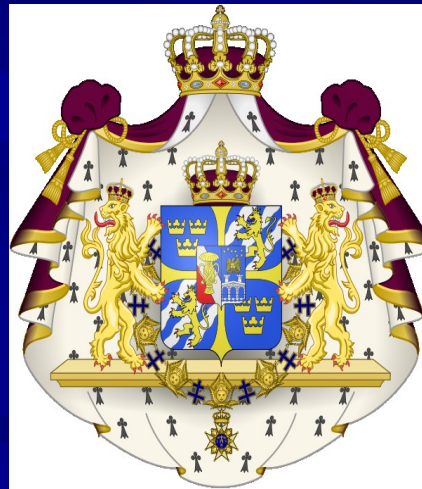
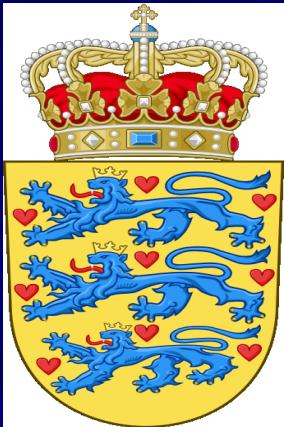
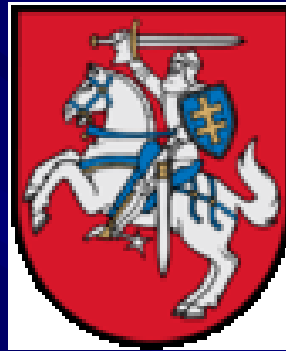


MYKOLAS ROMERIS UNIVERSITY
FACULTY OF LAW

**CONSTITUTIONS and SEPARATION OF
POWERS: Baltic Sea States**

**(Finland, Estonia, Latvia, Lithuania, Poland,
Denmark, Sweden, Norway)**

Gediminas Mesonis



The themes of the lectures

- I. Constitutional tradition of the Counties of Baltic Sea States (Lithuania, Latvia, Estonia, Poland, Finland, Denmark, Sweden, Norway): concept and the features of the modern constitutions.
- II. The principle of the “*Separation of Powers*” (SOP): reflection at the constitutional systems of the Baltic States (Lithuania, Latvia, Estonia, Poland, Finland, Denmark, Sweden, Norway).

Origin and development of the Constitutionalism at Baltic Sea States (Lithuania, Latvia, Estonia)

- The Middle Ages - 1791: the way to the first European Constitution
- Scandinavia: free development XIX-XX
- 1918 -1939: Nationalist Dictatorships
- 1945 -1990: Communist Dictatorships

USTAWA RZĄDOWA.

—————

PRAWO UCHWALONE.

Dnia 3 Maja, Roku 1791.



W WARSZAWIE,

u P. DEFOUR Konfyt: Nadw: J. K. Mci
i Dyrektora Druk: Korp: Kad:



