Overview
The seminar will provide an introduction to the comparative study of constitutional law through the lens of Israeli constitutional jurisprudence – a jurisprudence built explicitly on the foundations of a variety of other constitutional systems, reflecting the diversity of approaches to constitutionalism. Through this comparative framework students will learn basic constitutional theory as well as explore some of the major constitutional debates in Israeli contemporary law. The constitutional theory part of the course will discuss the formation of Israeli constitution in comparison with the structure of other constitutions such as the U.S. Constitution and the Canadian Charter of Rights and Freedoms. This framework will introduce the central notions of constitutionalism – the ideas that constitutions can (and should) limit government; the role of the judiciary in interpreting and enforcing the constitution; and the importance of constitutional rights. Among the constitutional debates that the class will explore are topics such as freedom of expression and freedom of association, equality, the right of human dignity, due process, social rights, freedom of occupation, freedom of religion etc. These topics will also be looked at from a comparative perspective drawing upon different constitutional regimes such as the Canadian Charter and the constitution of South Africa.

Student Requirements and Participation:
The course will include lecture and active discussion. Discussion is a large part of the course. 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. Participation means both attending and participating actively.
Readings
All reading materials will be available on the course website

Grade Distribution
15% active participation
25% mid-term assignment
60% final exam

Course Structure
Part I - the first part of the course will address the basic constitutional theory, review structural issues and discuss current comparative constitutional questions.
Part II - the second part of the course will introduce the Israeli legal system and discuss Israeli constitutional law.
Part III - the third part of the course will focus on specific case studies and current constitutional debates in Israeli law. Each case study will be discussed through a comparative perspective.

Mid-Term assignment
The mid-term assignment is aimed at summarizing the first two parts of the course. The students will actively analyze a few additional constitutions, implementing the theory discussed in class. For this assignment the students will be divided into pairs or small groups. Each group will be required to analyze a constitution that was not discussed in class, submit a short paper describing its conclusions and present the analysis to the class. The groups will work on this assignment in class (with guidance from instructors) and get another week to work at home before they present their conclusions to the class and submit the paper.

Final Exam
Take home exam.

Schedule

I – Comparative Constitutional law

1. Course overview + Introduction to Comparative Constitutional Law  (Wed. 1/18)

2. Constitutional Law (Mon. 1/23)

3. Comparative Constitutional Law (Wed. 1/25)
Lorraine E. Weinrib, Constitutional Conceptions and Constitutional Comparativism, in Defining the Field of Comparative Constitutional Law (Westport, Connecticut: Praeger, 2002) p. 3

4. Judicial Review Models and Implementation (Mon. 1/30)
Charles F. Abernathy, Law in the United States (Thomson), p. 138-150 (Marbury case and notes).

5. Judicial Review (Wed. 2/1)

6. The American Constitution (Mon. 2/6)
Guest Lecturer Prof. Kenneth Bamberger, Berkeley School of Law. Handouts will be distributed in class.

II – Israeli Constitutional Law

7. Introduction to the Israeli Legal System (Wed. 2/8):

8. Constitutional Values - the early days of the state (Mon. 2/13)
The Declaration of Independence (will be posted on bSpace)
HCJ 73/53, "Kol Ha'am" Co. LTD v. Minister of Interior; (1953), 7 PD 871. [21], skim

9. Constitutional Values - the early days of the state (Wed. 2/15)
HCJ 73/53, "Kol Ha'am" Co. LTD v. Minister of Interior; (1953), 7 PD 871. [21]
Mark Tushnet, Book Review: The Universal and the Particular in Constitutional law: an Israeli Case Study, 100 Columbia L. Rev, 1327 (2000) 1327-1332; 1341-

10. Constitutional Law before and after 1992 (Wed. 2/22)
Basic Law: Human Dignity and Liberty
Basic Law: Freedom of Occupation

11. The Constitutional Revolution (Mon. 2/27)
CA 6821/93 United Mizrahi Bank Ltd. v. Migdal Cooperative Village, 49(4) P.D. 222

Suzie Navot, The Constitutional Law of Israel (Kluwer Law, 2007), Part II, Ch. 5, s. 2

13. In-class work on mid-term projects (Mon 3/5)
Each group will work on it’s own materials according to its assignment.

14. Mid-term project presentations (Wed 3/7)

III – Comparative View on Current Constitutional Debates: Israel and …

15. Freedom of Speech and Its Limits – Hate Speech (Mon 3/12, Wed 3/14)
For Monday 3/12:
Abigail Levin, The Cost of Free Speech: Pornography, Hate Speech, and Their Challenges to Liberalism, (Palgrave Macmillan, 2010), Chapter 8, p. 176-184
For Wednesday 3/14:

16. Freedom of Speech and Its Limits – Obscenity and Pornography, (Mon 3/19)

Kent Roach, Must We Trade Rights for Security? The Choice Between Smart, Harsh or Proportionate Security Strategies in Canada and Britain, 27 Cardozo L. Rev. 2151 (2006), 2151-2155, 2172-2187
18. National Security - Torture and Human Dignity  (Mon. 4/2)
HCJ 4764/04, Physicians for Human Rights v. IDF Commander in Gaza, [2004] IsrLR, 200

18. Gender Equality, (Wed 4/4, Mon. 4/9,)

19. Equality and Sexual Orientation (Wed. 4/11)
Peter W. Hogg, Canada: The Constitution and Same-Sex Marriage, 4 I·CON, 712 (2006)

20. Social Rights (Mon 4/16, Wed. 4/18)
Madhav Khosla, Making Social Rights Conditional: lessons from India, 8 I·CON, 739 (2010)
HCJ 2599/00, Yated v. The Ministry of Education, [2002-3] IsrLR, 57