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Teaching Constitutional Law to Undergraduate Students of Administration and Security

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Abstract

The author endeavors to display the didactic process in undergraduate studies in administration and security. He emphasizes the legitimacy and the understanding of trans-political functions of the law. The article also discusses the legal and constitutional notion of liberty and security, which students do not find obvious. Moreover, he puts forward some methods that make lectures in constitutional rules more accessible to students.

Key words: constitutional law, pedagogy, history of law, positive law, natural law

Introductory remarks

My didactic experience as a historian of legal and constitutional doctrines demands reflection and a synthetic approach. This article presents but a few thoughts. General deliberations are yet to come. Undoubtedly, modern students are much different from students from the previous century. Also the current structure of undergraduate studies has its own characteristics and requirements. Without a doubt, pedagogy in the course of undergraduate studies in security administration is an important link of shaping the profile of the studying youth. The level of said pedagogy has a both professional and intellectual dimension. Both dimensions are equally important for establishing the framework of safety culture.¹

¹ M. Cieślarczyk, *Kultura bezpieczeństwa i obronności*, Wyd. AP, Siedlce 2010, p. 210; M. Cieślarczyk, *Fenomen bezpieczeństwa i zjawisko kryzysów postrzegane w perspektywie kulturowej*, [in:] *Jedność i różnorodność*, E. Reklajtis, B. Wiśniewski, J. Zdanowski

Constitutionalism and the history of state, law and political and legal doctrines

Teaching constitutional law reaches the optimal level if it meets the criteria of a comparative and interdisciplinary synthesis.² Students may find the exposition inaccessible if teaching is limited to presenting and analyzing the text of the constitution itself. In particular, a linguistic and semantic analysis of the constitution, when it is considered separately from an analysis of its function, is of little use to students, as well as abstract and largely pointless. The role the constitutional rules play is easier to comprehend when the lecturer is able to explain their purpose. The history of state and law offers ample resources for exemplification.³ For instance, it is impossible to reasonably explain the core of liberal democracy to students without showing its origins. The lecturer should persuade the students that liberalism and democracy are not merely slogans but meaningful notions whose content and range is defined by the history of political and legal doctrines. Said political and legal doctrines also determine the meaning of a number of terms which seem homogeneous and obvious to students, whereas in reality they are diverse and controversial and require constitutional codification.

For instance, the legal and constitutional notion of liberty is neither obvious nor simply intuitive. It is not easy to persuade the students that not only despotism and tyranny, but also anarchy are the opposites of liberty. Such an endeavor requires displaying the crux of the matter in a synthetic

(ed.), ASPRA-JR, Warszawa 2010, p. 96.

² The writings of Konstanty Grzybowski are a role model for an intellectual, interdisciplinary synthesis. See: W. Kozub-Ciembroniewicz, *Konstanty Grzybowski - uczony, homo politicus, publicysta*, [in:] *Konstanty Grzybowski – myśliciel sceptyczny*, scientific committee: J. Bardach, J. Baszkiewicz, M. Jaskólski, W. Kozub-Ciembroniewicz (ed.), J. Majchrowski, H. Olszewski, M. Waldenberg, Kraków 2000, p. 19 ff.

³ Studying source materials significantly enriches the didactic process, as I have ascertained myself by presenting various declarations and constitutions to my students during lectures. I recommend, for instance: *Historia Państwa i prawa. Wybór tekstów źródłowych*, compiled by A. Gulczyński, B. Lesiński, J. Walachowicz, J. Wiewiórowski, Poznań 1995.

way, and hence – explaining the very essence of civilization, with its axiological aspect, the role of law, standards, and institutions. It is no easy task, albeit it is a necessary one if students are to understand and remember the knowledge relayed to them during the lecture.⁴ During seminars, one should not expect spontaneous questions from the students. Questions must be provoked by presenting the different ways in which such notions as liberty have been defined, depending on the time period and ideological inclinations.⁵

Positive and natural law

The issue of fundamental rights is relevant to the exposition of constitutional law, and the problem of overpositive laws plays a singular part within it. It is hard for the students to comprehend the complex matter of positive and natural laws, even if the lecture in constitutional law is preceded by an introduction to jurisprudence.

