

Faculdade de Direito da UFMG

Programa de Pós-Graduação em Direito

PLANO DE ENSINO

ANO E SEMESTRE					
2022-1					
PROFESSOR(ES)					
PROFESSORA TIMEA DRINOCZI					
CÓDIGO DA DISCIPLINA					
DIP DIR873					
TEMA					
TEMAS DE DIREITO CONSTITUCIONAL					
SUBTEMA					
ILLIBERALISM AND ILLIBERAL CONSTITUTIONALISM					
AUTORIZA OFERTA DE MATRÍCULA NA MODALIDADE DISCIPLINA ISOLADA?					
(+) Sim () Não					
AUTORIZA OFERTA DE MATRÍCULA DE GRADUANDO NA MODALIDADE DISCIPLINA ELETIVA?					
(+) Sim () Não					
DIA DA SEMANA	HORÁRIO	CARGA HORÁRIA	CRÉDITOS	VAGAS	TIPO DA DISCIPLINA
segundas-feiras	18.30- 21.50	60	4	25	REGULAR
A DISCIPLINA É MINISTRADA EM IDIOMA ESTRANGEIRO: CASO SIM, QUAL IDIOMA?					
() Não () Sim Qual: INGLES/ENGLISH					

PARTICIPAÇÃO DE PROFESSOR(ES) CONVIDADO(S)?		
() Sim (+) Não		
NOME(S) DO(S) PARTICIPANTE(S)	CPF	INSTITUIÇÃO

EMENTA

[1] The **purpose** of this course is to introduce students to illiberalism, illiberal constitutionalism and identity in Europe, especially in Hungary and Poland. Besides the theory and functioning of illiberal constitutionalism, students will also get an insight into its historical and emotional background. They will learn how it supports the endurance of illiberal constitutional identity and its presence, as well. Against this background students will have opportunity to critically analyze and compare this European illiberalism with the constitutional erosion in Brazil. They will explore how illiberalism could be conceptualized and what it means from the perspective of comparative constitutional law.



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The students, based on their previous knowledge on constitutionalism and democracy, will be able to demonstrate an understanding of illiberal constitutionalism and its distinctive features, discuss various theories on constitutionalism, construct an own understanding of the events that occurred in Poland and Hungary, Member States of the European Union, from 2010 to date and compare them with the Brazilian constitutional erosion. The students should be able to evaluate, justify and/or dispute different governmental actions, pieces of legislation and cases, individually or in groups, and think critically about law, politics, and legal scholarship.

[2] The **content** of the course, in a 4-hour long classes, on a weekly basis, encompasses the following: Introduction; About the class; requirements; Assignments; Introductory questions and answers. Illiberalism and Illiberal constitutionalism as a research project. Authoritarianism and other concepts. The concept of illiberal constitutionalism. Constitutional identity. Limits of illiberal constitutionalism. Illiberal democracy. Illiberalization of human rights. Functioning of illiberal constitutionalism: capture and creating of an invisible constitution. Functioning of illiberal constitutionalism: illiberal judicialization of politics and illiberal constitutional courts. Functioning of illiberal constitutionalism: pushing the limits. Functioning of illiberal constitutionalism: failed exit strategies. Restoring of constitutionalism.

[3] The **mode of delivery** includes lectures, discovery learning, problem-based learning, group-based learning (if possible), and independent studies. Students are exposed to dominant theoretical perspectives and methods used to explain constitutional change and erosion. Students will be referred to minimum reading (and listening) materials and will be expected to read (listen) them and elaborate on the various assignments within their respective group/individually. In the class, they are invited to present their arguments and findings.

[4] The **week-by-week breakdown** of the course is as follows.