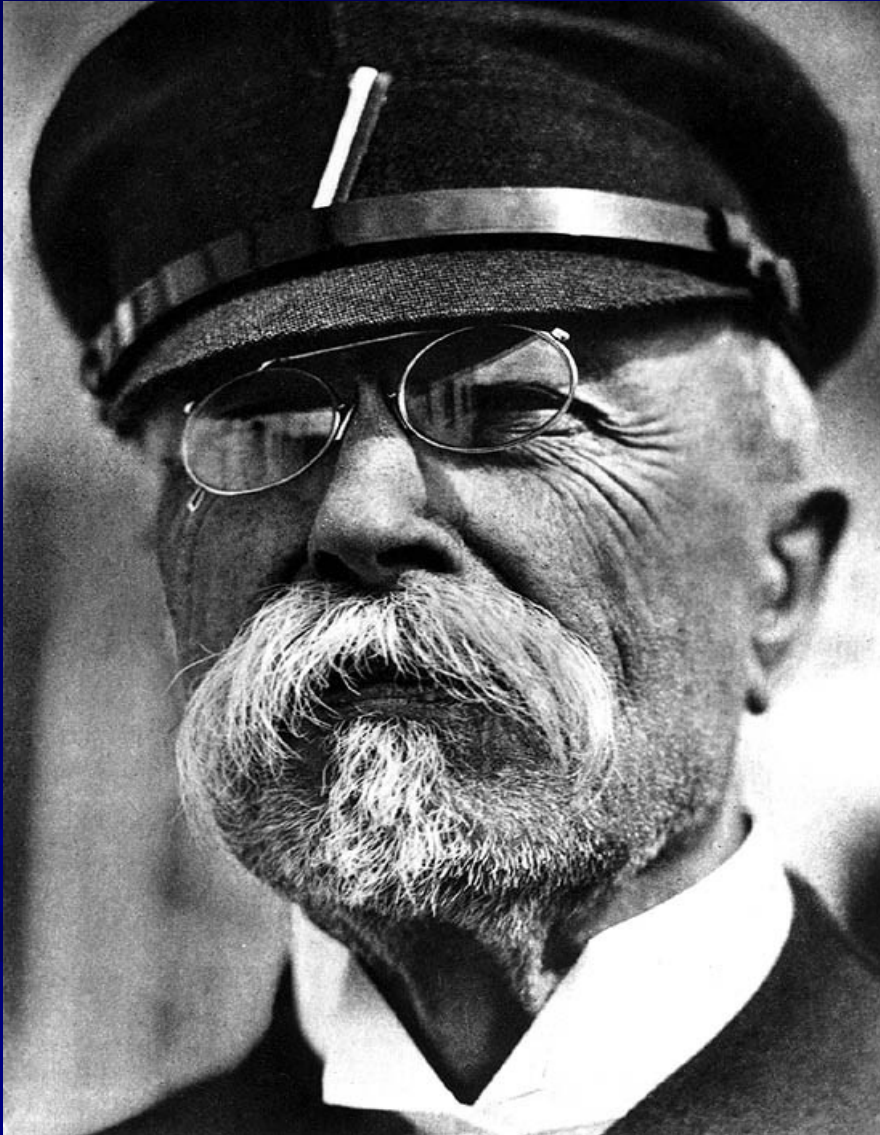
The features of the Constitution of 3 May, 1791

- The Commonwealth (**Rzeczpospolita**) - the Polish-Lithuanian state (composed of the Crown - Poland and the Grand Duchy of Lithuania) was a European power still during the 16th and the first half of the 17th centuries. However, it became dependent on its neighbors - Prussia, Austria and Russia in particular during the 18th century.
- The Constitution of 3 May 1791 is generally recognized as **Europe's first modern codified national constitution**, as well as the second oldest national constitution in the world.
- The Constitution comprised 11 articles. It introduced the principle of popular sovereignty (applied to the nobility and townspeople) and a separation of powers into legislative (a bicameral Sejm), executive ("the King in his council") and judicial branches.

Period of the dictatorships and democracy at BSS: 1918 -1940



Czechoslovakia experiment: T.G.M (1850 -1937)



- Philosopher
- President
- Professor

“Democracy is discussion”

The aspects of the classification of Constitutions

- by the character of adoption;
- by complexity of amending and changing process;
- by written / unwritten aspect of expression;
- by validity period;
- by factual implementation of constitutional norms;
- by codification;
- by plenty of public relations which are regulating;
- by state form (government form; form of state structure; type of political – legal regime (system)).

Constitutions by the character of adoption

SWEDEN (1974, 1810, 1949, 1991)		By State Parliament
FINLAND	2000	By State Parliament
DENMARK	1953	By referendum
NORWAY	1814	By Constitutional assembly
ESTONIA	1992	By referendum
LATVIA	1922	By Constitutional assembly
LITHUANIA	1992	By referendum
POLAND	1997	By referendum
CZECH REP.	1992	By State Parliament

The Constitution of Sweden

- The 1974 Instrument of Government (Swedish: Regeringsformen)
- The 1810 Act of Succession (Swedish: Successionsordningen)
- The 1949 Freedom of the Press Act (Swedish: Tryckfrihetsförordningen)
- The 1991 Fundamental Law on Freedom of Expression (Swedish: Yttrandefrihetsgrundlagen)

Constitutions by complexity of amending and changing procedure

FINLAND	Rigid Constitution
SWEDEN	Rigid Constitution
DENMARK	Rigid Constitution
NORWAY	Rigid Constitution
ESTONIA	Rigid Constitution
LATVIA	Rigid Constitution
LITHUANIA	Rigid Constitution
POLAND	Rigid Constitution
CZECH REPUBLIC	Rigid Constitution

