

CONSTITUTIONAL LAW

SYLLABUS

Professor: Jorge Silva Sampaio

Course Description

Constitutional law is a branch of law that examines the nature and structure of constitutional states. This course focuses on key topics such as the concepts of the state and constitutionalism, the nature of constitutions and their creation, the political architecture of the state, and fundamental concepts like the rule of law, democracy, and the separation of powers. It also addresses constitutional interpretation, fundamental rights, and constitutional principles such as proportionality and equality.

We will explore questions such as:

- (1) What conditions are necessary for a state to exist?
- (2) What is a constitution, and how is it created?
- (3) What types of political regimes exist, and how can we define them?
- (4) What do the core constitutional concepts of the rule of law, democracy, and separation of powers mean, and why are they important?
- (5) What is constitutional interpretation, and how does it differ from statutory interpretation?
- (6) What are fundamental rights, and under what circumstances can they be restricted?
- (7) Should laws be subject to judicial review, and if so, how should this review be conducted?

Course Goals

The primary goal of this course is to provide a conceptual and descriptive analysis of the main tenets of constitutional law. Drawing on the tools and insights of analytical legal theory, the course aims to: (a) equip students with analytical tools to critically examine common discourse on constitutional concepts; (b) develop a general theory of constitutional law that explains its nature across different legal systems; and (c) enhance critical thinking and problem-solving skills relevant to constitutional issues.

Topics

- § 0. Philosophy and Methodology of Constitutional Law
- § 1. The concept of State
 - 1.1. People, Territory, and Sovereignty
- § 2. The Concept of Constitutionalism
- § 3. Nature of Constitutions

- 3.1. The Authority of Constitutions
- 3.2. Constituent Power and Constitutional Amendments
- 3.3. Modalities of Constitutions
- 3.4. Entrenchment and Writtenness
- § 4. Fundamental Concepts of Constitutionalism
 - 4.1. Rule of law
 - 4.2. Democracy
 - 4.3. Separation of powers
- § 5. Varieties of political regimes
 - 5.1. Parliamentaryism
 - 5.2. Presidentialism
 - 5.3. Mixed regimes: The French and the Portuguese Cases
- § 6. Constitutional Interpretation
- § 7. Constitutional Norms
 - 7.1. Modalities of Constitutional Norms
 - 7.2. Fundamental Rights
 - 7.3. Constitutional Principles
 - 7.3.1. Equality
 - 7.3.2. Proportionality
- § 8. Judicial review

Schedule of Topics and Readings

To be further communicated.

Assignments and Grades

Participation in classes and resolution of a written exercise during a class (50%)

Final paper (to be presented in class) – 6-10 (1.5 spacing) pages (50%)

Professor's Contact Information Email: jorgesilvasampaio@fd.ulisboa.pt