

CONSTITUTIONALISM IN EUROPE

Contribution to the courses

Perbandingan Hukum Tata Negara (S1 Reguler) and Constitutional Law (IUP)

concerning § 2 VI Milestones in constitutional history

Diagram 1**The most important milestones in constitutional history**

England a the time of Cromwell		
Year	Denomination and special features	Importance
1653	<u>Instrument of Government</u> - establishing the rulership (constituting the ruling institutions) - executive power with "Lord Protector" and "State Council"	<ul style="list-style-type: none"> • basic legal order of England as a (short-time) republic • first constitution in the sense of const. theory
North America after independence		
Year	Denomination and special features	Importance
1776	<u>Virginia Bill of Rights</u>	<ul style="list-style-type: none"> • first positivation of fundamental rights
1776/77	First state constitutions in North America (in the former colonies)	<ul style="list-style-type: none"> • encouraged constitutionalism in Europe
1787/88	<u>Constitution of the United States of America</u> - sovereignty of the people ("We, the People of the United States...") - enumeration of the federal legislative competences - fund. rights catalogue added with 1 st to 10 th Amendment (1791) - development of sophisticated theory during ratification discussion by the <u>FEDERALISTS (MADISON, HAMILTON, JAY)</u>	<ul style="list-style-type: none"> • first constitution of a modern federal state • impulse, model and standard for development of constitutionalism in Europe
1803	<u>US Supreme Court, decision in the case Marbury v. Madison</u> - postulation of the primacy of the constitution and the right of the courts to review the constitutionality of laws	<ul style="list-style-type: none"> • often quoted historical elucidation of an essential basis of constitutionalism
France during and after the French Revolution		
Year	Denomination and special features	Importance
1789	<u>Déclaration des droits de l'homme et du citoyen</u> - proclamation with universal claim but initially not legally binding - preservation of human rights as objective of the state (art. 2) - sovereignty of the nation [people] (art. 3) - comprehensive liberty ("to do anything that does not harm others", art. 4) - the law as expression of the general will ["volonté générale"] (art. 6) - guarantee of fundamental rights and separation of powers as necessary characteristics of any constitution (art. 16)	<ul style="list-style-type: none"> • first European proclamation of important fundamental values of the free and democratic constitutional state • has made the ideas of the French Revolution popular in Europe • art. 16 postulates a position that is still uphold by many constitutionalists in Europe¹
1791	<u>Constitution of 1791</u> - less than one year in force - Déclaration of 1789 included - still a monarchy but based on the sovereignty of the people - discussion of theoretical foundations of modern constitutionalism in <u>ABBÉ SIEYES' pamphlet "Qu'est-ce que le Tiers Etat?" (1789)</u>	<ul style="list-style-type: none"> • model for many constitutionalist movements in Europe
1793	<u>Constitution of the year I (Constitution montagnarde)</u> - adopted by referendum but not entered into force	<ul style="list-style-type: none"> • first republican constiution

¹ While many scholars consider these elements characteristics of the type of a *free and democratic* constitution, many others maintain that a document missing one of them (as the Indonesian Constit. of 1945 until 2000) is not a constitution at all.

Important European constitutions of the 19th and 20th century (selection)		
Year	Denomination and special features	Importance
1814	France: Charte constitutionnelle - imposed monarchical constitution	<ul style="list-style-type: none"> • model constitution for constit. monarchy
1849	Germany: Constitution of the German Reich (Frankfurt Constit.) - drafted in the <i>St. Paul's Church</i> in Frankfurt by a national assembly on the basis of the constituent power of the people - was rejected by the King of Prussia (who was supposed to become German Emperor) and did not enter effectively into force - concept of the Reich as a democratic German federal state with separation of powers between Emperor and Reichstag - comprehensive catalogue of fundamental rights - Reichsgericht (Reich's Court) with functions of a constitutional court, including individual fundamental rights complaint	<ul style="list-style-type: none"> • first free and democratic German constitution • important source of inspiration for the Weimar Constitution and the Basic Law
1871	Constitution of the German Reich (Bismarck Constitution) - mixed constit. of the German Empire combining monarchical and democratic elements	<ul style="list-style-type: none"> • constitution of the German national state until 1918
1919	Constitution of the German Reich (Weimar Constitution) - the Reich as a free and democratic republican federal state - destructive non-confidence vote (caused instability) - strong position of elected President of the Reich, including right to dissolve Reichstag and to take dictatorial emergency measures - long part on heterogeneous fundamental rights which were conceived as non-binding programmatic principles	<ul style="list-style-type: none"> • first German republican constitution • first German free and democratic constitution entering effectively into force • conceptual flaws fostered crisis of German parliamentarism
1949	<u>Basic Law for the Federal Republic of Germany</u> - a constitution for the West German state, enacted by adoption by the parliaments of the West German Länder - the Federal Republic as a free and democratic republican social federal state based on the rule of law, with human dignity as highest fundamental value - only constructive vote of no-confidence - concept of defensive democracy - fundamental rights as directly binding law - comprehensive jurisdiction of the Federal Constitutional Court, including remedy of individual constitutional complaint	<ul style="list-style-type: none"> • most successful constitution in German history; maintained after the German reunification 1990 • has for many decades strongly fostered the identification of the citizens with the state (→ constitutional patriotism) • a source of inspiration for constitutional design in South and East Europe and for constitutional theory
1958	<u>France: Constitution of the Fifth Republic</u> - semi-presidential system with strong position of the President of the Republic and also of the Prime Minister (various → "cohabitations") - preventive constitutional review by Conseil constitutionnel - Déclaration des droits de l'homme et du citoyen of 1789 part of the "bloc de constitutionnalité" (recognized by Conseil const. in 1971)	<ul style="list-style-type: none"> • prevailing constitution • not popular in the past
2004	<u>Treaty establishing a Constitution for Europe</u> - did not enter into force after rejection in referenda in F. and NL - fundamental reform of the European Union and its institutions - integration of the Charter of Fundamental Rights as constit. law	<ul style="list-style-type: none"> • first constitution of an organisation based on public international law