

the General Principles of Constitutional Law-Syllabus

Law 103, Summer 2026, Bogaziçi University, Faculty of Law

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Office Hours: Tuesday 13.00-15.00

“If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary.”

James Madison, *The Federalist Papers*, No. 51

Please note that enrolment in this course is restricted to students of the Faculty of Law. The weekly programme in this syllabus represents approximations. There might be changes-deletions or additions-during the semester. Students are responsible for staying informed of any updates, which will be announced in class or posted online.

Course Overview

Constitutional law is the nerve center of public law, the discipline through which we examine not only the architecture of government but also the grammar of political authority itself. It concerns the design of institutions, the allocation of powers, and the mechanisms by which power is disciplined. To borrow Justice Antonin Scalia’s phrase, “structure is destiny”: to study constitutions is to study the fates of political communities.

In its broader, material sense, constitutional law extends beyond texts to encompass the norms, conventions, and practices that give shape to political life. Constitutions, whether written or unwritten, revolutionary or imposed, claim to be the supreme framework for governing. Yet they are also deeply paradoxical: the very force that shields us from disorder is the same force that can descend into tyranny. The central question, therefore, is how political power can be both enabled and neutralized, organized for collective well-being yet contained to prevent domination.

This inquiry is inseparable from the genealogy of the state. We once tolerated monarchs, emperors, and sultans as embodiments of sovereignty, their fall transferred power to “the people.” But sovereignty, even when democratized, remains dangerous. Max Weber’s classic definition of the state as “the monopoly of the legitimate use of physical force” reveals why constitutions are indispensable: they transform violence into authority, and authority into legality. Yet legitimacy is never automatic, it must be constructed, argued, and contested.

Constitutions, then, are not merely technical blueprints. They are political projects and cultural artifacts, simultaneously constraining power and legitimizing its exercise. They embody competing ideals, such as liberty, equality, security, order, and force us to ask whether law can ever truly tame politics. For every celebrated success story of constitutionalism, there are failures and fragile hybrids, grey-zone regimes that reveal both the promise and limits of law's reach.

Throughout this course, we will explore these tensions comparatively and theoretically. We will analyse the foundations of state authority, the structures of legislative, executive, and judicial power, the doctrines of separation of powers and checks and balances, and the role of constitutions in entrenching rights. But our aim is not passive description: it is to think critically about whether constitutions are guardians of liberty, or sophisticated disguises for domination.

Course Objectives:

The objectives of this course may be articulated as follows:

- **To cultivate a grounded understanding of modern constitutional government** by examining the institutional design of the state, the distribution and interaction of powers, and the structural safeguards against their abuse.
- **To introduce the political and philosophical foundations of constitutionalism**, including the competing traditions of liberalism, republicanism, and democracy that continue to shape constitutional thought and practice.
- **To familiarize students with the guiding doctrines of constitutional law**, such as separation of powers, checks and balances, judicial review, and the entrenchment of fundamental rights, with special attention to their evolution in comparative perspective.
- **To develop the capacity for critical engagement with contemporary constitutional issues**, enabling students to assess not only current governmental practices in Turkey and abroad, but also hypothetical scenarios that test the limits of constitutional design.
- **To encourage reflection on the Turkish constitutional experience**, situating it within the broader global discourse on constitutionalism—thus allowing students to appreciate both its unique historical trajectory and its shared challenges with other constitutional orders.

Participation: Students are expected to read and reflect on the assigned materials prior to each class session. Active engagement in classroom discussions, both voluntary contributions and responses when called upon, is an integral part of the learning process. The quality and consistency of your participation will be considered when determining the final grade, at the discretion of the instructor.

Attendance: There is no attendance requirement for this course.

Office Time: You are always welcome to drop by, even outside of my formal office hours if I am in. I may not be able to meet with you right away, but I will do my best to make time for you as soon as possible.

Grading/Evaluation Policy: The following outlines the grading policy for GPCL and the criteria by which students' performance will be assessed. Your final grade will be determined by the following five components:

▪ Midterm Exam	4 th Week of the Semester	40%
▪ Final Exam	End of semester	60%

COURSE OUTLINE

Week 1 **The Story of Constitutional Law: Ulysses at the Mast**

Introducing the themes, objectives and other essentials of the course

Week 2 **The concept, definition, themes, sources and classifications of the constitution**

Required

- Galligan D / Versteeg M (2013) Theoretical Perspectives on the Social and Political Foundations of Constitutions (CH 1), pp. 3-48, in *Social and Political Foundations of Constitutions*, Cambridge University Press.
- Parpworth N (2012) The Meaning of a Constitution (CH 1), pp. 3-17, in *Constitutional & Administrative Law*, Oxford University Press, 7th Ed.

