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## **Challenges of Teaching the Constitutional Law of Russia and the Constitutional Law of Foreign Countries**

**Valentina V. Komarova\***

*Kutafin Moscow State Law University  
9 Sadovaya-Kudrinskaya Str., Moscow, 125993, Russia*

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*Current social demands predetermine actualization of topical issues, increasing interest of lawyers to the sphere of education in modern Russia. Today education is the factor that outlines the social status of a person. On the one hand, the equal conditions for getting education guaranteed by the legislation, along with the establishment of the compulsory education level, contribute to the formation of common starting opportunities for all citizens, on the other hand, education affects the variety of social roles and determines social positions of individuals. Today, education is recognized as one of the priority national projects, which entails activation of organizational, standard-setting and financial activities of the state in terms of improving the conditions for obtaining education. The objective of the work is to study the methods for maintaining the high level of legal education in modern Russia. With the use of the historical, comparative-legal and systemic methods, topical issues of teaching the constitutional law of Russia and foreign countries are analyzed, conditionally subdividing the identified problems into the essential and the formal ones and offering possible ways for their solution.*

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The national system of specialists' training has always been outlined by fundamental and scientific nature. In terms of the youth's intellectual level, in the second half of the past century (in the 50s – the second, in the 60s – the third) our country occupied one of the leading places in the world. The process of training was knowledge-oriented and was organized in accordance with the didactic triad: knowledge, skills and practice. The

result of training was the knowledge in the process of obtaining which all necessary skills would be developed.

Due to the participation of Russia in the Bologna process and education reforms the following reasonable question arises: will we be able to maintain the high level of legal education and train a full-fledged lawyer within the framework of the state's chosen path of legal education?

In our opinion, the problem needs to be conditionally divided into the essential and the formal ones. The conditional nature of this division is obvious: in fact, these are two sides of the same coin: what disciplines and how to teach, and how to provide the educational process with educational literature.

I agree with the opinion of V.I. Fadeev that “the problem of the gap between knowledge and practical skills on its application has become especially acute. Modern life requires from the graduates of law schools to not only have knowledge, skills and practice, but also the ability and readiness to apply them in specific professional situations, in their future practical activities. Personality features of students, their ability to perform practical activities on the basis of their knowledge and skills today stand as a new educational result, which is defined today by the term ‘competence’”<sup>1</sup>.

In the Russian Federation, the current legislation, in particular the Federal Law, “On Education in the Russian Federation” dated December 29, 2012, establishes the following levels of professional education: 1) secondary vocational education; 2) higher education – bachelor’s degree; 3) higher education – specialist’s degree, master’s degree; 4) higher education – training of highly qualified personnel.

Bachelor in the field “Jurisprudence” is trained for the following types of professional activity: 1) standard-setting; 2) law enforcement; 3) regulatory; 4) expert-consulting; 5) pedagogical (teaching of legal disciplines in educational institutions, except for higher educational institutions). For Masters trained in the field of “Jurisprudence”, two more types of professional activity are added in comparison with Bachelors: 1) organization and management; 2) research. It is obvious that it is necessary to draw a line in the amount of material that should be provided

to undergraduate students and graduate and postgraduate students.

In 2010, the federal standard of jurisprudence (FSES of May 5, 2010) for Bachelor’s degree changed the name of the course on constitutional law. In the USSR and until 2010 in the new Russia this course had been called the state (then constitutional) law of the USSR, the Russian Federation, Russia. This name defined the profile and system of the course, focused the developers of programmes and course books to teach the constitutional law of the country. Different subjects of the course, certainly, contained some comparisons with the institutions of constitutional law of leading foreign countries, but unlike some other legal courses (civil, criminal, etc.), where course books usually contained the final chapter, which gave a brief understanding of the relevant field of law abroad, course books on constitutional (state) law of the USSR/Russia did not contain such a chapter, while simultaneously or later the course on the constitutional law of foreign countries (states) was taught.

In accordance with the federal state educational standards of secondary vocational education (Decree No. 508 “On approval of the federal state educational standards of secondary vocational education in the field 40.02.01 Law and Social Security Organization” of the Ministry of Education of the Russian Federation dated May 12, 2014 (ed. September 14, 2016)) and higher education (Decrees of the Ministry of Education of the Russian Federation No. 464 dated May 04, 2010, Decree No. 1538 dated December 5, 2014 and No. 1763 dated December 14, 2010) “Constitutional Law” is a basic course studied by the students of all levels of education.

