

Course title: Sovereignty, Democracy and Constitutionalism in Europe

Language of instruction: English

Professor: Hèctor López, Pau Bossacoma and Cornel-Peter Rodenbusch

Professor's contact and office hours:

Course contact hours: 45

Recommended credit: 6 ECTS credits

Course prerequisites: None

Language requirements: Recommended level in the European Framework B2 (or equivalent: Cambridge Certificate if the teaching language is English, DELE or 3 semesters in the case of Spanish)

Course focus and approach:

This is a course that aims to work on the origins and development of key ideas of modern constitutional polities. Since the course aims to study the foundation and evolution of crucial constitutional concepts, the team is composed by two public law scholars (Dr López and Dr Bossacoma) and one legal historian (Cornel-Peter Rodenbusch). The course approach is based on the academic disciplines of legal history, constitutional theory, public law, political theory and political philosophy.

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Course description:

The course focuses on the creation and evolution of modern constitutional polities in Iberia and Europe, including states (e.g. Spain), unions of states (e.g. the European Union) and sub-state units (e.g. Catalonia). More than an empirical explanation of different cases, the main aim is to analyse basic concepts and ideas that helped to develop current liberal democracies. The complexity and fragility of the equilibrium between these concepts and ideas may offer some clues on how to deal with the multiple criticisms and threats that European liberal-democracy is facing.

Each session will predominantly address and discuss a specific concept or idea (or close group of them) including sovereignty, territorial autonomy, federalism, national pluralism, democracy, parliamentarism, constitutionalism, constitution-making power, separation of powers, rule of law, fundamental rights, European integration, secession and withdrawal. Obviously, these concepts and ideas have strong links among each other and so will the lectures of this course.

Since all these legal and political issues are important, broad, multifaceted, stimulating and controversial, students with distinct backgrounds and different academic interests may enjoy this course, which is not intended to take place behind university doors exclusively but also to include historical walks and institutional visits. As the course explores the origins and evolution of these crucial constitutional notions, the teaching team is composed by a constitutional law scholar (Dr Hèctor López) and a political and constitutional theorist (Dr Pau Bossacoma). In

addition, Dr Cornel-Peter Rodenbusch will be running some outdoor visits to medieval, early-modern and contemporary sites with an intense political significance.

Learning objectives: Understanding and discussing basic concepts of democratic and constitutional theory including:

- Sovereignty and territorial autonomy
- Democracy and parliamentarism
- Constitutionalism and constituent power
- Separation of powers and rule of law
- Federalism and EU Integration
- Withdrawal and secession

Course workload: The workload is essentially composed of compulsory and optional readings, attendance at and participation during lectures, presentations followed by collective discussions, institutional and historical visits, and term-paper or final exam.

Teaching methodology: The course is structured in four main types of activities:

- Lectures followed by a debate
- Collective presentations followed by collective discussions
- Field sessions consisting in institutional and historical visits
- Term-paper or final exam

Assessment criteria:

Class participation 40% (including presentations and visits). Term exam or paper 60%. Nevertheless, the lower the participation is, the more significance the final exam or paper will have. Participation has an essentially positive impact on the final mark.

BaPIS absence policy

Attending class is mandatory and will be monitored daily by professors. Missing classes will impact on the student’s final grade as follows:

Absences	Penalization
Up to two (2) absences	No penalization
Three (3) absences	1 point subtracted from final grade (on a 10-point scale)
Four (4) absences	2 points subtracted from final grade (on a 10-point scale)
Five (5) absences or more	The student receives an INCOMPLETE (“NO PRESENTADO”) for the course

The BaPIS attendance policy **does not distinguish between justified or unjustified absences**. The student is deemed responsible to manage his/her absences.

Only absences for medical reasons will be considered justified absences. The student is deemed responsible to provide the necessary documentation. Other emergency situations will be analyzed on a case by case basis by the Academic Director of the BaPIS.

The Instructor, the Academic Director and the Study Abroad Office should be informed by email without any delay.

Classroom norms:

To be established by each teacher according to the nature of each activity.

Topics and units of study:

The creation of the European Modern State
 Political participation and representation in preliberal Europe
 Law-making and the observance of law in preliberal Europe
 Ancient and modern constitutionalism
 The evolution of constitutionalism and the rule of law
 Sovereignty and division of powers
 Constituent power, constitutional supremacy and judicial review of legislation
 Federalism and the plurinational challenge
 Democracy, parliamentarism and suffrage. Representative v. direct democracy
 Integration, self-determination and secession in the European Union.

Required readings:

Each teacher will provide the required readings for each session.