Supplemental

- Loughlin M (2010) The Constitutional Contract, in *Foundations of Public Law*, Oxford University Press, CH 10, pp. 275-311.
- Castiglione D (1996) The Political Theory of the Constitution, *Political Studies*, pp. 417-435.
- Grimm D (2012) Types of Constitutions, in Rosenfeld M and Sajó A (eds.), *The Oxford Handbook of Comparative Constitutional Law*
- Hedling N (2017) The Fundamentals of a Constitution, *Constitution Brief, International IDEA* (free online access: <https://www.idea.int/sites/default/files/publications/the-fundamentals-of-a-constitution.pdf>)

Week 3 **Framing ‘the power’ and its original source: *the constituent power* and the *power constituted***

*Q: Where does the constitution derive its authority or normative validity? Is it rather an issue of political theory, may be a myth or dogmatic concept, that has nothing to do with **the** constitutional law? –a positivist normativist approach*

Required

- Loughlin M (2014) The Concept of the Constituent Power, *European Journal of Political Theory*, 13 (2), pp. 218-237.

- Loughlin M (2010) The Constituent Power, in *Foundations of Public Law*, Oxford University Press, pp. 221-228.

Supplemental

- van Asseldonk (2022) Who, the people? Rethinking constituent, power as praxis, *Philosophy and Social Criticism*, 48 (3), pp. 361-385.
- Böckenförde E W (2017) The Constituent Power of the People, A Liminal Concept of Constitutional Law, in *Constitutional and Political Theory, Selected Writings*, Volume 1, CH 7, pp. 169-185.

Week 4

Framing the State: Theories, legitimacy and construction

Required

- Beaud O (2012) Conceptions of the State, in Rosenfeld M / Sajó A (eds.) *The Oxford Handbook of Comparative Constitutional Law*, Oxford University Press, pp. 269-282.
- Heywood A (2004) The state, in *Political Theory an Introduction*, Palgrave Macmillan, in CH 3, pp. 75-88.

Supplemental

- Loughlin M (2010) The Concept of the State, in *Foundations of Public Law*, Oxford University Press, CH 7, pp. 183-208.

Week 5

Constraints on State Power I: Conceptual discourse of ‘Constitutionalism’

Required

- Barber N (2018) Introduction: Constitutionalism, in *The Principles of Constitutionalism*, Oxford University Press, Ch 1, pp. 1-19.
- Schütze R (2019) Constitutionalism(s), in *The Cambridge Companion to Comparative Constitutional Law*, Cambridge University Press, Ch 2, pp. 40-66.

Supplemental

- Waldron J (2012) Constitutionalism: A Sceptical View, Public Law & Legal Theory Research Paper Series, Working Paper No. 10-87, New York University School Of Law, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1722771
- Butleritchie D T (2004) The Confines of Modern Constitutionalism, *The University of New Hampshire Law Review*, 3 (1), pp. 1-32.
- Waluchow W / Kyritsis D (2022) Constitutionalism, *Stanford Encyclopedia of Philosophy*, (Click [here](#) to access the source).

Week 6

Constraints on State Power II: The theory of separation of powers, and checks and balances

Required

- Bellamy R (1996) The Separation of Powers: The Political Form of the Constitution: The Separation of Powers, Rights and Representative Democracy, *Political Studies*, 44, pp. 436-456.
- Alder J (2002), Separation of Powers, in *General Principles of Constitutional and Administrative Law* (4th ed.), in CH 5, pp. 105-120.
- The Federalist Papers No. 47-51

Supplemental

- Barber N (2018) The Separation of Powers, in *The Principles of Constitutionalism*, Oxford University Press, Ch 3, pp. 51-83.
- Barendt E (1995) Separation of Powers and Constitutional Government, *Public Law*, pp. 599-619.
- Möllers C (2013) Divisions of Powers: Traditions and Meanings, in *The Three Branches a Comparative Model of Separation of Powers*, Oxford University Press, CH 1, pp. 16-50.
- Barber N (2001) Prelude to the Separation of Powers, *Cambridge Law Journal*, 60 (1), pp. 59-88.
- Brookes R H (1951) The Separation of Powers, *Political Science*, 3 (1), pp. 53-60.

