"Every government degenerates when trusted to the rulers of the people alone. The people themselves, therefore, are its only safe depositaries. And to render them safe, their minds must be improved to a certain degree."

- Thomas Jefferson, Notes on the State of Virginia (1782)

"If a nation expects to be ignorant & free, in a state of civilisation, it expects what never was & never will be."

- Thomas Jefferson, Letter to Charles Yancey (1816)

“To know his rights; to exercise with order and justice those he retains; to choose with discretion the fiduciary of those he delegates; and to notice their conduct with diligence, with candor, and judgment; . . . To form the statesmen, legislators and judges, on whom public prosperity and individual happiness are so much to depend. . . . To expound the principles and structure of government, the laws which regulate the intercourse of nations, those formed municipally for our own government, and a sound spirit of legislation, which, banishing all arbitrary and unnecessary restraint on individual action, shall leave us free to do whatever does not violate the equal rights of another.”

- Thomas Jefferson on the objects of university education
- Rockfish Gap Report (1818)

“Conservative or liberal, we are all constitutionalists.”


In the Gettysburg Address, Abraham Lincoln famously spoke of “government of the people, by the people, for the people.” Why should government be so constituted? And if it should be, how is such a political order to be founded, designed, and maintained? In “Constitutionalism, Law & Politics,” we shall address these fundamental questions of political science by examining the idea of constitutionalism and the role constitutions play in political life. By reading classic texts in ancient and modern political philosophy, studying fundamental texts of the American political tradition, and examining contemporary legal and political issues, we shall study questions such as: How do different constitutional orders or regimes nurture different forms of political life and different types of citizens? How do different regimes rise and fall? What is the proper relationship between political authority and individual liberty? What, if any, are the limits on a just constitutional order?
Despite being a relatively large class, “Constitutionalism, Law & Politics” often will be conducted as a seminar with frequent class discussion. You should come to every class prepared to participate in and contribute to a conversation. The course is designed to help you think more clearly and deeply about the purpose and limits of political authority, participate more thoughtfully and effectively in the democratic political process, better understand competing visions of constitutional norms and ideals, and more thoroughly develop your own political ideals while also exploring ideals and viewpoints that are different from your own. Specifically, the course is designed to enable you to:

- Carefully read a few profound thinkers on matters of politics and constitutional government
- Compare ancient and modern conceptions of constitutionalism
- Explore how the Founders designed the American Constitution to promote ordered liberty
- Understand, analyze, and evaluate America’s founding constitutional ideals and subsequent criticisms and alterations to those ideals
- Engage your classmates in civil conversation about contentious legal and political issues
- Present your ideas orally

“Constitutionalism, Law & Politics” serves as the introductory gateway class for Notre Dame’s new minor in Constitutional Studies. You are encouraged and invited to attend all events sponsored by the Constitutional Studies minor as they are designed to compliment our class.

Class Time: Tuesday & Thursday 2:00-3:15 PM
Hayes Healy Center 127

Office: Decio 447
Office Phone: 574-631-0489
Email: vmunoz@nd.edu
Office Hours: Wednesday, 9:00-11:30am and by appointment. I am frequently in my office. You are welcome to drop by anytime, and I will meet with you if my schedule allows.

Teaching Assistant kvance1@nd.edu

Texts to be Purchased Immediately
Aristotle, The Politics, trans. Peter L. Phillips Simpson (University of North Carolina Press, 1997) (It is important that you obtain the Simpson translation even if you already have another edition of The Politics)
John Locke, Two Treatise of Government, ed. Peter Laslett (Cambridge University Press) (Other editions of Locke’s Second Treatise may be used)
Hamilton, Madison, Jay, The Federalist Papers, intro. by C. Kesler, ed. C. Rossiter (Signet, 2000) (Other editions may be used)
Abraham Lincoln, Greatest Speeches (Dover Publications, 1991)
Alexis de Tocqueville, Democracy in America, intro. by S. Kessler, ed. S. Grant (Hackett, 2000) (Other editions may be used but it will be helpful if you use the Kessler/Grant edition)
Course Readers – Available from the DCL Campus Print Shop

Course Requirements
Constitutionalism, Law & Politics will be a participatory class. Some classes will consist primarily of lecture, but I anticipate much class time to be devoted to discussion. Lectures and discussion will be based on the assigned readings. When I do lecture, I encourage participation in the form of questions and comments. In order to participate effectively, you must read, take notes, and think about all assigned readings before class. I cannot overemphasize this point. You will learn more, enjoy class more, and be able to participate more because you have read the assigned materials before class. As a good and informed citizen, you should also read a daily newspaper. We will often begin class with a short discussion of current events, especially those that pertain to subjects discussed in class.
Assignments | Grading Scale
---|---
Short writing assignments | 100 points | A | 1000-930 | C | 779-730
Participation | 100 points | A- | 929-900 | C- | 729-700
Midterms | 500 points | B+ | 899-880 | D+ | 699-680
Final | 300 points | B | 879-830 | D | 679-630
| B- | 829-800 | D- | 629-600
| C+ | 799-780 | F | 599-000

