

Comparative Constitutional Law
Course 627-01, Spring 2012
Monday & Wednesday, 2:30-3:45 pm, Room 3
Prof. Sudha Setty

Syllabus

Course Objectives

- Using a comparative approach to constitutional law with a view to developing a critical understanding of how different constitutional systems deal with similar issues.
- Considering how comparative constitutional study can offer insights into our own constitutional system.
- Considering aspects of the U.S. constitutional system that have been considered for adoption by emerging constitutional nations.
- Considering the legitimacy of U.S. lawmakers or judges considering or referring to foreign constitutional law in the creation of U.S. law or in the decision-making process for U.S. cases.

Overview of Course

This course explores topics arising in the comparative study of constitutional systems and constitutional questions of law. The course will first address broad questions, such as why comparative constitutional law is a relevant topic for study. We will then move to a discussion of structural issues, including comparative approaches to the separation of powers and judicial review. The remainder of the course will address comparative approaches to individual rights, including reproductive rights, freedom of expression and the rights of minorities.

Administrative Information & Expectations

Prof. Sudha Setty

Office: 303

Phone: 413.782.1431

Email: sudha.n.setty@gmail.com (preferred); ssetty@law.wne.edu

I will generally respond to emails within one business day. If you have a substantive question about class discussion or the reading, I encourage you to come see me during office hours.

Office Hours:

Mondays, noon to 2 pm, and by appointment.

Required Reading:

Textbook: Dorsen, et al., Comparative Constitutionalism (2d edition, 2010).

Page numbers in the assignments listed in the syllabus refer to the textbook. All material, including commentary, footnotes, questions, etc., within the assigned page range is included in the assignment.

Bring the casebook to each class.

Please make sure you are registered for the class TWEN site, as weekly discussion topics and occasional supplemental readings will be posted there.

Class structure and grading:

Comparative Constitutional Law meets twice each week. Generally, we will cover one topic per week, although there may be some weeks when we cover two topics (the list of topics is at the end of the syllabus).

For each topic, we will generally discuss the reading assignment for both classes in a week, including case analysis, policy considerations and other discussion questions. We will also use role play and small group activities to debate the advantages and disadvantages of differing constitutional systems and provisions.

As you can see, the Dorsen textbook is encyclopedic, and we are not going to read and discuss all parts of this book, or even half of it. Instead, we will be discussing selected topics in more depth over the course of the semester.

Grading:

There will be no final exam at the end of this course. You will be evaluated on four bases:

- (1) written responses to the reading material and discussion questions for seven topics,
- (2) a presentation and leading a class discussion on a topic of your choice,
- (3) a short research paper (12-15 pages) on the same topic as the presentation, and
- (4) class participation.

These elements are discussed in further detail below.

- (1) Written Thought Responses for Each Topic (20% of the overall grade)

In addition to the reading assignment for each topic we cover in class, discussion questions will be posted on the class TWEN site. Discussion questions will generally be posted on the class TWEN site each Wednesday for the following week's classes.

You will be required to post a response on TWEN to the discussion questions **seven times during the semester**. Responses are due one day prior to the start of the class in which we address that topic (e.g., if we are going to begin our discussion of federalism on a Monday, the discussion questions for that topic will be posted the previous Wednesday, and written responses must be posted on the class TWEN site by Sunday at 2 pm).

These written responses are meant to be brief (approximately one page, double spaced) and thoughtful responses to the reading for the week. They are not meant to be research papers or polished finished products.

As mentioned above, you are required to post a response for seven topics. You need not tell me which seven weeks you plan to post a response—just make sure that you have completed seven by the end of the semester (do not post a response during the week in which you are giving a presentation).

The TWEN responses will be graded on a scale of zero to three points:

3 Points	Incorporates some of the assigned material into the response and provides insightful analysis and original thinking
2 Points	Incorporates some of the assigned material into the response in an organized and coherent manner
1 Point	Minimal indication that assigned material was reviewed.
0 Points	TWEN response not submitted (and “pass” already used)

The score for a late response will generally be docked by one point. (If the response would have earned one point if submitted on time, one-half point will be awarded for the late submission). Responses will not be accepted for questions related to material already covered in class.

(2) Presentation on a Topic (20% of the overall grade)

From the list of topics at the end of the syllabus, you will pick one topic of particular interest from Chapters 3 through 8 and Chapter 12. For that selected topic, you will be required to:

- (a) review the reading material in question and meet individually with me at least one week ahead of the class in which we will be discussing the topic,
- (b) generate the discussion questions to be posted for the topic (our individual meeting will assist in this process),
- (c) review the class TWEN responses prior to the class discussion, and
- (d) make a presentation.

You should sign up for a topic you are interested in focusing on; I will post a sign-up sheet on TWEN by the second week of the semester. Note that if you select a topic from Chapter 3 or 4, your workload for the semester is going to be front-loaded, whereas if you choose a topic from Chapter 7 or 8, your workload will be back-loaded.

