

Syllabus and Course Requirements

Comparative Constitutional Law
Government 2480

Fall Semester, 2018
Isaacson

Class Schedule

Classes will be held on Mondays and Wednesdays from 10:05 to 11:30 a.m.

Office Hours

Office hours will be by appointment. It is best to arrange an appointment with me during the class break or at the close of class, or by email (gisaacso@bowdoin.edu). Generally, I will hold office hours at my home at 38 Longfellow Avenue (just a short walk from campus). If you need to cancel an appointment, please call either my home (725-2695) or office (786-3566).

Accountability

Tests will consist of a mid-term exam and a final. Both tests will be closed book-open notebook examinations. You may use your case and article outlines, as well as class notes, during the exams. You may not use the casebook, supplementary materials, or other photocopied materials (also excluded are photocopies of other students' notes and outlines). Small study groups are encouraged in preparation for exams, and you may use your personal notes from these study groups during exams.

All assigned court decisions referenced in the syllabus, whether in the casebook or in the supplementary materials, should be outlined. (We will discuss how to “brief” cases in one of the early classes.) Each student is expected to come to class prepared to discuss the reading assignment for that day. If, for any reason, you have not been able to complete the assigned reading, you should still attend class, but you should inform me at the beginning of the class session that you are not prepared to participate. In that event, I will not call on you. Otherwise, because we use the Socratic method (a structured dialogue between the student and teacher designed to probe the principles contained in court decisions), I will feel free to call upon students on a random basis. Students are encouraged to volunteer during class discussions. Participation will count substantially toward the final grade for the course.

Early in the semester, you will be asked to write a short 1,000-word paper on an assigned topic. A 10-page research paper on a subject of your choice will be due on November 30. The process of choosing a topic should include an office hours consultation and your submission no later than October 26, of a one paragraph proposal. An evening (one hour) training session with reference librarian Barbara Levergood to explain the use of legal research databases relevant to this course has been scheduled for September 20, at 7:00 p.m. (in lieu of the September 19 class session) and will be conducted in the Electronic Classroom at Hawthorne-Longfellow Library. Also, the Library’s research guide for this course can be found at <https://bowdoin.libguides.com/fall2018-gov2480>.

READING ASSIGNMENTS

The following readings are in Dorsen, Rosenfeld, Sajo, Baer & Mancini, *Comparative Constitutionalism – Cases and Materials 3rd Ed.* (2016) and in supplementary materials as indicated. This syllabus is intended as a guide, and the pace of our progress may be adjusted. Additional supplementary materials will be distributed during the course of the semester.

1. Constitutionalism

- pp. 33-40, 44-52, 56-60, 71-72, Supp.
- Henkin, “A New Birth of Constitutionalism,” Lev, “Social Movements, Constitutionalism and Human Rights,” Notes 1-2, *Princess Soraya Case* (Ger.), *Retroactive Criminal Legislation Case* (Hung.), Notes 1-3, Introduction to Written v. Unwritten Constitutions, Bradley and Ewing, “Constitutional and Administrative Law,” Notes 1-4, Beer and Itoh re Constitution of Japan, Note 3 (p. 71), “Japan Wrestles With Its Pacifism”—*New York Times* [Supp.], Note 4 (p. 72), Horowitz “Constitutional Courts’ A Primer for Decision Makers.” [Supp.]

2. Constitutions Beyond The Nation-State

- pp. 101-107, 109, 117-120, 121-129, 132-137, Supp.
- Levin Institute “The Issue of Sovereignty” [Supp.], Rosenfeld, “Is Global Constitutionalism Meaningful or Desirable?,” Peters, “The Merits of Global Constitutionalism,” Civitas Note 2 [p. 109] “European Union Treaties” [Supp.], *Maastricht Treaty Case* (Ger.), *Treaty of Amsterdam Decision* (Fr.), *Lisbon Treaty Case* (Ger.) Notes 1-6, including Grimm-Habermas debate over “constitutional patriotism,” Brexit Court Decision Introduction and Summary [Supp.]

