

# Судебные источники публичного права зарубежных стран

Магистерская программа  
«Публичное право»  
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# Контактные данные

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# Структура курса

## Часть 1. «Введение»

- Судебное правотворчество в публичном праве зарубежных стран
- Судебное решение как юридический акт

## Часть 2. «Кейсы»: США, Великобритания, Франция, Германия

## Часть 3. Институциональный подход: организация публичной власти/основные права человека.

# Письменные работы

- Домашнее задание => эссе  
(индивидуальный проект)
- Структура: введение (актуальность темы, затрагиваемой в судебном акте), факты (фабула), правовая проблема, аргументы сторон, правовая позиция суда + позиция автора – не менее 3 аргументов со ссылкой на различные библиографические источники;

# Формула оценки

- Накопленная оценка за текущий контроль :

$$O_{\text{накопленная}} = 0,5 * O_{\text{текущий}} + 0,3 * O_{\text{ауд}} + 0,2 * O_{\text{сам.работа}}$$

- Результирующая оценка :

$$O_{\text{результ}} = 0,6 * O_{\text{накопл}} + 0,4 * O_{\text{экз/зач}}$$

# Title 1. Judicial rulings as a source of public law

- **Chapter 1. Judiciary on the conquest of power**

*Does it a truly constitutional power or just one of the governmental functions (like army)?*

*Whether the judicial **power** is compatible or not with democracy? How the political questions should be treated by judges?*

- Chapter 2. Models and scope of judicial review

- Chapter 3. National judiciary vs international courts

# Tema 1. Judiciary on the conquest of power

- Judiciary: is it constitutional power or just one of the state functions?
- Whether the judicial power is compatible with democracy when the people is a source of all power of government?
- How the political questions should be treated by judges?

# John Locke, Two Treatises of Government (1689)

- 3 powers: "legislative," "executive," and "federative".
- The legislative branch must to be supreme, while the executive and federative functions-internal and external affairs, respectively- are within the control of the monarch



# Montesquieu, The Spirit of law (1748)

- there is no liberty, if the **judiciary power** be not separate from the legislative and executive.

Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator.

Were it joined to the executive power, the judge might behave with violence and oppression.

There would be an end of everything, were the same man or the same body... to exercise those three powers, that of enacting the laws, that of executing the public resolutions, and of **trying the cases of individuals**

# Montesquieu, The Spirit of law (suite)

- *Les juges de la nation ne sont que la bouche qui prononce les paroles de la loi, des êtres inanimés, qui n'en peuvent modérer ni la force ni la rigueur.*
- **Maximilien de Robespierre:** Ce mot de "jurisprudence" doit être effacé de notre langue. Dans un Etat qui a une constitution, une législation, la jurisprudence des tribunaux n'est autre chose que la loi

# Hans Kelzen, The pure theory of law and state

- There not three, but 2 basic *functions* of the State: creation and application (execution) of the law. In particular, courts exercise the legislative power when they declare the laws to be unconstitutional ones