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COMPARATIVE
CONSTITUTIONALISM
CASES AND MATERIALS

Second Edition



Norman Dorsen, Michel Rosenfeld,
András Sajó, Susanne Baer

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COMPARATIVE CONSTITUTIONALISM CASES AND MATERIALS

Second Edition

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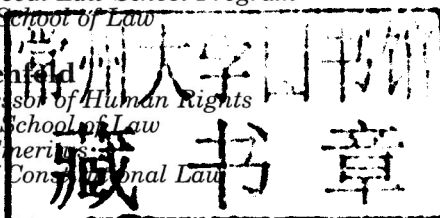
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Preface to the Second Edition

The circumstances and trends that prompted us to prepare the first edition of this book—the vast increase in international movements of people, capital, goods, ideas and information, and the further particularization of human rights—have continued and indeed intensified. There are now more law courses devoted to comparative constitutionalism, more academics entering the field, more scholarly conferences and writing on the subject, and, above all, there is a broader sense of its importance. Further, the *International Journal of Constitutional Law* (I•CON), launched in 2003 after four years of gestation, now provides a needed forum for the exchange of ideas about constitutional law worldwide.

The world we live in is violent and often seems utterly mad. But this does not lessen—indeed, it intensifies—the need for rational governance among nations, including the nurturing of a rule of law that both restrains and liberates the instincts of men and women that are reflected in their governments. Much as the perfect riposte to the notorious Nazi slogan, “I reach for my gun whenever I hear the word ‘culture’” was “I reach for my culture whenever I hear the word ‘gun’,” so is the development and dispersion of wise constitutional principles an excellent antidote to the forces of destabilization and conflict.

We have seen that the path of comparative constitutionalism is not always smooth. For example, there is controversy over the degree to which national courts should cite and rely on the decisions of courts in other countries. Justices Antonin Scalia and Stephen Breyer of the United States Supreme Court took this issue public at a widely televised debate held in 2005 at the Washington College of Law at American University, the transcript of which was published in I•CON (July 2005). Despite the thought and energy that the justices brought to the matter, there is no sign that the dispute will be resolved soon; this edition of the casebook presents the opposing viewpoints.

The editors have carefully reviewed the first edition to assure its accuracy and continued relevance, and have prepared significant new and updated material for this second edition. There is a new section containing cases in many jurisdictions on various aspects of the so-called “war on terrorism,” including torture. There is also new material on problems relating to pornography, social welfare, and religion. The chapter on dignity and self-determination has been revised to cover such issues as euthanasia and rights of sexual autonomy, including the rights of transsexuals. The political rights material has

likewise been updated to cover voting and party politics in addition to rights of individual citizenship.

The cases are, for the most part, current through 2009. As in the first edition, in order to assure the inclusion of a broad array of opinions on constitutionalism, we have drawn material from more than fifty jurisdictions from all parts of the world. We have tried to present the material in all its complexity to further the understanding of principles that may vary among different regions and legal systems.

We hope that the users of this book will share the enthusiasm and intellectual profit that we have found in preparing it.

NORMAN DORSEN

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March 2010

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Finally, we lament the recent passing of Professor Thomas M. Franck of NYU Law School, a brilliant international law scholar and a pioneer in the comparative field with his influential casebook, *Comparative Constitutional Processes* (1968).

—*The authors*

Note on Citations and Glossary of Acronyms

This book cites to cases and secondary authorities from a great number of jurisdictions. It is not always clear what reporter or form of citation is appropriate; thus, although we have striven for accuracy, there may be mis-citations or inconsistencies of one kind or another.

Where there is an official or preferred reporter, such as the *U.S. Reports* or the *South Africa Law Reports* (SALR), we have cited to it whenever possible.

When reproducing cases and other authorities, we have retained the spelling and style conventions (American or British) and citation forms used in the original.

Footnotes retained from excerpted material include their original numbering. Footnotes inserted by the editors are indicated by lower case letters. Material that we have omitted from excerpted text or footnotes is indicated by asterisks (* * *), while material we have added is placed in brackets. An ellipsis (. . .) indicates an omission made by the excerpt's author, quoting from another source.

We have used the following acronyms:

BCCL	Bulletin on Constitutional Case-law
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECJ	European Court of Justice
ECtHR	European Court of Human Rights
GCC	German [Federal] Constitutional Court
HCC	Hungarian Constitutional Court
ICC	Italian Constitutional Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ISC	Indian Supreme Court [Supreme Court of India]
RCC	Russian Constitutional Court
SACC	South African Constitutional Court
USSC	United States Supreme Court

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