

Constitutional Theory

POLS 4130

Spring 2017

Main 006

MWF 12:30pm-1:20pm

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Office Hours: Monday and Wednesday 1:30 pm-2:30 pm (or by appointment)

Course Synopsis

Most courses involving the Constitution primarily focus on what the Supreme Court has said about the Constitution (constitutional law) rather than what the Constitution itself might mean to other political actors. The Court's role as supreme arbiter of constitutional meaning is well established in American politics. However, political actors (such as lawyers, judges, politicians, and ordinary citizens) generally talk about the Constitution and the Court as if the Court can get the Constitution wrong. By so doing, these actors presuppose that the Constitution has meaning independent of what the Court (or any other interpreter) might say it means. We will take this presupposition seriously and explore the meaning of the Constitution from its political and theoretical foundation. In so doing, we will (hopefully) better understand its meaning and the ways in which this governing document empowers and constrains political actors and politics.

Required Texts

Notes of Debates in the Federal Convention of 1787 Reported by James Madison (Ohio University Press)

The Federalist Papers with Introduction and Notes by Charles R. Kesler (Signet Classics)

The Anti-Federalist Writings of the Melancton Smith Circle ed. Michael P. Zuckert and Derek A. Webb
Sanford Levinson, *Our Undemocratic Constitution* (Oxford University Press)

Course Goals

1. Learn fundamental principles, generalization, and theories
 - Much of the course will focus on historical information that will be vital in understanding the development of the ideas and practices that shaped the meaning of the Constitution. While I do not require extensive memorization of historical facts (like dates when papers were published or debates transpired), I will expect you to learn important factual information as it relates to the content of the course. The exams will be the primary means of assessing this goal.
2. Learn to analyze and critically evaluate ideas, arguments, and points of view
 - Guaranteed, you will disagree (sometimes deeply) with some of the political views of individuals in the text and in the classroom. Rather than simply dismissing their positions as irrelevant or misguided (putting it nicely), we will endeavor to engage with them, and each other, in a charitable and meaningful way. Class discussion and the writing assignment will be the means of assessing this goal.

3. Develop skill in expressing oneself orally and in writing
 - “a politics of persuasion—in which people try to change one another’s minds by appealing not only to reason but also to passions and sometimes even to prejudices—is a mode of politics that is worth defending” (Bryan Garsten, *Saving Persuasion*, Harvard University Press, 2006, pp. 3). Articulating a persuasive argument, whether in speech or writing, is an important skill that can be used in politics and life. As such, we elevate the quality of our discourse when we avoid manipulation and pandering to make our points. Class participation and the writing assignment will be the primary means of assessing this goal.

Assignments and Grading

Writing Assignment (100 points)

There will be two writing assignments throughout the semester. The first will involve the debates between the Anti-Federalists and Federalists. You will choose one topic (representation, federalism, etc.) debated by these two sides and write a 4-5 page paper, double-spaced that 1) briefly summarizes each side of the debate, making sure to include the most important arguments and 2) discusses which side has the most convincing argument and why. You will want to avoid making conclusions like “the Federalists were more convincing because that is how we do it now.” This assignment will be due the Friday of the week you choose for your topic. So, if you write on representation, your paper will be due in-class on Friday, March 24th.

The second will engage with Levinson’s argument from his book. Understanding the argument an author is putting forth is an important part of academic writing. The better you understand the author’s argument, the better you are able to engage with them in an academic dialogue. You will be required to write an academic review of Levinson’s *Our Undemocratic Constitution*. Your review will include the following: 1) a brief summary of Levinson’s argument, 2) the specific strengths of Levinson’s argument, and 3) the specific weaknesses of Levinson’s argument and how you would recommend he strengthen them. The bulk of this writing assignment will consist of addressing and substantiating this third point. This assignment will be 5-6 pages, double-spaced.

Each writing assignment will be worth 50 points and needs to be typed in New Times Roman, 12-point font with 1-inch margins. I do not accept email paper submissions. Papers submitted late will receive a 5-point deduction for every day they are late.