| Grade | Description | Explanatory Comments |
---|---|---|
A | Truly Exceptional | All work meets or exceeds the highest expectations for the course |
A- | Outstanding | Superior work in all areas of the course |
B+ | Very Good | Superior work in most areas of the course |
B | Good | Solid work across the board |
B- | More than Acceptable | More than acceptable, but falls short of solid work |
C+ | Acceptable | Meets all the basic requirements and standards for the course |
C | Acceptable | Meets most of the basic requirements and standards in several areas |
C- | Acceptable | Work falls short of meeting basic standards in several areas |
D | Minimally Passing | Work just over the threshold of acceptability |
F | Failing | Unacceptable performance |

**No Extra Credit** will be given. No exceptions.

**No Incomplete Grades** will be granted without remarkable circumstances.

**Class Attendance** is expected. No hats in class, unless for religious reasons.

**Class Participation** will be based both on the quality and quantity of your class participation. Good questions count for class participation. If you don’t understand something, find something confusing, want more clarification on a point, or just want to talk about something more in class, speak up and voice your concern.

**Classroom Decorum:** Our class will cover contentious subjects that can evoke passionate feelings. I expect all in-class comments to be expressed in a civil manner. You are certainly allowed and encouraged to disagree with the professor and your classmates, but you are expected to disagree in an agreeable manner.

**Examinations:** Success on examinations will require the ability to understand, compare and contrast, criticize, and analyze the concepts and details of the assigned reading, as well as the concepts and details of the class lectures and discussions. Knowledge of the assigned reading is necessary, but not sufficient for success. Class lectures and discussions will often address issues beyond the scope of the assigned reading for which students are responsible. Missed exams will be calculated as a zero. Make-up exams will not be given without prior permission of the instructor.

**Laptop Computers, Tablets, Phones** and **Recording Devices** are not to be used in the classroom without prior approval of the professor.

**Academic Integrity:** Academic dishonesty will not be tolerated. I shall follow and enforce strictly the university’s policies regarding academic integrity.

**Honor Code:** Class members are expected to understand the principles and procedures set forth in the University of Notre Dame Academic Code of Honor ([http://www.nd.edu/~hmrcode/](http://www.nd.edu/~hmrcode/)) and abide by its pledge: “As a member of the Notre Dame community, I will not participate in or tolerate academic dishonesty.”

**Students with Disabilities** will be accommodated as extensively as possible. Please talk directly with the instructor regarding any necessary arrangements.
Please Note. If you cannot make class for an important medical or family reason, please let me know ahead of time. Likewise, if you are having difficulties with an assignment, please talk to me before the assignment is due.

**Tentative Schedule/Reading Assignments**

This schedule will change. Final assignments will be given in class.

* = available in course reader

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**Introduction: The Ends of Politics?** (August 21)

The Declaration of Independence*

Thomas Jefferson, Letter to Roger C. Weightman, June 24, 1826*

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**I. Theories of Classical, Modern, & American Constitutionalism**

Constitutionalism in Classical Political Thought (Aug. 23-Sept. 4)

- Aristotle, *Politics*
  - Book I (1, 2), pp. 8-12
  - Book III (6-18), pp. 87-114
  - Book IV (1-9, 13-17), pp. 115-31, 137-52
  - Book V (1-3), pp. 153-157
  - Book VI (1-2, 11-16), pp. 170-73, 189-206
  - Book VII (entire), pp. 207-245

Constitutionalism in Modern Political Thought (Sept. 6-11)

- Montesquieu, *The Spirit of the Laws*, Book XI*

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**American Constitutionalism I: The Founders’ Constitutionalism** (Sept. 13-25)

- James Madison, “Property”*
- James Madison, “Memorial & Remonstrance,” Article 1*
- Publius, *The Federalist Papers*
  - *Federalist* 10: On the large republic, multiplicity of interests, and the protection of rights
  - *Federalist* 47-49, 51: On the separation of powers
  - *Federalist* 57, 62-63: On representation
  - *Federalist* 70-72: On executive power

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September 13, 2012  Charles Kesler Lecture, *Attendance expected*  
September 18, 2012  Barry Cushman, Constitution Day Lecture. Attendance encouraged  
September 21, 2012  Faculty Panel on the HHS Mandate/Religious Liberty controversy. Attendance encouraged

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**September 27, 2012 First Midterm Examination**

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1 In many editions of Aristotle’s *Politics*, Book IV in Simpson’s edition is Book VII. See Simpson’s introduction for the reasoning behind his chapter ordering