Presentations can take any number of forms (e.g., giving a lecture on your research paper topic, using PowerPoint to compare constitutional provisions, leading a small group activity, setting up a “game show” for students to compete in analyzing various points). **Presentations are expected to be 20-30 minutes long.**

(3) Research Paper of 12-15 Pages (40% of overall grade)

You are required to write a short research paper on a topic related to your class presentation. For that paper, you will be required to submit an outline and the final version of the paper; submitting a draft is optional but is an opportunity for additional feedback from me. For those of you who choose to present on a topic early in the semester, you may prefer to write your paper early on when the material is freshest in your mind. However, as a default, the following deadlines apply to all papers:

(a) Outline & Bibliography (1-2 pages) **DUE Thursday, March 15 (midnight)**

The outline should present your thesis (the idea you will develop in the paper) and your general approach or “roadmap.” In preparing your outline, you will likely find it necessary to begin to engage in research and outside reading. The bibliography should include a starting list of sources that you are using to develop your paper.

Please submit your outline and bibliography to me using the Assignment Drop Box on TWEN. I will reply to your submission with feedback, questions or concerns. If you would like more guidance on your paper, I strongly encourage you to set up a time to meet with me after reviewing the feedback on your outline and/or draft.

(b) Draft (**optional**)

Submit by Thursday, April 19 (midnight)

If you would like interim feedback on your research, submit a rough draft to me using the TWEN Assignment Drop Box as a Word attachment. I will respond with comments and suggestions on your draft. The more complete and polished your draft is, the more feedback I will be able to provide.

(c) Final version of the paper

DUE Wednesday, May 9 (5 pm)

Please submit your final paper as a Word attachment using the TWEN Assignment Drop Box. Format your paper using 12 point, Times New Roman font, no larger than 1 inch margins, double-spaced text, and 10 point, single-spaced footnotes (not endnotes). Citations should comply with Bluebook rules.

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Grading of papers

I will grade your final paper submission based on the following:

- Original and appropriate thesis
- Variety and relevance of sources consulted
- Quality and depth of research and legal analysis
- Proper citation and attribution
- Overall organization (a logical roadmap, section and subsection headings)
- Improving on weaknesses identified in the outline and draft
- Content supports the thesis
- Clear sentences and analysis
- Grammar and citation format
- Compliance with deadlines (outline and final submission)

(4) Class Participation (20% of overall grade)

Comparative Constitutional Law is a seminar with relatively small enrollment. Active participation in the class is necessary to maintain an interesting, lively and productive discussion. (Caffeine alone will not do the trick).

Participation in the class will be measured by the quantity and quality of responses to questions posed by me and other presenters, participation in class discussion, and volunteering with thoughtful and relevant commentary throughout the semester.

Attendance:

Per ABA and Law School policies, class attendance is mandatory. If you will not be able to attend a class, please let me know in advance. If you are absent for 20% of the total number of classes during the semester, I will speak with the Law School administration about the situation. Before reaching that point, I will try to contact you – in person or via email – about your attendance. Your attendance will affect your participation score in the class.

Welcome to Comparative Constitutional Law – I'm looking forward to our semester together!

Reading Assignments

Chapter 1: What is a Constitution?

- (a) Your initial assignment for the course is in two parts:
 - a. Read pp. 1-25, 29-33 (Why Comparative Constitutional Law? The Controversy over Citation to Foreign Constitutional Material);
 - b. Read the text of U.S. Constitution (available online at: <http://www.law.cornell.edu/constitution/constitution.table.html#articlei>, as well as many, many other sources).
- (b) pp. 41-55, 58-63, 66-77 (Rule of Law; Constitutional Models)
- (c) pp. 116-138 (Constitutional Ratification and Amendments)

Chapter 2: Judicial Enforcement of the Constitution—what is the role of the courts?

- (a) pp. 139-173, 190-208 (The Place of Constitutional Adjudication; Models of Adjudication; Dilemmas of Constitutional Interpretation)

Chapter 3: Horizontal Separation of Powers

- (a) pp. 240-304 (Checks and Balances; Legislative Branch; Referendum)
- (b) pp. 305-360 (Executive Power)
- (c) pp. 361-383, 1539-1565 [**note that this block of materials is in Ch. 12**] (Judiciary; Emergency Powers)

Chapter 4: Federalism & the Vertical Separation of Powers

- (a) pp. 384-443 (Forms of Federalism)

Chapter 5: Dignity, Privacy and Personal Autonomy

- (a) pp. 527-564 (Fundamental Rights; Constitutional Right to Abortion)
- (b) pp. 564-609 (Death Penalty; Life Imprisonment; Suicide & Euthanasia)
- (c) pp. 609-651 (Self-Definition, Intimacy, Relationships) [**if time allows: pp. 651-668, Virtual Identity**]

Chapter 6: Equality, Minority and Group Rights

(a) pp. 669-694, 702-715 (Formal vs. Substantive Equality; Targeting Particular Inequalities)

(b) pp. 718-752, 779-802 (Discrimination based on Race, Sex and Sexual Orientation; Affirmative Action)

(c) pp. 802-846 (Protecting Group-Based Equality)

Chapter 7: Freedom of Expression

(a) pp. 847-882, 943-953, 967-970, 972-977 (Freedom of Expression; Hate Speech)

Chapter 8: Freedom of Religion and Belief

(a) pp. 1015-1053 (Freedom of Religion and Belief)