

Legal Studies 190.2
Comparative Constitutional Law: The Case of Israel
200 Wheeler, Tuesday & Thursday 9:30-11
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Office hours: Tuesdays 11:00-12:00, or by appointment.

Overview

The course will provide an introduction to constitutional law. It will use the Israeli constitutional law as an illustration to the more general concepts and doctrines of constitutional law. Each of the topics will be first explored from theoretical and comparative perspectives, and then will study and critically evaluate the Israeli law approach to each of the subjects. Israel serves as an exceptionally useful case study, due to its unique constitutional regime. It is a democracy that operated without a written Constitution for more than half-century, and moved to a written Constitution without actually enacted a Constitution. It is a democracy which explicitly challenges the concept of state neutrality, as it was established as a Jewish, and thus non-neutral democracy, and at the same time it gives unusually great emphasis to group-rights of its Arab-Palestinian minority. Israel also presents a unique model of state and religion. These and many more issues provide a wonderful opportunity to explore the boundaries of fundamental aspects of constitutional law.

In each week we will have two meetings: On the first meeting, on Tuesday, will be discuss a subject from both a theoretical (mostly, moral, political and social) perspective and comparative study. Major comparative sources will include Canada, US, Germany, and the jurisprudence of the European Court of Human Rights. Then, on our second meeting in each week, on Thursday, we will move to critically evaluate Israeli constitutional law issues related to the same topic. We will use the theoretical and comparative discussion as a basis for evaluating Israeli constitutional law, and at the same time utilize the Israeli law to reconsider the more general aspects of each of the issues.

The main subjects discussed include: Constitutionalism, Separation of Powers and Judicial Review, state neutrality and self-determination (and Israel's identity as a Jewish and Democratic State), minority rights (with a focus of group rights of Arab citizens of Israel), state and religion, basic concepts and methodologies of Human Rights Law, the concept of "defensive democracy" and ban of non-democratic political parties, legal aspects of the fight on terror, freedom of expression, equality and antidiscrimination, social rights, and constitutional limitations on privatization.

Student Requirements and Participation:

The course will include lectures and active discussion. Students will be expected to come to class having completed the readings for that day and be prepared to discuss them. Participation is an important part of the grade.

Readings

All reading materials will be available on the course bSpace website.

Additional materials on Israeli law: The Israeli Supreme Court decisions are rendered in Hebrew but important decisions are translated into English, and are available here:

http://elyon1.court.gov.il/eng/verdict/search_eng/verdict_by_misc.html.

The Basic Laws (Israel's Constitution) are published in English on the Knesset's (the Israeli parliament) website, here: http://www.knesset.gov.il/description/eng/eng_mimshal_yesod1.htm.

An official English translation of statutes, entitled Laws of the State of Israel (L.S.I.), is published by the Ministry of Justice. Authorized English translations of laws are also available at the Israeli Foreign Ministry website:

<http://www.mfa.gov.il/MFA/Government/Law/Selected+legislation/>.

A useful general introduction in English to Israeli constitutional law is the following book:

SUZIE NAVOT, THE CONSTITUTIONAL LAW OF ISRAEL (2007).

Grade Distribution:

15% active participation; 25% two reflection papers; 60% final exam (take-home exam)

Schedule

Week	Subject	Tuesday	Thursday
1	CONSTITUTIONALISM	Theory	Israel's "Constitutional Revolution"
2	SEPARATION OF POWERS AND JUDICIAL REVIEW	Theory and Comparative	Israel
3	STATE NEUTRALITY AND SELF-DETERMINATION	Theory and Comparative	Israel as a Jewish and Democratic State
4	MINORITY RIGHTS	Theory and Comparative	Group rights of the Arab minority in Israel
5-6	STATE AND RELIGION	Theory and Comparative	Israel
7	HUMAN RIGHTS LAW I	Theory	Comparative
8	HUMAN RIGHTS LAW II	Israel	Israel
9	DEFENSIVE DEMOCRACY AND BAN OF NON-DEMOCRATIC POLITICAL PARTIES	Theory and Comparative	Israel
10	FIGHT ON TERROR	Comparative	Israel

11	FREEDOM OF EXPRESSION	Theory and Comparative	Israel
12	EQUALITY AND ANTIDISCRIMINATION	Theory and Comparative	Israel
13	SOCIAL RIGHTS	Theory and Comparative	Israel
14	HUMAN RIGHTS AND PRIVATIZATION	Theory and Comparative	Israel