2 In many editions of Aristotle’s *Politics*, Book V in Simpson’s edition is Book VIII.
American Constitutionalism II: Progressive Constitutionalism (Oct. 2-4)
Herbert Croly, “Reconstruction; It’s Conditions and Purposes,” from The Promise of American Life*
Woodrow Wilson, “What is Constitutional Government?” from Constitutional Government in the United States*
Franklin D. Roosevelt
- The Commonwealth Club Address, 23 September 1932*
- Second Acceptance Address, 26 June 1936*
- ‘Four Freedoms’ Speech, Eighth Annual Message to Congress, 6 January 1941*
- 1944 State of Union Address, 11 January 1944*

II. The Practice of Constitutionalism

Constitutional Interpretation (Oct. 9)
Federalist 78
Edwin Meese III, “Interpreting the Constitution” (1985)*

The Constitutional Protection of Property (Oct. 11)
Fletcher v. Peck (1810)*
Trustees of Dartmouth College v. Woodward (1819)*
Proprietors of Charles River Bridge v. Proprietors of Warren Bridge (1837)*
Stone v. Mississippi (1890)*
Home Building and Loan Association v. Blaisdell (1934)*

Slavery, Race, and American Constitutionalism (Oct. 23-30)
Stephen Douglas, Speech at Chicago, July 9, 1858, in Johannsen (ed.), The Lincoln-Douglas Debates, p. 22-36*
Abraham Lincoln, Speech on the Repeal of the Missouri Compromise, Peoria, Illinois, October, 16, 1854*
Abraham Lincoln, Fragment on the Declaration and Constitution (c. 1860)*
Dred Scott v. Sanford (1857)*
Abraham Lincoln, Speech on the Dred Scott Decision, June 1857*
Lyndon Baines Johnson, “To Fulfill These Rights,” June 4, 1965*
Grutter v. Bollinger (2003)*

Privacy, Dignity, and the Right to Life (Nov. 1-6)
Griswold v. Connecticut (1965)*
Roe v. Wade (1973)*
Planned Parenthood v. Casey (1992)*
Peter Singer, “Rethinking Life and Death: A New Ethical Approach,” in Last Rights?, 171-198*

November 2, 2012 Akhil Amar lecture on “The Unwritten Constitution.” Attendance encouraged
November 9, 2012 John Tomasi lecture on “Free Market Fairness.” Attendance encouraged
Religion and the American Constitution (Nov. 8-13)
Reynolds v. United States (1879)*
Sherbert v. Verner (1963)*
Wisconsin v. Yoder (1972)*
Employment Division v. Smith (1990)*
University of Notre Dame v. Sebelius, Complaint of The University of Notre Dame (2012)*

The Commerce Clause, the Constitution, and the Limits of Federal Power (Nov. 15)

November 20, 2012 Second Midterm Examination

III. The Preservation of Democratic Constitutionalism

Tocqueville on the Nature and Tendencies of Democracy (Nov. 27-Nov. 29)
Tocqueville, Democracy in America, p: 170-78, 189-195, 201-228, 297-319
I.I.1 “The Philosphic Method of the Americans” 170-74
I.I.2 “The Principal Source of Beliefs among Democratic Peoples” 175-78
I.I.10 “Why the Americans Are More Devoted to the Practice of the Sciences Than to Their Theory” 189-195
I.II.1 “Why Democratic Peoples Show a More Ardent and More Lasting Love for Equality Than for Liberty” 201-04
I.II.2 “Individualism in Democratic Countries” 204-206
I.II.4 “How the Americans Combat Individualism by Free Institutions” 206-10
I.II.5 “The Use That the Americans Make of the Association in Civil Life” 210-214
I.II.7 “Relationships Between Civil and Political Associations” 215-219
I.II.8 “How Americans Combat Individualism by the Doctrine of Interest Rightly Understood” 219-22
I.II.9 “How the Americans Apply the Doctrine of Interest Rightly Understood in Matters of Religion” 222-24
I.II.10 “The Taste for Material Well-Being in America” 224-26
I.II.11 “The Particular Effects That the Love of Material Pleasures Produces in Democratic Times” 226-228
I.IV.1 “Equality Naturally Gives Men the Taste for Free Institutions” 297-98
I.IV.2 “That the Ideas of Democratic Peoples Regarding Government Are Naturally Favorable to the Concentrations of Powers” 298-301
I.IV.3 “That the Sentiments of Democratic Peoples Accord With Their Ideas in Leading Them to Concentrate Power” 301-04
I.IV.6 “What Kinds of Despotism Democratic Nations Have to Fear” 304-09
I.IV.7 “Continuation of the Preceding Chapters” 309-16
I.IV.8 “General View of the Subject” 316-319

The Future of American Constitutionalism (Dec. 4-6)
Barack Obama, “Our Constitution,” from The Audacity of Hope, 71-100 (esp. 84-98)*

Final Examination