

Course Title: Constitutionalism and Democracy
Teaching Instructors: Professor Violeta Beširević ; Associate Professor Marko Božić
Course Type: Elective
ECTS: 12
Prerequisite: None
<p>Course Description</p> <p>The course deals with theoretical issues concerning constitutional design and constitutional adjudication. The topics and related comparative research deals with classical and arising issues of constitutional study, including the relationship between democracy and constitutionalism, rule of law, separation of powers, constitutional review, constitutional rights, EU constitutionalism, militant democracy, erosion of democracy and populism, etc. The course will focus on comparisons of selected topics in different jurisdictions, critical analysis of the constitutional solutions and related theoretical assumptions.</p>
<p>Learning Outcomes</p> <p>After studying this course, the students should be able to:</p> <ul style="list-style-type: none"> • Recognize the relevance of underlying issues in modern constitutional democracies. • Identify key issues concerning fundamental constitutional solutions in different jurisdictions and compare it with international standards. • Understand the influence of politics and political actors on democratic processes in contemporary constitutional democracies.
<p>Topics:</p> <ol style="list-style-type: none"> 1. Constitutionalism, Constitution and Democracy: Definitions and Mutual Relations 2. Constitutional Patriotism and Constitutional Identity 3. Adoption and Change: Universal Principles in the Historical Context; Migration of Constitutional Solutions; Procedure for Enacting and Amending the Constitution in a Comparative Perspective 4. Student Debate: Does the Republic of Serbia Need to Change Its Constitution in the Process of European Integration? 5. Global Constitutionalism: State Sovereignty in a Contemporary Perspective; Global Governance and Global Laws; The Problem of Democratic Legitimacy 6. European Constitutionalism: EU Constitutionalization; The Legal Nature of the EU; Why the EU Has a Constitution; EU and Democratic Deficit; The Relationship Between the Member States' National Constitutions and the EU Constitution. 7. The Rule of Law and Separation of Powers: Politics and Law; Legal, Political, and Normative Characteristics of the Rule of Law; Separation of Powers: Personnel, Functional and Organizational Demarcations; Checks and Balances. 8. Constitutionalism in the Age of Populism: Case Study: USA; Hungary, Poland, Turkey, Serbia 9. What Rights are Constitutional? What are We Talking About When We Talk About Human Rights: Moral or Political Categories? Conflict of Rights, Recognition of New Human Rights. 10. Are Group, Social and Economic Rights Anti-Democratic? 11. Militant Democracy: Concept and Dilemmas 12. Religion and the Secular State: Can the State be too Secular? 13. Constitutional Review: Constitutional Review and Democracy; The Constitutional Judiciary as a Political Actor; Interpretation and the Constitutional Amendments; The Problem of The Counter-Majoritarian Mechanism; The Political Question Doctrine in The Constitutional Courts' Jurisprudence. 14. Constitutional Judiciary in the Age of Populism: Constitutional Courts as Opponents or Allies of Populist Regimes; Case Study: USA; United Kingdom; Israel, Poland, Serbia 15. State of Emergency in Response to a Crisis: Defending or Compromising Democracy; Security against Freedom; the State of Emergency in the legal limits: for and against.
<p>Required and Optional Reading</p> <p>V. Beširević (ed.), <i>New Politics of Decisionism</i>, The Hague, Eleven International Publishing, 2019.</p> <p>V. Beširević (ed.), <i>Public Law in Serbia: Twenty Years After</i>, London, EPL & Esperia Publications Ltd, 2012.</p> <p>V. Beširević, N. Udombana (eds.) <i>Rethinking Socio-Economic Rights in an Insecure World</i>, Budapest, CEU Center for Human Rights, 2006.</p> <p>V. Beširević (ur.), <i>Militantna demokratija - nekada i sada</i>, Beograd, Sl. glasnik & PFUUB, 2013.</p> <p>V. Beširević, "Governing Without Judges": The Politics of the Constitutional Court in Serbia," <i>International Journal of Constitutional Law</i> (I-CON), vol. 12, no. 4, 2014, pp. 954-979.</p> <p>V. Beširević, Making Sense of Political Question Doctrine: the Case of Kosovo, <i>Review of Central and East European Studies</i>, 2020, u štampi.</p> <p>V. Beširević, "If Schmitt were alive...Adjusting Constitutional Review to Populist Rule in Serbia," in V. Beširević (ed.), <i>New Politics of Decisionism</i>, The Hague, Eleven International Publishing, 2019, pp. 193-207.</p> <p>V. Beširević, A. Trbović, "New Challenges of Democracy in Serbia: Global Issues in Local Perspective," in <i>New Challenges of Democracy, European Review of Public Law</i>, London: EPL & Esperia Publications, 2015, pp. 435-481.</p> <p>V. Beširević, "Constitutional Review in a Democratic Deficit Setting: The Case of the European Union," in: M. Jovanović (ed.), <i>Constitutional Review and Democracy</i>, The Hague, Eleven Publishing International, 2015, pp. 83-107</p> <p>V. Beširević, "The Constitution in the European Union: The State of Affairs," in: A. Dupeyrix, G. Raullet (eds.), <i>European Constitutionalism. Historical and Contemporary Perspectives</i>, Brussels, Peter Lang, 2014, pp. 15-35.</p> <p><i>Beširević, Violeta, "Уставно судство у земљама у транзицији: лекције из упоредног права," у: Б. Ненадић (ур.), Улога и значај Уставног суда у очувању владавине права, Београд, Уставни суд РС, 2013, стр.268-289.</i></p>

