

CONSTITUTIONALISM AND DEMOCRACY

*University of Bayreuth
Winter Semester 2012/13
Wednesday, 14.00-16.00*

For BA students, 3rd, 5th, 7th semester

Course 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 politics 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 and the rule of law, we will pay attention to both 'law in books' and 'law in action'. Upon these analyses, we will address two issues that feature importantly in the contemporary constitutionalist discourse: the state of emergency and EU constitutionalism.

Course requirements and evaluation

The course can be taken either for 2 ungraded credits, or for 6 graded credits. In the former case, students will be required to give a presentation that will be based on a short position paper (2-3 pages long, 12 points, Times New Roman, double spaced, default margins). In the latter case, in addition to the presentation and the position paper, students will be required to submit a final paper for the course (10-20 pages long, formal requirements as above). In each case, attendance as well as active participation in seminars are required. The final grade will be composed of three parts: seminar participation and attendance (15%), seminar presentation and position paper (25%), final paper (60%).

Registration and course materials

Registration for the course will be done using Google Forms.

COURSE SCHEDULE: CONSTITUTIONALISM AND DEMOCRACY

(Note: the list below indicates the order of discussion and the material to be discussed. The exact seminar structure might, however, change, in the course of the semester.)

1. Constitution, constitutionalism, and democracy I
Kommers and Thompson, "Fundamentals in the liberal constitutional tradition", in. Hesse and Johnson (eds.), *Constitutional Policy and Change in Europe*
2. Constitution, constitutionalism, and democracy II
Preuss, "The Political Meaning of Constitutionalism", in. Bellamy (ed.), *Democracy and Sovereignty*
3. The politics of constitution-making
Elster, "Forces and Mechanisms in the Constitution-Making Process", in. *Duke Law Review*
4. Rights I
Sajó, *Limiting Government*, Chapter 8
5. Rights II
Beetham, "What Future for Economic and Social Rights?", in. *Political Studies*
6. Rights III
Jovanovic, "Recognizing Minority Identities Through Collective Rights", in. *Human Rights Quarterly*
7. Institutional structure I
Barendt, "Separation of Powers and Constitutional Government", in. Bellamy (ed.), *The Rule of Law and the Separation of Powers*
8. Institutional structure II
Sartori, *Comparative Constitutional Engineering*, Chapter 5
9. Institutional structure III
Sartori, *Comparative Constitutional Engineering*, Chapter 6
10. Institutional structure IV
Sartori, *Comparative Constitutional Engineering*, Chapter 7
11. Institutional structure V
Sajó, *Limiting Government*, Chapter 7
12. Constitutional culture or constitution(alism) as culture?
Johnson, "Inventing Constitutional Traditions", in. Ferejohn *et al* (eds.), *Constitutional Culture and Democratic Rule*
13. State of emergency and the constitution
Gross, "Extra-Legality and the Ethic of Political Responsibility", in. Ramraj (ed.), *Emergencies and the Limits of Legality*
14. EU constitutionalism
Eriksen and Fossum, "Europe in Transformation", RECON Online Working Paper