3. Constitutional “Moments,” Regime Transition, Protection of Democracy

- pp. 78-88, 1496-1500, 1501-1508, 1509-1510, 1532-1535; Supp.
- Intro., Arendt “On Revolution,” Elster, “Constitutional Bootstrapping in Philadelphia, and Paris,” *Certification of The Constitution of South Africa*, (South Africa), Bell, “French Constitutional Law,” Notes 1-5; Brahm article explaining “Lustration,” [Supp.], *Lustration Case* Czech and Slovak Rep.) [Supp.], Notes 6-7 [pp. 1496-1498]; *Socialist Reich Party Case* (Ger.), *Refah Partisi v. Turkey* (ECHR); *Independent* article “Turkey constitutional changes: what are they, how did they come about and how are they different?” [Supp.]; Zoltan Simon, “Why Hungary and Poland Rattle Europe’s Liberal Order” [Supp.]; Note 2 [pp. 1509-1510]; *New National Party v South Africa* (South Africa).

4. Abortion

- pp. 708-725
- *Roe v. Wade* (U.S.), *Planned Parenthood of Southeastern Penn. v. Casey* (U.S.), *Gonzales v. Carhart* (U.S.), *R. Morgentaler* (Can.), *Daigle v. Tremblay* (Can.), *Abortion 1 Case* (Ger.), *Family Planning Act Amendment* (Pol.)

Right To End Life

- pp. 763-776
- *Cruzan v. Dir. of Mo. Dept. of Health* (U.S.), *Fleming v. Ireland* (Ireland), *Carter v. Canada* (Can.), *Lambert v. France* (ECHR), *Washington v. Glucksberg* (U.S.), Note 1

5. Death Penalty and Life Imprisonment

- pp. 736-752, 754-755, 756-761 [Supp.]
- *Gregg v. Georgia* (U.S.) [Supp.], *Glossip v. Gross* (U.S.), *Roper v. Simons* (U.S.), *State v. Makwanyane* (South Africa), *United States v. Burns* (Can.), Note 2 [p. 754], EU Policy on Death Penalty [Supp.], *R. v. Latimer* (Can.), *Life Imprisonment Case* (Ger.), Notes 1, 2

6. Intimate Partners

- pp. 213-215, 792-800, 803-804, 881-884, 806-821
- *Griswold v. Conn.* (U.S.), *Dudgeon v. U.K.* (ECHR), *Lawrence v. Texas* (U.S.), *Natl. Coalition For Gay and Lesbian Equality v. Minister of Justice* (South Africa), Note 3 [p. 799], *Loving v. Virginia* (U.S.), *Minister of Home Affairs v. Fourie* (South Africa), *Reference Re Same-Sex Marriage* (Can.), *Obergefell v. Hodges* (U.S.), Notes 1-5

7. **Freedom of Religion - Free Exercise Rights**
 - pp. 1161-1194, 1197-1198
 - *Decision on Scientology* (It.), *Syndicat Northcrest v. Amselem* (Can.), Notes 1-5, *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah* (U.S.), Mahmud, “Freedom of Religion and Religious Minorities in Pakistan,” *Zaheeruddin v. State* (Pak. article), Notes 1-3, *Japan v. Yasuko Nakaya* (Jap.), *Bijoe Emmanuel v. State of Kerala* (Ind.), *Kokkinakis v. Greece* (ECHR), Notes 1-4
8. **Church-State Relations**
 - pp. 1194-1197, 1201-1202, 1289-1298, 1300-1323
 - *Chan Hiang Leng Colin v. Public Prosecutor* (Sing.), Notes 8-9 [pp. 1201-1202], Introduction, Models of church-State Relations, Daniel and Durham, “Religious Identity as a Component of National Identity,” *Town of Greece v. Galloway* (U.S.), *Classroom Crucifix II Case* (Ger.), *Lautsi v. Italy* (It.), *S.R. Bommai v. Union of India* (Ind.), Notes 1-5
9. **Religion vs. The State**
 - pp. 1325-1333, 1337-1348, 1351-1353, 1203-1208, 1243-1252, 1254-1256, 1262-1279 [Supp.]
 - *Shavit v. The Chevra Kadisha of Rishon Le Zion* (Is.), Note 1, Slotte and Arsheim, “The Ministerial Exception,” *Ecclesia de Lange v. The Presiding Bishop of the Methodist Church* (S. Afr.), *Schüth v. Germany* (ECHR), Notes 1-3, *Burwell v. Hobby Lobby Stores* [Supp.] *Wisconsin v. Yoder* (U.S.), Notes [starting on p. 1351] 1-2, *Employment Dir. V. Smith, S.A.S. v. France*, “Why the French Are So Strict About Islamic Head Coverings,” *The Economist* [Supp], Note 2 [p. 1250], Notes 6-7 [starting on p. 1254], *Multani v. Comm Scolaire Marguerite-Bourgeoys* (Can.), *North-Rhine Westphalia Headscarf Ban Case* (Ger.), Notes 1-5
10. **Citizenship**
 - pp. 563-567, 620-624, 631-638, 665-666, 674-675, 680-687, 593-595, 597-599
 - Introduction: “The Concept of Citizenship,” Rosenfeld, “The Identity of the Constitutional Subject,” Shachar, “Citizenship,” *Liechtenstein v. Guatemala* (ICJ), *Sarbananda Sonowal v. Union of India* (ind.), Notes 1-2, “Challenging the Nation-State Paradigm,” *Sejdić and Finci v. Bosnia and Herzegovina* (ECHR), Note 4 [starting on p. 680], *Van Gend en Loos v. Nederlandse* (ECJ), *Chen v. Home Secretary* (ECJ), Benhabib, “Transformations of Citizenship: The Case of Contemporary Europe,” *El Dridi v. Italy* (ECJ)
11. **Discrimination Based on Gender**
 - pp. 888-900, 902-903, 573-575
 - *Nocturnal Employment Case* (Ger.), *Craig v. Boren* (U.S.), *Pres. of the Republic of South Africa v. Hugo* (S. Afr.), Notes 1-3, *Tanja Kreil v. Germany* (ECJ)

