Constitutional Studies Subfield Examination
Department of Political Science
University of Notre Dame

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The Constitutional Studies comprehensive examination is an open-book (no internet access allowed), written exam to be completed and submitted no later than 6 hours after the exam is distributed. The 6-hour limit is firm, with exceptions at the discretion of the Director of Graduate Studies for physically or linguistically handicapped students and documented events of an extraordinary nature, not including equipment problems for which the student is presumed responsible. Failure to meet the deadline means failure on the exam.

The exam consists of three sections. One question must be answered from each section. No answer can be longer than 1,700 words. Answers must be the student's own, and students are urged to take special care to avoid suspicion of plagiarism. All quotes, paraphrases, and copied material (charts, tables, etc.) must be accompanied with full references. Answers should be doubled-spaced; students must save copies of their answers in PDF for future production as the DGS may request.

Answer one question from each section.

I. Philosophy of Law and Constitutional Interpretation

1. Adrian Vermeule and his intellectual allies seek to displace the rights-protective constitutionalism of establishment liberalism with an ends-oriented constitutionalism that they call a "common-good constitutionalism" (CGC). The leading substantive end of their CGC would be the salvation of the souls of their people, as conceived by Catholic Christianity. They defend their proposal by alleging the failure of liberal or rights-protective constitutionalism. This defense of their CGC assumes but two alternative constitutionalisms, one of which has failed. This assumption implicitly denies either the existence or the feasibility of another alternative: the secular CGC of scholars like Martin Diamond and Stephen Salkever and historical figures like Abraham Lincoln and the authors of *The Federalist.* How would one of the following thinkers explain Vermeule's silence about a secular CGC? Brian Leiter, Benedict Spinoza, Stanley Fish, Richard John Neuhaus. Though this may seem a long question, it invites a short answer, not an essay.

2. What is the "New Originalism?" How is it different from older versions of originalism? In your answer, use specific historical or hypothetical constitutional law cases to illustrate the differences between the "new originalism" and older version of originalism.

II. American Constitutional Law and Judicial Politics

1. For its jurisprudence of freedom of speech, religious free exercise, or privacy, answer the following questions:
    a) Has the Supreme Court articulated a clear and consistent doctrine?
    b) To what extent does that doctrine(s) reflect the actual text of the Constitution?
    c) Explain why we might (or might not) expect a major change in doctrine in the next five years?

2. Numerous empirical studies of American judicial politics agree that U.S. Supreme Court justices are constrained in their decision making by the preferences of external actors (e.g., the public, Congress, or the president). However, these studies differ with regard to how and why the justices are susceptible to external influence. Describe at least three explanations for how and why Supreme Court justices are influenced by external actors, evaluate the evidence supporting/contradicting each explanation, and make an argument for which explanation is most persuasive. You may focus on the influence of public opinion, other elected officials, or both.

III. Comparative Constitutional Systems and Law

1. What are the benefits and limitations of consulting other countries' experiences in adopting a new constitution? For example, different national constitutions employ similar language about the freedom of expression, due process of law, equal protection. Are these cognate commitments essentially the same? Do we still find important differences across jurisdictions? In your answer, you might also address the tension between the universal and the particular in constitution-making. Focus your answer on specific cases and principles, such as those mentioned above, to ensure your response is sufficiently concrete.

2. Some constitutional courts have taken the step of declaring that a constitutional amendment may itself be unconstitutional on substantive grounds. These decisions sometimes find their basis in "eternity clauses," or constitutional statements that explicitly state that some provisions may not be amended or omitted. Other times, such decisions are the result of the court's own elaborations of a constitution's essential commitments and identity. Why is the possibility of an unconstitutional constitutional amendment a salient issue in comparative constitutional theory? What are some of the arguments that figure into this debate, and what are the potential benefits and drawbacks of this constitutional mechanism? Cite relevant scholarship and draw from at least two countries' experiences in your answer.