Hence it is necessary to use a well-chosen example. One such example that shows the complexity of this issue is the *Declaration of the Rights of Man and of the Citizen*: “declaring” rights, or reminding that there are overpositive laws already in existence, is different from creating laws, or constituting a normative order. The model of overpositive laws deriving from the Age of Enlightenment is rationalistic. This model should

⁴ I have noticed that referring students to compendia, essays or dissertations, no matter how good, (e.g. Z. Witkowski (ed.) J. Galster, B. Gronowska, W. Szyszkowski, A. Bień-Kacała, A. Cieszyński, K.M. Witkowska, *Prawo konstytucyjne*, Toruń 2006; M. Grzybowski, S. Bożyk, A. Jackiewicz, G. Kruszeń, J. Matwieju, A. Olechno, K. Prokop, *Prawo konstytucyjne*, wyd. 2, Białystok 2009;) is sadly not productive. As a rule, students have professional obligations and thus expect from their lecturer a concise, communicative information. On the other hand, rulings of the Constitutional Tribunal prove useful. Selected cases successfully help broaden the students’ theoretical knowledge.

⁵ See: M. Bankowicz, W. Kozub-Ciembroniewicz, *Dyktatury i tyranie. Szkice o niedemokratycznej władzy*, Kraków 2007, p. 38; W. Kozub-Ciembroniewicz, *Konrad Adenauer personalizm i tradycjonalizm*, Kraków 2000, p. 27.

be set off against the model of laws of nature of a religious origin.⁶ A fine example of this overpositive reflection is offered by Konrad Adenauer's legal and political doctrine, which expresses the renaissance of law of nature in a particular situation of post-war Germany, following the collapse of the national socialist system.⁷

It was Konrad Adenauer who advocated legal and political personalism, based on the fundamental rule of the value of a person in building a new, democratic Germany. For him, totalitarian systems are most of all anti-personalist as they ignore inalienable rights of human person. The constitutional order cannot be arbitrary; it stems from a non-relativist order of things. Materialist worldview leads to relativism, whereas the constitutional order demands observing and cultivating suprahistorical values.

Presenting issues of such complexity requires not only a clear exposition, but also conversing with students. Only in this way it is possible to examine the material understanding of the lecture among students.

Rechtsstaat

Usually students find the concept of Rechtsstaat unclear as the word suggests an incorrect understanding of the issue, presupposing a distinction between "a state of law" and "a state without law." In other words, a state of law is a state in which law is in force. Nothing could be further from the truth. And convincing students of this requires some didactic effort.

The norms of Nazi law are one example. However, one should take care to explicate their content and the way they were legislated, which are fundamentally different from the liberal and democratic model. Students usually grasp and understand the discriminative content of a legal rule that

⁶ J. Piwowarski, B. Płonka, *Etyka w administracji i zarządzaniu publicznym. Motywacje, realizacja, bezpieczeństwo*, Kraków 2012, p. 23; 29; 54.

⁷ Ibidem.

deprives a certain group of people of their inalienable rights. The Discrimination in the form of institutionalized racism is something that is conceivable. Students understand the iniquity of racist law and the absurdities it leads to (e.g., in marital law).

From a didactic point of view, it is convenient to show the issue of discrimination by means of a comparative example of Soviet Russia and the USSR. Discrimination of particular groups of population as class enemies is especially instructive. Given this context, and employing the “*a contrario*” method of thinking, students are able to correctly understand the model of state which adheres to essential and formal standards, or Rechtsstaat.

The essence of a totalitarian state, rooted in the cult of personality,⁸ extremely voluntaristic and absolutely arbitrary, lacking control from independent courts, clarifies the procedure of constituting law well for students. Introducing issues of natural law into the exposition of the institutions of Rechtsstaat not only enriches said exposition, but also allows students to grasp the trans-political function of the law and the fact that any form of political infiltration is the biggest threat to law.

Legal, political, social, and professional pluralism

To students, the constitutional model of a pluralistic state is usually obvious, whereas the mechanism of dictatorship seems more difficult to grasp as dictatorship itself is abstract, unimaginable. It is even harder to comprehend the sources of pathological threats to democracy. Students are more conscious of their symptoms, while the functioning of political parties in relation to the so-called “interest groups” is entirely abstract.