Affirmative Action

 - pp. 935-956
 - *Grutter v. Bollinger* (U.S.), *Ashoka Kumar Thakur v. Union of India* (Ind.), Summary of Brazilian Supreme Court Decisions, *Hellmut Marschall v. Land Nordrhein-Westfalen* (ECJ), *Feminine Quotas Case* (France) Notes 1-6
12. **Protecting Language Identity, Aboriginal and Group Rights**
 - pp. 957-966, 971-977, 991-998, 668-671, 977-982 [Supp.]
 - *Ford v. Quebec*, (Can.), *Mentzen Case* (Latvia), Notes 1-3, *Belgian Linguistic Case* (ECHR), Mancini and deWitte: “Language Rights as Cultural Rights,” *R v. Van Der Peet* (Can.), Canadian Constitutional Provisions Regarding Aboriginal Rights [Supp.], Articles on Kenyan, Australian and Canadian Indigenous Peoples’ Claims [Supp.], *Santa Clara Pueblo v. Martinez* (U.S.), Notes 1-3, [articles], *Gorzelik v. Poland* (ECHR)
13. **Social and Welfare Rights**
 - pp. 1398-1401, 1404-1435, 1453-1465
 - Introduction, *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan* (Ind.), Note 1-13, *Soobramoney v. Minister of Health* (S. Africa), Notes 4-9 [starting on p. 1453]

