

Single Credit Course on Comparative Constitutional Law, by Prof. Mark Tushnet

- A Brief Report



Prof. Mark Tushnet is a proponent of democracy and in all his works, he has focused on lessening the impact of judiciary in determining the legality of the laws, thereby to promote effective democratic rule. This, he calls, Political Constitutionalism. In our first class, his lecture focused mainly on the expansion of such political constitutionalism in a State,

with criticisms on Hans Kelsen's theory of Constitutional courts. According to Kelsen, there should be courts specifically established to decide on the constitutionality of the legislations, apart from normal courts which deals with statutory interpretation and administrative law. The discussion then gradually proceeded towards the scope of application of PILs. In our second lecture, the concept of judicial efficacy was discussed in detailed with various examples, which was followed by a discussion on the case of Allen v. Wright. The scope of the constitutional right to freedom of speech and expression was discussed in detail-

with examples of Mark Anthony and Abraham Lincoln. This discussion extensively continued to the the next day dealing with the different methods the courts of US and Canada have adapted in determining the scope of the Freedom of Speech and Expression in their respective territory whereby we found that the



categorical approach of the US aims in attaining objectivity over the definition of the freedom, whereas, the doctrine of proportionality as followed by Canada empowers the courts to decide subjectively. In the final day of lecture, the affirmative action in US and India were compared, as a form of discussion, as encouraged by the Professor which led to the discussion of stimulating concepts and major differences- mainly because of the differences in the societal composition. It was altogether an invigorating experience for the students.

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