

Florian Meinel, Universität Göttingen, Juristische Fakultät

Comparative Constitutional Law (Summer Semester 2024)
Course Information and Syllabus

General Information: Thursdays 6:00-7:30 pm, VG 3.105 (Verfügungsgebäude). **Class starts in the 2nd week of the semester (April 18), no class on April 11.**

Course material: available on Stud.IP

Course Description: This course will provide an introduction to the comparative analysis of constitutional law. We will examine different types of constitutions and ask how these differences can be explained (history? culture? social structure? etc.). We will explore the various models of judicial review and the role of constitutional courts, different types of federalism, theories of democracy, and constitutional approaches to the administrative state. We will talk about the political economy of constitutionalism and ask how its institutions are related to economic and social structures. The course will also cover the rise of authoritarianism and the present transformation of constitutional law it indicates.

Exam options: I offer both an oral exam or a graded essay. Anyone interested in earning a “**Fremdsprachenschein**” may contribute a short presentation on a case or on an article. Please contact me.

Office Hours: Thursdays, 1-2pm (please make an appointment with my assistant Karolin Schwarz: staatsl@gwdg.de)

Reading:

Any serious engagement with comparative constitutional law requires a considerable amount of reading. For each week, one or two key texts (cases and/or scholarly articles) are assigned, which should be read before class.

No additional textbook is required for this course. The following are suggestions only.

1) A short and easy to read introductions is:

- Mark Tushnet: *Advanced introduction to comparative constitutional law* 2nd ed. 2018

2) For a more detailed introduction to particular topics such as rights, courts, democracy, federalism etc., the following two research handbooks are essential to consult (or just to skim through to get a rough idea what kind of questions comparative constitutional deals with):

- András Sajó/Michel Rosenfeld (eds.): *The Oxford Handbook of Comparative Constitutional Law*, 2012
- Robert Schütze (ed.): *The Cambridge Companion to Comparative Constitutional Law*, 2nd edition 2019.

3) Textbooks that cover key cases and other materials are:

- Vicky Jackson/Mark Tushnet: *Comparative Constitutional Law* [previous editions available at the SUB]
- Norman Dorsen/Michel Rosenfeld/András Sajó/Susanne Baer/Susanna Mancini: *Comparative Constitutionalism: Cases and Materials*, 4th ed. 2022 [ordered; a copy will be available for study at the Institut für Grundlagen des Rechts, Nikolausberger Weg 17 soon]

Supplementary readings will be recommended throughout the semester. Also, this syllabus will be amended throughout the semester. Check the course website for updates regularly.

Syllabus and reading assignments (* means optional)

1 Rights, democracy, conflicts: Why constitutional law is inherently comparative and why we study comparative constitutional law (April 18)

The Ezra Klein Show Episode on *Dobbs v. Jackson Women's Health Organization*:

<https://podcasts.apple.com/de/podcast/the-ezra-klein-show/id1548604447?i=1000567732834>

* Mark Tushnet, Some Reflections on Method in Comparative Constitutional Law, in *The Migration of Constitutional Ideas* (Sujit Choudhry, ed., 2006).

* Christoph Schönberger: Verfassungsvergleichung heute. Der schwierige Abschied vom ptolemäischen Weltbild, in: *Verfassung und Recht in Übersee* 43 (2010), 6-27.

2 Some fundamental categories: Types of constitutions and constitutional ideologies (April 25)

Dieter Grimm: Types of constitutions, in: Michel Rosenfeld/András Sajó (eds.): The Oxford Handbook of Comparative Constitutional Law, Oxford: Oxford University Press 2012, 98-132.

* Sigrid Boysen: Postcolonial constitutional law, in: Anthony F. Lang/ Antje Wiener (eds.): Handbook of Global Constitutionalism, Edward Elgar 2023

3 Democracy I: Separation of powers; varieties of parliamentary democracy (April 25)

Christoph Möllers: Separation of Powers. Cambridge Companions to Law, in: Robert Schütze/Roger Masterman (eds.): The Cambridge Companion to Comparative Constitutional Law, Cambridge: Cambridge University Press 2019, 230-257.

* Steffen Ganghof: Beyond Presidentialism and Parliamentarism. Democratic Design and the Separation of Powers, Oxford: Oxford University Press 2021 1-34.

4 Democracy II: Elections, political parties, citizenship (May 2)

Shelby County v. Holder, 570 US 529 (2013), if you find it too hard to read the full SC opinion, read <https://www.oyez.org/cases/2012/12-96> or/and https://en.wikipedia.org/wiki/Shelby_County_v._Holder

* Yasmin Dawood: Democracy, power, and the Supreme Court, in: International Journal of Constitutional Law 4 (2006), 269-293

No class on May 9 (Himmelfahrt)

5 Democracy III: Emergency powers, war powers (May 16)

Hennette Vauchez, Stéphanie: Taming the exception? Lessons from the routinization of states of emergency in France, in: International Journal of Constitutional Law (2023).

* John Ferejohn/Pasquale Pasquino: The law of the exception, in: International Journal of Constitutional Law 2 (2004), 210-239

6 Militant democracy (May 23)

Jan-Werner Müller: Citizens as Militant Democrats, Or: Just How Intolerant Should the People Be?, in: Critical Review 34 (2022), 85-98

* Adam Przeworski: Crises of democracy, Cambridge: Cambridge University Press 2019 [Introduction]

7 Federalism and second chambers (May 30)

Daniel Halberstam: Of Power and Responsibility: The Political Morality of Federal Systems, in: Virginia Law Review 90 (2004), 731-834

8 Foundations and scope of judicial review (June 6)

UK Supreme Ct, R (on the application of Miller) v The Prime Minister, [2019] UKSC 41 (Gina Miller II)

* Ran Hirschl: The Judicialization of Mega-Politics and the Rise of Political Courts, in: Ann. Rev. Pol. Sci. 11 (2008), 93-118.

* Dieter Grimm: Proportionality in Canadian and German Constitutional Jurisprudence, in: The University of Toronto Law Journal 57 (2007), 383-397

9 Constitutional law and political economy: property rights (June 13)

Cedar Point Nursery v. Hassid (2021)

BVerfG, Co-Determination case (1979)

* Gregory S. Alexander: Property as a Fundamental Constitutional Right, in: Cornell L. Rev. 88 (2003), 733-778.

10 The administrative state I – foundations (June 20)

Humphrey's Executor v. United States, 295 U.S. 602 (1935)

11 The administrative state II – current debates (June 27)

West Virginia v. EPA, 597 U.S. ____ (2022)

12 Freedom of speech and the public sphere (July 4)

Citizens United v. FEC, 558 U.S. 310 (2010)

BVerfG, Judgment of the Second Senate of 15 June 2022 - 2 BvE 4/20 (Merkel)

CJEU, *Russia Today France v. Council of the European Union* (2022)

* Michel Rosenfeld: Hate Speech in Constitutional Jurisprudence. A Comparative Analysis, in: Michael Herz/Peter Molnar (eds.): *The Content and Context of Hate Speech: Rethinking Regulation and Responses*, Cambridge: Cambridge University Press 2012, 242-289