

Syllabus 2005 – Choice and Discrimination: Race Gender Religion

12 April	Thema: Introduction / Choice: The Right to End a Life
questions: <ul style="list-style-type: none"> ▪ methods of comparative constitutional law ▪ what is constitutionalism? 	
Casebook: p. 556-569 <ul style="list-style-type: none"> ▪ Cruzan v. Director, Msr. Dpt. of Health (USA) ▪ Washington v. Glucksberg (USA) ▪ Rodriguez v. British Columbia (CAN) 	
new cases: <ul style="list-style-type: none"> ▪ Pretty v. UK (ECHR, 2002) – with reviews ▪ cases from „Euthanasia and the Law in the Netherlands“ 	

26 April	Subject: Discrimination and Social Norms: Different Standards for Different Categories
Casebook: <ul style="list-style-type: none"> ▪ Nocturnal Employment (G 1992) – p. 678 ▪ Romer v. Evans (USA) – anti-discrimination law (Sexl. Orientatn.) – p. 700 	
other casebooks: <ul style="list-style-type: none"> ▪ Andrews v. Law Society of British Columbia (CAN) – MacKinnon p. 26 ▪ Price Waterhouse v. Hopkins (USA 1989) Eskridge/Hunter p. 282 – gender discrimination as sex discrimination? – MacKinnon notes (p. 168) ▪ Regents of the University of California v. Bakke – MacKinnon p. 435 – ‚strict scrutiny‘ for race, not for sex discrimination ▪ <i>Wards Cove Packing Co. v. Antonio</i> (USA 1989) – MacKinnon p. 541 – <i>burden of proof: race in allocation of workplace, prima facie discrimination case by virtue of numbers</i> ▪ <i>Ernest Dillon v. Frank</i> (USA 1992) – Eskridge/Hunter p. 926 – <i>statutory ban on sex discrimination: gender discrimination?</i> 	
new cases: <ul style="list-style-type: none"> ▪ Bhe v. Magistrate and others (RSA, 2004) – male progeniture: black traditions v. equality 	
questions: <ul style="list-style-type: none"> ▪ what is assumed as normal? gender vs. sex ▪ sex equality and racism: tougher standards for racism in US vs. black tradition in S.A. in <i>Bhe</i> 	

10 May	Subject: Sexuality and Procreation: Choice vs. Discrimination – Freedom vs. Equality
Casebook: <ul style="list-style-type: none"> ▪ Griswold v. Connecticut (USA) – p. 609 ▪ ADT v. UK (ECHR) – p. 610 ▪ Bowers v. Hardwick (USA) – p. 611 ▪ Natl. Coaltn. f. Gay & Lesbian Equality v. Min. of Justice and others (RSA) – p. 613 	

new cases:

- Laskey, Jaggard and Brown v. UK (ECHR, 1997) – Henkin HR – regulation of SM not contrary to Art. 8 ECHR; maybe morals
- Sutherland v. UK (ECHR, 2001) – different age of consent for homosexuals
- Lawrence v. Texas (USA, 2003)

questions:

- sexuality: a matter of choice and freedom, privacy and autonomy, or an equality matter?
- standards of normalcy: deviant sexuality and the morals – same-sex partners vs. SM

24 May

Subject: The Right to Marry: Choice vs. Discrimination

Casebook:

- Loving v. Virginia (USA) – p. 604 – race
- Zablocki v. Redhail (USA) – p. 605
- Transsexuals Case (G) – p. 579

new cases:

- Bellinger v. Bellinger (UK, 2004) or *Goodwin v. UK* (ECHR 2002) – transsexual marriage, with Gender Recognition Act 2004
- Juliega Daniels v. Robin Grieve Campbell No and others (RSA 2004) – definition of ‚spouse‘ – marriage by Muslim rites?
- Hilary Goodridge v. Massachusetts Dpt. of Public Health (USA 2003)
- *optional: Reference re Same-Sex Marriage (CAN 2004); Ontario v. M & H (CAN, casebook p. 606)*
- *optional: Gossenaerts et al. v. De Rycke and another and Ministerrat (B, 2004) – Gesetz z. Öffnung d. Ehe für Personen gleichen Geschlechts... (in German)*

questions:

- religion, race, gender, sexual orientation: an interplay of discrimination

7 June

Subject: Obscenity and Prostitution: Free Speech and the Morals

other casebooks:

- American Booksellers Ass., Inc., v. William H. Hudnut, III (USA, 1985) – Eskridge/Hunter p. 549 or MacKinnon p. 1563 – anti-porno laws combating discriminatory stereotypes

new cases:

- Jordan and others v. the State and others (RSA, 2002) – sex workers, equality
- Café Pssst... (G 2000)
- Aldona Malgorzata Jany and others v. Staatssecretaris van Justitie (NL), (ECJ, 2001) – prostitution as regular job covered by freedom of residence

questions:

- sexuality and morals – the business side of choice
- which rights? Privacy, free speech, economic rights, equality

21 June	Subject: Religion and the State: Which Model? Morals as a Limit to Choice vs. Discrimination for Religious Reasons
<p>Casebook:</p> <p>as a background to discussion: religion and the state – which model? – p. 982-1015</p> <ul style="list-style-type: none"> ▪ Chan Hiang Leng Colin and others v. Public Prosecutor (Singapore) ▪ S.R. Bommai v. Union of India (India) ▪ County of Allegheny v. ACLU (USA) ▪ Shavit v. The Chevra Kadisha of Rishon Le Zion (Israel) ▪ The Hindutva Cases (India) <p>religious clothing in a public setting</p> <ul style="list-style-type: none"> ▪ Goldman v. Weinberger (USA 1986) – p. 959 – please consider Brennan J.'s dissent in full 	
<p>new cases: religious clothing in a public setting:</p> <ul style="list-style-type: none"> ▪ Bhinder and another v. Canadian National Railway Co. (CAN 1985) ▪ Dahlab v. Switzerland (ECHR, 2001) ▪ France: Mlle Marteaux (F, 2000), CE 02.11.1992 (F), CE 27.11.1996 (F) – in French ▪ Leyla Şahin v. Turkey (ECHR 2004) ▪ Ludin (G, 2004) 	
<p>questions:</p> <ul style="list-style-type: none"> ▪ which role does the status of religion in a state play for the acceptance of display of religious allegiance in public institutions? ▪ what is the role of a state's history in terms of immigration and colonialism? Which effect does a greater religious multitude have on legal argument? 	

5 July	Subject: Countering Discrimination: Affirmative Action – Race and Sex
<p>Casebook: p. 724-744</p> <ul style="list-style-type: none"> ▪ Regents of California v. Bakke (USA) – university, race ▪ State of Uttah Pradesh v. Pradip Tandon (India) – university, rural areas ▪ Hellmut Marschall v. Land NRW (ECJ 1997) – public service, sex ▪ Feminine Quotas Case (F) – elections, sex 	
<p>other casebooks:</p> <ul style="list-style-type: none"> ▪ Adarand Constructors, Inc., v. Pena (USA 1995) – Henkin p. 1058 – preference of socially and economically deprived subcontractors for public contracts – esp. assumption because of 'race' 	
<p>new cases:</p> <ul style="list-style-type: none"> ▪ Grutter v. Bollinger et al. (USA 2003) and Grutz v. Bollinger (USA 2002) – university ▪ Abrahamson and Fogelqvist v. Sweden (ECJ) – university professors, sex 	
<p>questions:</p> <ul style="list-style-type: none"> ▪ Which measures to secure choice and to combat discrimination? ▪ sex and race: which relation, which standard? (cf. session 3 May 2005) 	