ABSTRACTS

Constitutional Comparativism Today: The Difficult Farewell to Legal Ptolemaicism

By *Christoph Schönberger*, Konstanz

The article analyses the problems and challenges of constitutional comparativism today. It describes the reasons for the persistence of legal Ptolemaicism which focuses exclusively on national law and continues to dominate most of constitutional law scholarship. In Germany, particular reasons and circumstances have frustrated the development of an important comparative constitutional law scholarship, e.g. the strong practical orientation of legal education and legal scholarship and the introverted fascination with the Basic Law and constitutional jurisprudence. The article goes on to describe the practical and theoretical purposes of constitutional comparativism. It underlines that one of the main theoretical purposes of comparative law is to enable the national lawyer to look at his own constitutional law in a fresh, distanced, alienated way. As comparison always consists in the analysis of differences and similarities, it is not surprising that comparatists usually fall prey to two competing ideologies which the article terms the ideology of similarity and the ideology of difference. While the ideology of similarity has traditionally prevailed in most of private law comparative scholarship, it is also gaining ground in constitutional comparativism due to the influence of European integration which tends to favour the search for common ground among the constitutions of the Member States. However, the theoreticians of difference may help us to remain sensible to the different historical and cultural contexts even if the texts start to resemble each other more and more. Instead of choosing between the two ideological orientations, comparativism should learn from both in order to remain attentive simultaneously to the similarities and the differences between the constitutional systems at hand. Comparative constitutionalism might then become the basis for a modern constitutional theory whose models and typologies could in turn deepen future comparative law scholarship.

Constitutional Reform and Crisis: Honduras in Comparative Perspective

By *Detlef Nolte*, Hamburg

In June 2009 the president of Honduras, Manuel Zelaya, was deposed by the military and sent to Costa Rica. While the international community put pressure on the de facto government to reinstall Zelaya before the end of his term in January 2010, a new president was elected in October 2009. He took office on January 27. The main reason for Zelaya's deposition was his effort to reform the constitution and to convoke a constituent assembly. Thus it might be argued that the rigidity of the Honduran constitution was one the reasons

for the political crisis. In this paper, the Honduran case will be analyzed from a comparative perspective. It will be demonstrated that the Honduran constitution is not so rigid and that there have been quite a number of reforms since 1982, covering a variety of important topics. Honduras is not a deviant case with regard to the frequency of reforms and the topics of these reforms. Yet the ouster of President Zelaya demonstrates how the combination of short-term political interests and populist rhetoric with the topic of constitutional reform can put democracy at risk.

The concept of freedom in Argentina (1750-1850): between privileges (libertates) and individual liberty (libertad)

By *Andreas Timmermann*, Berlin

According to the german historian Reinhart Koselleck, the so called "Sattelzeit" converted plural terms into singular terms. An interesting overseas example is Argentina: Until the eighteenth century privileges like rights to hold property, control over labour, and exemtion from tribute were granted to a group of white notables, to the municipalities and the church, basing their claims on medieval spanish law. Christian natural right, the Enlightenment and physiocracy questioned these privileges. The new concept of mercantilism (comercio libre) favoured the idea of economic freedom. Elder trading licenses and taxes were abolished in the Viceroyalty of the River Plate created in 1776. Owing to the May revolution (1810) the following governments (juntas, triumviratos) and assemblies initiated a series of reforms as abolition of institutions like labour services, Indian tribute, Inquisition, titles of nobility, mayorazgos and proclaimed a new guarantee of freedom. The draft of a unitarist Constitution (1819) and the following one (1826) confirmed the revolutionary concept of liberty. Under the leadership of Bernardino Rivadavia (1820-1829) contemporary liberal doctrines dominated. The administration campaigned successfully against clerical immunities and fueros and fought for free trade, foreign investment, and land colonization by Europeans. That's why early constitutional law in Argentina accentuated the protection of economic freedom, property and legal equality, even if social realities differed from the liberal assessment.

Debt relief – quo vadis? Incentives for a sustainable debt position

By *Stefan Hohberger*, Bayreuth

Over the last two decades a number of debt relief programs were implemented to ensure a better economic environment for developing countries. Although most debt indicators in the HIPC-Countries improved, growth rates are not higher than in other Non-HIPC-Countries. Moreover, the institutional environment is still problematic in many countries without significant improvements over the last years. This paper analyses the behavior of creditors

and debtors against the background of the incentives generated by debt relief programs. Free-riding behavior of emerging creditor countries and disincentives of debtor countries are the results of an unhampered extension of loans by multilateral creditors. Using a simple economic model of autocratic regimes, this paper shows that there is a trade-off between granting debt relief and good governance. The trade-off suggests that granting more debt relief will worsen the institutional setting and thus strengthen the position of a dictator. These developments are not compatible with a sustainable debt position. We try to propose an institutional arrangement by creating incentives for creditors and debtors which might be able to overcome this trade-off. To avoid free-riding behavior, an international insolvency proceeding should be implemented which makes imprudent lending less attractive. Instead of granting more debt relief, debtor countries should receive a financial reward for institutional reforms allocated by a simple formula created in this paper. The underlying framework provides incentives for debtor countries to implement institutional reforms bottom-up, as well as for creditors to prevent free-riding behavior.

DR Congo as a State of Law – Constitution and Reality

By *Hartmut Hamann*, Stuttgart

The Constitution of the DR Congo offers a framework for the development of a state of law which could accurately reflect the special geographical, cultural, historical and political features of this country. Whether the elite groups in power wish this appears to be an open issue. It must also be determined categorically what influence the international community will and should have here and whether it can decide to take concerted action with the view to the development of a state of law.

In view of the author there is much to suggest that the development and structure of a state of law in the Democratic Republic of the Congo can only succeed if this starts at the bottom and works its way up by local and regional communities organising themselves and assuming responsibility. The task of the central state is to make this possible and to provide and secure a framework for this. The international community can support this. The better the coordination among European countries in so doing, the greater the prospect of success. Local elites could and would have to further develop the state of law structures. This gives rise to the question what motivation there is for such elites to create state of law structures.