**DISCIPLINA:** COMPARATIVE CONSTITUTIONAL LAW  
**PROFESSOR:** DIEGO WERNECK ARGUELHES & EVAN ROSEVEAR  
**CARGA HORÁRIA:** DISCIPLINA ELETIVA  

**EMENTA**  
The field of comparative constitutional law has significantly expanded over the last two decades. In addition to traditional comparative legal scholars, political scientists, economists and historians have made important contributions to our understanding of both the convergence and divergence in how different constitutional courts decide similar issues across the globe. Course readings will focus on the original text of judicial decisions by constitutional courts; classroom discussion will expand upon these ideas and explore their social and political context. By the end of the course, students will have become familiar with a set of important judicial rulings from several jurisdictions and the different approaches to constitutional adjudication they adopt.

**OBJETIVOS GERAIS**  
In this course, we will consider and compare constitutional controversies that have been dealt with by the constitutional courts of several jurisdictions.

**OBJETIVOS ESPECÍFICOS**  
We will discuss classic (such as freedom of expression and religion) and contemporary (such as same-sex marriage, healthcare and housing) constitutional problems, analyzing both the influence of political and institutional factors and the different methods of constitutional interpretation employed in these jurisdictions.

**METODOLOGIA**  
All lectures and in-class discussions will be conducted in English. We strongly encourage students to present in English as well, but it will be possible to submit written work (including the exam) in Portuguese. Students who have questions about the required level of English should feel free to meet the instructors before or in the first week of class.

**PROGRAMA**  
Week 1 – Course Presentation / Introduction to Constitutional Review Structures and Cultures  
Week 2 – Abortion and Reproductive Rights  
Week 3 - Gender Equality & Discrimination  
Week 4 – Regulating Sexuality  
Week 5 – The Right to Education  
Week 6 - Healthcare  
Week 7 - Basic Needs (Social Security, Housing, Food)  
Week 8 - Religious Accommodation  
Week 9 - Establishment/State Religion  
Week 10 – Freedom of Expression  
Week 11 - The Judicialization of “Mega Politics”  
Week 12 – Proportionality & Limiting Rights  
Week 13 – Human Dignity

**CRITÉRIOS DE AVALIAÇÃO**  
Students can choose between two forms of evaluation:
A. Writing-intensive evaluation:
   • Two response papers (2 pages / 500 words) (50% of the final grade), to be sent during the semester in previously scheduled dates,
   • One take-home exam during the second exam period (50%).

B. Writing/Presentation evaluation:
   • One response paper (2 pages / 500 words) (25%)
   • One in-class presentation and analysis of a Brazilian case related to the meeting's topic, as defined by the instructors (25%)
   • One take-home exam during the second exam period (50%).

**BIBLIOGRAFIA OBRIGATÓRIA**

All readings below are mandatory, and either are available online or will be sent by the instructors in the first week of class. We will provide additional, optional readings as the semester progresses.

**Week 1 – Course Presentation / Introduction to Constitutional Review Structures and Cultures**

**Week 2 – Abortion and Reproductive Rights**
   • Abortion I Case (1975) 39 BVerfGE 1 (Fed Const’l Ct (Germany))
   • Attorney General v X and Others (1992) 1 IR 1 (Sup Ct (Ireland))
   • Roe v Wade (1973) 410 US 113 (Sup Ct (US))
   • R v Morgentaler (1988) 1 SCR 30 (Sup Ct (Canada))

**Week 3 - Gender Equality & Discrimination**
   • Alice Miller v Minister of Defence [1995] HCJ 4541/94, 1995-6 Israel Law Reports 1
   • Constitutional Judgment 3-3-1-41-09 (Police Pensions Case) (Sup Ct [Estonia])

**Week 4 – Regulating Sexuality**
   • Civil Partner Pensions Case (2009) 1 BvR 1164/07 (Fed Const’l Ct (Germany))
   • Lawrence v Texas (2003) 539 US 558 (Sup Ct (US))
   • Loving v Virginia (1967) 388 US 1 (Sup Ct (US))
   • Reference re Same-Sex Marriage (2004) 3 SCR 698 (Sup Ct (Canada))

**Week 5 – The Right to Education**
   • Brown v Board of Education of Topeka (No 1) (1954) 347 US 483
Moore v British Columbia (Education) [2012] SCC 61
Campaign for Fiscal Equity v State of New York (2001) 719 NYS (2d) 475 (Sup Ct NY)

Week 6 - Healthcare
- Chaoulli v Quebec (Attorney General) (2005) 2005 SCC 35 (Sup Ct (Canada))
- Soobramoney v Minister of Health (KwaZulu-Natal) (1997) 1997 ZACC 17 (Const’l Ct (South Africa))
- NFIB v Sebelius (2012) 567 US ____ (Sup Ct (US))

Week 7 - Basic Needs (Social Security, Housing, Food)
- Gosselin v Quebec (Attorney General) [2002] 2 SCR 429 (Sup Ct (Canada))
- Grootboom v Government of RSA [2000] ZACC 19 (Const’l Ct (South Africa))
- Olga Tellis v Bombay Municipal Corporation (1985) [1985] 3 SCR 545 (Sup Ct (India))
- Fabre C, ‘Social Rights in European Constitutions’ in Gráinne de Búrca, Bruno de Witte and Larissa Ogertschnig (eds), Social Rights in Europe (Oxford University Press 2005)

Week 8 - Religious Accommodation
- Leyla Sahin v Turkey (Eur Ct Hum Rts (Grand Ch))
- Multani v Commission Scolaire (2006) 1 SCR 256 (Sup Ct (Canada))
- Wisconsin v Yoder (1972) 406 US 205 (Sup Ct (US))

Week 9 - Establishment/State Religion
- Bruker v Marcovitz [2007] 3 SCR 607 (Sup Ct (Canada))
- Classroom Crucifix Case [1995] 1 BvR 1087/91
- Lina Joy v Majlis Agama Islam Wilayah Persekutuan (2007) 4 MLJ 585 (Malaysia)

Week 10 – Freedom of Expression
- Von Hannover v Germany [2004] (Application no. 59320/00) [European Court of Human Rights]
- Luth (1958) 7 BVerfGE 198 (Fed Const’l Ct (Germany))

Week 11 - The Judicialization of “Mega Politics”
- Reference re: Secession of Quebec (1998) 2 SCR 217 (Sup Ct (Canada))
- C-370 of 2006 (Colombian Constitutional Court)

Week 12 – Proportionality & Limiting Rights
- Stone Sweet A and Mathews J, ‘Proportionality Balancing and Global...
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<th>Constitutionalism’ (2008) 47 Columbia Journal of Transnational Law 73</th>
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<td>• R v Oakes (1986) 1 SCR 103 (Sup Ct (Canada))</td>
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**Week 13 – Human Dignity**

- Omega [2004] European Court of Human Rights
- Francis Coralie Mullin vs. Administrator, Union Territory of Delhi [1981], 1 SCC 608 [India]
- Aviation Security Case [2006], Judgment of the First Senate of 15 February, German Constitutional Court

**BIBLIOGRAFIA COMPLEMENTAR**

Will be provided optional readings as the semester progresses.