Amendment and changing of the Constitutions: Baltic States

EST	<p>The Constitution may be amended by a law which is adopted by:</p> <p>1) referendum; 2) two successive complements of the Parliament; A draft law to amend the Constitution shall be considered during three readings in the Parliament, whereby the interval between the first and second readings shall be at least three months, and the interval between the second and third readings shall be at least one month. The manner in which the Constitution is amended shall be decided at the third reading. In order to put a proposed amendment to the Constitution to referendum, the approval of a three-fifths majority of the complement of the Parliament shall be mandatory. The referendum shall not be held earlier than three months from the time that such a resolution is adopted in the Parliament.</p> <p>In order to amend the Constitution by two successive complements of the Parliament, the draft law to amend the Constitution must receive the support of the majority of the complement of the Parliament. If the next complement of the Parliament adopts the draft which received the support of the majority of the previous complement, without amendment, on its first reading and with a three-fifths majority of its complement, the law to amend the Constitution shall be adopted. (Articles 161-168).</p>
LAT	<p>The Parliament may amend the Constitution in sittings at which at least two-thirds of the members of the Parliament participate. The amendments shall be passed in three readings by a majority of not less than two-thirds of the members present. If the Parliament has amended Articles 1,2,3,4,6, or 77 of the Constitution, such amendments, in order to come into force as law, shall be submitted to a national referendum. An amendment to the Constitution submitted for national referendum shall be deemed adopted if at least half of the electorate has voted in favor. A draft law submitted for national referendum shall be deemed adopted if the number of voters is at least half of the number of electors as participated in the previous Parliament election and if the majority has voted in favor of the draft law. (Articles 76-78).</p>
LTU	<p>The provision of Article 1 that the State of Lithuania is an independent democratic republic may only be amended by a referendum in which at least three-fourths of the electorate of Lithuania vote in favor thereof. Amendments of other chapters of the Constitution must be considered and voted upon in the Parliament twice. There must be a lapse of at least three months between each vote. Bills for constitutional amendments shall be deemed adopted by the Parliament if, in each of the votes, at least two-thirds of all the members of the Parliament vote in favor of the enactment. (Articles 147, 148).</p>

AN INSTITUTIONS OF CONSTITUTIONAL JUSTICE (I)

<p>LITHUANIA www.lrkt.lt</p>	<p>Constitutional Court 9 justices</p>	<p>The Government, no less than 1/5 of the members of the Parliament, and the courts shall have the right to address the Constitutional Court. No less than 1/5 of the members of the Parliament and the courts shall have the right to address the Constitutional Court concerning the conformity of acts of the President with the Constitution and the laws.</p>
<p>LATVIA www.satv.tiesa.gov.lv</p>	<p>Constitutional Court 7 justices</p>	<p>The right to submit an application: the President; the Saeima; not less than twenty members of the Saeima; the Cabinet of Ministers; the Prosecutor General; the Council of the State Control; the Dome (Council) of a municipality; the State Human Rights Bureau; a court, when reviewing an administrative, civil or criminal case; a person whose fundamental rights established by the Constitution have been violated.</p>
<p>ESTONIA www.nc.ee</p>	<p>The Supreme Court 19 justices</p>	<p>Constitutional review petitions are heard by the Constitutional Review Chamber which consists of 7 members.</p>

AN INSTITUTIONS OF CONSTITUTIONAL JUSTICE (II)

<p>POLAND www.trybunal.gov.pl</p>	<p>Constitutional Tribunal 15 justices</p>	<p>The President of the Republic, the Marshal of the Sejm, the Marshal of the Senate, the Prime Minister, 50 Deputies, 30 Senators, the First President of the Supreme Court, the President of the Chief Administrative Court, the Public Prosecutor-General, the President of the Supreme Chamber of Control and the Commissioner for Citizens' Rights, the constitutive organs of units of local self-government; the national organs of trade unions as well as the national authorities of employers' organizations and occupational organizations; churches and religious organizations;</p>
<p>CZECH REPUBLIC www.concourt.cz</p>	<p>Constitutional Court 15 justices</p>	<p>The Constitutional Court shall act on an initiative: a) the President; b) a group of at least 41 Deputies or a group of at least 17 Senators; c) a Panel of the Court in connection with deciding a constitutional complaint; d) the government e) the representative body of a region; f) the Public Protector of Rights ["Ombudsman"]; g) the Interior Minister; h) the competent minister; k) the representative body of a municipality, in cases concerning petitions proposing the annulment of a legal enactment of a region within the territory of which the municipality lies.</p>
<p>SLOVAKIA www.concourt.sk</p>	<p>Constitutional Court 10 justices</p>	<p>The Constitutional Court initiates proceedings on the basis of a proposal by a) at least one-fifth of deputies of the National Council of the Slovak Republic, b) the president of the Slovak Republic, c) the Government of the Slovak Republic, d) the court, e) the general prosecutor, f) in cases listed under Article <u>127</u>, anyone whose rights are to become the subject of inquiry.</p>