14. **Freedom of Expression - Scope, Political Order, Symbols**
 - pp. 1001-1034
 - Introduction, *Lange v Atkinson* (N.Z.), *Whitney v. California* (U.S.), *Irwin Toy Ltd. v. Atty. Gen. of Quebec* (Can.), *Curtis v. The Minister of Safety and Security* (South Africa), Comment: "Subversion of the Political Order," *Abrams v. U.S.* (U.S.), Notes 1-3, *Brandenburg v. Ohio* (U.S.), *Praising and Encouraging Under National Security Act* (S. Korea), *Ceylan v. Turkey* (ECHR), *Texas v. Johnson* (U.S.), *Flag Desecration Case* (Ger.), *Vajnai v. Hungary*, (Hung.), Notes 1-5
15. **Freedom of Expression - Publications, Racist Speech**
 - pp. 1059-1070, 1072-1074, 1078-1085, 1113-1130
 - Introduction to libel, *New York Times Co. v. Sullivan* (U.S.), Notes 1-6, *Mephisto Case* (Ger.), Notes 1-3, *Beauharnais v. Illinois* (U.S.), *Colin v. Smith* (U.S.), *R.A. V. v. City of St. Paul* (U.S.), Matsuda "Public Response to Racist Speech," Notes 1-7
16. **Freedom of Expression - Hate Speech, Revisionist History**
 - pp. 1130-1155, Supp.
 - *R. v. Keegstra* (Can.), Notes 1-4, *Garaudy v. France* (ECHR), Kübler, "How Much Freedom For Racist Speech," *Holocaust Denial Case* (Ger.), Notes 1-8, Canadian Charter of Rights and Freedoms [Supp.], *New York Times* article "American Exception" [Supp.] *Jurist* article re British Columbia Human Rights Tribunal [Supp.]
17. **Freedom of Assembly**
 - pp. , Supp.
 - *Dir. Of Pub. Prosecutors v. Jones* (U.K.), *R. v. Chief Constable of Gloucestershire* (U.K.), *Edwards v. South Carolina* (U.S.), *Brokdorf Case* (Ger.), Note 1-6, *Christine Mulundika v. The People* (Zambia), *Baczowski v. Poland* (ECHR), *Thomas v. Chicago Park District* (U.S.), *Schmidberger v. Austria* (ECJ), Notes 1-6 [all readings in Supp.]
18. **Right To Silence In Criminal Proceedings**
 - pp. , Supp.
 - Dolinko, "Is There a Rationale For the Privilege Against Self-Incrimination," *Miranda v. Arizona* (U.S.), Note on *Miranda*, *R. v. Herbert* (Can.), *Nandini Satpathy v. P.L. Dani* (Ind.), Notes 1-5, *Griffin v. California* (U.S.), *Murray v. United Kingdom* (ECHR), Kessel, "European Perspectives On Accused as a Source of Testimonial Evidence," Notes 1 and 2 [all readings in Supp.]
19. **State of Emergency - Suspension of Civil Rights, Targeting Particular Groups, Exercise of Special Powers**
 - pp. 1575-1577, 1585-1589, 1592, 1593-1602, 1603-1611, 877-881, Supp.
 - Introduction, Grimm, "Civil Liberties in an Age of Terror-How to Balance Freedom and Security" [Supp.], Loewenstein, *Militant Democracy and Fundamental Rights*, Note 4, Ackerman, "The Emergency Constitution," Gross, "Chaos and Rules: Should Responses to Violent Crises Always Be Constitutional," [Supp.], Comment on State-of-Emergency Jurisprudence, *Ex Parte Milligan* (U.S.), *Liversidge v. Anderson* (U.K.), Notes 1-2, *Lawless v. Ireland* (ECHR), *S.R. Bommai v. Union of India* (Ind.), Notes 1-7, *Korematsu v. U.S.* (U.S.), Notes 3-4, 1942 U.S. military evacuation order to persons of Japanese ancestry [Supp.], Nazi decrees of 1933 [Supp.]
20. **State of Emergency - Aggressive Interrogation Methods, Protective Measures, Detention of Enemy Combatants**
 - pp. 1611-1650
 - *Ireland v. United Kingdom* (ECHR), *Public Committee Against Torture v. The State of Israel* (Is.), *Aydin v. Turkey* (ECHR), Notes 1-4, Rosenfeld "Judicial Balancing in Times of Stress: Comparing the American, British, and Israeli Approaches to the War on Terror," *Beit Sourik Village Council v. The Government of Israel* (Is.), *Hamdi v. Rumsfeld* (U.S.), *ABC v. Secretary of State* (U.K.), *The Aviation Security Act Case* (Ger.), Notes 1-5

21. **Constitutional Amendments and Secession**
 - pp. 89-92, 98-99, 457-460, 215-224, Supp.
 - Introduction to Amending the Constitution, Note 3 [p. 98], *Re Quebec Objection to a Resolution to Amend the Constitution* (Can.), Hogg, “Special Status,” Reference Re Secession of Quebec (Can.), “Neverendum referendum: Voting on Independence, Quebec-Style,” BBC News Magazine [Supp.], Isaacson, “A Constitutional Crisis in Canada: Confronting the Prospect of Quebec Secession [Supp.], “World Court Rules Kosovo Declaration Was Legal,” *New York Times* [Supp.], “Europe’s Rising Regionalism,” Foreign Affairs [Supp.], “Catalonia’s Bid for Independence from Spain Explained, BBC News [Supp.], “Scotland’s Vote on Independence,” CNN/The Independent [Supp.], “South Carolina Ordinance of Secession” and “Declaration of the Immediate Causes Which Induce and Justify the Secession.” [Supp.]
22. **Comparative Perspectives In Constitutional Interpretation**
 - pp. 6-23, 25-30, 196-199, Supp.
 - *S. v. Makwanyane* (South Africa), *Roper v. Simmons* (U.S.), *Lawrence v. Texas* (U.S.), “The Relevance of Foreign Legal Materials in U.S. Constitutional Cases: A Conversation between Justices Antonin Scalia and Justice Stephen Breyer,” Glendon, “Comparative Law in the Age of Globalization,” Notes 1-6, *New York Times* articles “Supreme Court’s Global Influence Is Waning,” and “‘We the People’ Loses Appeal with People Around the World,” [Supp.], Fallon, “A Constructivist Coherence Theory of Constitutional Interpretation”