Course Description

The European Union constitution adopted in the Lisbon Reform Treaty: history, values, and objectives; EU institutions and finances; economic, political, and constitutional competences; citizenship and democracy; human rights and fundamental freedoms; common foreign policy; security and defense; amending the constitution. Interdisciplinary graduate and advanced undergraduate students welcome; no prerequisites.

Content: In this course, you will uncover the new EU constitution hidden inside the text of the Lisbon Reform Treaty, which took effect on December 1, 2009 throughout all European Union member states (now 28). From your careful reading and rereading of the detailed treaty provisions governing the economic, political and constitutional structure of the European Union, you will gain a sophisticated modern understanding of this unprecedented political and jurisprudential evolution in international cooperation. Your own key to unlocking the specific provisions of the hidden EU Constitution will be Walsh, THE EUROPEAN UNION CONSTITUTION – THE COMPLETE RECONCILED TEXT OF THE CONSTITUTION TREATY AND THE LISBON REFORM TREATY, INCLUDING THE EU CHARTER OF FUNDAMENTAL RIGHTS AND THE STABILITY PACT (Catalyst Course Website distribution, 2012). We will print out this constitutional text onto 3-hole punch paper for regular classroom reference and discussion. These constitutional provisions laid out by Professor Walsh will be further illuminated by another required text which you will also read for each class, a deeply insightful survey of post-Lisbon EU constitutional law co-authored by a judge of the European Court of Justice, Rosas & Armati, EU CONSTITUTIONAL LAW – AN INTRODUCTION (Hart Publishing, 2d Revised Edition 2012). After first discussing the European Union’s reconciled constitutional text as laid out by Professor Walsh, and the additional commentary on those same provisions co-authored by Judge Rosas, we will conclude each class by discussing an illustrative recent case, on pressing issues ranging from sovereign debt to human rights, from military procurement to environmental protection.

Method: An important objective of this course is to convey the elevated place of written primary law in the European hierarchy of jurisprudential norms. We do so by identifying and reading together the new 21st century EU constitution that is often much more detailed and complete than its 18th century US counterpart. To keep us all on the same constitutional page, no later than 6 p.m. on the evening before our morning class, each student will post a Reaction to the assigned reconciled constitutional text laid out by Professor Walsh for the following day.
While you are expected to be fully familiar with all of the assigned EU treaty articles for the purpose of our classroom discussion, in your prior posting you should raise only those particular constitutional provisions and questions that intrigue you most; for the same reason, in your posting you need not discuss the assigned illustrative case. There is no maximum, but you should post at least 500 words per week. Also, on our Catalyst Course Website posting board covering those assigned constitutional provisions, you must carefully read the alternative Reactions of your classmates, and try to answer their questions just as they try to answer yours.

Instructor: Associate Professor Walter J. Walsh teaches comparative law and constitutional history at the University of Washington School of Law and in the Law, Societies and Justice (LSJ) Program. He holds law degrees from University College Dublin (B.C.L.), Yale University (LL.M.), and Harvard University (S.J.D.), where he wrote his doctoral dissertation on early human rights advocacy, and has practiced and taught law in Europe and in the United States. He has also trained in his native Dublin, Ireland, at the Incorporated Law Society, and in Strasbourg, France, at the Institut Internationale des Droits des l’Hommes. Professor Walsh is a founding faculty member and teaches each summer in the LSJ European Law & Society Program at the UW Rome Center.


Assessment: Weekly course website postings (30%), plus 24-hour Take-home Final Exam (70%). Paper option available, for qualified students only.

For your further perusal: To review the full course materials and course design, please visit our Catalyst Course Webpage at https://catalyst.uw.edu/gopost/board/wawa/21331/ (You can also find our full EU Constitution Catalyst Course Webpage by clicking the link to it from the regular UW law school course webpage.) Professor Walsh’s Syllabus for EU CONSTITUTION is attached, and he looks forward to seeing you at 1.30 p.m. on Monday, January 6, in Room 217 of the law school building, William H. Gates Hall. For all inquiries, please contact Professor Walsh's assistant Tabitha Acosta at ta25@uw.edu or (206) 685-6950 . . .