AN INSTITUTIONS OF CONSTITUTIONAL JUSTICE (III)

FINLAND	The Supreme Court	www.kko.fi
NORWAY	The Supreme Court	www.domstol.no
SWEDEN	The Supreme Court	www.domstol.se
DENMARK	The Supreme Court	www.domstol.dk

FINLAND

- **Section 74 Supervision of constitutionality**
- The Constitutional Law Committee shall issue statements on the constitutionality of legislative proposals and other matters brought for its consideration, as well as on their relation to international human rights treaties.

Theory of the “Separation of Powers”

- John Locke:
“Second Treatise of Government”
- Charles-Louis de Secondat, Baron de La Brède et de Montesquieu:
“The Spirit of the Laws”
- Alexander Hamilton, James Madison, and John Jay:
“The Federalist papers”

The separation of powers embodies a different philosophy, that of balancing power between different bodies so that no power can act without the co-operation of the others, and each checks the others. On this conception is creating the doctrine of the system of checks and balances.

John Locke (1632 -1704)

- J. Locke found the origin of the legislative and executive authority in the powers man had in the state of nature. The first of these was to do whatever he thought fit for the preservation of himself and others within the limits of the Law of Nature. This was the origin of legislative power. The second power man had in the state of nature was the power to punish crimes committed against the Law of Nature. This was the origin of the executive power. J. Locke marked third power – “Federative power”. The federative power contains “ the power of war and peace, leagues and alliances, and all the transactions, with all persons and communities without the Commonwealth”.
- J. Locke selected the legislative like a “supreme power”. So, these three powers were not equal in Locke’s system of separation of powers. The doctrine of popular sovereignty was so actual at that time, time of contradiction between the King and parliament. The judicial function was a part of executive function, on the J. Locke point of view.

Montesquieu (1689 – 1755) (*De l'esprit des lois*)

- Montesquieu described division of political power **between an executive, a legislature, and a judiciary**. He based this model on the British constitutional system, in which he perceived a separation of powers between king, Parliament, and the courts of law.
- To prevent one branch from becoming supreme, and to induce the branches to cooperate, governance systems employing a separation of powers typically are created with a system of "checks and balances", a term which, like separation of powers itself, is generally credited to Montesquieu.

“The Federalist papers”: background of the concept of the checks and balances system

- The **Federalist Papers** are a series of 85 articles arguing for the ratification of the United States Constitution.

The articles were written by Alexander Hamilton (who probably wrote 51 of them), James Madison (29), and John Jay (5).

- The separation of powers embodies a different philosophy, that of balancing power between different bodies so that no power can act without the cooperation of the others, and each checks the others. On this conception is creating the doctrine of the system of checks and balances.

“Separation of Powers” in the Constitution of the BSC

ESTONIA	DIRECT Art.4 of the Constitution
LATVIA	CONSTRUCTIVE
LITHUANIA	CONSTRUCTIVE
FINLAND	DIRECT Art 3 of the Constitution
SWEDEN	CONSTRUCTIVE
DANMARK	DIRECT Art 62 of the Constitution
NORWAY	CONSTRUCTIVE
POLAND	DIRECT Art.10 of the Constitution
CZECH REP.	CONSTRUCTIVE

