

Prof. Dr. Dr. h.c. Thomas Fleiner^{*}

Comparative Constitutional Law

Master Course, Law Faculty University of Belgrade, October 31 – November 16, 2011

Aims of the Course

The course aims to equip students for comparative analysis of major constitutional principles and institutions. In order to do so the course will introduce students into the methods of comparative constitutional law and comparative politics of constitution.

Course Description

a) Thematic Focus and Structure

The course will develop the basic principles applicable for comparative constitutional law and will compare the constitutional systems of UK, USA, France and Germany as most important examples of the key differences including common-law and continental law constitutional traditions. The constitutions of Switzerland and Serbia and the Treaty of Lisbon will always remain key references. We will analyze the challenges of multiculturalism and globalization for post-modern constitutional democracies. We shall also deal with procedural and constitutional principles and designs - such as federalism - aimed at conflict management in the societies with ethnic tensions and those coming out of ethnic wars. During these three weeks students should get familiar with current constitutional problems that states face as regards European integration, migration and the universality of human rights.

The three week course will cover four different topics: I. Introduction into the method of comparative constitutional law, different approaches on constitution making and the principles of democratic constitutionalism. II. The Rule of Law, Human Rights and Constitutional Review. III. Different governmental systems and constitutional designs, including federalism as a conflict-management device.

b) Method

The students will be encouraged to make own judgments on current constitutional issues. They will have to discuss on particularly controversial issues and argue their position with the help of comparative and theoretical background they get acquainted with during the course. For this reason the course will involve both taught and interactive elements: 18 lectures and 10 classes of practical work involving workshops with a group-work and presentations of group-work results in plenary sessions. In the week following the course the students will be asked to produce a short paper of maximum 15'000

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characters (no space) on one of the topics summarizing key insights they gained from the course.

Assessment

Evaluation methods will take into account active participation during the classes and workshops, including short presentations and discussions of the group-work results. The quality of the paper to be prepared in the week following the course will also be an element of an overall assessment.

Documentation – Reader and given documentation entries on the internet Home-Page of Prof. Fleiner and Prof. Basta Fleiner: <http://www.thomasfleiner.ch/>

The course will take place between October 31 and November 16, 2011 on Mondays, and Wednesdays

The course will begin at 5:30 pm and last until 8n pm. In the third week it will last until 8:45 pm

Program:

1. Lecture: Introduction
2. Lecture: Different Systems of Constitution Making
3. Lecture: Basic Principles of Rule of Law

Workshop 1: Brewer Scalia Question: Introduction of Art. 39 of the South African Constitution Question would you and why introduce into your constitution such provision with what arguments pro and con?

Documentation:<http://www.freerepublic.com/focus/f-news/1352357/posts>

4. Lecture: Democratic Governance
5. Lecture Common Law / Civil Law

Workshop 3: Marbury v. Madison Question: What are the main arguments to establish constitutional review? Could a continental court get to the same conclusions?

Documentation:

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=5&invol=137>

6. Lecture Constitution and Minority rights
7. LectureThe Criteria's to evaluate different systems of Government

Workshop: 2 Question: In what sense the Treaty of Lisbon improves principles of democratic governance? E.g. Human rights, democracy Look at the question in the light of the arguments of the German Constitutional Court

Documentation: Treaty of Lisbon

8. Lecture Different Systems of Constitutional Review
- Workshop 3 Marbury v. Madison
9. Lecture Constitutional Challenge of Diversity

T.F. and L.B.F.