|  |  |
| --- | --- |
| **Module** | **A Constitutional Sociology of Europe: Law, Politics, and Society** |
| Location | Charles University |
| Date |  |
| Teacher | Dr. Paul Blokker, Charles University |
| Credits | 7 |
| **Course Description** | The sociology of constitutions has in recent years emerged as a dynamic and innovative sub-discipline of sociology and the sociology of law, and explores the foundational aspects of a sociology of law and significantly contributes to debates about the role of constitutions in modern societies as well as on the transnational level. The course will discuss various sociological approaches to the study of European constitutionalism, analyze socially relevant dimensions of constitutions (legitimacy, democracy, identity, integration, values), and apply this knowledge in the study of constitutional traditions in Europe. The final part of the course will closely look at emerging constitutional dimensions of the European Union. |
| **Goal of the Course** | * To introduce the students to the sociology of constitutions; * To provide insights in the societal context in which constitutions operate; * To obtain knowledge regarding different traditions of constitutionalism in Europe; * To explore constitutional dimensions of the European integration project; * To provide insights into the social operation of the law; * To explore the changing nature of constitutionalism from the perspective of social functions of constitutions, including axiological, integrative, and participatory functions; * To provide insight into the social embeddedness of rights and constitutional norms. |
| **Teaching methodology** | 1. Lectures 2. In-class debate 3. Collaborative projects (in-class) 4. Class presentations |
| **Final exam** | 1. Final essay |
|  |  |
|  |  |

|  |  |
| --- | --- |
| *Hourly demands course:* | |
| Lectures attendance | 18 h |
| Essay preparation | 102 h |
| Preparation in-class projects, presentations | 20 h |
| Self-study preparation, readings | 100 h |
| ***In sum*** | ***240 h*** |

\*At CU, 1 credit stands for 30 hours of a student's work. E.g. attending 12 lectures (12 x 1.5 hour=18 hours) equals 0.65 credit. Obligatory readings (12 x 25 pages = 55 hours) equal 1.8 credit. The home study for the oral examination (120 hours) equal 4 credits. And so on with other assignments (essays, presentations, take home assignments).

**Weekly programme**

**Week 1 Introduction to the course**

The sociology of constitutions understands constitutions in a context-sensitive manner. Different approaches to a constitutional sociology can be identified, including Luhmannian, historical-sociological, and political-sociological approaches. The sociological approach will be utilized in the exploration of constitutional traditions in European countries and of the European Union at large.

*Readings*

Thornhill, C., 2017. "The Sociology of Constitutions". *Annual Review of Law and Social Science*, 13, pp.493-513.

Blokker, Paul. "Democratic Ethics, Constitutional Dimensions, and Constitutionalisms." *Central Eastern European after Transition: Towards a new socio-legal semantics*, A. Febbrajo & W. Sadurski, eds., Ashgate (2010), pp. 73-98.

**Week 2 Constitutions and constitutional traditions in Europe**

The making of constitutions is a unique historical event, and the way constitutions are structured and relate to their socio-political environment is strongly context dependent. This means that even if processes of Europeanization and supranational constitutionalization play an important role in domestic European societies, distinctive national constitutional cultures and traditions keep on playing an important role.

*Readings*

Rosenfeld, Michel. "Constitutional adjudication in Europe and the United States: paradoxes and contrasts." *International Journal of Constitutional Law* 2.2 (2004), 633-668.

Scholl, Bruno. ‘The impact of constitutional traditions on the EU-reform discourse in Austria, France, Germany and the UK’. VS Verlag für Sozialwissenschaften, 2006, 175-199.

**Week 3 Constitutions, Rights, and European Integration**

European integration is for an important part about integration-through-law. The European project prominently involves a process of incremental constitutionalization and an increasing role of rights. In particular in the project for a European Constitution, the fundamental politico-legal dimension came to the fore. It can however be argued that part of the failure of the European Draft Constitution is due to a lack of attention to important sociological dimensions, including questions regarding identity, legitimacy, and societal engagement with the law.

*Readings*

Přibáň, Jiří. "The juridification of European identity, its limitations and the search of EU democratic politics." *Constellations* 16.1 (2009): 44-58.

Dawson, Mark, and Floris Witte. "Constitutional Balance in the EU after the Euro‐Crisis." The Modern Law Review 76.5 (2013): 817-844.

**Week 4 The Many Constitutions of Europe**

The European integration project has developed its own constitutional dimensions, not least through a gradual evolution of EU law and the interpretation by the European Court of Justice. From a sociological point of view, it can be argued that there are, however, other constitutional dimensions of the European integration project, which are not necessarily captured by the legal constitution.

