

Comparative Historical Constitutionalism

Academic Year: (2022 / 2023)

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Department assigned to the subject: Criminal Law, Procedural Law and History Law Department

Coordinating teacher: BERMEJO CASTRILLO, MANUEL ANGEL

Type: Compulsory ECTS Credits : 6.0

Year : 2 Semester : 2

REQUIREMENTS (SUBJECTS THAT ARE ASSUMED TO BE KNOWN)

Not applicable

OBJECTIVES

The aim of this subject is to provide students with an in-depth introduction to the complex historical and conceptual reality that explains and justifies the central role played by Constitutions in the legal systems of present day democratic societies. Therefore, beginning with their remote medieval origins, the student will be introduced to the evolution of constitutional thought, through the gradual building and consolidation of the essential defining notions and principles of the new model of the State established as a result of the liberal revolutions, such as sovereignty, legality, separation of powers, or recognition and protection of individual and collective rights. But he or she will also have to opportunity to analyze and compare the different realization and formulation adopted by them through the most important historical constitutional texts, This will allow the student to become aware of the direct link existing between the solutions contained in each Constitution, including the current Spanish Constitution, and the particular political, economic and social circumstances at the moment of their writing.

At the end of the course the student should be able to:

1. Understand the juridical nature of the Constitution as the supreme source of the legal system.
2. Identify cultural factors that explain the historical evolution of constitutionalism from a comparative perspective
3. Perceive political, social and economic transformation in legislative changes.
4. Identify and understand the determinant legal conceptions of the political organization and law in force in contemporary Western societies.
5. Appreciate the historical dimension of legal, political and social institutions.
6. Analyze the keys to interpret the development of the State in Spain.
7. Acquire the ability to argue the analysis and interpretation of the norms from a historical perspective.
8. Perceive the historical dimension of the law and reflect on the factors that determine its evolution

DESCRIPTION OF CONTENTS: PROGRAMME

1. The idea of constitutional order in classical thought: politeia and res publica
2. Medieval order and the mixed constitution
3. The doctrines of sovereignty and absolutism. 16th and 17th centuries
4. Tradition and evolution in English constitutionalism
5. Colonial origins of North American constitutionalism
6. Birth and Constitution of the United States
7. Revolution and constitutions in France
8. The liberal state and state constitutions
9. The crisis of the liberal system. The constitutional state in the 20th century
10. Spanish constitutionalism in the 19th century
11. The Constitution of the Second Republic and the Constitution of 1978

LEARNING ACTIVITIES AND METHODOLOGY

The teaching methodology is based on a combination of introductory explanations by the professor for each topic and the active participation of the student through preparing and presenting papers, individual and group oral presentations and participation in debates based on topics from the presentations. To facilitate these activities, the student will have access to documents consisting of a program and a list of constitutional and doctrinal texts that will be analyzed and commented on.

An extensive system of tutoring will be established, aimed at solving issues and problems related to classes and materials and to the orientation for the preparation of essays and oral and written presentations

ASSESSMENT SYSTEM

% end-of-term-examination/test:	0
% of continuous assessment (assignments, laboratory, practicals...):	100

The continuous assessment is based on the following criteria:

- Regular class attendance and class participation: 10%.
- Written projects and oral presentations: 20%
- Participation in class debates and whether the participation in these is interesting and opportune: 5%
- Attending tutorials and the interest, preparation and knowledge demonstrated in them: 5%
- Written examinations on class content: 60%. There will be at least two tests based on the professor's lectures and reading provided to the students. However, passing these exams is obligatory in order to take into consideration the other parts of the continuous assessment system when averaging the student's grade. The students could pass the subject through the continuous assessment system.

Alternatively, the final exam counts 60% of the final grade for those students who choose not to take part in the continuous assessment system. Students who have not passed the subject with the continuous assessment system or those who wish to improve their grade can also take a final exam, different from the one mentioned above

BASIC BIBLIOGRAPHY

- L. GRAU An American Constitutional History Course, Madrid, Universidad Carlos III, 2012
- M. FIORAVANTI Constitución: De la antigüedad a nuestros días, Madrid, Trotta, 2001

ADDITIONAL BIBLIOGRAPHY

- A. LYON Constitutional History of the UK, Routledge , 2016
- F. TOMÁS Y VALIENTE La Constitución de 1978 y la historia del constitucionalismo español, Anuario de Historia del Derecho Español, 50 (1980), pp. 721-751.
- H. C. LOCKWOOD Constitutional History of France, Palala, 2015
- J. FRUCHTMAN American Constitutional History, A Brief Introduction, Wiley, 2016
- M. FIORAVANTI Los derechos fundamentales. Apuntes de historia de las constituciones, Madrid, Trotta, 1996.
- N. MATEUCCI Organización del poder y libertad. Historia del constitucionalismo moderno, Madrid, Trotta, 1998