

Central European University  
Political Science Department  
MA Program  
Academic year 2022/2023  
Fall Semester

## **Course Description**

### **CONSTITUTIONALISM AND DEMOCRACY**

Lecturer: Tamas Meszerics

Number of credits: 2 (4 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 some of 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 democracy. We proceed by exploring basic elements of the constitutional content: fundamental rights and foundational principles of formal institutional arrangements. Next we address several democracy-related challenges: participation, pluralism and conflict, individual choice and group preference formation, as well as political challenges from agonism and populism.

#### **Expected outcomes**

By the end of the course students will acquire an understanding of the key categories of constitutional democracy. 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 two-credit course. One lecture and one seminar will cover each topic. You are required to submit one short position papers (2-3 pages) on one of the topics on the e-learning site before the seminar meeting. The position paper should contain a 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.

Seminars are mandatory. Active participation in seminars is required. You are expected to come to seminar meetings 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 the position papers.

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.

For each seminar meeting you are expected to submit one question on the Forum section of the topic on the e-learning site. The question can be empirical, theoretical, or just clarificatory. It will be used to inform the seminar discussion. You are encouraged to check the questions of the other on the forum and engage in an online discussion if you are so motivated.

There will be **an end-term exam** in the last week of the course. You will be assigned open-ended essay questions that will address issues raised in any of the topics covered. The format will be take-home essay, where you can use any source material (with appropriate attribution and referencing) for composing a maximum 1,500-word essay within 72 hours.

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

- class participation: 15 %
- questions 15 %
- position paper: 30 %
- end-term exam: 40 %

### **Topic by topic breakdown**

#### **Topic 1. Basic concepts: constitutionalism, constitution, constitution-making**

Analytical and normative features of constitutionalism. Legal and political identification of constitution. The relationship between constitutionalism and democracy. Who makes the constitution. Procedural rules of constitution-making. Timing. Types of constitutional revision.

#### Mandatory readings

- Dieter Grimm, “Types of Constitutions”, in Michel Rosenfeld and Andras Sajó (eds.), *The Oxford Handbook of Comparative Constitutional Law* Oxford, Oxford University Press, 2012
- Jon Elster, “Forces and Mechanisms in the Constitution-Making Process”, *Duke Law Review*, Vol. 45, 1995-1996.

#### Optional readings

- Andras Sajó and Renata Uitz, *The Constitution of Freedom. An Introduction to Legal Constitutionalism*, Chapter 1 Oxford: Oxford University Press, 2017
- David Dyzenhaus, “The Idea of a Constitution”, in David Dyzenhaus and Malcolm Thorburn (eds.), *Philosophical Foundations of Constitutional Law* Oxford: Oxford University Press, 2016
- Wil Waluchow, “Constitutionalism”, *Stanford Encyclopedia of Philosophy*, 2012, <http://plato.stanford.edu/archives/win2012/entries/constitutionalism/>
- Stephen Holmes, “Constitutions and Constitutionalism”, in Michel Rosenfeld and Andras Sajó (eds.), *The Oxford Handbook of Comparative Constitutional Law* Oxford: Oxford University Press, 2012
- Walter Murphy, “Constitutions, Constitutionalism, and Democracy”, in Douglas Greenberg et al (eds.), *Constitutionalism and Democracy. Transitions in the Contemporary World* New York: Oxford University Press, 1993
- Dennis Mueller, *Constitutional Democracy* Oxford: Oxford University Press, 2000
- Stephen Gardbaum, “Revolutionary Constitutionalism”, *I-CON*, Vol. 15, No. 1, 2017
- Andrew Arato, *Post-Sovereign Constitution-Making. Learning and Legitimacy* Oxford: Oxford University Press, 2016
- Rosalind Dixon, “Constitutional Drafting and Distrust”, *I-CON*, Vol. 13, No. 4, 2015

## **Topic 2. The institutions: rule of law, separation of powers, constitutional adjudication**

Politics within the limits of law. The separation of powers and its requirements: personal, functional, and organizational divisions. Checks & balances. What is constitutional adjudication? Who interprets, and how.

#### Mandatory readings

- John Tasioulas, “The Rule of Law”, in John Tasioulas (ed.), *The Cambridge Companion to the Philosophy of Law* (Cambridge University Press, 2019), at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3216796](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3216796)
- Alec Stone Sweet, “Constitutional Courts”, in Michel Rosenfeld and Andras Sajó (eds.), *The Oxford Handbook of Comparative Constitutional Law* Oxford, Oxford University Press, 2012

### Optional readings

- Eric Barendt, “Separation of Powers and Constitutional Government”, in Richard Bellamy (ed.), *The Rule of Law and the Separation of Powers* Aldershot: Ashgate/Dartmouth, 2005
- Venice Commission, *Rule of Law Checklist*, 2016, at [www.venice.coe.int](http://www.venice.coe.int)
- Martin Krygier, “Rule of Law”, in Michel Rosenfeld and Andras Sajó (eds.), *The Oxford Handbook of Comparative Constitutional Law* Oxford: Oxford University Press, 2012
- T. R. S. Allan, “The Rule of Law”, in David Dyzenhaus and Malcolm Thorburn (eds.), *Philosophical Foundations of Constitutional Law* (Oxford: Oxford University Press, 2016)
- Ronald Dworkin, *Law’s Empire* London: Fontana Press, 1986)
- Andras Sajó and Renata Uitz, *The Constitution of Freedom. An Introduction to Legal Constitutionalism*, Chapter 9 Oxford: Oxford University Press, 201

### **Topic 3. Democracy and its Problems I.: Participation and group decisions**

A working definition of democracy. Minimum conditions: participation, reliable aggregation, informed choices. Why participation in the most basic procedure – elections – is not trivial. What is preference aggregation in the classical model of democracy? Is there a uniquely good way of finding out what groups want?

