

§ 1 Introduction

I. Why studying constitutional law with a comparative approach?

- for a *better understanding* of the own constitutional law, its particularities and alternatives, its strong and weak points and the perspectives of its development
- as a *source of inspiration*: innovations and solutions in the constitutional law of one country may be useful in other countries too
 - examples: the institution of the constitutional court, fundamental rights doctrine
- for a *better critical analysis of the domestic constitutional jurisprudence*
 - other const. courts may have found better solutions for the same problem or shown a more sophisticated reasoning
- a long history of *constitutional and jurisprudential reception*
 - many countries have adopted with great benefit concepts and institutions from others
- *not only the success stories* but also the failures of foreign constitutionalism are interesting
 - you must not repeat the mistakes of others...

II. Why studying constitutionalism in Europe?

- because Europe, together with America, is the *cradle of constitutionalism*
- because of the important *contributions of European scholars*
 - e.g. EMMANUEL JOSEPH SIEYÈS, GEORG JELLINEK, RAYMOND CARRÉ DE MALBERG, CARL SCHMITT, RUDOLF SMEND, HERMANN HELLER, HANS KELSEN, German and French scholars in the late 20th century
- because of the *jurisprudence of European constitutional courts*, which has inspired the development of constitutional law doctrine in the world
 - esp. of the German BUNDESVERFASSUNGSGERICHT, the French CONSEIL CONSTITUTIONNEL and the Italian CORTE COSTITUZIONALE; see also the jurispr. of the EUROPEAN COURT OF HUMAN RIGHTS
- because European constitutional history also demonstrates *all kinds of wrong solutions and undesirable developments* you should better avoid...
 - including recent developments towards authoritarianism (Hungary, Slovakia, Poland)
- because nowadays constitutional law doctrine and constitutional theory are the most developed in Europe (esp. Germany, France, Italy, Switzerland, Austria, Spain ...)
- because the European integration led in Europe to the *most intensive and advanced trans-national debate on modern constitutionalism*
- because of the *common background*: the commitment to modern constitutionalism
 - the constitution as basic legal order of the state, with primacy and direct applicability (see infra, § 2 IV)
 - the common commitment to democracy, rule of law, separation of powers and human rights

III. Why studying the law of state institutions with a comparative approach?

- because some typical problems exist almost everywhere, but constitutional states have found different legal solutions with interesting approaches and different results
- because the comparison shows that small differences in details of the constitutional law can have a big impact on the political system and the performance of the state