4/4/2022

Introduction; About the class; requirements; Assignments; Introductory questions and answers

Reading/video for next week:

- For illiberal constitutionalism as a research project
- T Drinóczi and A Bień-Kacała, Illiberal Constitutionalism in Poland and Hungary: The Deterioration of Democracy, Misuse of Human Rights and Abuse of the Rule of Law, Routledge (2022) Part I

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- Constitution 1997 of Poland, <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm> (principles and state structure)
- Constitution of Hungary, https://www.ctbto.org/fileadmin/user_upload/pdf/Legal_documents/national_provisions/Hungary_Constitution_121249.pdf (principles and state structure)
- Video: UFMG Constitutionalism and Democracy Seminar Series: Illiberal Constitutionalism as a Research Agenda: <https://www.youtube.com/watch?v=2ioWifni6SM&t=931s>
For Illiberalism:
- Marlene Laurelle, Illiberalism: a conceptual introduction, <https://www.illiberalism.org/illiberalism-conceptual-introduction/>

Deadline for submission of the presentations: Friday

Deadline for submission of Individual notes: before the next class

11/4/2022

Discussion on **Illiberalism and Illiberal constitutionalism as a research project** (student rapporteurs presents the topics, students present their Individual notes and assess the presentation, lecturer summarizes and provides further insights)

- Illiberal constitutionalism as a research project
- Illiberalism as a conceptual framework

Literature for the next week:

For authoritarianism and other concepts:

- Puddington, Arch, '[Breaking down democracy: global strategies, and methods of modern authoritarians](https://freedomhouse.org/sites/default/files/June2017_FH_Report_Breaking_Down_Democracy.pdf)', https://freedomhouse.org/sites/default/files/June2017_FH_Report_Breaking_Down_Democracy.pdf June 2017
- Tóth Gábor Attila, 'Authoritarianism' in R Grote, F Lachenmann, R Wolfrum (eds), *Max Planck Encyclopedia of Comparative Constitutional Law* (Oxford Constitutional Law; online resource, 2017), <https://oxcon.ouplaw.com/view/10.1093/law-mpeccol/law-mpeccol-e205?prd=MPECCOL>
- A Bozóki and D Hegedús, 'An externally constrained hybrid regime: Hungary in the European Union', *7 Democratization* (2018)
- Gábor Halmai, [The Making of 'Illiberal Constitutionalism' with or without a New Constitution The Case of Hungary and Poland](https://me.eui.eu/gabor-halmai/wp-constitution-the-case-of-hungary-and-poland), [https://me.eui.eu/gabor-halmai/wp-](https://me.eui.eu/gabor-halmai/wp-constitution-the-case-of-hungary-and-poland)

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content/uploads/sites/385/2018/05/Making_of_illiberal_constitutionalism_Halmi_final.pdf

Deadline for submission of the presentations: Friday

Deadline for submission of Individual notes: before the next class

18/4/2022

Discussion on **Authoritarianism and other concepts** (student rapporteurs presents the topic, students present their Individual notes and assess the presentation, lecturer summarizes and provides further insights)

Literature for the next week:

- T Drinóczi and A Bień-Kacała, *Illiberal Constitutionalism in Poland and Hungary: The Deterioration of Democracy, Misuse of Human Rights and Abuse of the Rule of Law*, Routledge (2022) Part II
- M Tushnet, *The Possibility of Illiberal Constitutionalism?*, *Florida Law Review*, vol 69, 1367–1384. (additional)
- G Walker, 'The idea of nonliberal constitutionalism', vol 39, *Ethnicity and Group Rights*, 1997. (additional)

Deadline for submission of the presentations: Friday

Deadline for submission of Individual notes: before the next class

2/5/2022

Discussion on **The concept of illiberal constitutionalism** (student rapporteur presents the topic, students present their Individual notes and assess the presentation, lecturer summarizes and provides further insights)

- Illiberal constitutionalism
- Authoritarianism and other concepts

Literature for next week:

For the concept of constitutional identity (as the identity of the constituent people)

- T Drinóczi and A Bień-Kacała, *Illiberal Constitutionalism in Poland and Hungary: The Deterioration of Democracy, Misuse of Human Rights and Abuse of the Rule of Law*, Routledge (2022) Part III
- Schwartz, SH and Bardi, A, 'Influences of adaptation to communist rule on value priorities in Eastern Europe', *2 Political Psychology* (1997)

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- Additional sources on the Hungarian and Polish history (individual research)
For the concept of identity of the constitution
- T Drinóczi, Constitutional identity in Europe: the identity of the constitution. A regional approach. 2 German Law Journal (2020, Vol 21) 105-130, <https://www.cambridge.org/core/journals/german-law-journal/article/constitutional-identity-in-europe-the-identity-of-the-constitution-a-regional-approach/83D8D1737788756FEF098CF9485D7B1C>

