

Higher School of Economics
National Research University
Faculty of Law

Syllabus

Comparative Constitutional Law

Master's program "Public Law"

(2018-2019)

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I. Course Brief

1. Title

Comparative Constitutional Law

2. Prerequisites

None

3. Course Type (compulsory, elective, optional)

Compulsory

4. Abstract

The course “**Comparative Constitutional Law**” covers series of topics within comparative study of constitutional as well as quasi-constitutional systems. It is aimed to investigate the concepts and structures of the constitutions and the constitutional law institutions in Russia and foreign countries through all over the world from a comparative perspective. The main idea of the course is to prove that the constitutionalism is the balanced system of a society organization. There are a lot of constitutional balances. The main of them is the balance between human liberty and the state power. The most significant institutions of the constitution law such as human rights, systems of government, judicial review, and the territory organization of modern states are analyzed from the perspective of the system of the constitutional balances. The course introduces students to the different models of the constitutionalism (inclined to presidential or parliament ones) and quasi-constitutionalism (including religious (Islamic), party (socialist), inertial (bureaucratic, post-socialist), military (Latin American), tribal (African), superficial (elite) and unstable (revolutionary) models) in history and the modern world.

II. Course Objectives

The main objectives of this course are the following:

1. Transformation of students understanding of the constitutional law role in establishing effective government system;
2. Investigating actual constitutional law problems and analysis of different approaches to these problems solutions in Russia and foreign countries.

III. Course Learning Outcomes

Students should gain:

Knowledge of:

- The concepts of constitutionalism, constitution and constitutional law;
- The most important institutions of the constitutional law such as human rights, systems of government, judicial review, and the territory organization of modern states.

Skills and abilities to:

- Deal with the notes and sources of the constitutional law;
- Research and analyze the texts of the constitutions, judicial decisions and scientific works;
- Recognize and analyze the essence and importance of the distinctions between the ideas and instruments, using by the constitutions and constitutional legislation in different countries;
- Think systematically in terms of constitutional law and its role for different structures of governments and establishment of effective government system.

Students should gain the following competences:

- To deal with judicial information (to search, evaluate, range and use the information, necessary for accomplishment of scientific and professional

- tasks);
- To carry out the academic, educational and practical professional activities in the constitutional environment;
 - To use the technical, comparative and other specific methods;
 - To understand and analyse constitutional law issues and search for their solutions.

IV. Course Plan

1. Brief Plan

1. Constitutionalism as a Balanced Model of the Society Organization. Fundamental Constitutional Concepts.
2. State Power and Human Liberty Balance as the Philosophical Bases of the Constitutionalism.
3. Legal Equality as the Mean of Balance of Different Individual Interests and Rights.
4. Modern Concepts of Sovereignty as a Balance for Human Liberty as well as Political Elite and Bureaucracy Power.
5. Government and Opposition Balance as the Political Backbone of the Real Constitutionalism.
6. Separation of Powers as the Institutional Basis.
7. Territorial Organisation of the State as the System of Balances.
8. Quasi – Constitutionalism (Nonequilibrium) Models and their Characteristics.

2. Detailed Plan

- 1. Constitutionalism as a Balanced Model of the Society Organization. Fundamental Constitutional Concepts.**

- Constitution, Constitutional Law and Constitutionalism – what are they?
- What are trends and paradoxes of the world constitutional process ?
- Constitutionalism as a balanced model of social organization. The system of the main constitutional balances:
 - State power (rather political elite and public bureaucracy) – human rights and the sovereignty of the people
 - Individual liberty – legal equality
 - The sovereignty of the people - human rights
 - Public bureaucracy – elected political elite
 - Political elite – political parties
 - Political parties - people sovereignty (elections)
 - Ruling political party - political opposition
 - Separation of powers (horizontal and vertical)
- Constitutionalism @ quasi-constitutionalism

2. State Power and Human Liberty Balance as the Philosophical Bases of the Constitutionalism.

- Why is this balance so necessary?
- What are the peculiarities of State power – human rights balance ?
- What are the constitutional restrictions of State power?
- How do constitution rules on human rights restrict the State power?

3. Legal Equality as the Mean of Balance of Different Individual Interests and Rights.

- What is the main idea of legal equality?
- Can it be always achieved?
- Is total legal equality possible and even necessary ?
- What are desirable and forbidden limitations for legal equality principle?

- What are the ways of equality declaring by different constitutions?
- What are vulnerable points of legal equality strategy?

4. Modern Concepts of Sovereignty as a Balance for Human Liberty as well as Political Elite and Bureaucracy Power.

- What is sovereignty?
- People and State sovereignty.
- What is the correlation between the literal understanding “the sovereignty of the people” and its real idea ?
- Does the sovereignty of people really exist ?
- How is the idea of popular sovereignty covered by social doctrine, constitutions and realized in practice?
- Why is the sovereignty of people considered to be a kind of constitutional balance?
- What is the sovereignty of State?
- Does the sovereignty of State really exist?
- What are definitions of the state sovereignty principle by constitutions of different countries?
- What is the constitutional significance of the state sovereignty principle?
- Does the principle of state sovereignty go together with the constitutionalism as a balanced model of social organization?
- What is “the sovereignty as a responsibility” concept?

5. Government and Opposition Balance as the Political Backbone of the Real Constitutionalism.

- What is the role of political parties within the democratic society organization? Party criticism.

- What is the role of the ruling party and opposition as a political backbone of the real constitutionalism as a balanced system of the society organization.
- Role of political parties during elections and in the State bodies (Parliament and Government) activities.
- Types of the political parties' systems and their role in creating and maintaining balances within the political space.