The FSES of 2010 excluded the mention of the country (Russian Federation) from the name of the course of constitutional law. At the same time, the course of the constitutional law of foreign countries was excluded from the list of

compulsory academic courses. The change in the name of the course of constitutional law was not a simple renaming. Basically, universities were given the right to choose:

Teach a new, unified course of constitutional law with a different structure, content and teaching methods;

Teach constitutional law in two separate blocks (Russia and a little about foreign countries);

Teach the constitutional law of Russia and mention the names of some foreign countries (chosen by the teacher);

Teach the constitutional law of Russia (as a basic compulsory course) and the “Constitutional Law of Foreign Countries” as an academic course at the choice of a student who has chosen a state-legal profile after having the basic courses;

Teach the constitutional law of Russia (as a basic compulsory course) and leave the “Constitutional Law of Foreign Countries” for studying in master’s programmes, as well as continuing education as a postgraduate.

The latter options, in our opinion, are more in line with the educational standard, which provides for the study of not general constitutional law, but, namely, Russian constitutional law. It demands that while studying the main curriculum in terms of Bachelor’s degree the student should know “the features of the constitutional system, the legal status of citizens, the forms of the state’s structure, organization and functioning of the system of public authorities and local government in Russia”. In the context of training a practice-oriented bachelor, an emphasis on the study of the Russian constitutional law should be made.

In order to provide the selected options of teaching of the renamed course with course books, unlike the official title of the course in the FSES, both in 2015 and 2016, the authors write, and the publishing houses continue to publish course books called “The Constitutional Law

of Russia”; “The Constitutional Law of Foreign Countries”. Thus, the second, i.e. the traditional version of teaching, is most supported by course books. However, there are certain problems with the first option and providing it with course books.

It is obvious that the university course book on constitutional law with the approved title of the subject should contain legal and factual material not only on the constitutional law of Russia, but also other countries. It is impossible to simply connect two previous aspects in one. There are 193 member states of the UN, there are individual non-members of the UN (Vatican). No training course can include an overview of the constitutional law of all states, and it is not necessary. We should look for other ways.

Certainly, comparative constitutional law is interesting both for the student and for the teacher. However, we understand that certain difficulties appear when writing such a course book and working with students in a class.

In our opinion, the course book on comparative constitutional law should meet the following requirements.

1. Integrity of the course book on constitutional law for the bachelor’s degree.
2. Small scope (20 pages).
3. A seamless mix of Russian and foreign material: each chapter the course book should contain Russian and foreign material: first, general concepts about the specific major institution of constitutional law, then Russian material, and at the conclusion of the chapter several pages about the peculiarities of this institution in foreign constitutional and legal systems or states.

The description of the foundations of a particular institution in foreign countries should always be encyclopedic (we should remember that we are dealing with the bachelor’s degree) and should not exceed four or five pages. This means that about five printed pages of the text of

the course book will be devoted specifically to the issues of foreign law. This volume is considered sufficient (a fourth-fifth part of the whole scope), if the total volume of the course book is about 25 pages. Of course, we can recall that in Great Britain and France, the volume of course books on constitutional law is up to 70-90 pages. With the recommended system of repetitions it cannot be less, while the same phenomenon is viewed from different angles. Therefore, the course book should contain different references to the previous and the subsequent, which will allow the student to get skills in working with the course book.

4. The sequence of chapters in the course book in science was basically established as in the Constitution of the Russian Federation. The course book should contain chapters on constitutional law as a branch of law, science and academic discipline; on the constitution; on the foundations of the constitutional system (the basis of economic, social, political systems (including the types of public power at its various levels), spiritual life of society); a person, a citizen and other constitutional and legal statuses: constitutional rights and obligations; state-territorial organization; the form of government: representative and direct democracy (including electoral law), general characteristics of the system of public authorities, the head of state; parliament; government; judicial branch; the prosecutor's office; the foundations of the constitutional (statutory) law of the subjects of federations; foundations of local self-government.<sup>2</sup>

5. Test questions and tests and problems for each subject of the course. It is reasonable to publish workbooks.

Currently, the previously used "*intuitive*" model of teaching<sup>3</sup> has completely changed in the legal education system. The "intuitive" model of teaching, applied for more than 50 years, was based exclusively on the unshakable principles of freedom of teaching and freedom of education.

The teacher transferred the knowledge to the learner, while the level of knowledge of the teacher and the student upon the completion of the legal education could have differed more than dozens of times. Today, as a result of training, the law student should have certain competences. Thus, as a result of acquaintance with the system of constitutional categories and concepts in Russia and foreign countries, the student has a solid basis for further research and practical activities, without the formation of which it is impossible to move to the new stage of education.

