

Comparative Historical Constitutionalism

Academic Year: (2024 / 2025)

Review date: 28-04-2024

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.

This course will pursue these basic learning objectives:

1. Define constitutionalism and its historical significance in limiting political power by law.
2. Compare and contrast ancient Greek and Roman political frameworks, highlighting their contributions to constitutional thought.
3. Analyze the transition from medieval mixed constitutions to early modern absolutism, focusing on key theorists like Jean Bodin.
4. Examine the development of contractarianism through the perspectives of Thomas Hobbes and John Locke.
5. Evaluate the causes and consequences of the American Revolution, emphasizing its impact on constitutional development.
6. Explore the French Revolution's philosophical underpinnings and legicentric implications for constitutionalism.
7. Assess the Restoration period in nineteenth-century Europe, examining its constitutional developments and tensions.
8. Investigate the transition from traditional liberal constitutionalism to modern democratic constitutionalism in post-World War II Europe.
9. Discuss the role of constituent power and judicial review in shaping modern constitutional democracies.
10. Critically analyze the principles of modern constitutionalism, including the balance of powers and protection of individual rights, and the directive force of the constitution.

These learning objectives provide a foundational understanding of constitutional development across various historical periods and philosophical frameworks.

DESCRIPTION OF CONTENTS: PROGRAMME

This course encompasses a broad array of subjects, tracing the evolution of constitutionalism from ancient Greece to contemporary times. It delves into various historical epochs, including medieval European political structures, the rise of absolute monarchy, English constitutionalism, contractarianism, American constitutional development, the French Revolution, nineteenth-century liberal constitutionalism, and the emergence of democratic constitutions post-World War II.

Initially, it examines the ancient Greek concept of constitution, drawing from notions like *politeia* and perspectives offered by figures such as Cicero and Polybius. The medieval period is explored, highlighting fragmented political authority, feudal relationships, and the emergence of jurisdictional monarchies, influenced by concepts like privilege, divine kingship, and the *pactum subjectionis*.

Transitioning to the early modern era, focus shifts to the rise of absolute monarchy, particularly through the work of Jean Bodin, while still retaining elements of medieval constitutionalism. The course then delves into seventeenth-century English constitutional conflicts, emphasizing documents like the Petition of Right and the Bill of Rights, and the notion of Ancient Constitution which shaped modern constitutional principles through struggles between monarchy and Parliament.

Political theory is scrutinized through the lens of thinkers like Hobbes and Locke, examining concepts such as social contract, natural law, and the role of government in society. The American Revolution and the subsequent establishment of the Constitution and Bill of Rights are explored, emphasizing principles of popular sovereignty, the separation of powers and the emergence of the constitution as a law guaranteeing liberty.

The French Revolution is dissected, with a focus on Rousseau's influence and the concept of general will, shedding light on legislative power and constituent sovereignty. The emergence of French *legicentrism* and its implications will be outlined. The course further explores the Restoration period in Europe after the Napoleonic era, where efforts to reconcile traditional monarchic authority with emerging liberal ideals led to the establishment of constitutional monarchies. Key points of this period include the rejection of constituent power, tensions between reactionaries and liberals, and the emergence of the liberal legal state, and the downgrading of the normative constitution.

Finally, attention is directed to the transition from traditional liberal constitutionalism to modern democratic constitutionalism post-World War II. Post-war constitutions prioritize the supremacy of the constitution, establish judicial review, and delineate features such as fundamental rights, the balance of powers, and the constitution's directive force reflecting the evolving landscape of democratic principles in Europe. Specifically, the course will cover the following topics:

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

This course comprises two distinct types of sessions: lectures and seminars.

During the lecture sessions, the professor will offer an overview of the various topics covered in the course.

In the seminar sessions, students will engage in collaborative discussions, seated in roundtables, focusing on a selection of readings specifically chosen to provoke conversations about constitutional history. These readings are directly linked to the subjects discussed in previous lecture sessions. The selected readings serve multiple purposes: they may reinforce the key themes of the lecture, delve

deeper into issues raised in class, present alternative perspectives that may align with or challenge the lecture content, or provide historical examples illustrating the concepts and developments discussed in class.

To actively participate in seminar discussions, students must diligently prepare by thoroughly reading and annotating the assigned materials before class. In their preparation, students should consider how the readings relate to the lecture content and reflect on their own reactions, thoughts, ideas, and arguments prompted by the readings.

Students will keep a portfolio consisting of journal entries for each seminar session related to the assigned readings.

ASSESSMENT SYSTEM

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

The course assessment comprises class participation, a class portfolio, and a minimum of two midterm examinations based on lecture content, which are mandatory for passing. The grading breakdown is as follows:

- Midterms: 60%
- Portfolio: 20%
- Seminar participation: 20% (attendance proportionate)

If students achieve at least 50% of the grade through continuous evaluation, they are exempt from the final exam, and their course grade will reflect the continuous evaluation score. However, those who fall below 50% during continuous evaluation must sit for the final exam, which serves as a second opportunity within the same assessment period. The final exam, held on the same day and time as the initial call, covers the entire course content. Students seeking grade improvement may opt to take the final exam as well. In both scenarios, the final grade calculation is as follows:

- Continuous evaluation grade: 40% of the final grade
- Final exam: 60% of the final grade

For students not participating in continuous evaluation, the final exam contributes solely to 60% of the final grade.

In this course, students must not use artificial intelligence tools to complete the tasks or exercises proposed by the teacher. The use of AI by students, leading to academic fraud by falsifying the results of an exam or task required to accredit academic performance, will be subject to disciplinary measures under the Regulation of the University Carlos III of Madrid of partial development of the Law 3/2022, of February 24th, of University Coexistence.

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