To read attached Syllabus for EU Constitution, please continue . . .
EU CONSTITUTION
Law E520, 4 cr
Course Website–https://catalyst.uw.edu/gopost/board/wawa/21331/
Mon & Weds, 1.30-3.20 p.m., Room 217, William H. Gates Hall

The European Union constitution adopted in the Lisbon Reform Treaty: history, values, and objectives; EU institutions and finances; economic, political, and constitutional competences; citizenship and democracy; human rights and fundamental freedoms; common foreign policy; security and defense; amending the constitution. Interdisciplinary graduate and advanced undergraduate students welcome; no prerequisites.

WEEK I
EUROPEAN UNION CONSTITUTIONAL HISTORY
PRELUDE, PREFACE AND PREAMBLES

The 21st Century Reconstitution of the European Union


What Constitution? A Rose by Any Other Name

Rosas & Armati, EU CONSTITUTIONAL LAW: AN INTRODUCTION, 2ND REVISED EDITION (“INTRODUCTION TO EU CONSTITUTIONAL LAW”), 1-6

The Constitutional History and Jurisprudence of the EU

Walsh, THE EU CONSTITUTION: THE COMPLETE RECONCILED TEXT, 50-66, Appendices 1 & 2 at 1443, 1449


The Elephant that Cannot be Defined? What the EU Is, and Is Not

Rosas & Armati, INTRODUCTION TO EU CONSTITUTIONAL LAW, 6-19

The Master of the Treaties? General Principles of EU Law

Rosas & Armati, INTRODUCTION TO EU CONSTITUTIONAL LAW, 32-33, 43-51

Direct Effect

Rosas & Armati, INTRODUCTION TO EU CONSTITUTIONAL LAW, 79-81
WEEK 2

A. THE NEW CONSTITUTIONAL ORDER OF THE EUROPEAN UNION

THE EU’s VALUES, DEFINITION, AND OBJECTIVES

The Policies, Personality, and Primacy of the EU

Walsh, THE EU CONSTITUTION: THE COMPLETE RECONCILED TEXT, 67-125

Illustrative Case C-6/64: Costa v. ENEL [1964] ECR 1141, 1203 (ECJ) (primacy added to direct effect, EC Treaties as new constitutional order)

Constructing a Hierarchy of Norms

Rosas & Armati, INTRODUCTION TO EU CONSTITUTIONAL LAW, 52-59

European Union Law in the National Legal Orders of the Member States

Rosas & Armati, INTRODUCTION TO EU CONSTITUTIONAL LAW, 66-76

THE EU’s MEMBERSHIP

Member State Eligibility and Accession, Territorial Scope, Civil Protection and Solidarity Clause, Suspension for Breach of EU’s Values, and Voluntary Withdrawal

Walsh, THE EU CONSTITUTION: THE COMPLETE RECONCILED TEXT, 126-148

Illustrative Case C-145/04: Spain v. United Kingdom [2006] ECR I-7917 (ECJ) (democracy and EU voting rights in Gibraltar)

Civil Protection, and European Solidarity Clause

Rosas & Armati, INTRODUCTION TO EU CONSTITUTIONAL LAW, 259-260

Suspending Member State Rights for Serious and Persistent Breach of EU’s Values

Rosas & Armati, INTRODUCTION TO EU CONSTITUTIONAL LAW, 54-55, 160-161

THE EU’s NEIGHBOURS

Relations with Neighboring States, and with Former Colonies of EU Member States

Walsh, THE EU CONSTITUTION: THE COMPLETE RECONCILED TEXT, 149-172

Illustrative Case C-300/04: Eman v. College van Burgemeester en Wethouders van den Haag [2006] ECR I-8055 (ECJ) (nationality, citizenship, EU voting rights of residents of former Dutch colony Aruba)