Obviously, test questions and assignments, workbooks today are an indispensable element, and they should be developed from the standpoint of the current state of the science of constitutional law and taking into account the competence-based, practice-oriented approach to studying the academic course, and include various tasks for testing professional competences of "knowledge", "skills" and "practice" for each subject<sup>4</sup>. In our opinion, such diversity allows to identify and use the creative potential of each student, activate independent and critical thinking, the ability to make decisions (including non-standard ones), increase interest in studying the subject, desire to use personal efforts in building a legal, democratic, social and secular (and therefore constitutional) state in our country. In our opinion, students will be prepared for the perception and thorough analysis of the problems of the sectoral disciplines that they will have to study in the future, and if we look into a more distant future, they will make a significant contribution to the formation of their legal conscience, legal thinking, outlook and work skills to protect the rights and freedoms of man and citizen and protection of law and order<sup>5</sup>.

Understanding the specifics of teaching the courses of the state-legal cycle (constitutional law, constitutional law of foreign countries),

**three main directions for implementing a “competent” method** of teaching in this field can be outlined.

1. Consistency and continuity of constitutional and legal knowledge at various levels of education (for example, the implementation of the principle of continuity). 2. Symbiosis of scientific knowledge and practice. When using the “competence” method of teaching, the emphasis is on the practical application of theoretical knowledge of students (here you can include different types of practice, practice-oriented classroom activities, tasks for independent work, other university activities, etc.). 3. Expansion of the student’s independent work in comparison with the classroom load (here it is possible to include research activities for students, various kinds of scientific events).

Certainly, an avalanche of questions appears that should be discussed.

As part of the transition to tertiary education, what, how, and to what extent, using what methods should we teach students today?

What are the criteria for choosing foreign countries – which ones should be included in a course book and given as an example at a lecture?

Should classical Bachelor course books reflect a wide range of views of researchers-course book authors on legal problems and methods of studying the field? It is advisable to take indisputable foundations as the basis for examining a certain issue in classes with future bachelors, not leading them to theoretical discussions, leaving it for work with students of master’s and postgraduate courses.

To what extent is it necessary to talk about global systems and families of constitutional law? It is obvious that nowadays in different parts of the world there are different global systems of law, including constitutional law (in some countries there is a totalitarian-socialist system, a Muslim

system, etc.). There are also different families of law, including constitutional law. Should this be briefly mentioned in the course book? Obviously, we should take a very balanced approach to the history and assessments of contemporary reality.

Are the proposals for clarifying the constitutional text that the authors suggest, necessary? Should the authors also write about new challenges that the constitutions face in the current conditions? The constitutional law and its teaching are influenced by new challenges.

There are other issues that change the content and structure of course books and the methodology of teaching constitutional law. In previous constitutions, the main scope, according to the tradition laid down by the US Constitution, was occupied by the regulatory activities of the supreme state agencies. In modern conditions, socio-economic and political issues are brought to the forefront, especially those close to the population. This should be taken into account in the field of teaching and course books.

B.S. Krylov believed that the new problems of studying the comparative constitutional law of foreign countries<sup>6</sup> have “... special significance for understanding the essence of the state mechanism of modern foreign countries. These are, above all, the issues of growing dissatisfaction of a large part of the population with the policies of the ruling circles, as well as the loss of state sovereignty; secondly, discontent of the population with the lack of equality of state rights and equality of rights of citizens (population) living in them; and finally, this is the diminution of the importance and role of political parties, which have long been seen as expressing views and interests of the population”.

Constitutional law shapes the worldview of the future lawyer, their legal culture, which requires attention to history, traditions, the emergence and development of scientific ideas. However, quite often educational literature on

constitutional law contributes to the preservation of old myths and promotes the creation of myths, misleading the reader. In this regard, there is a fundamental question: if the position needs additional discussion, should the authors of the course book for Bachelor students describe their point of view as a given? In this case, in our opinion, it is more expedient to focus on the text of the Constitution of the Russian Federation in the course book. At the lecture though, "... the teacher needs ... a palette of views, they cannot act in accordance with the logic "only I'm right, the rest is not true"<sup>77</sup>.

In conclusion, the problem of the quantity and quality of educational literature. O.E. Kutafin believed, and his opinion is also relevant today, after more than 10 years, that "... a person has the right to write anything, but we have no right

to allow the publication of such a book in mass circulation, calling it a course book. Please do whatever you want, but for the right to publish educational literature there should be a contest"<sup>78</sup>.

It appears that in this case, to determine this the collective efforts of the constitutionalists are required. Obviously, it is time to talk about a new five-year experience at the meeting of constitutionalists and outline some general essential approaches.

Many more joint efforts of constitutionalists are needed in cooperation with representatives of other social and social sciences, especially on the economic and social foundations of the state, the spiritual life of the society, the nature and types of public authority and other problems. Then our course books will be more accurate and closer to life.

