
Book Review

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- 1 Between Magic and Deceit, Comparative Constitutional Studies,
Elgar Monographs in Constitutional and Administrative Law
by: Günter Fragenberg
Published 2018
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William Pratt House, 9 Dewey Court, Northampton,
Massachusetts 01060, USA, 343pp
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Nowadays, comparative constitutional law as well as international constitutional law are not only well established research fields but also studies of vital importance in order to research in further depth national constitutional law. Especially, the field of comparative constitutional law offers the most essential methodological tools and the theoretical and practical framework for the improved understanding and interpretation of the national constitutional texts.

The roots of comparative constitutional law research are extremely old and can be traced in the 18th and 19th century constitutional laboratory. This laboratory consists on the one hand of the vast ideological, social and political movement of enlightenment and on the other hand on the classic literature on rights and autonomy as well as the American and French revolution constitutions. During this first historical period, comparative constitutionalism is enforced in a practical level via transfers and loans in emerging new constitutions. It can be seen as an influence that affects the adoption of principles and norms adopted in new constitutional texts or as the motivation for the adoption of a constitution in order to politically organise a new or a pre-existing polity.

Nevertheless, today, comparative constitutional law consists of many more than transfers and loans from a constitution to another. Globalisation enhances the legal exchange of constitutional arguments and interpretation; it initiates the dialogue between constitutional, supranational and international courts. In this framework, constitutional transfers and loans especially in the field of human rights theory and practice are more and more the rule than the exemption.

The present book analyses both the historical roots and the present premises of comparative constitutional law, its modern methodology and perspectives. Günter Fragenberg's, *Between Magic and Deceit*, is divided in three parts. The first one is devoted on the matters of theory and method of comparative constitutional law and it examines how the forms, designs and internal architecture of the constitutional texts

resemble or vary in different legal orders, political and social contexts and how the classic constitutions have evolved to the present modern ones. The important issue of constitutional ethnocentricity is examined as the core trade mark, the very constitutional identity that helps us to discern on constitutional text from the other.

The second part of the book analyses the history and transfers that have marked the path of comparative constitutional law both negative and positive, as well as the constitutional reflexes against the 'power' of globalisation and its means to resist homogeneity. The author is proposing a series of vehicles and paths for constitutional transfers used in the past, while examining the historical premises of the 19th century and the classic literature that has assisted the forging of the modern comparative constitutional law.

The third part of the book is aiming in setting out a common ground, a minimum that modern constitutions share in common. The author refers in this part to a number of principles and constitutional functions that make a constitution of vital importance for a modern polity, as its ability to function as the terrain for the resolution of political and social conflicts, as the medium for achieving social integration, social inclusion and solidarity. Lastly, the author analyses the dynamics of the state of exception and their normalisation achieved via their constitutional incorporation. His arguments are of great importance given the ongoing debate regarding the enforcement of the state of exception in some European countries, following serious terrorist attacks (e.g., France).

Günter Fragenberg's, *Between Magic and Deceit*, covers many significant issues of the modern comparative constitutional law, while it is reflecting new ideas and trends of the field. Its main strength lies in its practical paradigms which are many and enlightening of the way that comparative constitutional law can assist the practical enforcement of national constitutions. Comparisons, transfers, loans, as well as the mutual interaction between different constitutional polities, are not only theoretical but also practical matters of great importance, influencing the everyday application of a country's constitution. Comparative constitutional law can be a significant source of constitutional argumentation between and beyond states, among citizens and politicians, within national civil societies and in the global forum, between courts and jurists, thus transferring the ideological energy contained in constitutionalism, the ideals and ideologies contained in the theory and practice of constitutional law.

2 Immigration Policy and the Shaping of U.S. Culture: Becoming America
by: Roger White
Published 2018
by Edward Elgar Publishing Ltd,
The Lypiatts, 15 Lansdown Road,
Cheltenham, Glos, GL50 2JA, UK, 205pp
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If the USA is something is a nation of migrants. It is common knowledge that migration has shaped the American political and social culture based on a variety of nations. Yet, after 9/11 and especially during the Donald Trump era, the idea of the USA

as a 'negative' towards migration country has developed. The idea of birthright citizenship, border walls, extremely demonstrated during the Donald Trump campaign and travel bans have been largely introduced in the American public dialogue along with a rising nationalism. From this point of view, Roger White's book seems to be extremely important as an effort to provide us with a comprehensive analysis on the abovementioned paradox. How can a nation build on migration be hostile against migrants?

