

MEMORIAL: DONALD P. KOMMERS – A MEMORIAL COLLECTION

## The Value of Comparative Constitutional Law\*

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The publication of an English translation of a notable decision by a major foreign tribunal<sup>1</sup> is a fitting occasion on which to discuss the value of comparative constitutional law as a subject of academic study and as a legal discipline of valid current applicability. When referring to comparative constitutional law, I am speaking mainly of case law and most particularly of judicial decisions handed down by national tribunals empowered to review the constitutionality of legislative and executive acts.

Comparative constitutional law in the sense just mentioned hardly exists as a taught discipline in the United States. Good casebooks are rare. Those which do exist are either too broad or too narrow in scope and fail to include decisional materials from some of the world's best known constitutional courts.<sup>2</sup> There are some useful comparative studies of national constitutions as well as comparative, analytical commentaries on constitutional cases, but these works are widely divergent in content and are not easily adaptable for teaching purposes.<sup>3</sup> Moreover, there are only a few translations of foreign judicial decisions of non-English speaking countries. The Abortion Case published in this issue is one of a mere handful of the decisions of the West German Federal

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\*[Originally appeared as Donald P. Kommers, *The Value of Comparative Constitutional Law*, 9 John Marshall J. Pract & Proc. 685 (1976). Republished here with permission of the original publisher.]

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<sup>1</sup>Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court] Feb. 25, 1975, 39 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVERFGE] 1, 1975 (Ger.); the German abortion decision is a landmark decision in German constitutional law. It is an exceptional statement of constitutional policy on the right to life and human development. For the translation of the decision and a discussion on the merits, see *Preface, Introduction* and, *Translation supra*.

<sup>2</sup>Among the few contemporary casebooks are H. GROVES, *COMPARATIVE CONSTITUTIONAL LAW: CASES AND MATERIALS* (1963) and T. FRANCK, *COMPARATIVE CONSTITUTIONAL PROCESSES* (1968). A forthcoming volume intended for use in college level constitutional law classes is W. MURPHY & J. TANENHAUS, *COMPARATIVE CONSTITUTIONAL LAW: CASES AND MATERIALS*. The latter includes an excellent selection of comparable cases from the United States, West Germany, Ireland, Australia, Canada, Japan, and Italy.

<sup>3</sup>Recent examples of these studies are I. SHARMA, *MODERN CONSTITUTIONS AT WORK* (1962); K. WHEARE, *MODERN CONSTITUTIONS* (2d ed. 1966); C. STRONG, *A HISTORY OF MODERN POLITICAL CONSTITUTIONS: AN INTRODUCTION TO COMPARATIVE STUDY OF THEIR HISTORY AND EXISTING FORM* (1964); S. DASH, *THE CONSTITUTION OF INDIA: A COMPARATIVE STUDY* (2d ed. 1968); L. WOLF-PHILLIPS, *CONSTITUTIONS OF MODERN STATES* (1968); F. CASTBERG, *FREEDOM OF SPEECH IN THE WEST: A COMPARATIVE STUDY OF PUBLIC LAW IN FRANCE, THE UNITED STATES, AND GERMANY* (1960); and A. ZURCHER, *CONSTITUTIONS AND CONSTITUTIONAL TRENDS SINCE WORLD WAR II* (2d ed. 1955). Important philosophical works on modern constitutionalism are C. MCILWAIN, *CONSTITUTIONALISM AND THE HANGING WORLD* (1969) and C. FRIEDRICH, *CONSTITUTIONAL GOVERNMENT AND DEMOCRACY: THEORY AND PRACTICE IN EUROPE AND AMERICA* (4th ed. 1968). Two very recent comparative studies of constitutions are I. DUCHACEK, *POWER MAPS: COMPARATIVE POLITICS OF CONSTITUTIONS* (1973) and I. DUCHACEK, *RIGHTS AND LIBERTIES IN THE WORLD TODAY: CONSTITUTIONAL PROMISE AND REALITY* (1973). Perhaps this is the place to note that comparative constitutional law was at a very early time an important sub-field of political science, although it focused mainly on the formal study of constitutions, not on case law. Examples of these older works include J. BURGESS, *POLITICAL SCIENCE AND CONSTITUTIONAL LAW* (2 vols. 1913) and CRANE, *POLITICS: AN INTRODUCTION TO THE STUDY OF COMPARATIVE CONSTITUTIONAL LAW* (1884).