Inner, Intermediate and Outer Circles of Integration and Differentiation

Rosas & Armati, INTRODUCTION TO EU CONSTITUTIONAL LAW, 121-123, 148-150
WEEK 3 - no class M 1/20

THE EU’s INSTITUTIONS

The European Council, the Council of Ministers, the European Parliament, the European Commission


The Institutional Framework

Rosas & Armati, INTRODUCTION TO EU CONSTITUTIONAL LAW, 86-99

The European Court of Justice, the Court of Auditors, the European Central Bank, the European Investment Bank, Advisory Bodies

Walsh, THE EU CONSTITUTION: THE COMPLETE RECONCILED TEXT, 269-378, Annexes at 1331, 1360, 1387

Illustrative Case C-263/02 P: Commission v. Jego-Quere & Cie. SA [2004] ECR I-3425 (ECJ) (Atlantic fishing regulations, individual standing requirements to bring annulment action before ECJ)

Issues of Enforcement and Control: The European Court of Justice, and National Courts

Rosas & Armati, INTRODUCTION TO EU CONSTITUTIONAL LAW, 261-281

The Committee of the Regions; and Interinstitutional Agreements

Rosas & Armati, INTRODUCTION TO EU CONSTITUTIONAL LAW, 108, 64

WEEK 4

THE EU’s FINANCES


Walsh, THE EU CONSTITUTION: THE COMPLETE RECONCILED TEXT, 379-418


The Court of Auditors, and Budgetary and Financial Control

Rosas & Armati, INTRODUCTION TO EU CONSTITUTIONAL LAW, 91-93, 263, 266

THE EU’s COMPETENCES

Principles of Conferral, Subsidiarity, and Proportionality control EU’s Legal Acts, in Exclusive, Shared and Supporting Categories of Competence (W1/29)

Walsh, THE EU CONSTITUTION: THE COMPLETE RECONCILED TEXT, 419-494

**WEEK 5**

**B. THE EU’s INTERNAL POLICIES, ACTION AND FUNCTIONING**

**EUROPEAN ECONOMIC UNION: THE EU’s FOUR FREEDOMS AND THE INTERNAL MARKET**

**Free Movement of Persons and Services in the Internal Market**  
Walsh, THE EU CONSTITUTION: THE COMPLETE RECONCILED TEXT, 495-551  
Illustrative Case C-145/09: Land Baden-Wurttemberg v. Tsakouridis [2010] ECR __ (ECJ) (freedom of movement, longterm residence, crime and deportation)

**Free Movement of Workers and Services, of Citizens and Persons**  
Rosas & Armati, INTRODUCTION TO EU CONSTITUTIONAL LAW, 206-207, 143-144, 146-148, 150-157, 212-215

**Free Movement of Goods and Capital in the Internal Market**  
(W 2/5)  
Walsh, THE EU CONSTITUTION: THE COMPLETE RECONCILED TEXT, 552-627  
Illustrative Case C-112/05: Commission v. Germany [2007] ECR I-8995 (ECJ) (testing Germany’s golden shares in Volkswagen stock)

**The Internal Market: Liberal, Social or Green?**  
Rosas & Armati, INTRODUCTION TO EU CONSTITUTIONAL LAW, 200-209, 194-197

---

*Principles Governing European Union Competences: Conferral, Subsidiarity, Proportionality*
Rosas & Armati, INTRODUCTION TO EU CONSTITUTIONAL LAW, 14, 19-22, 28-31

*Secondary Law (Directives, Regulations, Decisions) and Other Legal Acts of EU Institutions*
Rosas & Armati, INTRODUCTION TO EU CONSTITUTIONAL LAW, 61-65

*Direct Applicability of European Union Norms*
Rosas & Armati, INTRODUCTION TO EU CONSTITUTIONAL LAW, 76-78

