

## Constitutionalism as a Balanced Model of the Society Organization

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### SYLLABUS

#### 1. COURSE DESCRIPTION

*a. Title of the course*

**Constitutionalism as a Balanced Model of the Society Organization**

*b. Pre-requisites*

- theory of law
- foreign and Russian constitutional law
- confidence in English (levels B1-B2 or higher).

*c. Course type*

Elective

*d. Abstract*

The course “**Constitutionalism as a Balanced Model of the Society Organization**” 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.

#### 2. LEARNING OBJECTIVES

The main objectives of this course are the following:

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

### 3. 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.

### 4. COURSE OUTLINE

#### **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.

**5. READING LIST**

**a. Required**

*Tushnet M.* Advanced Introduction to Comparative Constitutional Law (Edward Elgar, 2015).

*Ginsburg T. and Dixon R.* (eds) Comparative Constitutional Law (Edward Elgar, 2014).

*Frankenberg G.* Comparative Constitutional Studies: Between Magic and Deceit (Edward Elgar, 2018).

**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.

**Fredman S.** Discrimination Law. 2<sup>nd</sup> edn (OUP, 2011).

**Ginsburg T.** Comparative Constitutional Design (CUP. 2014).

**Gregorio A.** (ed) The Constitutional Systems of Central-Eastern, Baltic and Balkan Europe. – Hague, 2019.

**Heringa A.W.** Constitutions Compared (5th edition). Cambridge, 2019.

**Hirschl R.** Comparative Matters. The Renaissance of Comparative Constitutional Law (OUP. 2014).

**Rosenfeld M.** and **Sajo A.** The Oxford Handbook of Comparative Constitutional Law (OUP, 2012).

**6. GRADING SYSTEM**

The final grade (FG) is determined according to the following formula:

$$FG = 0,1 * G_{test} + 0,1 * G_{case} + 0,4 * G_{class\ act.} + 0,4 * G_{exam}$$

where:

$G_{test}$  is a grade earned for tests;

$G_{case}$  is a grade acquired for submitting a home assignment in the form of a case note;

$G_{class\ act.}$  is a grade acquired for participation in class discussions;

$G_{exam}$  is a grade gained for final exam.

The highest score of every kind is 10, the highest final score is 10 as well.

**7. GUIDELINES FOR KNOWLEDGE ASSESSMENT**

**Tests.** Periodically during the course students will be asked to pass some tests. Every test contains one or more correct answers. Every test is rated one point if the answer is correct absolutely and zero if even one mistake. Every test assignment will consist of 10 tests. Final test score will be the average.

**Home assignment.** Students are expected to perform analysis of several cases related to important aspects of different topics of the course. Cases are selected according to the student's individual interest and the significance of the cases. Home assignment is evaluated according to the following criteria:

#	Grading criteria	Grade (out of 10)
1.	Relevance to the topic of the course	

2.	Clearness of the problem statement: what the author would like to analyse	
3.	Appropriateness of case selection	
4.	Factual correctness	
5.	Providing a context for selected cases (historical, political, institutional)	
6.	Conceptualization of the problem (application of relevant legal doctrines)	
7.	Interpretation of the result	
8.	Critical thinking (student's contribution to the discussion)	
9.	Text structure (introduction, analysis, conclusion)	
10.	Formatting (typos, accuracy, references, citations, data sources, etc.)	

All grades (1 to 10) are added together and divided by 10 to form the final grade for home assignment.

**Class activity.** It is highly desirable that students be prepared, active and participated in the discussions on the matters of modern constitutional law in accordance with the course outline. The criteria for assessment of the knowledge and oral arguments are similar to ones for the home assignment.

**Exam** will look like a kind of oral interview. The list of examination questions will be given to the students three weeks before the exam. The criteria for assessment of the examination answers are similar to ones for the home assignment.

## 8. SPECIAL EQUIPMENT AND SOFTWARE SUPPORT

The following equipment is essential to make teaching and learning comfortable and efficient:

- Personal computer (equipped with Microsoft Windows 10) with Internet access;
- Multimedia projector with remote control.

Students will be encouraged to use legal databases and other Internet resources.