

COMPARATIVE CONSTITUTIONAL LAW

Contents

Preliminary remark: Due to the reduced number of lectures in the shortened lecture period in the coronavirus crisis, some contents of the course (as presented in 2019) must be skipped. However, for course participants interested in self-study, the relevant course materials are offered for download at the [course website](#). There you will also find [special links](#) to online resources concerning the skipped topics.

§ 1 Introduction

- I. Why studying comparative constitutional law?
- II. Constitutional law and the world order of states
- III. Constitutional law and the level of development of the state
- IV. Constitutional law and the historical, cultural and religious backgrounds of the state

Part I: The constitution

§ 2 The constitution as a legal institution

- I. The concept of constitution
- II. Types of constitution
- III. The constitution as a legal institution of the modern age
- IV. Functions of the constitution
- V. The *pouvoir constituant* (constituent power)
- VI. The primacy of the constitution
- VII. The direct applicability of the constitution
- VIII. The interpretation of ordinary law in conformity with the constitution
- IX. Constitutional interpretation

§ 3 Stages of constitutional history and theory

- I. Constitutional history of modern times at a glance
- skipped; see for self-study [Diagram 1](#) and the [special links](#) at the course website
- II. Indonesian constitutional history at a glance
- III. Landmarks of constitutional theory
- skipped; see for self-study [Slide 2a](#) and the [special links](#) at the slide and the course website

Part II: Fundamental constitutional decisions

§ 4 The significance of the fundamental constitutional decisions

- I. The need to decide about the *fundamental values and ideas* of the state
- II. Fundamental decisions, constitutional identity and types of constitution
- III. The legal anchoring of the fundamental decisions in *fundamental constitutional principles*

- IV. The concretisation of the fundamental decisions in state organisation law
- V. The complementation of the fundamental constitutional principles by others
- VI. Fundamental constitutional decisions and constitutional amendment

§ 5 Classical fundamental decisions

- I. The decision for sovereign statehood
- II. The decision for a republican or monarchical system
- III. The decision for unitarianism or federalism

§ 6 Fundamental decisions in the free and democratic constitutional state

- I. A multinational authentic authority on questions of up-to-date free and democratic constitutionalism: the Venice Commission of the Council of Europe
- II. The commitment to human dignity and human rights
 - 1) The general commitment to human rights as universal fundamental values
 - 2) Human dignity as a constitutional value in Europe
- III. The principle of democracy
 - skipped; see for self-study [Slide5](#), p. 2 f. and the [special links](#) from the course Electoral law
 - 1) Foundations of democracy
 - 2) The decision for representative or plebiscitary democracy
 - 3) The decision for parliamentarian, presidential or semi-presidential democracy
 - 4) Political parties
 - 5) The concept of defensive democracy
 - 6) Democracy and supranational integration
- IV. The principle of the rule of law
 - 1) Fundamental idea and historical foundations
 - 2) Different manifestations of the same fundamental idea in Europe: "Rechtsstaat", "État de droit", "rule of law" and "general principles of law"
 - 3) The spreading of the idea in the wake of globalisation and development
 - 4) Formal and material concept of the rule of law
 - 5) The constitutional basis of the rule of law
 - 6) The elements of the rule of law
- V. The principle of separation of powers
 - 1) Fundamental idea and philosophical foundations
 - 2) Separation of powers as a fundamental constitutional principle
 - 3) The realisation of the separation of powers by the constitutional arrangement of the state institutions
 - 4) The complementation of the horizontal by a vertical separation of powers in federal states
- VI. The principle of solidarity, social justice and cohesion
 - 1) Fundamental idea and historical foundations
 - 2) Solidarity and social justice as a common European (but not American) value
 - 3) The implementation via social fundamental rights or a social state principle
 - 4) Problems resulting from the vagueness of the concept
- VII. Towards a principle of climate and environment protection?

§ 7 Special fundamental concepts in other constitutional systems

- I. Pancasila
- II. Other special concepts in Asian constitutionalism
- III. Special concepts in socialist constitutionalism
- IV. Special concepts in Islamic constitutionalism

Part III: Fundamental rights

§ 8 General fundamental rights doctrine

- I. Human and fundamental rights
- II. Fundamental rights as directly binding law
- III. Types of fundamental rights
- IV. Functions of fundamental rights, duties of protection
- V. Holders and addressees of fundamental rights
- VI. The dogmatic structure of (defensive) fundamental rights
- VII. The limitation of fundamental rights encroachments by the principle of proportionality

§ 9 Fundamental rights in Asia

- with a special focus on Indonesia, Malaysia, Taiwan and South Korea
- I. The arrangement of fundamental rights in Asian constitutions
 - II. The interpretation of fundamental rights norms by Asian courts
 - III. Current problems in the realisation of fundamental rights in Asia

§ 10 Current problems of the freedom of opinion - the example of Germany

- I. The importance of freedom of opinion in a democratic state
- II. The sphere of protection of the freedom of opinion
- III. The limits of the freedom of opinion
- IV. Recent problems

§ 11 Freedom of religion and tolerance in a pluralistic society - the example of Germany

- I. The importance of freedom of religion as a fundamental right
- II. Pluralism and tolerance in a free and democratic state
- III. The sphere of protection of the freedom of religion
- IV. The limits of the freedom of religion
- V. Special problems

Part IV: Constitutional review

§ 12 Constitutional review as an essential element of modern constitutionalism

- I. Historical and theoretical foundations
- II. Basic models of constitutional jurisdiction
- III. Constitutional review as a motor for the development of constitutional law doctrine
- IV. Constitutional review and separation of powers
- V. Not always the good guys: Spectacular failures and scandals of constitutional courts

§ 13 Constitutional review in Germany

- I. The German Bundesverfassungsgericht [Federal Constitutional Court]
- II. Types of proceedings before the Bundesverfassungsgericht
- III. In particular: the constitutional complaint
- IV. Special problems

§ 14 Constitutional review in Asia

- with a special focus to Indonesia, South Korea and Japan
- I. Models of constitutional review in Asia
- II. Constitutional review in Asia and Asian values
- III. Constitutional review and waves in the development of modern constitutionalism in Asia

More information on this course at www.thomas-schmitz-yogyakarta.id. For any questions, suggestions and criticism please contact us in our offices (Building A, room A.IV.11/13) or via e-mail at tschmit1@gwdg.de.