*Readings*

Thornhill, Chris. "The formation of a European constitution: an approach from historical-political sociology*." International Journal of Law in Context* 8.03 (2012): 354-393.

Tuori, Kaarlo, and Suvi Sankari (2010), *The many constitutions of Europe*. Ashgate Publishing Limited, introduction, pp. 3-30.

**Week 5 Domestic Constitutional Reform in Europe**

Various constitutional orders in Europe are the object of constitutional reform and in some cases far-going change. Main questions to be discussed are: what are the purposes of these reforms, whether the relation between constitutionalism and modern society is changing, what does an increasingly pluralistic landscape of constitutionalism look like, and how do domestic constitutional orders relate to an increasingly constitutionalized transnational/European situation.

*Readings*

Blokker, excerpts from writings of the CoPolis project (2012-15) (unpublished)/Constitutional acceleration, pp. 1-50

**Week 6 Constitutions and Civic Participation**

An increasingly important dimension of relations between society and constitutional politics in Europe regards civic participation in constitutional amendment and drafting. A trend towards participatory constitutionalism can be identified, which blurs the distinction between law and society in important ways. Such a trend can also be discerned on the EU level.

*Readings*

2016, Paul Blokker, ‘Constitutional reform in Europe and recourse to the people’, in: Xenophon Contiades and Alkmenia Fotiadou (eds), *Participatory Constitutional Change: The people as amenders of the Constitution*, Routledge, pp. 31-51.

Victor Cuesta (2007), ‘Prospects for Participatory Democracy in the Supranational Constitutionalism of the European Union’, 199-207.

**Week 7 Constitutions and Illiberal Democracy in New EU Member States**

The new democracies in Central and Eastern Europe have embarked on the constitutionalization of democratic regimes since at least the early 1990s. A specific set of templates can be said to be important in this process of constitutionalization, which has arguably involved the institutionalization of so-called new constitutionalism, which portrays constitutions as relatively distinct from situated societies.

*Readings*

Blokker, Paul, 2016, chapter 'EU Democratic Oversight and Domestic Deviation from the Rule of Law: Sociological Reflections', in: C. Closa and D. Kochenov (eds), *Reinforcing the Rule of Law Oversight in the European Union*, Cambridge University Press, 249-270.

**Week 8 Grassroots Constitutionalism**

Constitutions are in legal and political-scientific approaches largely understood as top-down orders, grounded in universally valid principles and rights. An alternative, society-oriented view argues that constitutions are importantly expressions of local mores, traditions, and historical experiences. An additional perspective emphasizes the creation of constitutional norms and constitutionalization from the bottom-up.

*Readings*

Tully, James. "A New Kind of Europe?: Democratic Integration in the European Union." *Critical Review of International Social and Political Philosophy* 10.1 (2007): 71-86.

Bani, Marco. "Crowdsourcing democracy: The case of Icelandic social constitutionalism." Politics and Policy in the Information Age, Springer (2012), 1-19.

**Week 9 The Future of a Constitution for Europe**

The political constitutional project for the EU of the early 2000s failed in the French and Dutch ratification referenda in 2005. The objective of an official Constitution for the European Union seems to be further away than ever. Key questions are what are the obstacles to a formal constitutionalization of the EU and why would it be necessary?

*Readings*

Ackerman, Bruce (2015), Three Paths to Constitutionalism – and the Crisis of the European Union, *British Journal of Political Science* / Volume 45 / Issue 04 / October 2015, pp. 705-714.

Startin, Nick, and André Krouwel. "Euroscepticism re‐galvanized: The Consequences of the 2005 French and Dutch Rejections of the EU Constitution." *JCMS: Journal of Common Market Studies* 51.1 (2013): 65-84.

**Week 10 Global constitutionalism**

Global constitutionalism can be understood as involving the constitutionalization of international regimes and institutions (e.g. the United Nations), but also as the diffusion and increasing interconnectedness of domestic constitutional orders. A different way of understanding post-national phenomena is through the lens of constitutional pluralism. Global constitutional tendencies strongly differ from the national experiences in the conspicuous absence of a global society.

*Readings*

Brunkhorst, Hauke. "Globalising democracy without a state: Weak public, strong public, global constitutionalism." *Millennium-Journal of International Studies* 31.3 (2002): 675-690.

Thornhill 2016

**\*\*\*\*\***