Constitutional Court appearing in translation.<sup>4</sup> This translation gives the American student the opportunity to think comparatively about constitutional law.

The state of affairs of comparative constitutional law is beginning to change, however. The relative success of newly created constitutional courts, the volume of cases they have produced and the spreading phenomenon of judicial review in various parts of the world have alerted the scholarly community interested in cross-cultural and trans-national studies of constitutional law to a potentially rich field of investigation.

Since the end of the Second World War, several nations have created courts of judicial review modeled after the United States Supreme Court. Judicial review, once regarded as a unique mark of the American governmental system, has been explicitly provided for in the written constitutions of several newly independent nations, although in many of these places it has not evolved into a living principle of juridical democracy; that is particularly true of several emergent nations of Asia and Africa, where judicial review has succumbed to authoritarian rule. Outside the common law legal community judicial review has gained the most acceptance in Japan, Italy, West Germany, and Austria, where it has worked surprisingly well as an operative principle of constitutional government.<sup>5</sup> India should probably be added to the list of modern democracies enjoying a successful regime of judicial review in the last quarter century; at the present time, however, under the state of emergency proclaimed by Indira Gandhi, the supreme court may well lose its political independence.

Judicial review is also known in various commonwealth countries, although it is not an articulate principle of their constitutions. "In its historical origins," writes McWhinney, "judicial review of the Constitution in the Commonwealth Countries was simply part of the apparatus of Empire-projection [sic] of Imperial power in legal institutional form."<sup>6</sup> As a mere accident of Empire, judicial review appears to lack a firm philosophical foundation in commonwealth legal theory, and some common wealth courts are even uneasy with the very notion of "unconstitutionality" as applied to national legislation. Partly for this reason, scholars may feel that the constitutional law of certain continental countries offers more grist for the mill of the comparativist, given the strong and explicit judicial check in their constitutions upon the political branches of government.<sup>7</sup>

The constitutional courts of the aforementioned countries have been the objects of considerable research in recent years. Legal scholars have tended to write analytical commentaries on selected decisions of these courts, dwelling mainly on certain "headline" cases—the atypical cases, it must be added—that have caused high political tension in the applicable countries.<sup>8</sup> Judicial scholars in

<sup>4</sup>Other decisions which appear in translation are the Communist Party Case (1952) in VON SCHMERTZING, OUN.AWING THE COMMUNIST PARTY (1957); the Party Finance Case (1966) in COMPARATIVE JUDICIAL POLITICS 269–80 (T. Becker ed. 1970); and the East-West German Basic Treaty Case in GERMAN UNITY: DOCUMENTATION AND COMMENTARIES ON THE BASIC TREATY 34–64 (F. Hess ed. 1974). Translations of 16 additional decisions will be published soon in W. MURPHY & J. TANENHAUS, COMPARATIVE CONSTITUTIONAL LAW: CASES AND MATERIALS.

<sup>5</sup>It should be noted that the Austrian Constitutional Court was first established under the Constitution of 1920. The Court ceased to function after 1933 and was reestablished under the Constitution of 1946. For a discussion of judicial review in the continental countries, see M. CAPPELLETTI, JUDICIAL REVIEW IN THE CONTEMPORARY WORLD (1971),

<sup>6</sup>E. McWhinney, *Constitutional Review in the Commonwealth*, in VERFASSUNGSGERICHTSBARKEIT IN DER GEGENWART 77 (H. Mosler ed. 1962). An excellent treatment of judicial review in English-speaking countries is E. McWHINNEY, JUDICIAL REVIEW (4th ed. 1969).

<sup>7</sup>It should be mentioned that several South American nations have longer traditions of judicial review than any of the aforementioned countries except the United States. Yet American scholars have largely ignored the work of South American supreme courts. The relative instability of South American democracies may be an important reason for the dearth of comparative American constitutional law studies by North American scholars. A recent exception is R. BAKER, JUDICIAL REVIEW IN MEXICO: A STUDY OF THE AMPARO SUIT (1971). See also K. Rosenn, *Judicial Review in Latin America*, 35 OHIO ST. L.J. 785 (1974).

