

(UN)CHANGING VALUES: RULE OF LAW AND DEMOCRACY

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For decades democracy and rule of law have had a unanimous understanding in the field of constitutional law and politics. Contemporary political issues still require their theoretical analyses and the way they are understood both in Western and in Eastern Europe. The course intends to point out the different possible interpretations of democracy and rule of law and seeks the circumstances that influence them.

Undoubtedly, democracy is probably the most basic feature of civilised nations. The “rule of the majority” is a common principle in every country; however it is a difficult question where it turns to be the “tyranny of majority” and what can constitutions do to avoid such situations. Lectures consider what “will of the people” means and how it can be interpreted in contemporary relations.

During the course students will focus on The Commission conclusion that the core elements of the Rule of Law (the Rechtsstaat and the Etat de droit) are not only formal but also substantive or material. These core elements are: Legality, including a transparent, accountable and democratic process for enacting law; Legal certainty; Prohibition of arbitrariness; Access to justice before independent and impartial courts, including judicial review of administrative acts; Respect for human rights; and Non-discrimination and equality before the law. Students will examine these ideas using examples from different countries.

When analysing rule of law, one cannot avoid dealing with popular constitutionalism and illiberal constitutionalism. Students will be asked what is populism and whether populism affects day-to-day politics and, at the end of the day, constitutionalism. They will focus on deformations of constitutionalism, e.g. row majoritarianism, formal application of rule of law. The main goal of this topic is to find out what is liberal democracy and constitutionalism. The course examines how illiberal constitutionalism has been built by general election and constitutional capture of the main independent institutions: constitutional courts and judiciary. The international and supranational reaction on illiberal changes will be discussed.

GRADE EVALUATION

Grading will be based on a final examination with essay, short-answer and multiple-choice questions.

READINGS AND CLASS FORMAT

For each day's meeting, there is an assortment of required.

During class meetings, in addition to lecturing, we will ask questions and invite discussion based on the assigned readings.

READING ASSIGNMENTS

<u>Date</u>	<u>Topics (Lecturer) and Readings</u>
2 July	<p>Introduction/Roots of democracy. Democracy in the history of Europe and of the United States. Democratic transition in post socialist countries (<i>Lóránt Csink</i>)</p> <ul style="list-style-type: none">• Robert A. Dahl: On Democracy. Yale University Press, New Heaven – London, 1998. 1-32. (provided in PDF) <p>Democracy and Separation of Powers (<i>Lóránt Csink</i>)</p> <ul style="list-style-type: none">• Lóránt Csink: Concepts of Separation of Powers in a Comparative Approach – Similarities and Dissimilarities. <i>Przegląd Prawa Konstytucyjnego - Constitutional Law Review</i> 2018/6. 313-325. (provided in PDF)
8 July	<p>Democratic Decision-making. “Will of the people”, governments, constitutions (<i>Lóránt Csink</i>)</p> <p>no new reading; reading for Day 1 is continued.</p> <p>Venice Commission standards concerning rule of law (<i>Agnieszka Bień-Kacala</i>)</p> <ul style="list-style-type: none">• Rule of law checklist of the Venice Commission (provided in PDF)
9 July	<p>Non-majoritarian entities. The role of constitutional adjudication (<i>Lóránt Csink</i>)</p> <ul style="list-style-type: none">• Stephen Breyer: Making Our Democracy Work. Random House, New York, 2010 (selected chapters, provided in PDF)• William B. Glidden: The Supreme Court versus Congress. Praeger, Santa Barbara – Denver – London (selected chapters, provided in PDF) <p>Threats to the Rule of Law (<i>Agnieszka Bień-Kacala</i>)</p> <ul style="list-style-type: none">• Paul Blokker: Popular Constitutionalism and Meaningful Popular Engagement. Foundation for Law, Justice and Society, 2018. (provided in PDF)
10 July	<p>Populist constitutionalism (<i>Agnieszka Bień-Kacala</i>)</p>

<https://poseidon01.ssrn.com/delivery.php?ID=776114008100075120094092001100113014038018014015006038127117098011068082076116005007106099010022103035124021031119008104086017126008014016039098087000112127101102123041011057120098126103079121006026066121094121087072106000123030124098098064084112117069&EXT=pdf>

11 July **Liberal and illiberal constitutionalism** (*Agnieszka Bień-Kacala*)

https://me.eui.eu/gabor-halmaj/wp-content/uploads/sites/385/2018/05/Making_of_illiberal_constitutionalism_Halmaj_final.pdf

12 July **EXAMINATION**