Deadline for submission of the presentations: Friday

Deadline for submission of Individual notes: before the next class

9/5/2022

Discussion on **Constitutional identity** (student rapporteurs presents the topic, students present their Individual notes and assess the presentation, lecturer summarizes and provides further insights)

- Unbalanced constitutional identity: emotions and values in Hungary and Poland
- Identity of the constitution

Literature for next week:

For Comparative perspective - outside of Europe

- T Drinóczi and A Bień-Kacała, Illiberal Constitutionalism in Poland and Hungary: The Deterioration of Democracy, Misuse of Human Rights and Abuse of the Rule of Law, Routledge (2022) Part IV (Section I-II)
- A Lührmann and SI Lindberg, 'A third wave of autocratization is here: what is new about it?' 7 *Democratization* (2019)

For the Rule of Law and European Rule of Law and illiberal legality

- T Drinóczi and A Bień-Kacała, Illiberal Constitutionalism in Poland and Hungary: The Deterioration of Democracy, Misuse of Human Rights and Abuse of the Rule of Law, Routledge (2022) Part IV (Section III), Part V (Section I)
- T Drinóczi and A Bień-Kacała, Illiberal Constitutionalism and the European Rule of Law', in Tímea Drinóczi and Agnieszka Bień-Kacała, eds, Rule of Law, Common Values and Illiberal Constitutionalism. Poland and Hungary within the European Union, Routledge, 2021 (related parts)

Deadline for submission of the presentations: Friday

Deadline for submission of Individual notes: before the next class

16/5/2022

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Discussion on **Limits of illiberal constitutionalism** (student rapporteurs presents the topic, students present their Individual notes and assess the presentation, lecturer summarizes and provides further insights)

- Comparative perspective - outside of Europe
- The Rule of Law and European Rule of Law and illiberal legality

Literature for next week:

- T Drinóczi and A Bień-Kacała, *Illiberal Constitutionalism in Poland and Hungary: The Deterioration of Democracy, Misuse of Human Rights and Abuse of the Rule of Law*, Routledge (2022) Part V (Section II)
- OSCE ODIHR, *Hungary, Parliamentary Elections, 8 April 2018: Final Report*, <https://www.osce.org/odihr/elections/hungary/385959> (additional: reports on the 2010 and 2014 election)
- Election reports/news on the 2022 parliamentary election

Deadline for submission of the presentations: Friday

Deadline for submission of Individual notes: before the next class

23/5/2022

Discussion on **Illiberal democracy** (student rapporteurs presents the topic, students present their Individual notes and assess the presentation, lecturer summarizes and provides further insights)

Literature for next week:

- T Drinóczi and A Bień-Kacała, *Illiberal Constitutionalism in Poland and Hungary: The Deterioration of Democracy, Misuse of Human Rights and Abuse of the Rule of Law*, Routledge (2022) Part V (Section III)

Deadline for submission of the presentations: Friday

Deadline for submission of Individual notes: before the next class

30/5/2022

Discussion on **Illiberalization of human rights** (student rapporteurs presents the topic, students present their Individual notes and assess the presentation, lecturer summarizes and provides further insights)

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Literature for next week:

- T Drinóczi and A Bień-Kacała, Illiberal Constitutionalism in Poland and Hungary: The Deterioration of Democracy, Misuse of Human Rights and Abuse of the Rule of Law, Routledge (2022) Part VI (Section 1)

Deadline for submission of the presentations: Friday

Deadline for submission of Individual notes: before the next class

6/6/2022

Discussion on **Functioning of illiberal constitutionalism: capture and creating an invisible constitution** (student rapporteurs presents the topic, students present their Individual notes and assess the presentation, lecturer summarizes and provides further insights)

- Capturing constitution and constitutionalism
- Creating an invisible constitution

Literature for next week:

- T Drinóczi and A Bień-Kacała, Illiberal Constitutionalism in Poland and Hungary: The Deterioration of Democracy, Misuse of Human Rights and Abuse of the Rule of Law, Routledge (2022) Part VI (Section II)
- T Drinóczi, Illiberal constitutional courts and the danger they pose, 4-5 Państwa i Prawa 2022
- Video: UFMG Constitutionalism and Democracy Seminar Series: Abusive Constitutional Borrowing <https://www.youtube.com/watch?v=T0EDc5LJ2A8>, Rosalind Dixon and David Landau, 'Abusive judicial review: courts against democracy', https://lawreview.law.ucdavis.edu/issues/53/3/53-3_Landau_Dixon.pdf (additional)