<sup>8</sup>With regard to the Federal Republic of Germany, see A.T. von Mehren, *Constitutionalism in Germany—The First Decision of the New Constitutional Court*, 1 AM. J. COMP. L. 70 (1952); E. McWhinney, *The German Federal Constitutional Court and the Communist Party Decision*, 32 IND. L.J. 295 (1957); E. McWhinney, *Federal Constitutional Law and the Treaty-Making Power-Decision of the West German Constitutional Court*, 35 CAN. B. REV. 842 (1957); K. Loewenstein, *The Bonn Constitution and the European Defense Community Treaties: A Study in Judicial Frustration*, 64 YALE L.J. 805 (1955); G. Leibholz, *The Federal*

political science have been doing a full range of exploratory studies on foreign constitutional courts, focusing on such matters as the structure and operation of judicial review, the recruitment and personal characteristics of judges, judicial decision-making, and the political impact of constitutional courts.<sup>9</sup> They are only marginally concerned, however, with the art of constitutional interpretation. Judicial decisions were examined not for their doctrinal content but rather for the purpose of illustrating the judicial role in the formulation of public policy and of underscoring the political significance of constitutional courts in the totality of the governmental process. These studies express the belief of American scholars that a high level of comparability is to be achieved by relating the U.S. Supreme Court to the constitutional tribunals of Western European nations and the supreme courts of other countries heavily influenced by western models of politico-legal organization.

Yet it is possible to suggest that nations do differ to such an extent in the details of their political structure, legal culture, or the wording of their constitutions that no meaningful comparison of constitutional law across national boundaries is possible. That caveat might be made even in connection with the German and American abortion cases. Perhaps this matter should be addressed for a moment, using West Germany and the United States as examples. True, the structure of their governments differ. West Germany, following the parliamentary model, unites legislative and executive authority in a government with a chancellor, elected by Parliament, as its head. The United States follows the presidential model, with a popularly elected executive separated from the legislature. Judicial review also differs in operation. While in the United States constitutional questions can be addressed only within the framework of ordinary litigation, cases may be carried to the West German Federal Constitutional Court under a procedure known as *abstrakte Normenkontrolle*, loosely translated as “abstract judicial review.”<sup>10</sup> Thus a national law may be challenged immediately after enactment on a simple motion to the Court by a legislative minority (of at least 100 members) or a state government (cabinet and prime minister) if there are doubts about the law’s compatibility with the Constitution.<sup>11</sup> Incidentally, this was the jurisdictional route taken by the Abortion Case. Finally, the German Court’s organization differs from that of the U.S. Supreme Court’s. Whereas the latter is a single collegial body of nine justices with life-time appointments, the former is divided into two senates with mutually exclusive jurisdiction; the eight justices on each senate are elected by Parliament and serve for a single, non-renewable term of twelve years.<sup>12</sup>

But these differences would seem to be of minimal value in explaining variations in constitutional doctrine. They appear to have no relation whatever to the abortion rulings of the two countries. Nor do those rulings appear to be related to the religious convictions of the respective sets of justices. No one has even faintly suggested that religious affiliation was a relevant factor in the

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*Constitutional Court in Germany and the 'Southwest Case,'* 46 AM. POL. SCI. REV. 723 (1952); G. Doeker, *West German Federal Republic: Television Competence*, 10 AM. J. COMP. L. 277 (1961); and D. Kommers, *The Spiegel Seizure Case*, in T. BECKER, POLITICAL TRIALS 5 (1971).

