Constitutionalism, Law & Politics I:
Constitutional Government and Public Policy
POLS 30661/CNST 50001

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“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)

“The conviction that there is a Creator God is what gave rise to the idea of human rights, the idea of the equality of all people before the law, the recognition of the inviolability of human dignity in every single person and the awareness of people’s responsibility for their actions. Our cultural memory is shaped by these rational insights. To ignore it or dismiss it as a thing of the past would be to dismember our culture totally and to rob it of its completeness.”

- Pope Benedict XVI (2011)

“A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.”

- James Madison, Letter to W. T. Barry (1822)

“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)

“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 how should the people govern? What ends should they pursue and what means should they employ? In “Constitutionalism, Law & Politics I” we shall address these fundamental questions of political life by examining the idea and practice of constitutionalism as it manifests itself in matters of constitutional government and public affairs. Through readings on classical and contemporary political ideologies and discussions about leading issues of public policy, this class aims to present competing understandings of: the role of government, the meaning of justice, the possibilities of politics, and the demands of liberty and equality.

Despite being a relatively large class, “Constitutionalism, Law & Politics I” 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 purposes and limits of political authority, participate more thoughtfully and effectively in the democratic political process, better understand competing visions of constitutional norms and political ideals, and more thoroughly develop and deepen your own political principles 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 competing conceptions of constitutionalism, liberty, and equality
- 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 in a large group setting

“Constitutionalism, Law & Politics” serves as the introductory gateway class for Notre Dame’s 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: Tuesday & Thursday 12:30-1:45PM, DeBartolo Hall 208
Office: Decio 447
Office Phone: 574-631-0489
Emails: vmunoz@nd.edu, cbrophy@nd.edu
Office Hours: Prof. Muñoz: Wednesday 2:45-4:45pm and Thursday 2:00-3:00pm and at all hours 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.
Fr. Brophy: Monday 1:00-2:00pm and Tuesday 2:00-3:00pm, Decio 440

Required Texts
Course Readers available at DCL – Purchase vol. 1 immediately
Mark Blitz, Conserving Liberty (Hoover, 2011)
Harry G. Frankfurt, On Inequality (Princeton, 2015)
Charles Murray, Coming Apart (Crown Forum, 2012)
Andrew Sullivan, Virtually Normal (Vintage Books, 1995)
Course Requirements
Constitutionalism, Law & Politics I will be a participatory class. Some classes will consist primarily of lecture, but I anticipate most 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 when 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
In-class & Online Participation 200 points  A  1000-930  C  784-730
Pre-class Discussion Board Posts 50 points  A-  929-900  C-  729-700
Paper 100 points  B+  899-885  D+  699-685
Two Midterms 400 points  B  884-830  D  684-630
Final 250 points  B-  829-800  D-  629-600
C+  799-785  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 in-class and online discussion board 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.
Pre-Class Discussion Board Posts: Every student will be required to post approximately 5 pre-class posts on the class Sakai discussion board. These posts and post-responses, which will be discussed further in class, will be assigned and due before class.
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/~hnrcode/](http://www.nd.edu/~hnrcode/)) 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 come talk to me and/or Fr. Brophy.*

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**Tentative Class/Readings Schedule**

Specific assignments will be given in class. This is a tentative schedule. It is likely to change.

* indicates that the reading is available on Sakai

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**I. THINKING ABOUT THE PROPER ROLE OF GOVERNMENT**

**Pornography** (Jan. 17)

Andrea Dworkin, “Pornography Happens to Women”*

Irving Kristol, “Liberal Censorship and the Common Culture,” *Society* (Sept./Oct. 1999), pp. 5-10*

- Roth v. United States, 354 US 476 (1957)*

**Euthanasia** (Jan. 19)


USCCB *Statement on Euthanasia* (1991)


**Income Inequality** (Jan. 24)

President Barack Obama, “Remarks on the Economy in Osawatomie, Kansas,” December 6, 2011

President Barack Obama, “Remarks on Economic Mobility,” December 4, 2013


Harry G. Frankfurt, *On Inequality* (entire book but you may skip pages 16-34)

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January 24, 2017 Paper Due
February 3, Noon  Constitutional Studies Panel on “The Future of Liberalism in the Age of Trump”  
Attendance Expected. Oak Room, South Dining Hall

