



## PROGRAMA

### The return of politics to Constitutional Law

The consolidation of constitutionalism in 20th century Europe meant to a significant extent also the consolidation of constitutional jurisdictions. Several factors contributed to this connection, namely the creation of constitutional courts in the inter-war period and especially after the second world war; the normative force of fundamental rights against the legislator and their direct application; at another level, still questionably “constitutional”, the development of a supranational European legal order in whose affirmation and defense the European Court of Justice played a leading role.

Those factors, among others, contributed to the dissemination of the conviction that constitutional law is reduced to a formal constitution fully guaranteed by a constitutional jurisdiction. By this token constitutionalism is generally confused with *judicial* constitutionalism.

Conversely, political constitutionalism – i.e. a constitutionalism that is not formalized and/or the object of judicial review – tends to be faced as a thing of the past. Indeed the claim that political constitutionalism has been eradicated is a widespread claim even though it is not always made in an explicit or sufficiently argued way.

The purpose of this conference is to debate this dominant view and consider the alternatives. A central question is whether one should keep referring today to a political dimension of constitutionalism not to be confused with the aforementioned judicial dimension and impervious to it. A related, perhaps overlapping, question is whether constitutional *law* is all there is regarding politics – or its regulation – or whether, on the contrary, one should also consider the existence of a constitutional *right*, developing in the lineage of the modern *political right*, originating in the thought of such authors as Thomas Hobbes.

These fundamental questions raise different problems, namely:

- Is there a *political right* structuring the state – eventually also the European Union – and presiding over its action not to be confused with formal constitutional law?
- Is *political right* an historical successor of *medieval political theology* and/or a modern form of *political theology*?
- Constitutions, even formal constitutions, are affected by changes that do not amount to formal constitutional revisions or amendments. Before those vicissitudes, is it necessary to speak of an informal constitutionalism? And is the latter a political constitutionalism?
- Are there non judiciable constitutional questions, namely those that are traditionally covered by the “political question doctrine”?
- To what extent has the financial crisis observed in the last decade – the consequent adoption of emergency measures both at the level of the European Union and of states – revealed a political dimension of constitutionalism?

The conference is a joint organization of the Centre for Research in Public Law of the University of Lisbon and of the Institute for Law and Philosophy of the University of San Diego.

The conference will take place on 22<sup>nd</sup> and 23<sup>rd</sup> May 2018 and will include six sessions.

Each talk of approximately 20 minutes will be followed by commentary and debate.

The speakers are invited to present a written paper or an outline of the argument until April 30<sup>th</sup> 2018 to the following e-mail address: [icjp@fd.ulisboa.pt](mailto:icjp@fd.ulisboa.pt)

Program

## Tuesday May 22nd

1st session:

### Constitutionalism and political right

10h30

- Martin Loughlin  
Commentary: Miguel Nogueira de Brito

11h10 - Debate

11h20 - Coffee break

11h45

- Robert Nagel  
Commentary: Steven Smith

12h25 - Debate

13h00 - Lunch

2nd session:

### From political theology to political right and back?

15h00

- Paul Kahn  
Commentary: Alexandre Franco de Sá

15h40 - Debate

15h50

- Luís Pereira Coutinho  
Commentary: David Teles Pereira

16h30 - Debate

16h45 - Coffee break

3rd session:

### Are there non-judicial constitutional questions?

17h00

- Lawrence A. Alexander  
Commentary: Gonçalo de Almeida Ribeiro

17h40 - Debate

### **Wednesday May 23rd**

4th session:

#### **A European political right?**

10h30

- Agustin Jose Menendez  
Commentary: Pedro Lomba

11h10 - Debate

11h20 - Coffee break

11h40

- Massimo La Torre  
Commentary: Miguel Morgado

12h20 - Debate

13h00 - Lunch

5th session:

#### **Formal and informal constitutionalism**

15h00

- James Allan  
Commentary: Jaime Valle

15h40 - Debate

16h30

- Manon Altwegg-Boussac  
Commentary: Lourenço Vilhena de Freitas

16h45 - Coffee break

6th session:

#### **Law and right**

17h00



# THE RETURN OF POLITICS TO CONSTITUTIONAL LA

- Maimon Schwarzshild  
Commentary: Jorge Silva Sampaio

17h40 - Debate



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## INFORMAÇÕES

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**Free admission without prior registration.**

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