*European Union Regulatory and Administrative Bodies*
Rosas & Armati, INTRODUCTION TO EU CONSTITUTIONAL LAW, 99-105

*Enhanced Cooperation*
Rosas & Armati, INTRODUCTION TO EU CONSTITUTIONAL LAW, 123-125

*Categories and Areas of Competence*
Rosas & Armati, INTRODUCTION TO EU CONSTITUTIONAL LAW, 6-8, 22-26

*Harmonization Clause, and Flexibility Clause*
Rosas & Armati, INTRODUCTION TO EU CONSTITUTIONAL LAW, 26-28, 41-43
WEEK 6

EUROPEAN ECONOMIC UNION: ECONOMIC AND MONETARY POLICY

Economic and Monetary Provisions, the Eurozone, and the New Stability Pact
(M 2/10)
Walsh, The EU Constitution: The Complete Reconciled Text, 628-709, Annex at 1413

Economic and Monetary Differentiation and Flexibility
Rosas & Armati, Introduction to EU Constitutional Law, 98, 112-114, 118-120

The Sovereign Debt Crisis and EU Constitutional Reform

EUROPEAN POLITICAL UNION: FREEDOM, SECURITY AND JUSTICE

Borders, Asylum, Immigration, Police and Judicial Cooperation
(W2/12)
Walsh, The EU Constitution: The Complete Reconciled Text, 710-777, Annexes at 1433
Illustrative Case C-540/03: Parliament v. Council [2006] ECR I-5769 (ECJ) (fundamental rights and EU family reunification policies for refugees)

The Area of Freedom, Security & Justice
Rosas & Armati, Introduction to EU Constitutional Law, 181-199

Differentiation and Flexibility in Written Primary Law on the Schengen Regime
Rosas & Armati, Introduction to EU Constitutional Law, 111-117

WEEK 7 - no class M 2/17

EUROPEAN POLITICAL UNION: OTHER EXCLUSIVE AND SHARED EU COMPETENCES

Employment; Social Policy; Economic & Territorial Cohesion; Agriculture & Fisheries
(W2/19)
Walsh, The EU Constitution: The Complete Reconciled Text, 778-852
Illustrative Case C-438/05: International Transport Workers’ Federation v. Viking Line ABP [2007] ECR I-10779 (ECJ) (the fundamental freedom of EU multinationals to establish versus the fundamental freedom of EU workers to strike)

The Social Dimension
Rosas & Armati, Introduction to EU Constitutional Law, 162-163, 178-180, 209-215
Environment; Consumer Protection; Infrastructure Networks; Research, Technology & Space; Energy

Walsh, THE EU CONSTITUTION: THE COMPLETE RECONCILED TEXT, 853-926


The Environment

Rosas & Armati, INTRODUCTION TO EU CONSTITUTIONAL LAW, 215-219

EUROPEAN POLITICAL UNION: COMPETENCES WHERE THE EU TAKES ONLY COORDINATING, COMPLEMENTARY OR SUPPORTING ACTION

Public Health; Industry; Culture; Tourism; Education, Youth, Sport & Vocational Training; Administrative Cooperation

Walsh, THE EU CONSTITUTION: THE COMPLETE RECONCILED TEXT, 927-949

Illustrative Case C-73/08: Bressol v. Gouvernement de la Communauté Française [2010] ECR I-2735 (ECJ) (free movement ban on discriminatory college access or higher tuition for EU out-of-state students, member state claims justification for medical student quotas based on national public health needs)

Supporting Competences

Rosas & Armati, INTRODUCTION TO EU CONSTITUTIONAL LAW, 25-26, 210-212

WEEK 8

EUROPEAN CONSTITUTIONAL UNION: THE EU’s DEMOCRATIC LIFE, CITIZENSHIP AND EQUALITY, AND FUNDAMENTAL RIGHTS

The EU’s Principles of Democratic Equality, Representative Democracy, Participatory Democracy; Nondiscrimination; Citizenship; Fundamental Rights and Freedoms (M 2/24)