<sup>9</sup>Works of this nature include COMPARATIVE JUDICIAL BEHAVIOR (G. Schubert & D. Danelski eds. 1970); C. Sheldon, *Public Opinion and High Courts: Communist Party Cases in Four Constitutional Systems*, 20 WORLD POL. Q. 341 (1967); D. Kommers, *Judicial Review in Italy and West Germany*, 20 JAHRBUCH DES ÖFFENTLICHEN RECHTS 111 (1971); D. Kommers, *Politics and Jurisprudence in West Germany: State Financing of Political Parties*, 16 AM. J. JUR. 215 (1971); T. Cole, *Three Constitutional Courts: A Comparison*, 53 AM. POL. SCI. REV. 963 (1959); S. Peck, *The Supreme Court of Canada, 1958–1966: A Search for Policy Through Scalogram Analysis*, 45 CAN. B. REV. 666 (1967); B. STRAYER, JUDICIAL REVIEW OF LEGISLATION IN CANADA (1968); R. JOHNSON, THE EFF. CT OF JUDICIAL REVIEW ON FEDERAL-STATE RELATIONS IN AUSTRALIA, CANADA, AND THE UNITED STATES (1969); T. BECKER, COMPARATIVE JUDICIAL POLITICS: THE POLITICAL FUNCTIONINGS OF COURTS (1970); G. Gadbois, *Indian Supreme Court Judges: A Portrait*, 3 L. SOC'Y REV. 317 (1968); G. Treves, *Judicial Review of Legislation in Italy*, 7 J. PUB. L. 345 (1958); P. BARTHOLOMEW, THE IRISH JUDICIARY (1971); D. Henderson, *Japanese Judicial Review of Legislation: The First Twenty Years*, 43 WASH. L. REV. 1005 (1968). See also the Symposium, *The Political Impact of Constitutional Courts*, 49 NOTRE DAME L. REV. 952–1050 (1974).

<sup>10</sup>BVERFGG§ 13, ¶ 6 (C.H. Beck 1971); G. LEIBHOLZ & R. RUPPRECHT, BUNDESVERFASSUNGSGERICHTSGESETZ: RECHTSPRECHUNGSKOMMENTAR 33–34 (1968).

<sup>11</sup>*Id.*

<sup>12</sup>D. KOMMERS, JUDICIAL POLITICS IN WEST GERMANY: A STUDY OF THE FEDERAL CONSTITUTIONAL COURT 88–89 (1976).

American ruling, and the evidence would suggest also that the German decision is the product of constitutional and not theological reasoning.

Perhaps a more crucial explanation of variations in constitutional doctrine across national boundaries than any feature of governmental structure are the general philosophical values and historical traditions that inform the meaning of constitutions. Constitutional interpretation in West Germany and the United States would seem to depend more on these values and traditions than on any variation in the textual content of their constitutions. For instance, there was nothing inexorable about the abortion rulings in Germany and the United States; they might have gone the other way. The German Constitution states that “[e]veryone shall have the right to life and to inviolability of his person.”<sup>13</sup> A related provision declares that “[t]he dignity of man shall be inviolable. To respect and protect it shall be the duty of all state authority.”<sup>14</sup> But whether “everyone” within the meaning of the Basic Law includes unborn persons is a point of hearty contention among German constitutional lawyers. The United States Constitution is less explicit about the right of persons to life. In addition, there is dispute over whether the fifth and fourteenth amendments impose an affirmative duty upon government to protect persons against encroachments upon their life or liberty by private individuals and institutions. The U.S. Supreme Court could very easily have found that the unborn fetus is a person within the meaning of the Constitution. Given the right set of circumstances, the Court could also rule that the failure of the state to protect unborn persons against private encroachments (*e.g.*, by pregnant women, doctors, hospitals, and medical clinics) has sufficient official encouragement to warrant the implementation of affirmative action plans against such deprivations, much as the Supreme Court has done in the area of racial discrimination. The point to be underlined here is that the constitutions of the countries we would want to include in studies of comparative constitutional law are all adaptable to changing circumstances and flexible enough to spur the mind and imagination of creative judges.

In the final analysis, what really makes West Germany, the United States, and the earlier mentioned nations fitting subjects for the study of comparative constitutional law is their commitment to political democracy and constitutional government, especially in the area of civil liberties and human rights. Equally relevant is the fact that these countries are secular political cultures; they are technologically sophisticated and pluralistic societies; socio-economically, they are advanced polities faced with similar problems of political order. The fact that some of them, like Germany and the United States, are also federal systems of government powered by competitive political parties is a further reason why these two countries, along with Australia, Canada, and perhaps India, are particularly good candidates for the study of comparative constitutional law. In addition, each of these countries feature courts with authority analogous to the U.S. Supreme Court.

