

Colloquium Comparative Constitutionalism – Syllabus SoS 2008

Date	Questions for the Session	Reading	Method
15 April	<p>Introduction</p> <p>brief outline: approach, material, subject</p> <p>information on exams and course requirements</p> <p>proceeding, how to find cases</p> <p>planning of presentations</p>		<p>input: outline of course</p> <p>input: intro to materials and to case research</p> <p>questions</p>
22 April	<p>Comparative Law: Functionalism</p> <p>What is comparative law? a method? a science with its own method? what is a method, what is a science?</p> <p>How do we compare, and what do we compare? why do we compare at all?</p> <p>Are we looking for the “best solution”?</p> <p>What is the function of a constitution, are there shared problems?</p> <p>Can there be a <i>praesumptio similitudinis</i> in constitutions, or are they “more different” than private law? why?</p> <p>Is there a “best constitution”, and are we looking for it?</p>	<p>Konrad Zweigert/ Hein Kötz, <i>Einführung in die Rechtsvergleichung: auf dem Gebiete des Privatrechts</i>, Tübingen, 3rd edn. 1996, pp 31-47</p> <p>Anne Peters/ Heiner Schwenke, <i>Comparative Law Beyond Post-Modernism</i>, 49 <i>Int'l & Comp. L Quarterly</i> 4 (2000), 803-810</p>	<p>Task: Develop 5-10 leading questions for comparative analysis.</p>
29 April	<p>Comparative Constitutionalism: Criticism</p> <p>Can there be objective comparison, or is our perception too tainted by our cultural preconceptions? what is an objective <i>tertium comparationis</i>?</p> <p>What, outside of the law, needs to be considered?</p> <p>Can there be an “enlightened” (Teitel) version of Comparative Constitutionalism?</p> <p>What would it look like, which questions should it ask?</p>	<p>Günther Frankenberg, <i>Critical Comparisons: Re-thinking Comparative Law</i>, 26 <i>Harvard Int'l L Jnl</i> (1985), 411-455 - German version: Frankenberg, <i>Autorität und Integration</i>, Frankfurt/M, 2003, pp 299-363</p> <p>Norman Dorsen et.al., <i>Comparative Constitutionalism</i>, West 2003, pp 1-16 (Ch. 1.A.-B.) = Casebook</p>	<p>close reading and discussion of “Critical Comparisons” (bring English version as a basis for discussion)</p> <p>re-consider your lead questions</p> <p>develop a framework of analysis for comparative case discussion</p>
06 May	<p>Body: Suicide</p> <p>→ questions from casebook</p>	<p>Casebook 556-566</p> <p><i>Cruzan v. Director, Msr. Deptmt of Health (US)</i></p> <p><i>Washington v. Glucksberg (US)</i></p> <p><i>Rodriguez v. British Columbia (CAN)</i></p>	<p>Find other, related cases</p> <p>case analysis</p> <p>presentation from students</p>

13 May	<p>Body: Reproductive Rights</p> <p>→ questions from casebook</p> <p>Dworkin argues that “pro-life” activist don’t base their argument on the fetus’ right to life but on the “intrinsic value” of human life. Do you agree? How does this relate to the discussion on assisted suicide?</p> <p>Glendon argues that abortion decisions show very different approaches to fundamental rights in the US and Europe. Do you agree with her depiction of the “European compromise”?</p>	<p>Casebook 527-557</p> <p><i>Roe v. Wade (US SC) – abortion</i></p> <p><i>Planned Parenthood v. Casey (US SC) – informed consent</i></p> <p>comment: Ronald Dworkin, <i>The Center Holds, New York Review of Books</i>, 13 Aug 1993, 29-33</p> <p><i>Daigle v. Tremblay (CAN) – father</i></p> <p><i>Decision on the Termination of Pregnancy Act (F) – N & Q p 553</i></p> <p>Ronald Dworkin, <i>Life’s Dominion: An Argument About Abortion and Euthanasia</i>, London 1993, pp 11-13</p> <p>Mary Ann Glendon, <i>Abortion and Divorce in Western Law: American Failures, European Challenges</i>, Cambridge, MA/ London 1987, pp 33-39</p> <p>Laurence H. Tribe, <i>Abortion: The Clash of Absolutes</i>, NY/ London 1990, pp 73-76</p>	<p>Find other, related cases</p> <p>case analysis</p> <p>presentation from students</p>
20 May	<p>Identity: Sex, Gender and the Body</p> <p>→ questions from casebook</p> <p>“I didn’t come out of the closet to live in a box” – Is it justifiable for a society to require that each person be of either one or the other sex? Do we need boxes? Why (not)?</p>	<p>Casebook 576-583</p> <p><i>Sheffield & Horsham v. UK (ECHR) – failure of state to recognize sex change</i></p> <p><i>Transsexuals Case (BVerfG) – birth certificate</i></p> <p>Laura Adamietz, <i>Latest Twists in German Transgender Jurisprudence</i>, LSA Conference 2007</p>	<p>Find other, related cases</p> <p>case analysis</p> <p>presentation from students</p>
27 May	<p>Information: Informational Self-Determination and Anonymity</p> <p>→ questions from casebook</p> <p>Which information may the state obtain, which information may it pass on to others, and which information is it required to provide? Discuss the concept of “privacy” in relation to the issues previously covered.</p> <p>Which issues are related?</p>	<p>Casebook 583-595</p> <p><i>Lustration case (HU) – public servants</i></p> <p><i>M.S. v. Sweden (ECHR) – medical information and insurance</i></p> <p><i>Gaskin v. UK (ECHR) – own childhood</i></p>	<p>Find other, related cases.</p> <p>case analysis</p> <p>presentation from students</p>