Walsh, THE EU CONSTITUTION: THE COMPLETE RECONCILED TEXT, 950-1011

Illustrative Joined Cases C-39/05 P & 52/05 P: Sweden and Turco v. Council [2008] ECR I-4723 (ECJ) (access to internal opinions written by EU legal advisors, full openness and transparency as requirements for democracy)

The EU System of Democracy

Rosas & Armati, INTRODUCTION TO EU CONSTITUTIONAL LAW, 126-142, 105-110, 262-263, 279-280

Nondiscrimination

Rosas & Armati, INTRODUCTION TO EU CONSTITUTIONAL LAW, 174-177, 209-210, 212-215

The Evolving Concept of Union Citizenship

Rosas & Armati, INTRODUCTION TO EU CONSTITUTIONAL LAW, 143-159
EUROPEAN CONSTITUTIONAL UNION: THE EU CHARTER OF FUNDAMENTAL RIGHTS

History of EU Charter of Fundamental Rights; Dignity, Freedoms, Equality  
Walsh, THE EU CONSTITUTION: THE COMPLETE RECONCILED TEXT, 1012-1090
Illustrative Case C-43/75: Defrenne v. Societe Anonyme Belge de Navigation Aerienne Sabena [1976] ECR 455 (ECJ) (horizontal direct effect of EC Treaty equal pay article, allows individuals to bring antidiscrimination right of action against all EU private employers)

The EU System of Fundamental Rights: History
Rosas & Armati, INTRODUCTION TO EU CONSTITUTIONAL LAW, 79-80, 160-164

WEEK 9

Social Solidarity, Citizens’ Rights, Justice; Interpreting and Applying EU Charter of Fundamental Rights  
Walsh, THE EU CONSTITUTION: THE COMPLETE RECONCILED TEXT, 1091-1170

The EU System of Fundamental Rights: Field of Application, Scope, Sources, Direct Effect
Rosas & Armati, INTRODUCTION TO EU CONSTITUTIONAL LAW, 44-51, 54-59, 164-177

C. THE EU’s EXTERNAL POLICIES, ACTION AND FUNCTIONING

EUROPEAN DIPLOMATIC UNION: THE EU’s COMMON FOREIGN & COMMERCIAL POLICY

Common Foreign & Commercial Policy; Humanitarian Aid; Restrictive Measures; International Relations and Agreements  
Walsh, THE EU CONSTITUTION: THE COMPLETE RECONCILED TEXT, 1171-1258
Illustrative Case C-459/03: Commission v. Ireland [2006] ECR I-4635 (ECJ) (British nuclear waste and Irish Sea, member state call for arbitration under Law of the Sea convention instead of ECJ prohibited)

EU External Relations
Rosas & Armati, INTRODUCTION TO EU CONSTITUTIONAL LAW, 236-254, 264-265

External Relations and Circles of Integration and Differentiation
Rosas & Armati, INTRODUCTION TO EU CONSTITUTIONAL LAW, 121-123

External Relations and Human Rights
Rosas & Armati, INTRODUCTION TO EU CONSTITUTIONAL LAW, 163-164

The EU’s International Agreements in the EU’s Hierarchy of Norms
Rosas & Armati, INTRODUCTION TO EU CONSTITUTIONAL LAW, 59-61, 241-242, 246-250

Primacy and Direct Effect of the EU’s International Agreements in the National Legal Orders of the Member States
Rosas & Armati, INTRODUCTION TO EU CONSTITUTIONAL LAW, 74-75, 78, 82-85

Week 10
EUROPEAN SECURITY UNION: THE EU’s COMMON SECURITY & DEFENCE POLICY

Common Security and Defence Policy; and Member State Security
Walsh, THE EU CONSTITUTION: THE COMPLETE RECONCILED TEXT, 1259-1292
Illustrative Case C-284/05: Commission v. Finland [2009] ECR I-11705 (ECJ) (member state exempts imported military equipment from EU customs duties, asserts essential interests of member state security)