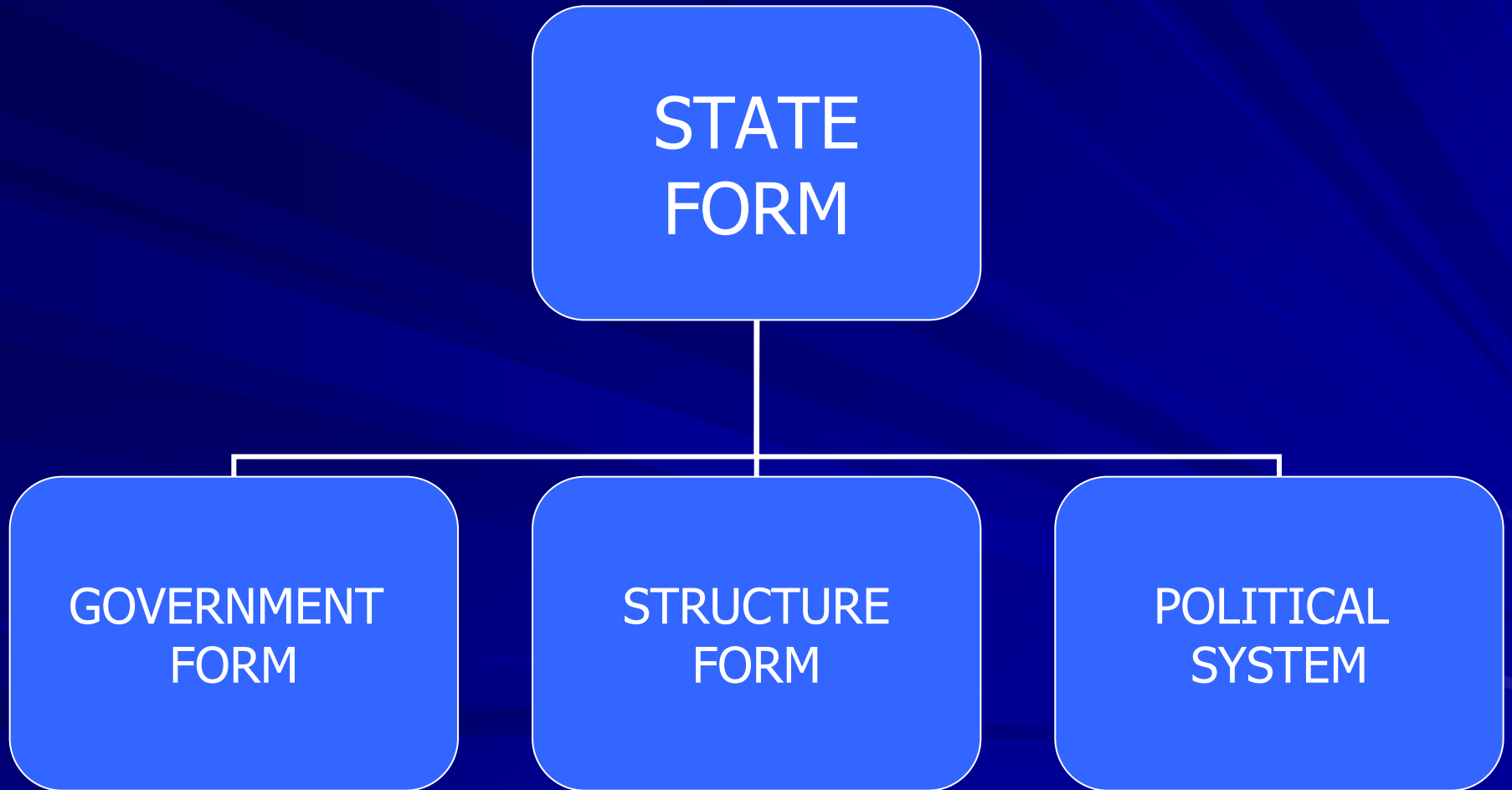
Constitutions by validity period

ESTONIA	Permanent Constitution
LATVIA	Permanent Constitution
LITHUANIA	Permanent Constitution
POLAND	Permanent Constitution
FINLAND	Permanent Constitution
NORWAY	Permanent Constitution
DENMARK	Permanent Constitution
SWEDEN	Permanent Constitution
HUNGARY	TEMPORAL Constitution

