Course Description

CONSTITUTIONALISM AND DEMOCRACY

Lecturer: Nenad Dimitrijevic
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Meeting time:
Office hours: two hours after each class meeting
Number of credits: 4 (8 ECTS credits)
Teaching format: a lecture and seminar cover each topic

Course goals: overview

This course explores the meaning of constitutionalism, its basic features, and its relationship to democracy. It is assumed that the central categories of constitutionalism – basic rights, the rule of law, limited government, constitutional judiciary, the constitution – are relevant for political science and political theory. While the course is organized largely around fundamental categories rather than country-specific case studies, the readings and lectures will raise topics that students are encouraged to apply to the analysis of their own or other countries, both in seminar discussions and in written work.

We begin with a conceptual and normative inquiry into the notions of constitutionalism and constitution. Next we discuss the political and legal aspects of constitution-making. We proceed by exploring basic elements of the constitutional content: fundamental rights and formal institutional arrangements. Following the premise that the constitutional text matters to the extent it effectively promotes liberty, equality, the rule of law, and democracy, we will pay attention to both ‘law in books’ and ‘law in action’. In this context, we will also explore the ambivalent relationship between culture and constitutionalism. Upon these analyses, we will address two issues that feature importantly in the contemporary constitutionalist discourse: the state of emergency and the EU constitutionalism.

Expected outcomes

By the end of the course students will acquire an understanding of the key categories of constitutional democracy: constitution and constitutionalism, basic rights, the rule of law, governmental forms, and constitutional judiciary. In this way students of politics will master theoretical concepts, institutional arrangements and practices of constitutional democracy, in a manner that would enable them to make use of this knowledge in pursuing their more specific academic interests.
Course requirements and evaluation

This is a four-credit course. A lecture and a seminar will cover each topic. One of you will be asked to prepare a short presentation for each seminar class, as the basis for a more concentrated discussion. Your presentation will take approx. 20 minutes, and it will be based on a short position paper (2-3 pages), that you will distribute electronically to all class participants and to me before 4 pm, on the day preceding the seminar class. Your presentation should contain short critical evaluation of the topic and of the way it is presented in the literature, as well as questions that you think need to be raised in the seminar discussion. A general class discussion will follow. The presentation will be graded.

Classes are mandatory. I will take attendance. You will need to provide written documentation or adequate oral explanation of legitimate circumstances that prevented you from attending class. Legitimate circumstances include illness, serious family emergencies, and participation in group activities sponsored by CEU. The same is required in case you fail to show up for exam. Should you fail to provide required excuse, you will not receive credits for the course.

Questions and comments during lectures are welcome. Active participation in seminars is required. You are expected to come to seminars prepared for in-depth discussion of the topics and the required readings. The readings classified as ‘optional’ are for your further consideration and reference – you may find them particularly useful when preparing your presentations.

You are expected to be familiar with the CEU policies on scholarly dishonesty. Plagiarism and other acts of academic dishonesty will result in automatic failure of the course and immediate referral to the appropriate committee for academic discipline.

The use of electronic devices (laptops, tablets, e-readers, phones, etc.) is not allowed.

There will be a mid-term exam after we complete topic six. You will be asked to answer a couple of short questions that will address issues raised in the first six topics.

There will be an end-term exam in the last week of the course. You will be asked to answer a couple of short questions that will address issues raised in the topics 7-11.

Grading will depend on the above presented features, in the following way:

- class participation: 25%
- seminar presentation: 15%
- mid-term exam: 30%
- end-term exam: 30%

Important note: Grading of the mid-term and end-term exams will be based on the CEU’s Student Rights, Rules, and Academic Regulations. I will not be translating various letter grades to a 100-point scale.

Week by week breakdown

First meeting. Introducing the course (Outlining the focus and the goals of the course. Identifying fundamental questions. Presenting the topics. Discussing requirements).
Topic 1. Basic concepts: constitutionalism, constitution, and democracy (Analytical and normative features of constitutionalism. Legal and political identification of constitution. On the relationship between constitutionalism and democracy)

Mandatory readings

Optional readings
- Janos Kis, Constitutional Democracy (Budapest: CEU Press, 2003)

Mandatory readings


Optional readings

- Walter Murphy, Constitutional Democracy. Creating and Maintaining a Just Political Order (Baltimore: John Hopkins UP, 2007)
- Sujit Choudry (ed.), The Migration of Constitutional Ideas (Cambridge: Cambridge University Press, 2006)

Topic 3. Rights I: The notion of constitutional rights (An analytical perspective: what we have when we have rights. Rights as protective and empowering rules. Entitlements and relationships. Claims and duties. Right-holders and right-addresses. Types of rights. Conflicts among rights)

Mandatory readings

- Andras Sajo, Limiting Government. An Introduction to Constitutionalism, Chapter VIII (Budapest: CEU Press, 1999)

Optional readings


Eva Brems (ed.), *Conflicts Between Fundamental Rights* (Antwerp: Intersentia, 2008)


George Rainbolt, *The Concept of Rights* (Dordrecht: Springer, 2006)


**Mandatory readings**


**Optional readings**


**Mandatory readings**

**Optional readings**

**Topic 6. Institutional structure I. Foundations: The rule of law and the separation of powers** (Politics within the limits of law. Legal, political, and normative features of the rule of law: can they be separated? The separation of powers and its requirements: personal, functional, and organizational divisions. Checks & balances)

**Mandatory readings**

**Optional readings**

**Mid-term exam in the week following Topic Six**


**Mandatory readings**

**Optional readings**
• Carl Friedrich, *Constitutional Government ad Democracy* (Waltham: Blaisdel, 1968)

guards the guardian? Constitutional courts in contemporary post-authoritarian contexts. Judicial appointments, organization and functions)

**Mandatory readings**


**Optional readings**


**Mandatory readings**


**Optional readings**

- Bruce Ackerman, *Before the Next Attack. Preserving Civil Liberties in an Age of Terrorism* (New Haven: Yale University Press, 2006)


**Mandatory readings**

**Optional readings**

**Topic 11. EU Constitutionalism** (Political and constitutional evolution of the Union. The legal and political character of the Union: an intergovernmental organization, a federation, or a *sui generis* polity beyond the state? Does the EU have a constitution? Democratic deficit. Europe in crisis)

**Mandatory readings**

Optional readings
• Erik Eriksen, The Unfinished Democratization of Europe (New York: Oxford University Press, 2009)
• Carlos Closa (ed.), The Lisbon Treaty and National Constitutions. Europeanisation and Democratic Implications (Oslo: ARENA/RECON, 2009), at http://www.reconproject.eu

End-term exam in the last week of the course.