As noted earlier, several new courts of constitutional review have in the last quarter century produced a large body of jurisprudence. The case law of the West German Federal Constitutional Court alone is currently bound in forty volumes of *Entscheidungen des Bundesverfassungsgerichts* published since 1951.<sup>15</sup> This excludes about 20,000 cases disposed of without opinion. The constitutional case law of other nations is equally rich, and it continues to multiply with each passing year as precedents accumulate and old constitutional principles gather new meaning. But if comparative constitutional law is to become a taught discipline in the United States, this body of doctrine will have to be organized for instructional purposes. Substantive areas now ripe for trans-national comparison are: church-state relations; free speech and press, especially obscenity and internal security cases; political representation; the right of assembly and association; taxation and property rights; equal protection under law, especially classifications based on sex, alienage, illegitimacy, ethnicity, and language; the right to migrate; equal opportunity in education

<sup>13</sup>The Basic Law of the Federal Republic of Germany art. 2(1); GRUNDGESETZ art. 2(1) (C.H. Beck 1971).

<sup>14</sup>*Id.* art. 1(1).

<sup>15</sup>For a general review of the Court's work, see D. KOMMERS, *JUDICIAL POLITICS IN WEST GERMANY: A STUDY OF THE FEDERAL CONSTITUTIONAL COURT* 162–75 (1976).

and employment; the rights of criminal defendants; the treaty-making power; and federal-state relations.

This transnational comparison will not be an easy task, however. The decisions of non-English speaking countries must first be translated, preferably by legal scholars fully conversant with the cultures, legal systems, and constitutional traditions of these jurisdictions. Moreover, barring the creation of a transnational constitutional law digest—a wholly unlikely development in the foreseeable future—this will have to be done on a continuing basis if the field is to be kept reasonably up-to-date. Perhaps a first, rudimentary step would be the preparation of good casebooks or restatements covering the substantive areas mentioned in the previous paragraph. If the state of the discipline is to advance, trans-national studies of constitutional law should be more than mere statements of positive law or mechanical comparison. Useful teaching materials would include analytical commentaries and historical treatises on the uses of judicial review. The relation of constitutional doctrine to philosophy, history, tradition, and sociology—to resurrect Cardozo's terminology<sup>16</sup>—would be a major focus of exploration. It would be the special task of the comparativist to explain the variations and similarities in constitutional doctrine from country to country. Successful achievement of this task would require complete familiarity with methods of constitutional interpretation used in the nations under study, together with knowledge of thought forms predominant in varying legal cultures.

Now that the possibility of a systematic study of comparative constitutional law has been discussed, what then is the value of embarking upon such a study? First, comparative constitutional law can provide Americans with valuable insight into the experience of other constitutional democracies, including that of non-western cultures. Constitutional law is part of man's legacy in the struggle for freedom and limited government. It mirrors the various modes and configurations of man's relationship to the state. Straddling the line between jurisprudence and political theory, this body of case law has much to say about notions such as consent, contract, due process, equality under law, justice, representation, and fraternity, elements all inherent in the principle of constitutionalism. Men who call themselves free ought to be acquainted with the range of human experience expressed by these ideals in order to provide them with a greater sense of the community they share with the peoples of other constitutional democracies.

Second, comparative constitutional law can be helpful in the quest for a theory of the public good and right political order. It can represent a disinterested quest for a public philosophy and a statement of the rights and duties that would be assigned in a more perfect constitutional polity. Constitutional courts are reflective institutions. In a very real sense, they represent political man writ large and thinking about where to draw the troublesome line between liberty and order. It would therefore be interesting to know what constitutional values and ideas about man and his relationship to the state are commonly shared across national boundaries. There is "a tendency on the part of courts of judicial review almost everywhere to find principles of ordered liberty, civilized conduct, simple equity, or natural justice which are not immediately derivable from the literal language of the constitutions they interpret."<sup>17</sup> Thus, the study of comparative constitutional law can be a search for principles of justice and political obligation that transcend the culture-bound opinions and conventions of a particular political community. As such, it can lead men to the attainment of truth and a better understanding of man's political condition.

Third, comparative constitutional law can enrich the study of comparative politics. It could restore the linkage of constitutional norms to political ideologies, intra-governmental relations, and public policies. Indeed, foreign constitutional case law deals with the relations between agencies and branches of government as well as with the judicial review of statutes, data that are sadly neglected by students of comparative politics. In examining the values that inform the constitutional law of various nations, students might begin to explore the reasons for the similarities and

<sup>16</sup>B. CARDOZO, *THE NATURE OF THE JUDICIAL PROCESS* 51–97 (1921).