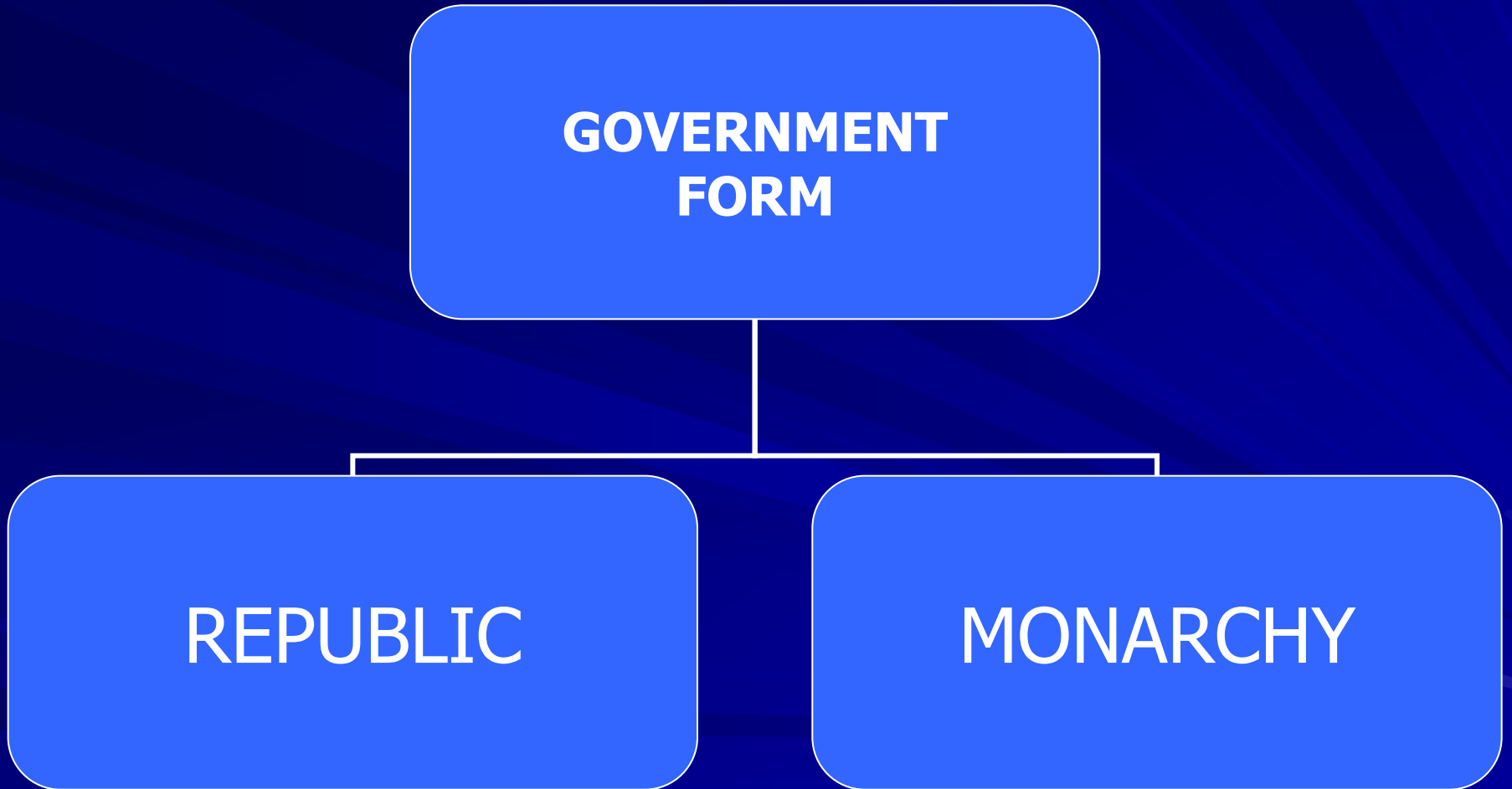
Implementation of constitutional norms: material v. formal

ESTONIA	Material Constitution
FINLAND	Material Constitution
SWEDEN	Material Constitution
DENMARK	Material Constitution
NORWAY	Material Constitution
LATVIA	Material Constitution
LITHUANIA	Material Constitution
POLAND	Material Constitution

