

Comparative Constitutional Law: Course Information and Syllabus

General Information

Course Number: 0691

Tuesdays, 12:15-13:45 in Room KAB-G-01. The in-person class will be livestreamed, and a podcast will be made available on SWITCHcast.

Readings

This course is reading-intensive. All those uncomfortable with reading should not consider taking this class. (You have been warned.)

All the assigned readings listed below will be made available on OLAT in the course of the semester or can be found online. It is expected that students come prepared so that they can answer questions on the assigned readings and are able to participate in the in-class discussion.

The course draws from:

- Michel Rosenfeld and András Sajó (eds), *The Oxford Handbook of Comparative Constitutional Law*, Oxford: OUP, 2012 (Rosenfeld/Sajó (eds.) 2012)
- Norman Dorsen/Michel Rosenfeld/András Sajó/Susanne Baer/Susanna Mancini (eds.), *Comparative Constitutionalism: Cases and Materials*, 3rd ed., West Academic Publishing: St. Paul, 2016 (Dorsen et al. 2016)

Exam and Grading

Depending on the class size, the examination will be oral or written (to be determined). The final grade will depend on the examination (80%) and in-class participation (20%).

Office hours

Please contact me by email (tilmann.altwicker@rwi.uzh.ch) and we can arrange a meeting in my office or on ZOOM.

Syllabus and Assigned Readings

September 20 Approaches to Comparative Constitutional Law

Assignment 1: Why comparative constitutional law? Dorsen et al. 2016, 1–6.

Assignment 2: Methods of comparative constitutional law. Jackson, VC, ‘Comparative Constitutional Law: Methodologies’, in Rosenfeld/Sajó (eds) 2012, 54–72.

Assignment 3: Empirical approaches to constitutions. Altwicker, T, ‘Constitutions and Empirical Legal Studies’, in: R. Grote/F. Lachenmann/R. Wolfrum (eds.) *Max Planck Encyclopedia of Comparative Constitutional Law* (MPECCoL, July 2020).

September 27 Constitutions and Constitutionalism (I): Making a Constitution and Criticizing It

Assignment 4: Constitution-making. Negretto, GL, ‘Deepening Democracy? Promises and challenges of Chile’s Road to a New Constitution’, 13 Hague J Rule Law (2021), 335–358.

Assignment 5: Constitutional models (I). Grimm, D, ‘Types of constitutions’, in Rosenfeld/Sajó (eds) 2012, 98–132.

Assignment 6: Constitutional models (II). Excerpts in Dorsen et al. 2016, 51–72.

October 4 Constitutions and Constitutionalism (II)

Assignment 7: What is constitutionalism? Excerpts in Dorsen et al. 2016, 33–40.

Assignment 8: Constitutional identity. Faraguna, P, ‘Identity’, in: R. Grote/F. Lachenmann/R. Wolfrum (eds.) *Max Planck Encyclopedia of Comparative Constitutional Law* (MPECCoL, March 2020).

Assignment 9: Constitutional amendment. Venice Commission, Report on Constitutional Amendment, 19 January 2010, CDL-AD(2010)001, paras 26–103.

Assignment 10: Constitutional endurance. Ginsburg, T, ‘Constitutional endurance’, in Ginsburg/Dixon (eds), *Comparative Constitutional Law* (Elgar 2011), 112–125.

October 11 Constitutions and Constitutionalism (III)

Assignment 11: Migration of constitutional ideas/citing to foreign precedent. Excerpts in Dorsen et al. 2016, 7–19.

Assignment 12: Constitutional transplants. Halmai, G, ‘The use of foreign law in constitutional interpretation’, in Rosenfeld/Sajó (eds) 2012, 1328–1348.

October 18 Constitutional Adjudication (I)

Assignment 13: Principles and models of constitutional review. Excerpts in Dorsen et al. 2016, 153–187.

Assignment 14: Constitutional courts. Stone Sweet, A, ‘Constitutional Courts’, in Rosenfeld/Sajó (eds) 2012, 816–830.