Recommended bibliography:

ABAT I NINET, A. (ed.) *Constitutional Law and Politics of Secession*. Abingdon: Routledge, 2023.
 ACKERMAN, B. *Revolutionary Constitutions. Charismatic Leadership and the Rule of Law*. Harvard University Press, 2019.
 AGAMBEN, G. *Homo Sacer. Sovereign Power and Bare Life*. Stanford University Press, 1998.
 ALBAREDA J. AND MANUEL HERRERO SÁNCHEZ (ed.). *Political Representation in the Ancien Régime*. Routledge, 2019.
 ARRIETA, J. "Forms of Union: Britain and Spain, a Comparative Analysis". *Revista internacional de los estudios vascos, Cuadernos 5*, 2009, pp. 23-52.
 BOSSACOMA, P. "Self-Determination and Coercion in Spain. The Case of Catalonia". *Revista d'Estudis Autònoms i Federals - Journal of Self-Government 34*, 2021.
 BOSSACOMA, P. *Morality and Legality of Secession*. Palgrave Macmillan, 2020.

- BOSSACOMA, P. *Sovereignty in Europe. An idea in transformation*. University of Girona, 2018.
- CAPDEFERRO, J. "Commissioners, ad hoc committees and negotiators in the *cortes* of Catalonia, 1701-02". *Parliaments, Estates and Representation* 39(3), 2019.
- CLOSA, C. (ed.) *Secession from a member state and withdrawal from the European Union*. Cambridge University Press, 2017.
- CORTEGUERA, L. R. *For the Common Good: Popular Politics in Barcelona, 1580-1640*, Cornell University Press, 2002.
- COSTA, P; ZOLO, D. (editors) *The Rule of Law. History, Theory, Criticism*. Springer, 2007.
- DOYLE, W. *The Oxford History of the French Revolution*. Oxford University Press, 1989.
- FERRERES, V. "Does Brexit Normalize Secession?". *Texas International Law Journal* 53(2), 2018, pp. 139-51.
- FERRERES, V. *Constitutional courts and Democratic values: A European perspective*. Yale University Press, 2009.
- KALYVAS, A., "Popular Sovereignty, Democracy and the Constituent Power". *Constellations* 12 (2), 2005, pp. 223-244.
- LOCKE, J. *Two Treatises of Government*. Cambridge University Press, 1988.
- LÓPEZ BOFILL, H. *Law, Violence and Constituent Power. The Law, Politics And History Of Constitution Making*. Routledge, 2021.
- LÓPEZ BOFILL, H. "Hubris, constitutionalism, and 'the indissoluble unity of the Spanish nation': The repression of Catalan secessionist referenda in Spanish constitutional law". *International Journal of Constitutional Law* 17 (3), 2019, pp. 943-969.
- MACCORMICK, N. *Questioning Sovereignty. Law, State, and Practical Reason*. Oxford University Press, 1999.
- MANIN, B. *The Principles of the Representative Government*. Cambridge University Press, Cambridge, 1997.
- McILWAIN, Ch.H. *Constitutionalism: Ancient and Modern*. Cornell University Press, 1947.
- NORTH, D.C. and WEINGAST, B.R. "Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth- Century England", *The Journal of Economic History* 49(4), 1989, pp. 803-832.
- HARZL, B. and PETROV, R. (eds.) *Unrecognized Entities: Perspectives in International, European and Constitutional Law*. Leiden: Brill, 2021.
- HINSLEY, F.H. *Sovereignty*. Cambridge University Press, 1986.
- POCOCK, J.G.A. *The Machiavellian moment: Florentine political thought and the Atlantic republican tradition*. Princeton University Press, 2003.
- SIEYÈS, E. *What is the Third State?* English translation available at <https://pages.uoregon.edu/dluebke/301ModernEurope/Sieyes3dEstate.pdf>
- TIERNEY, S. *The Federal Contract. A Constitutional Theory of Federalism*. Oxford University Press, 2022.
- WALKER, N. "The sovereignty surplus". *International Journal of Constitutional Law* 18(2), 2020, pp. 370-428.

Case law

- Thomas Bonham v. College of Physicians (Dr. Bonham's Case) (1610) Court of Common Pleas. 8 Co. Rep. 107 77 Eng. Rep 638 Case Opinions
- SUPREME COURT OF CANADA (1998) Reference re Secession of Quebec.
- UNITED KINGDOM SUPREME COURT (2017). R (Miller) v Secretary of State for Exiting the European Union.



EUROPEAN COURT OF JUSTICE (Full Court). Judgment of 10 December 2018. Andy Wightman and Others v Secretary of State for Exiting the European Union.