<sup>17</sup>D. Kommers, *Comparative Judicial Review and Constitutional Politics*, 27 *WORLD POLITICS* 296 (1975).

differences in constitutional rulings. By scrutinizing the conditions and historical circumstances out of which these rulings emerge some rulings may not represent long-range solutions to problems of governance, but rather temporary adjustments of conflicting interests students might also begin to appreciate which constitutional doctrines or policies can be transferred across national lines and which cannot. With this knowledge in hand, students would be better equipped to deal with judicial review as a general political phenomenon and with the problems of governance in many of the world's constitutional democracies.

Fourth, the comparative perspective can enrich the study of American constitutional law. Such a perspective will provide critical standards for reviewing the work of the U.S. Supreme Court. It will require the student to come to terms with the force and merit of arguments found in the opinions of foreign constitutional courts. True, dissenting views of American justices and analytical reviews of the Court's work help the student to get a critical hold on Supreme Court rulings; but in looking at constitutional problems through the eyes of foreign courts, the student is able to draw upon traditions, insights, and values that transcend the American experience. He quickly learns that there are common problems of governance across national boundaries and that foreign constitutional courts sometimes resolve these problems differently than the U.S. Supreme Court or marshal different reasons to support the same result. In the abortion cases, for example, the German Court frontally addressed and forthrightly answered questions—important questions of value—which the American Court consciously avoided. The curious student will want to know why these courts approached the question of abortion in wholly different ways. That the highest tribunals of two nations equally respectful of the humanity and basic freedoms of their people have decided the question of the unborn child's right to life under their respective constitutions differently would give him pause for reflection. Upon reflection he might deepen his understanding of what the constitutional problem or issue is all about. For some this would be an intellectually liberating experience, challenging conventional wisdom and bringing into question old and new assumptions and preconceptions. For others, the comparative perspective would lead to a deeper appreciation of the meaning and wisdom of American constitutional values and practices.

Finally, the comparative perspective can contribute to the growth of American constitutional law. Carl Friedrich has told us of the influence of American constitutionalism abroad.<sup>18</sup> For the most part this influence has contributed to the vitality of democratic governments in the world. In light of a full generation of constitutional governments in other countries, perhaps Americans can now in turn learn from these related constitutional experiences. Thus, if the linguistic barrier can somehow be broken through, U.S. Supreme Court Justices, up to now resistant to the influences of continental constitutional courts, may themselves profit from the views and perspectives of their colleagues abroad. Even a person who agrees with the result in *Roe v. Wade*<sup>19</sup> might wish that in future abortion cases the Supreme Court would try to meet the intellectual challenge of the German decision.

It is of some interest to note that the German court was very aware of *Roe v. Wade* when the Abortion Case was decided. In fact, *Roe v. Wade* was cited in the minority opinion.<sup>20</sup> There have been other German cases in which U.S. Supreme Court rulings have been cited, although once again, rejected.<sup>20a</sup> Many German justices have a close familiarity with American constitutional law. Indeed, a full set of the United States Supreme Court Reports is available in the library of the West German Federal Constitutional Court. Perhaps one day this manifest interest in our constitutional jurisprudence will be reciprocated by U.S. Supreme Court Justices. Who among

<sup>18</sup>C. FRIEDRICH, *THE IMPACT OF AMERICAN CONSTITUTIONALISM ABROAD* (1967).

<sup>19</sup>410 U.S. 113 (1973).

<sup>20</sup>Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court] Apr. 9, 1975, 39 *ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS* [BVERFGE] 74 81, 1975 (Ger.); The U.S. Supreme Court's privacy argument was impliedly rejected by the two dissenting justices.

<sup>20a</sup>See Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court] Oct. 4, 1965, 19 *ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS* [BVERFGE] 129 133, 1965 (Ger.); e.g., Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court] Feb. 24, 1971, 30 *ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS* [BVERFGE] 173 225, 1971 (Ger.).

them would be wholly unmoved by the Federal Constitutional Court's opinions on the right to vote,<sup>21</sup> on the public financing of political parties,<sup>22</sup> on the right of political parties to equal broadcasting time,<sup>23</sup> on the freedom of religious belief,<sup>24</sup> on the defamation of politicians and other public figures,<sup>25</sup> on wiretapping,<sup>26</sup> on the treaty-making power of the national government,<sup>27</sup> on the right to travel abroad,<sup>28</sup> on the suppression of subversive activity, on conscientious objection,<sup>31</sup> on the admission policies of professional schools,<sup>31</sup> on the right to free speech in the military,<sup>32</sup> and on federal-state relations.<sup>33</sup> Obviously, many German constitutional rulings could

<sup>21</sup>Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court] May 22, 1963, 16 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVERFGE] 130, 1963 (Ger.); Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court] July 3, 1957, 7 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVERFGE] 63, 1957 (Ger.).