6. Separation of Powers as the Institutional Basis.

- What is the idea of separation of powers principle?
- What are the ways of guaranteeing separation of powers principle by constitutions of different countries?
- What are the literal interpretation of separation of powers principle and its spirit?
- What are the factors modifying the literal interpretation of separation of powers principle?
- How do they impact on the spirit of separation of powers principle?

7. Territorial Organisation of the State as the System of Balances.

- What is territorial organization of the State?
- When and why did territorial organization of the State occur?
- What are the types of territorial organization of the State?
- What is their constitutional significance ?

8. Quasi – Constitutionalism (Nonequilibrium) Models and their Characteristics.

- Religious (Islamic) Model

- Party (Socialist) Model
- Inertial or bureaucratic (Post-socialist) Model
- Military (Latin American) Model
- Tribal (African) Model
- Superficial (Elite) Model
- Unstable (Revolutionary) Model.

V. Possible topics for students' papers

Peculiarities of constitutional regulation of human rights in the USA.

Peculiarities of constitutional regulation of human rights in the UK.

Peculiarities of constitutional regulation of human rights in Germany.

Peculiarities of constitutional regulation of human rights in France.

Generations of human rights.

Peculiarities of social rights.

Euthanasia in the modern world.

Capital punishment in the modern world.

Human rights protection before birth (abortion problem).

Ombudsman Institute in the modern world (the UK, the US, France).

Foreign agents in legislation of foreign countries.

Gender quotas as a mean for promoting women's participation in government (history and geography of gender quotas, kinds of quotas for women, legal regulations and their effects in different countries, pros and cons arguments about quotas).

Prisoner voting rights and legal equality.

Foreigner voting rights and legal equality.

Same-sex marriages and legal equality.

The strongest movements for equal rights in the world.

Positive discrimination and legal equality.

Immunities and legal equality.

Top 5 judicial decisions of human rights protection.

Referendums in the modern world: devaluation or imperative of democracy?

State sovereignty and right of nation to self-determination: approaches of international and constitution law.

Prisoners voting right: legislation of different countries and ECtHR positions.

Spontaneous public actions: legislation of different countries and ECtHR positions.

State sovereignty as a responsibility concept.

R2P concept in international and constitutional law.

Secession in history and modern world: legal regulation and practice.

Top 5 referendums in the modern world: goals and significance.

Legal regulation of political parties status in the UK.

Legal regulation of political parties status in France.

The Scottish independence referendum taken place on 18 September 2014: reasons, preparations, result, significance.

Peculiarities of referendum institution in the US.

Peculiarities of referendum institution in the UK.

Peculiarities of referendum institution in Switzerland.

The reduction of age qualification to be elected in France and the UK: reasons and significance.

Does legislation of foreign countries include a concept of “foreign agent”?

Primaries-2016 in Russia and the US.

Elections-2016 in Russia and the US.

Brexit as a expression of the people sovereignty: reasons and results.

Current regional reform in France.

Legal status of capitals in different countries (Paris, DC, London and so on).

The results of London mayoral elections 2016.

The legal status of Catalonia.

The legal statuses of Scotland, Wales and the Northern Ireland.

Separation of powers inside the Parliament: The reasons for bicameralism and peculiarities of houses.

Strong and weak upper houses of the parliaments in different countries.

The ways of formations of upper parliament houses in different countries.

Impeachments in Brasil (1992 & 2016).

Attempts of impeachments in Russia & the US in 1999: The reasons and results.

Separation & fusion of powers in the United Kingdom.

Referendum in Tadjikistan 2016.

Can Israel be considered the state with religion model of quasi-constitutionalism?

The Constitutions of the Islamic countries.

Constitutional reforms in Ukraine.

Russian deviations from the constitutional values.

Semi-presidential and super-presidential republics: similarities & peculiarities.

VI. Reading List

a. Required

Ginsburg T. Comparative Constitutional Design. CUP. 2014. 406 p.

Hirschl R. Comparative Matters. The Renaissance of Comparative Constitutional Law. OUP. 2014. 320 p.

The Oxford Handbook of Comparative Constitutional Law. Ed. by Michel Rosenfeld a. András Sajó. Oxford : OUP, 2013. 1396 p.

b. Optional

Bailes A.J.K. The Scottish Independence Referendum of September 2014: Constitutional and International Aspects // Kutafin University Law Review, 2014, Vol.1, Is. 1. P. 23-40.

Bingham T. The Rule of Law. London: Penguin Books, 2010.

Boyer P. Direct Democracy. The History and Future of Referendums. Oxford – Toronto, 1992.

Cameron D. The Referendum Papers. Essays on Secession and National Unity. Toronto, 1999.

Chirkin V. Right to Private Property: Constitutional Evolution // Kutafin University Law Review, 2015, Vol.2, Is. 1. P. 32-43.

Choudhry S. Method in Comparative Constitutional Law: A Comment on Law and Versteeg, 87 N.Y.U. L. Rev. 2078 (2012), Available at: <http://scholarship.law.berkeley.edu/facpubs/2253>

Fredman S. Discrimination Law. 2nd edn. OUP, 2011.

Strashun B. A. Constitutional Law: Notion and Sources // Kutafin University Law Review. 2014. Vol.1. Issue 1. P. 5-22.

Choudhry S. Method in Comparative Constitutional Law: A Comment on Law and Versteeg, 87 N.Y.U. L. Rev. 2078 (2012), Available at: <http://scholarship.law.berkeley.edu/facpubs/2253>

VII. Methods of Instruction

- Using interactive educational technologies (problematic lectures, Socrates method, work in small groups);
- Using ratings and accumulative system of control.

VII. Special Equipment and Software Support (if required)

Power-point, LMS, Internet.