Roger White's book provides us with an in-depth analysis of both the origins and the current debate on the USA migrant policies from a pluralist and liberal perspective with respect to human rights. His work divided the USA migration history in four periods.

The first one is the Colonial Era, marked by the Northern and Western European wave (1607–1874). During these years and the first years following the American Revolution and independence an 'open door' migration policy is maintained, that assists the forging of the American nation. From 1790–1875, a de facto policy was generally followed, in the form of restrictions to become a citizen. The Naturalization Act of 1790 restricted citizenship only to white persons of good moral character.

The second one is the period marked by the Southern and Eastern European wave and the position of qualitative restrictions from 1875–1920. During this time, federal legislation is enforced marking a clear preference towards immigrants coming from Europe. It is the Hart-Celler Act enacted in 1968 that increases the annual immigrant flow and the corresponding migration source countries.

The third period is characterised by the enactment of quantitative restrictions and the National Origins Quota System (1921–1967). This period is characterised by severe restrictions to migration (until the Hart-Celler Act), in the general isolationist policy of the time. The Emergency Quota Act enacted in 1921 imposed quantitative limits on the annual immigrant flows, thus putting a strict ceiling for immigration from countries in the Eastern hemisphere.

The fourth period is the one marked by the Hart-Celler Act (1968–present). This act revolutionised migration since it annihilates the former biased immigration policy. The new system is based on family reunification, admission of refugees and asylum seekers and filling labour market vacancies. During this era, a shift in the primary sources countries has been observed. The European source countries have been replaced by Asia, Latin America and the Caribbean.

By analysing in depth these four periods, the author comes to extremely important conclusions regarding the shaping of the modern American culture. Thus, the author contends that the qualitative restrictions had a vast impact in the shaping of modern discriminations and prejudices in the USA. The historical prevalence of European migration source countries has led to the 'European' culturally shaping of the American culture along of course with other parameters as the institution of slavery, the Japanese internment and the Civil Rights Movement. This substantial hypothesis explains the modern discriminations and repression of population groups coming from Asia and Latin America. The book contains serves as wonderful exploration and examination of the link between cultural politics and migration history in the USA, a most useful tool for understanding the modern debate on Donald Trump 'isolationist' policy making.

3 Comparative Constitutional Law

by: Marc Tushnet

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Marc Tushnet is one of the most well know academics in the field of comparative constitutional law. The present book reflects a short but advanced analysis in the most important issues currently faced in the field of comparative constitutional law such as constitution making, constitutional review, rights analysis, proportionality and balancing of rights, the structure of government and the modern a-typical forms of constitutionalism.

For Tushnet, the main historical waves that assisted the modern construction of comparative constitutional law are mainly two: The aftermath of World War II, in the era of decolonisation, in the wave of democratisation of Latin America and of course in the period following the breakdown of the Soviet Union and the Eastern European countries. For Tushnet among others, the main turning point is marked by the rise of the economic globalisation and industrial revolution that brings forward the idea of comparative constitutionalism from the end of 19th century and after. Nevertheless, the peak for comparative constitutional law is undoubtedly the rise of international human rights law, since the two fields are not only close but also interlinked.

The second chapter of the book is devoted in the analysis of the main framework and premises of constitutional law and thus serves as a brief exploration on the notions of constituent power and constitution making. The third chapter of the book offers a brief but in-depth analysis about constitutional review, offering some crucial comparative conclusions on the differences, advantages and disadvantages of centralised and dispersed constitutional review. The fourth chapter contains a comparative analysis on subject related the structure of rights and mainly the difference between the USA and European perspective, the issues of proportionality and balancing of rights as well as the consequences of international law on the realisation of human rights. The fifth chapter of the book reflects the changes that have been made on the three-branch model of government, namely in favour of the administrative branch that has grown immensely in the era of globalisation. Lastly, the author explores the new a-typical forms of constitutionalism, namely the 'thin' constitutions that the new authoritarian regimes employ.

Though brief, the book amazes on its depth analyses and direct way of thinking. It serves as an excellent introduction not only to comparative constitutional law, but to international constitutional law as well. Written in a simple manner, it touches all the crucial modern issues of comparative constitutional law international debate.