

CONSTITUTIONAL DEMOCRACY: THE THEORY & DESIGN OF MODERN GOVERNANCE

THE UNIVERSITY OF VIRGINIA
DEPARTMENT OF POLITICS
SPRING 2018

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Office Hours: MW 10:00-12:00pm

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Course Description

By nearly every metric, constitutional democracy is the predominant form of modern governance and political life. Almost every country in the world has some form of constitution and—by explicit declaration, logic, or pretense—each aspires to some form of popular rule. But this should strike us as puzzling. In many respects, the conjunction of constitutionalism and democracy is a fraught union. At bottom, democracy is predicated on the rule of the people. It is the will of the majority (however defined) that should determine and direct the actions of the state. Constitutionalism, on the other hand, consists in explicit definitions of governmental powers and purposes, which is to say, limitations on what the people can do through their government. For constitutional governance, counter-majoritarianism is frequently a central mechanism and honored principle. As a result, the union of constitutionalism and democracy is beset by tensions—between popular will and minority rights, the rule of the people and the rule of law, the claims of the present and the commitments of the past.

This course is a survey of the theory and design of constitutional democracy. It proceeds by examining each of the component parts—democracy and constitutionalism—in order to understand the aspirations and tensions occasioned by their combination. These inquiries culminate in two simulations, one oriented towards exploring the central questions of democracy and the other directed towards designing a constitution. A principal goal of the course is to situate one version of constitutional democracy, the American form, within the broader context of constitutional governance, clarifying its distinctive elements and identifying structural or institutional alternatives. To that end, we will engage with a range of primary sources dealing with the structure and theory of American constitutionalism. Along the way, we will canvass the “roads not taken” in American politics—parliamentary governance, proportional representation, a prohibition on judicial review, and much else. These explorations will equip us to engage with the central questions of the course: Is constitutional democracy worth pursuing? If so, how should it be structured?

Course Goals

This course is intended to:

- provide students with an introduction to the central questions and challenges of modern governance;
- expose students to the traditions of political and legal thought out of which constitutional democracy emerged;
- identify the distinctive elements of American constitutionalism relative to their alternatives;
- and equip students with the oral and written communication skills required for success within and beyond the University.

Course Texts*

1. *The Threshold of Democracy: Athens in 403 B.C.* (4th ed.), Josiah Ober, Naomi J. Norman, and Mark C. Carnes (W.W. Norton & Co., 2015)
2. *The Republic of Plato*, translated by Allan Bloom (Basic Books)
3. *The Federalist Papers*, Alexander Hamilton, James Madison, and John Jay (edited by Clinton Rossiter, introduction and notes by Charles Kessler) (Signet Classics)
4. Course Packet (all course packet readings will be made available on the class website)

** The editions of the course texts identified here are not arbitrary. They are the versions around which the course calendar is structured, to which reading assignments refer, and on which class discussions are based. There is, however, some flexibility. There are multiple editions of the Bloom translation of The Republic—and many cheap used copies to be found—any of which will work for our purposes. The Rossiter/Kessler edition of The Federalist is among the cheapest and most widely read, though any version will do. However, it is absolutely essential that you acquire the version (i.e., the 4th ed.) of The Threshold of Democracy listed above.*

Grade Rubric

- Class Participation: 15%
- Simulation Participation: 30% (15% each)
- Discussion Questions: 15% (5% each)
- Final Paper Outline: 10% (Due **April 16**)
- Final Paper: 30% (Due **May 8**)

Class Format

This course is, perhaps uniquely, participatory, as evidenced by the weight given to the different facets of participation in the grade rubric. Many weeks the course will proceed as a seminar: we will read a number of texts and discuss them in class. The expectation for these classes is that you come prepared to critically engage the texts. The other weeks will be structured as simulations, in which each student will play an important role that requires both preparation and participation.

Simulations & Participation

The centerpiece of this course is a pair of simulations, each addressing a fundamental component of constitutional democracy. The first is a reenactment of Athenian democracy “at the threshold,” when the foundations of political life were confronted in earnest. Here we will encounter the fundamental questions faced by political society. What are the goals of politics? Who should rule? Who is included in the political community? The second simulation is a constitutional convention, which will entail the collective design of a governing charter. In the run-up to each of these simulations, we will read and discuss a range of texts that will inform and guide the related activities.

Final Paper

In addition to class participation and the two simulations, a substantial portion of the course grade comes from the final paper. This paper, which is expected to be 8-10 pages, is intended to synthesize the various topics covered in the course and provide an opportunity to critically engage with its central questions. The prompt is as follows:

What is a just political regime and how should it be structured?

Though the paper is due on **May 8**, an outline is due by **April 16**. This outline will serve as preparation for the second simulation and is designed to encourage sufficient argumentative scope and development.

Classroom Policies

Classroom Conduct

Most importantly, I expect that you will treat your fellow students with charity and respect, as I will treat you, and that you will conduct yourselves in a manner befitting mature adults. We will cover topics that are exciting, deeply important, and potentially controversial in this course. And the class will be all the better for your participation. For that reason, it is of the utmost importance that every student feels free to express his or her convictions and opinions. That is only possible if interactions are conducted with mutual respect and intellectual openness.

Academic Integrity

All students are expected to adhere to the University Honor Code and Standards of Conduct. Violations of these guidelines will result in appropriate disciplinary penalties. The penalty for cheating on an exam will be swift and certain: automatic failure of that exam and referral to the University for further penalties and sanctions.

Special Needs

Students for whom it is applicable may request appropriate academic accommodations from the University of Virginia Student Disability Access Center (SDAC). Students who receive accommodations must notify me and supply the relevant documentation in a timely manner, no less than one week before the anticipated use.