STATE FORM: SISTEMIC CONSTRUCTION



Government FORMS



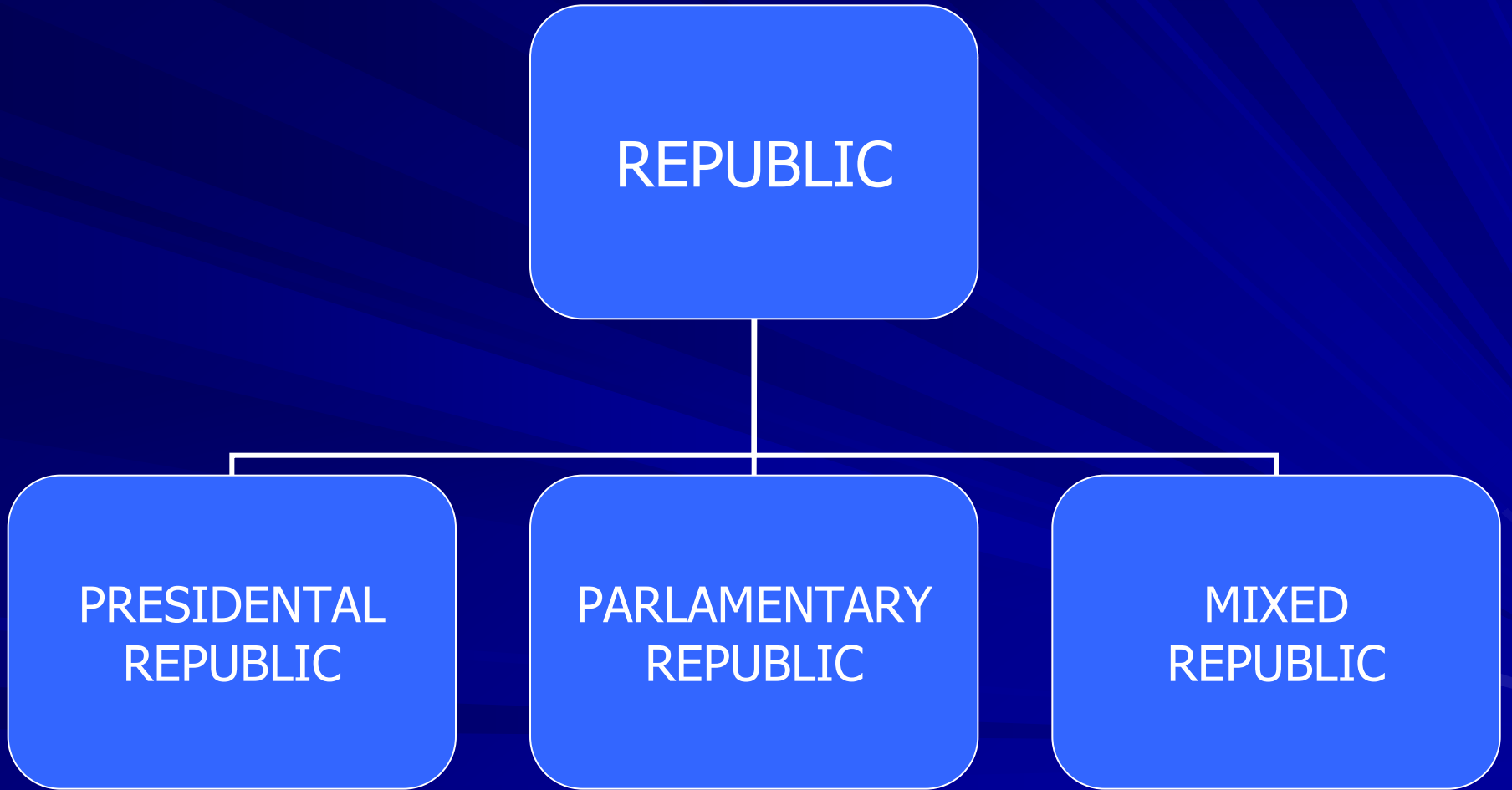
REPUBLIC

REPUBLIC

PRESIDENTIAL
REPUBLIC

PARLAMENTARY
REPUBLIC

MIXED
REPUBLIC



MONARCHY

MONARCHY

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graph TD; A[MONARCHY] --- B[PARLIAMENTARY MONARCHY]; A --- C[DUALISTIC MONARCHY]; A --- D[ABSOLUT MONARCHY]
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PARLIAMENTARY
MONARCHY

DUALISTIC
MONARCHY

ABSOLUT
MONARCHY

GOVERNMENT FORM: MAIN CRITERIA

PRESIDENTIAL FORM OF GOVERNMENT	PARLIAMENTARY FORM OF GOVERNMENT	MIXED FORM OF GOVERNMENT
Government is not political accountable to parliament	Government is political accountable to parliament	Government is political accountable to the President and Parliament

MAIN CRITERIA OF THE GF IN THE CONSTITUTIONS

EST	<p>The Parliament shall decide on votes of no-confidence in the Government of the Republic, the Prime Minister or individual ministers; The Government of the Republic shall resign when the Parliament expresses no-confidence in the Government or the Prime Minister.</p> <p><i>Constitution of the Republic of Estonia. Articles 65 (13), 92 (3).</i></p>
LAT	<p>The Prime Minister and other Ministers must have the confidence of the Parliament and they shall be accountable to the Parliament for their actions. If the Parliament expresses no confidence in the Prime Minister, the entire Government shall resign.</p> <p><i>Constitution of the Republic of Latvia. Article 59.</i></p>
LIT	<p>The <i>Seimas</i> (Parliament) shall supervise the activities of the Government, and may express non – confidence in the Prime Minister or individual Ministers.</p> <p><i>Constitution of the Republic of Lithuania. Article 67.</i></p>
POL	<p>The members of the Council of Ministers shall be collectively responsible to the House of Representatives (<i>Sejm</i>) for the activities of the Council of Ministers. The House of Representatives (<i>Sejm</i>) shall pass a vote of no confidence by a majority of votes of the statutory number of Deputies.</p> <p><i>Constitution of the Republic of Poland. Article 157 (1), 158 (1).</i></p>
CZ	<p>The Government is accountable to the Chamber of Deputies. The Chamber of Deputies may pass a vote of no confidence in the Government.</p> <p><i>Constitution of the Czech Republic. Articles 68 (1-3), 72.</i></p>