Modern Austria gives a great example of such correlations as its social partnership system, developed after 1957, is well-established.⁹ It turns

⁸ See: W. Kozub-Ciembroniewicz, *Doktryny włoskiego faszyzmu i antyfaszyzmu*, Kraków, 1992, p. 17 ff.

⁹ See: W. Kozub-Ciembroniewicz, *Socjaldemokracja w Austrii współczesnej 1945–1966*, Poznań 1982, p. 110 ff.

out that the model of constitutional system analysis, when it is reduced only to the role played by political parties, is simply incomplete and simplified. A democratic parliament and government are not the sole definers of the mechanisms of power. For in order to exercise power effectively, a mandate of a democratically legitimized power does not suffice. At the same time, there is a system safeguarding a permanent social dialogue, most of all with social and professional institutions. The Austrian example displays the intricacies of exercising power, where two threads entwine: democratic and egalitarian one, and a professional and social, non-elitist thread.

On the one hand, constant consultations and compromise stimulate progress, and on the other, they conserve the foundations of a constitutional state. Students find it easier to comprehend the democratic system when they view it as a result of a legal game between various subjects.

Centralism – federalism – autonomy

The exposition of constitutional law that analyzes the structure of the regime, utilizes the concepts of centralism, federation, and autonomy. Students are usually familiar with the federal structure of Germany and the United States of America, and consider it obvious.

On the other hand, the regime of the Habsburg Monarchy is completely foreign. This model is very instructive as it shows the evolution of the constitutional system, at the same time providing for its diverse, multinational essence. The Habsburg Monarchy long functioned as a centralistic structure of absolute monarchy. The changes that occurred during the Springtime of the Peoples turned out to be temporary. The October Diploma, on the other hand, proved to be a breakthrough and initiated the constitutional period¹⁰ of the Habsburg Monarchy. It lasted as long as the

¹⁰ W. Kozub-Ciembroniewicz, *Austria a Polska w konserwatyzmie Antoniego Z. Helcla 1846–1865*, Kraków 1980, p. 123.

monarchy did, albeit in a modified shape. The most significant change was the dualism of the state expressed in the Austro-Hungarian Empire and the autonomy of other crown lands of the monarchy.¹¹

Austro-Hungarian constitutional experiences may be useful in the further progress of European integration as it offers an efficient mode of rule that respects unity and national diversity and is not abstract, but rather historic. Students will understand modern times better when they are familiar with the premises and problems of European constitutionalism.

Conclusion

To conclude this article, we would like to offer some observations and didactic suggestions *pro futuro*. It is advisable to methodically attempt to equalize the students' educational level (as early as the first year of studies). Teaching logic will undoubtedly be conducive to that as logic facilitates the perception of theoretical subjects, which are relevant in displaying the trans-disciplinary character of administrative-defensive studies, particularly in the Rechtsstaat aspect. At the same time, it is expedient to suggest supplementary reading in order to broaden the students' knowledge, making it easier for them to learn. For one should remember that students begin their undergraduate studies having graduated from high schools of varied profiles and standards of education. Hence a compendium that will determine the optimal perception of theoretical and professional subjects taught at the college is necessary. Also in B.A. seminars material balance should be maintained, without favoring solely the professional approach. The Bachelor's exam should test not only professional skills, but also the graduate's intellectual capacity. A graduate should competently connect legal and administrative issues as well as elements of social sciences significant to security studies. This intellec-

¹¹ H. Wereszycki, *Historia Austrii*, Wrocław – Warszawa – Kraków – Gdańsk 1972, p. 253 ff.

tual capacity of a graduate is associated with “considerations and actions aimed towards eradicating ‘the feeling of threat from the unstable order that we live in.’”¹²

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¹² J. C. Garnett, *Introduction*, [in:] *Theories of Peace and Security*, London 1970, p. 31; [after:] J. Piwowarski, A. Zachuta, *Pojęcie bezpieczeństwa w naukach społeczno-prawnych*, Kraków 2013, p. 8.

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