Deadline for submission of the presentations: Friday

Deadline for submission of Individual notes: before the next class

13/6/2022

Discussion on **Functioning of illiberal constitutionalism: illiberal judicialization of politics and illiberal constitutional courts** (student rapporteurs presents the topic, students present their Individual notes and assess the presentation, lecturer summarizes and provides further insights)

- Illiberal judicialization of politics
- Illiberal constitutional courts

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Literature for next week:

- T Drinóczi and A Bień-Kacała, *Illiberal Constitutionalism in Poland and Hungary: The Deterioration of Democracy, Misuse of Human Rights and Abuse of the Rule of Law*, Routledge (2022) Part VI (Section III)

Deadline for submission of the presentations: Friday

Deadline for submission of Individual notes: before the next class

20/6/2022

Discussion on **Functioning of illiberal constitutionalism: pushing the limits** (student rapporteurs presents the topic, students present their Individual notes and assess the presentation, lecturer summarizes and provides further insights)

Literature for next week:

- T Drinóczi and A Bień-Kacała, *Illiberal Constitutionalism in Poland and Hungary: The Deterioration of Democracy, Misuse of Human Rights and Abuse of the Rule of Law*, Routledge (2022) Part VI (Section IV)
- Pech, L., Wachowiec, P. & Mazur, D. *Poland's Rule of Law Breakdown: A Five-Year Assessment of EU's (In)Action*. *Hague J Rule Law* 13, 1–43 (2021) (additional, available online)
- T Drinóczi, *The EU Cannot Save Us: Why Poland and Hungary need resilience, not future-oriented reforms of EU enforcement mechanisms*, *VerfBlog*, 2021/7/07, <https://verfassungsblog.de/the-eu-cannot-save-us/> (additional)

Deadline for submission of the presentations: Friday

Deadline for submission of Individual notes: before the next class

27/6/2022

Discussion on **Functioning of illiberal constitutionalism: failed exit strategies** (student rapporteurs presents the topic, students present their Individual notes and assess the presentation, lecturer summarizes and provides further insights)

Literature for next week:

- <https://verfassungsblog.de/category/debates/restoring-constitutionalism/>

Deadline for submission of the presentations: Friday

Deadline for submission of Individual notes: before the next class

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13/6/2022

Discussion on **Restoring of constitutionalism** (student rapporteurs presents the topic, students present their Individual notes and assess the presentation, lecturer summarizes and provides further insights)

4/7/2022

Consultation for the finalization of papers

BIBLIOGRAFIA

Core literature:

- T Drinóczi and A Bień-Kacała, *Illiberal Constitutionalism in Poland and Hungary: The Deterioration of Democracy, Misuse of Human Rights and Abuse of the Rule of Law*, Routledge (2022)
- Video: UFMG Constitutionalism and Democracy Seminar Series: Illiberal Constitutionalism as a Research Agenda: <https://www.youtube.com/watch?v=2ioWlfni6SM&t=931s>
- Marlene Laurelle, *Illiberalism: a conceptual introduction*, <https://www.illiberalism.org/illiberalism-conceptual-introduction/>
- Arch Puddington, '[Breaking down democracy: global strategies, and methods of modern authoritarians](https://freedomhouse.org/sites/default/files/June2017_FH_Report_Breaking_Down_Democracy.pdf)', https://freedomhouse.org/sites/default/files/June2017_FH_Report_Breaking_Down_Democracy.pdf June 2017
- Tóth Gábor Attila, 'Authoritarianism' in R Grote, F Lachenmann, R Wolfrum (eds), *Max Planck Encyclopedia of Comparative Constitutional Law* (Oxford Constitutional Law; online resource, 2017), <https://oxcon.ouplaw.com/view/10.1093/law-mpeccol/law-mpeccol-e205?prd=MPECCOL>
- A Bozóki and D Hegedűs, 'An externally constrained hybrid regime: Hungary in the European Union', *7 Democratization* (2018)
- Gábor Halmai, '[The Making of 'Illiberal Constitutionalism' with or without a New Constitution The Case of Hungary and Poland](https://me.eui.eu/gabor-halmai/wp-content/uploads/sites/385/2018/05/Making_of_illiberal_constitutionalism_Halmai_final.pdf)', https://me.eui.eu/gabor-halmai/wp-content/uploads/sites/385/2018/05/Making_of_illiberal_constitutionalism_Halmai_final.pdf
- T Drinóczi, *Constitutional identity in Europe: the identity of the constitution. A regional approach*. *2 German Law Journal* (2020, Vol 21) 105-130, <https://www.cambridge.org/core/journals/german-law-journal/article/constitutional-identity-in-europe-the-identity-of-the-constitution-a-regional-approach/83D8D1737788756FEF098CF9485D7B1C>
- A Lührmann and SI Lindberg, 'A third wave of autocratization is here: what is new about it?' *7 Democratization* (2019)