October 25 *Constitutional Adjudication (II): Constitutional Review Procedures and the Rights of Future Generations*

Assignment 15: Climate adjudication (I). Aust, H, ‘Climate Protection Act Case, Order of the First Senate’, 116 American Journal of International Law (2022), 150–57.

Assignment 16: Climate adjudication (II). Reich et al., ‘Climate Change Litigation Before the ECtHR: How Senior Women from Switzerland Might Advance Human Rights Law’, VerfBlog, 2022/5/16, <https://verfassungsblog.de/climate-change-litigation-before-the-ecthr/>.

Assignment 17: Standing in constitutional review. Excerpts in Dorsen et al. 2016, 190–193.

Assignment 18: Constitutional interpretation. Excerpts in Dorsen et al. 2016, 196–230.

November 1 *Constitutional Rights (I): Right to Life and Collision of Rights*

Assignment 19: Collision of rights. Greene, J, *How Rights Went Wrong: Why Our Obsession with Rights is Tearing America Apart* (Houghton Mifflin Harcourt 2021), 114–139 (Greene 2021).

Assignment 20: Life and death. Abortion. Excerpts in Dorsen et al. 2016, 736–752; 756–760; 763–776.

November 8 *Constitutional Rights (II): Freedom of Expression and Cancel Culture*

Assignment 21: Freedom of expression: Campus speech. Greene 2021, 221–247.

Assignment 22: Freedom of expression: Fundamentals. Excerpts in Dorsen et al. 2016, 1001–1021.

Assignment 23: Freedom of expression: Internet censorship. Excerpts in Dorsen et al. 2016, 1052–1059.

Assignment 24: Freedom of expression: Racist speech. Excerpts in Dorsen et al. 2016, 1113–11129.

November 15 *Constitutional Rights (III): Equality (I)*

Assignment 25: Equality and non-discrimination. Greene 2021, 32–57.

Assignment 26: Equality and non-discrimination: Practice. Excerpts in Dorsen et al. 2016, 839–863.

November 22 *Constitutional Rights (IV): Equality (II)*

Assignment 27: Socioeconomic equality in the courts (I). Saliba, AT and Vallandro do Valle, MF, ‘The Inter-American Court of Human Rights and the Quest for Equality: The Fireworks Factory Case’, EJIL Talk!, 20 January 2021.

Assignment 28: Socioeconomic equality in the courts (II). ECtHR, *Garib v. the Netherlands*, Appl. no. 43494/09, Judgment of 6 November 2017, paras. 95–167.

Assignment 29: Socioeconomic equality in the courts (III). Altwicker, T, ‘Social Justice and the Judicial Interpretation of International Equal Protection Law’, 35 *Leiden Journal of International Law* (2022), 221–244.

November 29 *Structure of Government (I): Law-Making Power*

Assignment 30: Parliamentary systems. Bradley, AW and Pinelli, C, ‘Parliamentarism’, in Rosenfeld/Sajó (eds) 2012, 650–670.

Assignment 31: The legislative branch. Excerpts in Dorsen et al. 2016, 269–306.

December 6 *Structure of Government (II): Executive Power*

Assignment 32: The executive branch. Cohn, M, *A Theory of the Executive Branch: Tension and Legality* (Oxford 2021), 7–39.

Assignment 33: Executive power. Excerpts in Dorsen et al. 2016, 328–341.

December 13 *Structure of Government (III): Vertical Separation of Powers (Federalism) and the Constitutional Integration of International Law*

Assignment 34: Models of federalism. Excerpts in Dorsen et al. 2016, 427–469.

December 20 *Decline of Constitutionalism?*

Assignment 35: Illiberal constitutionalism in action: The example of Hungary. Venice Commission, *Opinion on the constitutional amendments adopted by the Hungarian parliament in December 2020*, 2 July 2021, CDL-AD(2021)029.

Assignment 36: Illiberalism, populism, and the constitution. Landau, D, ‘Abusive Constitutionalism’, *U.C.D. Law Review* 47 (2013), 189–260.