Week 7 **Horizontal structuring of powers: Parliamentary, presidential and semi-presidential systems of government**

Required

- Sartori G (1994) Part Two: Presidentialism and Parliamentarism, in *Comparative Constitutional Engineering*, Macmillan, CHs 5, 6 and 7, pp. 83-140.

Supplemental

- Linz J J (1990) The Perils of Presidentialism, *Journal of Democracy*, 1, pp. 51-69.
- Martinez J S (2012) Horizontal Structuring, in in Rosenfeld M and Sajó A (eds.), *The Oxford Handbook of Comparative Constitutional Law*, CH 29.

Week 8 *The week continued:* **Horizontal Structuring of Powers: Parliamentary, presidential and semi-presidential systems of government**

Week 9 ***Constraints on State Power III: Rule of law and judicial independence***

Required

- Alder J (2002) Rule of law, in *General Principles of Constitutional and Administrative Law* (4th ed.), in CH 5, pp. 92-105.
- Craig P (1997) Formal and substantive concepts of the rule of law: an analytical framework, *Public Law*, pp. 467-487.

Supplemental

- Ferioli E (2015) Rule of Law and Constitutional Democracy, *The Turkish Yearbook of International Relations*, 46, pp. 91-106.
- European Commission for Democracy Through Law (Venice Commission) (2016) Rule of Law Checklist (Click [here](#) to access the document).
- Barber N (2018) The Rule of Law, in *The Principles of Constitutionalism*, Oxford University Press, CH 4, pp. 85-119.
- Waldron J (2016) The Rule of Law, *Stanford Encyclopedia of Philosophy*, (Click [here](#) to access the document).

Week 10 ***Constraints on State Power IV: The constitutionalization and protection of fundamental human rights***

Required

- Clapham A, Looking at Rights, in *Human Rights: A very short introduction*, Oxford University Press, CH 1, pp. 1-26.
- Alexy R (2012) Rights and Liberties as Concepts, in Rosenfeld M / Sajó A (eds.) *The Oxford Handbook of Comparative Constitutional Law*, Oxford University Press, pp. 284-296.

Supplemental

- Smith R K M (2013) The International Bill of Human Rights, in *Textbook on International Human Rights*, Oxford University Press, pp. 38-52.
- Möller K (2012) Negative and Positive Freedom, in *The Global Model of Constitutional Rights*, CH 3, pp. 29-43.
- The United Nations High Commissioner for Human Rights (2018) Constitution Bill of Rights, in *Human Rights and Constitution Making*, Part 2, pp. 20-125.

Week 11 ***The week continued: The Constitutionalization and Protection of Fundamental Human Rights***

Week 12 ***Constitutional Adjudication and the Methods of Interpretation: Originalism/Living constitutionalism***

Required

- Kelsen H (1942) Judicial Review of Legislation: A Comparative Study of the Austrian and the American Constitution, *The Journal of Politics*, 4 (2), pp. 183-200.
- Bobbit P (1991) *The Modalities of Constitutional Argument*, Available at: <https://www.law.uh.edu/assignments/spring2018/11814-Bobbitt.pdf>

Supplemental

- Bartrum I C (2021) *The Modalities of Constitutional Argument: A Primer*, READINGS IN PERSUASION: BRIEFS THAT CHANGED THE WORLD, Linda Edwards, ed., Wolters Kluwer, 2011, Available at SSRN: <https://ssrn.com/abstract=1849263>
- Brewer-Carías A (2011) Judicial Review of Legislation and the Legislator, in *Constitutional Courts as Positive Legislators: A Comparative Law Study*, Cambridge University Press, Ch 1, pp. 13-40.
- See also <https://cstl-cla.semo.edu/hhill/ui305/constitutional%20interpretationa.htm>

Week 13 ***Constraints on State Power V: A focus on the right to free elections in light of the Art 3 of Protocol No 1 of the ECHR***

Required

- Guide on Article 3 of Protocol No. 1 to the European Convention on Human Rights, Right to free elections, available at: https://www.echr.coe.int/Documents/Guide_Art_3_Protocol_1_ENG.pdf
- Mathieu-Mohin and Clerfayt v. Belgium, ECtHR, Application no. 9267/81, 2 March 1987.

Supplemental

- Golubok S (2009) Right to Free Elections: Emerging Guarantees or Two Layers of Protection?, *Netherlands Quarterly of Human Rights*, 27 (3), pp. 361–390.

Week 14 ***Wrap-up***