### Mandatory readings

- Tom Christiano, "Democracy", *The Stanford Encyclopedia of Philosophy* (Spring 2015 Edition), Edward N. Zalta (ed.), <http://plato.stanford.edu/archives/spr2015/entries/democracy/>
- G. Mackie: “The Doctrine of Democratic Irrationalism.” In Mackie: *Democracy Defended*. Cambridge: Cambridge University Press 2003.

### Optional readings

- E. Anderson: “Democracy, Instrumental versus Non-Instrumental Value”. In T. Christiano and J. Christman, eds: *Contemporary Debates in Political Philosophy*. Chichester: Wiley and Blackwell, 2009.
- Jon Elster, “The Market and the Forum: Three Varieties of Political Theory,” in *Philosophy and Democracy*, ed. T. Christiano, Oxford: Oxford University Press, 2002.
- L.E. Lomasky and G. Brennan: “Is There a Duty to Vote?” *Social Philosophy and Policy* 17 (2000) 62-86
- W.H. Riker: *Liberalism Against Populism*, Chs I. Prospect Heights, Ill: Waveland Press, 1982, 1-19.
- Joseph Schumpeter, *Capitalism, Socialism and Democracy* (New York: Harper and Row 1956)

### **Topic 4. Democracy and its problems II.: informed choices, accountability and the epistemic advantage**

Are voters informed enough to be able to make reasonable political choices? Do they need to know much about politics? Is there any meaningful accountability if voter choices are under-informed? Can deliberation ameliorate the problem? Is there a plausible ideal of epistemic democracy?

#### Mandatory readings

- Joshua Cohen, “Procedure and Substance in Deliberative Democracy,” in *Philosophy and Democracy*, ed. T. Christiano, Oxford: Oxford University Press 2002.
- David M. Estlund, *Democratic Authority*. Ch. 9. Princeton NJ: Princeton University Press, 2008.

#### Optional readings

- A. Lupia and M.D. McCubbins: “The Institutional Foundations of Political Competence: How Citizens Learn What They Need to Know.” In A. Lupia, M.D. McCubbins, and S.L. Popkin, eds: *Elements of Reason. Cognition, Choice, and the Bounds of Rationality*. Cambridge: Cambridge University Press, 2000.
- John S. Dryzek, “Deliberative Democracy in Divided Societies” *Political Theory*, Vol. 33, No. 2, 2005, pp. 218-242
- A. Lupia: “Delegation and its Perils.” In W.C. Müller and T. Bergman, eds: *Delegation and Accountability in Parliamentary Democracies*. Oxford: Oxford University Press, 2003..

### **Topic 5. The challenger from within: agonism.**

Do the discontents of globalization have a case? Hanna Arendt on truth and democracy. Is conflict the essence of all politics? The sources of Agonism. Is the goal nothing and the Movement everything?

#### Mandatory readings

- Chantal Mouffe, “Agonistic Democracy and Radical Politics” *Pavilion*, 29 December 2014. (<http://pavilionmagazine.org/chantal-mouffe-agonistic-democracy-and-radical-politics/>)
- Chantal Mouffe, “Society Is always Divided” (Interview) *Digital Development Debates*, Issue 14, March 2015. (<http://www.digital-development-debates.org/issue-14-movement--introduction--society-is-always-divided.html>)

#### Optional readings

- Dani Rodrik, *The Globalization Paradox: Democracy and the Future of the World Economy*, New York: W.W. Norton, 2011.
- Mark Wenman, *Agonistic Democracy: Constituent Power in the Era of Globalisation* (Cambridge: Cambridge University Press, 2015)
- Chantal Mouffe, *Agonistics: Thinking The World Politically*. (London – New York: Verso, 2013)
- James Tully, “The Agonic of Freedom”, *Economy and Society*, Vol.28, No.2, 1999.

Topic 6. Challenger from Where? Populism

Is there any consistent conceptual core to the diverse phenomenon of populism? Is it one thing, or many different things? The risk of becoming a residual category or an abuse-term. It his really an internal challenge to democracy?

Mandatory readings

- Cas Mudde, “Populism: AN Ideational Approach“ in: Rovira Kaltwasser et. al., The Oxford Handbook of Populism. Oxford: OUP, 2017. 46-70
- Jan-Werner Müller, “Populism and Constitutionalism“ in: Rovira Kaltwasser et. al., The Oxford Handbook of Populism. Oxford: OUP, 2017. 744-764