COURSE CALENDAR

I. Introduction & Orientation

- January 17 *General Introduction:*
- Thomas Jefferson, "Letter to James Madison" (1789)
 - Walter Murphy, "Constitutions, Constitutionalism, and Democracy"
- January 22 *Historical Context:*
- *Reacting*, pp. 2-53
 - Pericles, "Funeral Oration" (*Reacting*, pp. 89-94)

II. Plato's Republic

- January 24 - *The Republic*, Book I-II (pp. 3-61)
- January 29 - *The Republic*, Books III-IV (pp. 63-125)
- January 31 - *The Republic*, Books V-VI (127-192)
- February 5 - *The Republic*, Books VIII-IX (pp. 221-275)

III. The Threshold of Democracy (Simulation I)

- February 7 *Reconciliation Agreement:*
- Xenophon, *Hellenica* (*Reacting*, pp. 226-35)
- February 12 *Electorate:*
- Plato, *Protagoras* (*Reacting*, pp. 200-202)
- February 14 *Social Welfare:*
- Xenophon, "The Estate Manager" (*Reacting*, pp. 213-226)
- February 19 *Trial Day:*
- Plato, *Apology*
 - Review *The Republic* 376c-425a
- February 21 *Governance:*
- Plutarch, "Life of Lycurgus" (*Reacting*, pp. 202-208)
- February 26 *Remilitarization & Restoration of the Athenian Empire:*
- Plutarch, "Life of Cimon" (*Reacting*, pp. 209-213)

IV. From Democracy to Constitutional Democracy

- February 28
- Nathan Tarcov, “Ideas of Constitutionalism Ancient and Modern”
 - *The Federalist*, No. 1

**** Spring Recess, March 3-11 ****

V. Constitutionalism: Philosophical Background

- March 12
- John Locke, *Second Treatise* (§ 4-15, 54, 119-22, 163)
 - Declaration of Independence (in *The Federalist*)
 - Steven Kautz, “On Liberal Constitutionalism”
- March 14
- *The Federalist*, Nos. 37, 40, & 49
 - Impartial Examiner, No. 1
 - Elkins, Ginsburg, and Melton, “How Long Should Constitutions Endure?” from *The Endurance of National Constitutions* (2009)
- March 19
- Walter Murphy, “Alternative Political Systems” from *Constitutional Democracy: Creating and Maintaining a Just Political Order* (2007)
 - Jeremy Waldron, “Constitutionalism: A Skeptical View” (2009)

VI. Constitutional Design

- March 21
- Hannah Lerner, “Three paradigms of democratic constitutions” from *Making Constitutions in Deeply Divided Societies* (2011)
 - Elkins, Ginsburg, and Melton, “What Makes Constitutions Endure?” from *The Endurance of National Constitutions* (2009)
 - U.S. Constitution (in *The Federalist*)

March 26

***** Guest Lecture: Mila Versteeg, UVA School of Law *****

- Mila Versteeg and Emily Zackin, "Constitutions Un-Entrenched: Toward an Alternative Theory of Constitutional Design" (2016)
- Arend Lijphart, "Constitutional Design for Divided Societies" (2004) (skim recommendations)
- Excerpts from Ruth Bader Ginsburg interview

VII. Constitutional Institutions & Structures

March 28

Regime Structure & Separation of Powers

- Montesquieu, *Spirit of the Laws* (excerpts)
- *The Federalist*, Nos. 9, 10, 47, 48, & 51
- Storing, *What the Anti-Federalists Were For* (excerpts)

April 2

Electoral Systems & the Legislature(s)

- Arend Lijphart, "Electoral Systems: Majority and Plurality Methods Versus Proportional Representation"
- John Adams, "Thoughts on Government"
- *The Federalist*, Nos. 56 & 57
- *Reynolds v. Sims* (1964)

April 4

***** No Class *****

April 9

The Executive

- Juan Linz, "The Perils of Presidentialism" (1990)
- José Antonio Cheibub, "Introduction" in *Presidentialism, Parliamentarism, and Democracy* (2007)
- *The Federalist*, No. 70 & 72

April 11

The Judiciary & Constitutional Rights

- Alec Stone Sweet, "Constitutional Courts"
- *The Federalist*, Nos. 78 and 84
- U.S. Constitution, Article III & Bill of Rights (1791) (in *The Federalist*)
- Universal Declaration of Human Rights (1948)
- Constitution of the Republic of South Africa, Ch. 2: Bill of Rights (1996)

- April 16 *Citizenship, Equality, & Inclusion*
- Abigail Adams, John Adams, and James Sullivan, “Correspondence on Women and Republican Government” (1776)
 - Judith Sargent Murray, “The Necessity of Subordination” (1798)
 - Edgar Gardner Murphy, “The White Man and the Negro at the South” (1900)
 - Jane Addams, “If Men Were Seeking the Franchise” (1913)
 - Thurgood Marshall, “Bicentennial Speech” (1987)

VIII. Constitutional Convention (Simulation II)

- April 18 ***** Final Paper Outline Due *****
Preamble & Structure of Government
- German Basic Law, Article I (constituteproject.org)
 - Constitution of Ireland, Preamble (constituteproject.org)
- April 23 *Institutions I: Legislature & Executive*
- Review notes from April 2 & 4 classes
- April 25 *The Judiciary, Rights & Their Requirements*
- Review notes from April 9 & 11 classes

IX. Conclusion

- April 30 *Conclusion*

May 8: Final Paper Due by 5 PM