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- T Drinóczi and A Bień-Kacała, Illiberal Constitutionalism and the European Rule of Law', in Tímea Drinóczi and Agnieszka Bień-Kacała, eds, *Rule of Law, Common Values and Illiberal Constitutionalism. Poland and Hungary within the European Union*, Routledge, 2021 (related parts)
- OSCE ODIHR, Hungary, Parliamentary Elections, 8 April 2018: Final Report, <https://www.osce.org/odihr/elections/hungary/385959>
- T Drinóczi, Illiberal constitutional courts and the danger they pose, 4-5 Państwa i Prawa 2022
- <https://verfassungsblog.de/category/debates/restoring-constitutionalism/>

Additional literature

- M Tushnet, The Possibility of Illiberal Constitutionalism?, *Florida Law Review*, vol 69, 1367–1384 (additional)
- G Walker, 'The idea of nonliberal constitutionalism', vol 39, *Ethnicity and Group Rights*, 1997 (additional)
- Schwartz, SH and Bardi, A, 'Influences of adaptation to communist rule on value priorities in Eastern Europe', 2 *Political Psychology* (1997)
- Additional sources on the Hungarian and Polish history (individual research)
- OSCE ODIHR reports on the 2010 and 2014 election (Hungary)
- Election reports/news on the 2022 parliamentary election
- Video: UFMG Constitutionalism and Democracy Seminar Series: Abusive Constitutional Borrowing <https://www.youtube.com/watch?v=TOEDc5LJ2A8>,
- Rosalind Dixon and David Landau, 'Abusive judicial review: courts against democracy', https://lawreview.law.ucdavis.edu/issues/53/3/53-3_Landau_Dixon.pdf (additional)
- Pech, L., Wachowiec, P. & Mazur, D. Poland's Rule of Law Breakdown: A Five-Year Assessment of EU's (In)Action. *Hague J Rule Law* 13, 1–43 (2021) (additional, available online)
- T Drinóczi, The EU Cannot Save Us: Why Poland and Hungary need resilience, not future-oriented reforms of EU enforcement mechanisms, *VerfBlog*, 2021/7/07, <https://verfassungsblog.de/the-eu-cannot-save-us/>

TEXTOS E DOCUMENTOS DISPONÍVEIS NA WEB

As informed above

INFORMAÇÕES ADICIONAIS

Course assessment

Exam: paper submission: 50%. It consists of i) Presentation as a student rapporteur (45 mins; slides; 20%), and submission of the finalized paper based on the discussion (no more than 5000 words 30%). Papers should be sent to drinoczi.timea@gmail.com by **13/7/2022**.



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Individual notes (opinion on the presentation in advance; using bullet points; focusing on the strength and weaknesses of the presentation own opinion): 30%

Participation: 20%

Total: 100%

Students are invited to

- lead the discussion on their selected topic as a rapporteur
- finalize and submit their paper by the end of the semester
- evaluate the presentation of the rapporteur in advance
- participate in the discussions

Assessment criteria

- demonstrated comprehension of minimum reading material and other reading material;
- ability to evaluate, justify and/or dispute
- quality of the paper, the presentation and individual notes
- participation: evaluation of works of others, offering their own views, participation in the discussion part of classes