Security and Defence
Rosas & Armati, INTRODUCTION TO EU CONSTITUTIONAL LAW, 252-260, 278

Differentiation and Flexibility in Written Primary Law on Security and Defence
Rosas & Armati, INTRODUCTION TO EU CONSTITUTIONAL LAW, 120-121

D. REVISION PROCEDURES, AND OTHER FINAL PROVISIONS

FINAL PROVISIONS

Ordinary and Simplified Treaty Revision Procedures; Authentic Translations; Protocols and Annexes Included in EU’s Written Primary Law
Illustrative Case Bve 2/08: Judgment of the German Constitutional Court, Judgment of 30 June 2009, BverfG, 2 Bve 2/08 (German Const. Ct.) (one national judicial response to the increasing reach of EU constitutional jurisprudence)

Protocols and Annexes in the EU’s Hierarchy of Norms
Rosas & Armati, INTRODUCTION TO EU CONSTITUTIONAL LAW, 57

Procedures for Amending the Treaties
Rosas & Armati, INTRODUCTION TO EU CONSTITUTIONAL LAW, 32-41

The Elephant in the Room? Concluding Remarks
Rosas & Armati, INTRODUCTION TO EU CONSTITUTIONAL LAW, 282-288

Assessment: Weekly course website postings (for 30%), plus 24-hour Take-home Final Exam (for 70%). Paper option available, for qualified students only. 

W.J.W.

Catalyst Course Website distribution, 2012

The entire written primary law of the European Union, the Lisbon Reform Treaty (2009), shown in its constitutional form which almost entirely incorporates the Treaty Establishing a Constitution for Europe (2004). In this systematic reconstitution of the European Union treaties, each controlling treaty article includes relevant interpretative declarations and annotations, and stands together with other closely related articles and protocols. The treaty articles are presented in enlarged font and highlighted form, so they can either be read horizontally (i.e. from one to the next) or vertically (i.e. going deeper into any particular article as needed). Through the use of bold and underlined markings, and careful attribution of the constitutional provenance of each treaty article, the reader will instantly identify every change introduced into the EU treaties by the Treaty Establishing a Constitution for Europe and later adopted in the Lisbon Reform Treaty. In contrast to EU law books based on selective and incomplete treaty extracts, or on secondary descriptions of such controlling provisions, this invaluable book is based on the premise that the 21st century European Union constitution can be reconstituted from a careful historical reading of all the controlling articles of the Lisbon Reform Treaty, effective 1 December 2009.

Allan Rosas & Lorna Armati, EU CONSTITUTIONAL LAW: AN INTRODUCTION


This innovative book is based on the premise that the absence of a single constitutional document for the European Union does not imply the absence of a constitution. Rather, the EU constitution is composed of a myriad of legal texts, case-law and practice, is a moving target subject to continuous change and comprises several layers of integration with varying geographical scope. Essential features and the profound changes which have taken place over the past 20 years: the EU has become much more than an internal economic market and has recently been active even in areas such as immigration and third-country nationals, security and defence policy and penal law and procedure. Rather than casting the reader adrift in a sea of institutional and procedural detail, the authors underline the essential values, principles and objectives of the integration regime as well as its basic normative structure and hierarchy. In this context, the decentralised nature of the EU is highlighted as an integral part of its constitutional make-up. Recurring themes running through the book include European citizenship as well as fundamental rights and the rule of law. And, while stressing the basic values, principles and objectives of the EU, the book also confronts head-on the problems and challenges facing the Union and the gap which is often perceived between lofty ideals and harsh realities. The book will be particularly useful to students of EU law and European integration but will also appeal to a broader audience of researchers and practitioners, including political scientists. The book takes fully into account the fate of the Lisbon Reform Treaty entered into force on 1 December 2009.