Exams (200 points total)

There will be two exams (50 points each) and a final (100 points) throughout the semester. The exams will consist of both multiple choice and short-answer identifications of key concepts or arguments. **Please note the exams will be administered during class on the assigned days. No make-up exams will be allowed unless prior arrangements are made.**

Grading Scale

A	100-94
A-	93-90
B+	89-87
B	86-84
B-	83-80
C+	79-77
C	76-74
C-	73-70
D+	69-67
D	66-64
D-	63-60
F	59-0

Tentative Reading Schedule

Week 1

01/09: Introduction

01/11: Louis Michael Seidman, "Let's Give Up on the Constitution" in *The New York Times* (Canvas)

01/13: No Class

The Principles of the Founding and the Crisis of the Political System of the United States, 1776-1787

Week 2

01/16: No Class for Martin Luther King Jr. Day

01/18: The Declaration of Independence (Canvas)

01/20: Articles of Confederation (Canvas)

Week 3

01/23: Vices of the Political System of the United States (Canvas)

01/25: Thomas Jefferson to James Madison, Sept. 6, 1789 (Canvas)

01/27: James Madison to Caleb Wallace, Aug. 23, 1785 (Canvas)

The Constitutional Convention: the Alternative Plans

Week 4

01/30: *Notes of Debates*, May 29, 30, 31

02/01: *Notes of Debates*, June 15

02/03: *Notes of Debates*, June 18

The Constitutional Convention: the Connecticut Compromise

Week 5

02/06: *Notes of Debates*, June 26, 29, and 30

02/08: *Notes of Debates*, July 2 and 5

02/10: *Notes of Debates*, July 11-13

The Constitutional Convention: “The End is in Sight”

Week 6

02/13: *Notes of Debates*, July 17, 19, and 26

02/15: *Notes of Debates*, September 4-8

02/17: NO CLASS but still read *Notes of Debates*, September 12, 15, and 17

Debate over the Constitution: “We the People of the United States”

Week 7

02/20: No Class for President’s Day

02/21: Monday Schedule: **EXAM 1**

02/22: *The Federalist* No. 1 and 37

02/24: *The Federalist* No. 38

Debate over the Constitution: “A More Perfect Union”

Week 8

02/27: *The Federalist* No. 9

03/01: *The Federalist* No. 10

03/03: *Federal Farmer* No. 1 and *Essay of Brutus* No. 1

Week 9

03/06-03/10 Spring Break

Debate over the Constitution: Federalism and the Separation of Powers

Week 10

03/13: *The Federalist*, No. 39 and *Brutus* No. 2

03/15: *The Federalist*, No. 47 and 48

03/17: *The Federalist*, No. 51 and *Brutus* No. 5

Debate over the Constitution: “Representation and the Powers of Congress”

Week 11

03/20: *The Federalist*, No. 41 and *Brutus* No. 3 and 4

03/22: *The Federalist*, No. 55 and 56 and *Federal Farmer* No. 7 and 9

03/24: *The Federalist*, No. 57, 62, and 63

Debate over the Constitution: The Executive and Judiciary

Week 12

03/27: *The Federalist*, No. 68, 69, and 70 and *Federal Farmer* No. 14

03/29: *The Federalist*, No. 71, 72, and 73

03/31: *The Federalist*, No. 78, 81, and 82 and *Federal Farmer* No. 15

Debate over the Constitution: Articles IV, V, VI, VII, and the Bill of Rights

Week 13

04/03: *The Federalist*, No. 40, 43, and 44

04/05: *The Federalist*, No. 49 and 50 and *Address by a Plebeian to the People of the State of NY* (267-288)

04/07: NO CLASS but still read *The Federalist*, No. 84 and 85

Contemporary Constitutional Theory

Week 14

04/10: **EXAM 2**

04/12: *Our Undemocratic Constitution*, Prelude, Introduction, and Chapter 1

04/14: *Our Undemocratic Constitution*, Chapter 2

Week 15

04/17: *Our Undemocratic Constitution*, Chapter 3

04/19: *Our Undemocratic Constitution*, Chapter 4

04/21: *Our Undemocratic Constitution*, Chapter 5

Week 16

04/24: *Our Undemocratic Constitution*, Chapter 6

04/26: *Our Undemocratic Constitution*, Chapter 7 and CODA

04/28: Course Wrap-Up

Levinson paper will be due in the Political Science office on **Wednesday, May 3rd by 5:00pm**

The final exam is scheduled for **Monday, May 1st from 11:30am-1:20pm** in our regular classroom.