Course Description/Objectives:

This course looks at a series of interesting questions in the emerging field of comparative constitutional law. We will focus on four major questions where there is sharp differentiation between practice in the United States and practice in the rest of the world. First, we look at the role of courts in democracies, focusing on the increasing “judicialization” of politics in the rest of the world. Second, we explore the question of constitutional change, focusing on how constitutions are amended and how new constitutions are written. Third, we explore the literature related to the structure of the state, including the important question of how far a state can go to protect itself. Fourth, we explore the question of positive rights, a topic that has been banished from US Constitutional theory but which is important in the rest of the world. Finally, we look at the role of international and comparative law in the interpretation of domestic constitutions.

The class has two major aims. First, these questions of comparative institutional design and comparative doctrine can help to inform practice and policy in other countries. Second, a thorough understanding of comparative practice aids us in understanding our own system.

Readings:

All required readings will be posted on the course website at least one week before the required class; no text is required for this class.

Class Attendance:

Attendance is required for this course. In accordance with the law school’s accreditation requirements, you cannot receive credit for the course if you miss more than 20% of the scheduled class meetings.

Class Participation:

I expect students to be prepared for each class to discuss the readings assigned for that class. If you are unable to prepare due to extraordinary circumstances, you should contact me before class. Since this class is a seminar, class participation is critical and will count for 30 percent of your final grade. Students will also sign up to give a brief presentation of the material during one of our class sessions.

Paper:
The remaining 70 percent of your grade will be based on a 30 to 40 page research paper on some topic related to the course. Students should meet with the professor by the end of February to discuss preliminary paper topics. This course may be used to satisfy the upper level writing requirement.

Reading Assignments:

1. **Week 1 (January 10) – Introduction: What is this Field? Why Study It?**


   Abortion decisions from U.S., Canada, Germany


2. **I. The Role of Judiciaries**

   **Week 2 (January 17) – The Origins and Consequences of Judicialization**


3. **Week 3 (January 24) – Judicializing Huge Cases**


II. **Constitutional Creation & Change**
4. **Week 4 (February 6) -- Writing New Constitutions**


5. **Week 5 (February 13) – Constitutional Amendment**


Presidential Reelection Decisions, 2005 and 2009 (Colombia).

**III. State Structure & Threats to the State**

6. **Week 6 (February 14) – Structuring the State**


7. **Week 7 (February 21) – Emergency Powers & Terrorism**


Anti-Terrorism Cases: from Israel (torture case) and Germany (shoot-down case)

8. **Week 8 (February 28) – Political Speech and the Shape of the State**

Socialist Reich Party Case, German Constitutional Court (1952).

Holocaust Denial Case, German Constitutional Court (1994).


9. Week 9 (March 14) – The Role of Religion in the State


Shah Bono case, India (1985)


IV. Some Hot Topics in the Field

10. Week 10 (March 21) – Positive & Socio-Economic Rights 1: The Nature of Constitutional Law & Debates on Inclusion

Carmichele v. Ministers of Safety and Security, Constitutional Court (South Africa), 2001 (4) SALR 938


11. Week 11 (March 28) – Socio-Economic Rights 2 – Modes of Enforcement

Mark Tushnet, Weak Courts, Strong Rights (2008), chapter 8, pgs. 226-244; 247-250

South Africa v. Grootboom, CCT 11/00, Constitutional Court (South Africa) (2000).

Soobramoney v. Minister of Health, Constitutional Court (South Africa), 1998 (1) SALR 765.
12. Week 12 (April 4) – Relationship Between Domestic & International Law


US materials on the topic (excerpts from Roper v. Simmons (2005), Lawrence v. Texas (2003), and a debate between Justices Scalia and Breyer from 2005)


13. Week 13 (April 11) – paper presentations