03 June	<p>Intimacy: Intimate Partners, Marriage</p> <p>→ questions from casebook</p>	<p>Casebook 597-609</p> <p><i>Loving v. Virginia (US SC) – mixed-race marriage</i></p> <p><i>Zablocki v. Redhail (US SC) – minor issue</i></p> <p><i>Ontario v. M & H. – spouse</i></p> <p>Catharine A. MacKinnon, <i>Sex Equality</i>, 2001, pp 428-434, 1143-1149</p>	<p>Find other, related cases.</p> <p>case analysis</p> <p>presentation from students</p>
10 June	<p>Intimacy: Sexuality and Procreation</p> <p>→ questions from casebook</p> <p>what is public concern, what is private? what is normal?</p> <p>Are there sexual practices that the state can legitimately interfere with? Which public interests could justify such an intervention?</p> <p>Is this issue different from who can get married to whom? If so, why and how?</p>	<p>Casebook 610-616</p> <p><i>Griswold v. Connecticut (US SC) – contraceptives</i></p> <p><i>ADT v. UK (ECHR) – sex at home</i></p> <p><i>Bowers v. Hardwick (US SC) – sex at home; overruled by <i>Lawrence v. Texas (US SC, 2003)</i></i></p> <p><i>National Coalition for Gay & Lesbian Equality v. Minister of Justice and others (RSA) – crime of ‘sodomy’</i></p> <p><i>Laskey, Jaggard and Brown v. UK (ECHR) – SM (N&Q p 614)</i></p> <p>Catharine A. MacKinnon, <i>Sex Equality</i>, 2001, pp 1153-1155</p>	<p>Find other, related cases.</p> <p>case analysis</p> <p>presentation from students</p>
17 June	<p>Pornography</p> <p>→ questions from casebook MacKinnon</p> <p>What is normal sex?</p> <p>Should this issue be covered in the casebook? Or is pornography too sensitive of an issue? Why (not)?</p> <p>Which rights are implied: speech, equality, dignity, ...?</p> <p>How does this relate to <i>Laskey, Jaggard and Brown</i>?</p>	<p><i>American Booksellers Ass., Inc., v. William H. Hudnut, III (US SC, 1985)</i></p> <p><i>Little Sisters (CAN)</i></p> <p><i>Butler (CAN)</i></p> <p>Catharine MacKinnon, <i>Sex Equality</i>, 2001, pp. 1506-1512, 1562-1592, 1600-1610</p>	<p>Find other, related cases.</p> <p>case analysis</p> <p>presentation from students</p>
24 June	<p>Intimacy: Families</p> <p>→ questions from casebook</p> <p>What constitutes a family?</p> <p>What does privacy mean in a family setting? Reconsider <i>Gaskin</i> – is there a right to know your relatives? Feminists argue that considering the family as private protects violent men against state intervention. How private is the family?</p>	<p>Casebook 598-603</p> <p><i>Elsholz v. Germany (ECHR) – unmarried separated father</i></p> <p><i>Moore v. East Cleveland (US SC) – grandparents</i></p> <p><i>Sex Education case (BVerfG) – parents’ rights in education</i></p> <p>Catharine A. MacKinnon, <i>Sex Equality</i>, 2001, pp. 556-558</p>	<p>Find other, related cases.</p> <p>case analysis</p> <p>presentation from students</p>

01 July	[to be determined] Additional time for in-depth discussion of cases	(TBA)	case analysis
08 July	[to be determined] Additional time for in-depth discussion of cases	(TBA)	case analysis
15 July	Back to the Beginning: Is there an ideal Constitution? Rethink the uses of comparative constitutional law. Reconsider comparative constitutionalism. Is there a project of convergence? Reconsider your lead questions. After discussion of the topics covered, how do you conceive of the relationship between liberty, equality and dignity?	Evaluation, Feedback Which suggestions do you have for the casebook? Why?	What did you learn? What did you not learn? Did the class meet your expectations? What did you (not) like about this class? Why?