Central European University
Political Science Department
MA Program
Academic year 2017/2018
Winter Semester

Course Description

CONSTITUTIONALISM AND DEMOCRACY

Lecturer: Nenad Dimitrijevic
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Meeting time: Tuesdays 11-12:40 and Thursdays 11-12:40
Office hours: Mondays and Tuesdays 13-15
Number of credits: 4 (8 ECTS credits)
Teaching format: a lecture and seminar cover each topic

Overview of course goals

This course explores the meaning of constitutionalism, its basic features, and its relationship to democracy. It is assumed that the central categories of constitutionalism – the constitution, basic rights, the rule of law, separation of powers, limited government, constitutional judiciary – 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 foundational principles of 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 three issues that feature importantly in the contemporary constitutionalist discourse: the state of emergency, the EU constitutionalism, and global constitutionalism.

**Expected outcomes**

By the end of the course students will acquire an understanding of the key categories of constitutional democracy. These categories include concepts (constitutionalism, democracy, the rule of law), institutions (basic rights, governmental forms, constitutional judiciary), and processes (constitution-making, rights protection, constitutional culture). The concepts, institutions, and processes will be studied at state and supra-national levels. The intention is to help students of politics to 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 lecturer 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 commented and 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, phones, tablets, e-readers, 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 a **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: 20%


- seminar presentation: 20%
- mid-term exam: 30%
- end-term exam: 30%

Week by week breakdown

**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**


**Mandatory readings**

**Optional readings**
• Donald Lutz, Principles of Constitutional Design (New York: Cambridge University Press, 2006)
• 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**

**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


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**
• Garry Jacobsohn, *Constitutional Identity*, Ch. 3 (Cambridge, MA: Harvard University Press, 2010)

**Topic 10. Constitutionalism beyond the state I: Global constitutionalism** (Decline of state sovereignty. Globalization: what kind of polity, which law, and whose law? How to identify political, economic and social actors, and how to understand their relationships? The problem of democratic legitimacy)

**Mandatory readings**

**Optional readings**


**Topic 11. Constitutionalism beyond the state II: 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**


• 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.