 18)

Dorsen: pp. 795-813. ELMS e-reserve

*Ceylan v. Turkey* (ECHR) [pay special attention to the concurring opinion of Bonello]

Dorsen: pp. 885-6, 899-909. ELMS e-reserve

*Regina v. Keegstra* (Canada)

21. Rights and religion (April 20)

Dorsen: pp. 922-31. ELMS e-reserve

*Kokkinakis v. Greece* (ECHR)

Dorsen: pp. 973-82. ELMS e-reserve

22. Economic and social rights (April 25)

IDEA, “Social and Economic Rights” ELMS file.

## **V. Global Constitutionalism**

23, 24. A constitution for the European Union? (April 27, May 2)

Wikipedia: “European Union,” “Institutions of the European Union,” “Treaty of Lisbon”

Sergio Dellavalle, “Constitutionalism Beyond the Constitution: The Treaty of Lisbon in the Light of Post-National Public Law” Jean Monnet Working Paper 03/09 NYU School of Law. ELMS file

25. Confucian constitutionalism (May 4)

Daniel Bell, “Introduction” in Daniel Bell, ed., Jiang Qing, A Confucian Constitutional Order. ELMS file

26. Islamic constitutionalism (May 9)

Intisar Rabb, “‘We the Jurists’: Islamic Constitutionalism in Iraq.” ELMS file

27. A global constitution ? (May 11)

Chapters by Fassbender and Kumm in Dunoff and Trachtman, Ruling the World? ELMS e-reserve.