<sup>22</sup>Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court] Dec. 3, 1968, 24 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVERFGE] 301, 1968 (Ger.); Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court] July 19, 1966, 20 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVERFGE] 56, 1966 (Ger.); Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court] June 24, 1958, 8 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVERFGE] 51, 1958 (Ger.).

<sup>23</sup>Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court] Sept. 3, 1957, 7 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVERFGE] 99, 1957 (Ger.).

<sup>24</sup>Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court] Apr. 11, 1972, 33 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVERFGE] 23, 1972 (Ger.); Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court] Oct. 19, 1971, 32 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVERFGE] 98, 1971 (Ger.); Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court] Oct. 4, 1965, 19 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVERFGE] 129, 1965 (Ger.); Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court] Nov. 8, 1960, 12 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVERFGE] 1, 1960 (Ger.).

<sup>25</sup>Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court] Feb. 24, 1971, 30 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVERFGE] 173, 1971 (Ger.); Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court] Feb. 26, 1969, 25 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVERFGE] 256, 1969 (Ger.); Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court] Jan. 25, 1961, 12 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVERFGE] 113, 1961 (Ger.); Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court] Jan. 15, 1958, 7 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVERFGE] 198, 1958 (Ger.).

<sup>26</sup>Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court] Dec. 15, 1970, 30 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVERFGE] 1, 1970 (Ger.).

<sup>27</sup>Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court] June 4, 1973, 35 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVERFGE] 193, 1973 (Ger.); Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court] March 26, 1957, 6 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVERFGE] 309, 1957 (Ger.).

<sup>28</sup>Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court] Jan. 16, 1957, 6 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVERFGE] 32, 1957 (Ger.).

<sup>29</sup>Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court] Oct. 14, 1969, 27 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVERFGE] 88, 1969 (Ger.); Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court] Oct. 3, 1969, 27 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVERFGE] 71, 1969 (Ger.); Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court] Aug. 5, 1966, 20 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVERFGE] 162, 1966 (Ger.); Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court] Aug. 17, 1956, 5 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVERFGE] 85, 1956 (Ger.); Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court] Oct. 23, 1952, 2 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVERFGE] 1, 1952 (Ger.).

<sup>30</sup>Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court] March 7, 1968, 23 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVERFGE] 191, 1968 (Ger.); Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court] Mar. 5, 1968, 23 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVERFGE] 127, 1968 (Ger.); Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court] Oct. 4, 1965, 19 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVERFGE] 135, 1965 (Ger.); Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court] Dec. 20, 1960, 12 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVERFGE] 45, 1960 (Ger.).

<sup>31</sup>Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court] July 18, 1972, 33 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVERFGE] 303, 1972 (Ger.).

<sup>32</sup>Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court] Feb. 18, 1970, 28 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVERFGE] 36, 1970 (Ger.).

<sup>33</sup>Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court] Feb. 28, 1961, 12 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVERFGE] 12, 1961 (Ger.); Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court] July 30, 1958, 8 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVERFGE] 122, 1958 (Ger.);

not be assimilated into American constitutional law. But in some areas, such as the right to vote and to political representation, German and American constitutional principles and theories could be blended fruitfully and seasonably to produce more equitable balances between rights and duties within the American political order. The day may possibly dawn when the high constitutional tribunals of the world's major industrial democracies will be citing each other's opinions and drawing from each other's jurisprudence with increasing frequency. The academic study of comparative constitutional law may hasten the arrival of that day.

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Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court] July 23, 1958, 8 ENTSCHIEDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVERFGE] 102, 1958 (Ger.); Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court] Oct. 23, 1951, 1 ENTSCHIEDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVERFGE] 14, 1951 (Ger.).

**Cite this article:** Kommers DP (2019). The Value of Comparative Constitutional Law. *German Law Journal* 20, 524–531. <https://doi.org/10.1017/glj.2019.45>