V. Beširević, "Ko se boji federalne Evrope? Kritički osvrt na „lisabonsku“ odluku Saveznog ustavnog suda Nemačke," (2011) *Pravni zapisi* br. 1, str. 53-79.

M. Božić, *Laička Republika*, Beograd, Pravni fakultet, 2014.

M. Božić, "Sistem državne crkve u Evropi," *Pravni život*, br. 14, 2009, str. 457- 489.

M. Božić, G. Mitrović, "Načelo laiciteta u Ustavu Evrope", *Pravni život*, br. 12, 2005, str. 643-656

F., Carl, *Konstitucionalna demokratija : teorija i praksa u Evropi i Americi*, Podgorica : CID, 2005.

N. Dimitrijević, *Ustavna demokratija shvaćena kontekstualno*, Beograd : Fabrika knjiga, 2007.

Л. Баста Флајнер, *Политика у границама права : студија о англосаксонском конституционализму*, Београд , Сл. гласник, 2012.

M. Rosenfeld, Sajó, A, *The Oxford handbook of comparative constitutional law*, Oxford, Oxford University Press, 2012.

A. Sajó, R. Uitz, *The constitution of freedom : an introduction to legal constitutionalism*, Oxford, Oxford University Press, 2017.

R. Dvorkin, *Suština individualnih prava : novo izdanje sa odgovorom kritičarima*, Beograd, Sl. list SRJ, Podgorica, CID, 2001.

Dž. Vajler, *Ustav Evrope: "Ima li novo odelo svoga cara?" i drugi eseji o evropskoj integraciji*, Beograd, Filip Višnjić, 2002.

J. W. Müller, *Ustavni patriotizam*, Beograd, Fabrika knjiga, 2010.

J. W. Müller, *Šta je populizam?*, Beograd, Fabrika knjiga, 2017

J. Raz, *Etika u javnom domenu : ogledi iz moralnosti prava i politike*, Podgorica, CID, 2005.

О.Бо, *Држава и њена власт*, Београд : Сл. Гласник, Правни факултет, 2016.

R. Dal, *Demokratija i njeni kritičari*, Podgorica, CID, 1999.

S. Flogaitis, G. Timsit (eds.), *New Challenges to Democracy*, Athens, European Public Law Organization, 2015.

A. Tocqueville, *Democracy in America*, New York [etc.]: Harper and Row, 1966.

H. Kelsen, *О суштини и вредности демократије*, Београд, Центар за унапређивање правних студија, 1999.

Number of Classes 5 (a week)	Teaching 5	Practicum -	
Teaching Methods According to the so-called Socratic teaching method, lectures are based on interactive teaching. The development of doctrinal positions, comparative constitutional solutions of legislation, and court practice are approached through the dialogue of a teacher and students. During the classes, discussions are organized on given topics and performed through specific research tasks assigned to students in case studies. Students will have the opportunity to present the results of their research publicly and defend them in a public discussion.			
Grading (maximum 100 points). The final grade consists of the points achieved by fulfilling class assignments and the final written exam.			
CLASS ASSIGNMENTS	POINTS	FINAL EXAM	POINTS
Research and Class Presentation	30	Written exam essay type	60
Class Performance	10		