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- <sup>2</sup> Komarova, V.V. (2016). Retsenziia na uchebnik dlia bakalavriata V.E. Chirkina 'Konstitutsionnoe pravo' [Review of the course book by V.E. Chirkin 'Constitutional Law'], In *Obrazovanie i pravo [Education and Law]*, 2, 210-213.
- <sup>3</sup> Sizikova, N.A. (2016). Modernizatsiia prepodavaniia distsiplin gosudarstvenno-pravovogo tsikla (konstitutsionnogo prava i konstitutsionnogo prava zarubezhnykh stran) [Modernization of teaching the courses of state-legal cycle and constitutional law of foreign countries]. In *Sbornik MGIAU [Collection of Works of Moscow State Law University]*. Moscow.
- <sup>4</sup> Komarova, V.V. (2016). Otsenochnye sredstva v sovremennom iuridicheskom obrazovanii [Assessment means in modern legal education], In *Mezhdunarodnyi zhurnal eksperimentalnogo obrazovaniia [International Journal of Experimental Education]*. 5-1, 31-34.
- <sup>5</sup> Alebastrova, I.A. & Varlen, M.V. (2015). *Praktikum po konstitutsionnomu pravu [Workbook on constitutional law]*. Moscow, Norma: INFRA-M, 271 p.; Komarova, V.V. & Fadeev, V.I. (2015). *Praktikum po munitsipalnomu pravu [Workbook on municipal law]*. Moscow, Norma: INFRA-M, 160 p.; Komarova, V.V. (2017). *Praktikum po konstitutsionnomu sudebnomu protsessu [Workbook on constitutional court proceedings]*. Moscow, Norma: INFRA-M, 160 p.
- <sup>6</sup> Krylov, B.S. (2012). Nekotorye novye problemy izucheniia sravnitel'nogo konstitutsionnogo prava zarubezhnykh stran [Some new challenges of studying the comparative law of foreign countries], In *Sbornik tezisev dokladov III Mezhdunarodnoi nauchno-prakticheskoi konferentsii "Iuridicheskaiia nauka kak osnova pravovogo obespecheniia innovatsionnogo razvitiia Rossii (Kutafinskii chteniia). Sektsiia konstitutsionnogo i munitsipalnogo prava" [Collection of Articles' Theses of the 3<sup>rd</sup> International Scientific and Practical Conference "Legal Science as the Basis of Legal Support of Innovative Development of Russia "Kutafin's Readings). Section of Constitutional and Municipal Law"]*. Moscow, MGIAU imeni O.E. Kutafina, 30-32.
- <sup>7</sup> Avak'ian, S.A. (2008). Svoboda prepodavaniia: konstitutsionno-pravoivaia interpretatsiia [The Freedom of teaching: constitutional and legal interpretation], In *Aktualnye problemy prepodavaniia konstitutsionnogo i munitsipalnogo prava. Materialy Vserossiiskogo nauchno-prakticheskogo seminarara [Urgent problems of teaching constitutional and municipal law. Materials of the All-Russian Scientific and Practical Workshop]*. Moscow, 13-18, 324 p.
- <sup>8</sup> Kutafin, O.E. (2005). V iuridicheskom obrazovanii nam sleduyet sokhraniat svoi traditsii [We should maintain our own traditions in legal education], In *Rossiyskoye pravo v Internete [Russian Law in the Internet]*. 1, 2.

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# **Проблемы преподавания конституционного права России и конституционного права зарубежных стран**

**В.В. Комарова**

*Московский государственный юридический университет  
им. О.Е. Кутафина  
Россия, 125993, Москва, ул. Садовая-Кудринская, 9*

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*Актуализация вопросов, возрастание интереса юристов к сфере образования в современной России предопределены объективно существующими социальными потребностями. Сегодня образование является определяющим фактором социального статуса личности. С одной стороны, гарантированные законодательством равные условия для получения образования, наряду с установлением обязательности получения образования определенного уровня, способствуют формированию единых стартовых возможностей для всех граждан, с другой – образование влияет на многообразие социальных ролей и определяет социальные позиции индивидов. Образование признано одним из приоритетных национальных проектов, что означает активизацию организационной, нормотворческой и финансовой деятельности государства в направлении усовершенствования условий получения образования. Целью работы является исследование методов для поддержания высокой планки юридического образования в современной России. С использованием исторического, сравнительно-правового, системного методов анализируются актуальные вопросы преподавания конституционного права России и зарубежных стран; выявленные проблемы условно подразделены на сущностную и формальную. Предложены возможные пути их преодоления.*

*Ключевые слова: Конституция России, юридическое образование, проблемы преподавания, конституционное право.*

*Научная специальность: 12.00.00 – юридические науки.*

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