MAIN CRITERIA OF THE GF IN THE CONSTITUTIONS

<p>FIN</p>	<p><i>(2) The Ministers are responsible before the Parliament for their actions in office. Every Minister participating in the consideration of a matter in a Government meeting is responsible for any decision made, unless he or she has expressed an objection that has been entered in the minutes.</i></p> <p><i>Constitution of the Republic of Finland. Articles 60.</i></p>
<p>SWE</p>	<p><i>The Parliament is the foremost representative of the people.</i></p> <p><i>The Parliament enacts the laws, determines taxes and decides how public funds shall be used. The Parliament shall examine the government and administration of the country.</i></p> <p><i>The Government rules the country. It is responsible to the Parliament.</i></p> <p><i>Constitution of the Sweden (Basic principles) Article 4, 6.</i></p>
<p>DK</p>	<p><i>1) A Minister shall not remain in office after the Parliament has passed a vote of no confidence in him.</i></p> <p><i>2) Where the Parliament passes a vote of no confidence in the Prime Minister, he shall ask for the dismissal of the Ministry unless writs are to be issued for a general election. Where a vote of censure has been passed on a Ministry, or it has asked for its dismissal, it shall continue in office until a new Ministry has been appointed.</i></p> <p><i>Constitution of the Denmark. Article 15.</i></p>
<p>NOR</p>	<p><i>The members of the State Council of Ministers shall be collectively responsible to the House of Representatives for the activities of the Council of Ministers.</i></p> <p><i>Constitution of the Norway</i></p>

AUXILIARY CRITERIA IN THE SYSTEM OF CHEKS AND BALANCES

- The impeachment of executive officers
- The ways of presidential elections
- The ways of parliamentary elections
- President *veto* rights
- President's powers to dissolve the parliament
- President's powers to lead the executive
- President's right to call referendum
- Extraordinary powers of President
- *De facto* (constitutional conventions) content of powers

The government form

FINLAND	Parliamentary republic
SWEDEN	Parliamentary monarchy
DENMARK	Parliamentary monarchy
NORWAY	Parliamentary monarchy
ESTONIA	Parliamentary republic
LATVIA	Parliamentary republic
LITHUANIA	Parliamentary republic
POLAND	Parliamentary republic (?)
CZECH REPUBLIC	Parliamentary republic

Parliaments of the BSC countries: internet addresses

ESTONIA	Riigikogu (101 dep.)	www.riigikogu.ee
LATVIA	Saeima (100 dep.)	www.saeima.lv
LITHUANIA	Seimas (141 dep.)	www.lrs.lt
POLAND	Sejm (460 dep.) Senat (100 dep.)	www.sejm.gov.pl www.senat.gov.pl
FINLAND	Eduskunta (200 dep.)	www.eduskunta.fi
SWEDEN	Riksdag (349 dep.)	www.riksdagen.se
DENMARK	Folketing (179 dep.)	www.ft.dk
NORWAY	Storting (169 dep.)	www.stortinget.no

The state structure form and political system

ESTONIA	UNITARY	DEMOCRATIC
LATVIA	UNITARY	DEMOKRATIC
LITHUANIA	UNITARY	DEMOKRATIC
POLAND	UNITARY	DEMOKRATIC
FINLAND	UNITARY	DEMOKRATIC
SWEDEN	UNITARY	DEMOKRATIC
DENMARK	UNITARY	DEMOKRATIC
NORWAY	UNITARY	DEMOKRATIC

Exam: MU, Brno

Constitution and Constitutional systems of the Baltic SEA States

1. “*Living constitution*” or “*invisible constitution*”—
(30 min.)
2. The “*gaps*” at Constitutional regulation: Who can resolve this problem? Is it problem?
(30 min.)
3. Constitutional *jurisprudence*: Is it part of constitution?
(30 min.)

Executive (presidents, monarchs) *veto at: xxxxxxxx*
(30 min.)