II. PHILOSOPHIC APPROACHES TO THE PROPER ROLE OF GOVERNMENT

The Founders’ Natural Rights Classical Liberalism (Jan. 26, 31)  
The Declaration of Independence, in *The Portable Thomas Jefferson*, pp. 235-241 
John Locke, *Second Treatise of Government*, §4, 6, 25-34 
Theophilus Parsons, “The Essex Result” (1778) 
1784 New Hampshire Bill of Rights (1784) 
James Madison, *Property* 
Recommended
- John Locke, *Second Treatise of Government*

Modern Liberalism (Feb. 2, 7) 
Woodrow Wilson, *The New Freedom* (excerpt) 
Franklin D. Roosevelt 
- Commonwealth Club Address, September 23, 1932 
- 1944 State of Union Address, January 11, 1944 
Recommended
- Herbert Croly, “Reconstruction: It’s Conditions and Purposes,” from *The Promise of American Life*?

Modern Conservatism (Feb. 9, 14) 
Mark Blitz, *Conserving Liberty*, Introduction, Chapter 2 and 3 
Robert Kraynak, “Conservative Critics of Modernity: Can They Turn Back the Clock?” *Intercollegiate Review*, Fall 2001, p. 31-39

February 16, 2017  First Midterm Examination
III. CONSTITUTIONAL GOVERNMENT & PUBLIC POLICY

Slavery (Feb. 21, 23)
A Reader’s Companion to the Lincoln-Douglas Debates
  Recommended
  - Harry V. Jaffa, Crisis of the House Divided

Abortion (Feb. 28, March 2)
Peter Singer, “Rethinking Life and Death: A New Ethical Approach,” in Last Rights?, pp. 171-198
Roe v. Wade (1973)
Planned Parenthood v. Casey (1992)
  Recommended

Same-Sex Marriage (March 7, 9)
Michael Hannon, Against Heterosexuality, First Things (March 2014)
  Recommended
  - Robert Sokolowski, “On Same-Sex Marriage”*
  - S. Bear Bergman, “I Have Come to Indoctrinate Your Children Into My LGBTQ Agenda (And I’m Not a Bit Sorry),” Huffingtonpost.com, March 7, 2015
  - “What is Marriage?” Constitutional Studies debate between John Corvino and Sherif Girgis, University of Notre Dame, January 27, 2015
March 14 & 16  Spring Break

Inequality, Opportunity, and the American Family (March 21, 23, 28)
Robert D. Putnam, Lecture on Our Kids (starts at approximately minute 29:00)
Charles Murray, Lecture, March 28, 2017, Oak Room, South Dining Hall

Freedom of Association & Antidiscrimination Law (March 30, April 4)
Andrew Koppleman, “Richard Epstein’s Imperfect Understanding of Antidiscrimination Law,” (2016)
“Conflict on Campus: Religious Liberty v. Gay Rights”
Shelby Steele, “Selma to San Francisco? Same-Sex Marriage is Not a Civil Rights Issue,” Wall Street Journal, March 20, 2004

Recommended
- Andrew Sullivan, “Civil Rites,” The New Republic Online, March 30, 2004*
- Shelby Steele, “Married with Children?” The New Republic Online, April 14, 2004*

March 31, 12:15pm  Epstein-Coles Debate on Freedom of Association and Antidiscrimination
Attendance Expected

Immigration (April 6)
Rusty Reno-Peter Casarella Debate – Oak Room, South Dining Hall, 12:15pm

April 11, 2017  Second Midterm Examination

Religious Freedom & Religious Exemptions (April 13, 18)
Reynolds v. United States (1879)
Sherbert v. Verner (1963)
Employment Division of Oregon v. Smith (1990)
Frank Bruni, “Bigotry, the Bible and the Lessons of Indiana,” The New York Times, April 3, 2015*

Recommended

Death Penalty (April 20)
John Paul II, Excerpts from Evangelium Vitae and Statements on the Death Penalty
Frank Keating, “The Death Penalty: What’s All the Debate About?” in Religion and the Death Penalty, 213-220

Recommended
- The Catechism on Punishment in Catholic Dossier 4 (Sept. – Oct, 1998), 37-41*
- Avery Cardinal Dulles, "Catholicism & Capital Punishment," First Things 112 (April 2001), 30-35*

Constitutional Interpretation (April 25)
Edwin Meese III, Federalist Society Speech Defending a Jurisprudence of Original Intent, November 15, 1985
William J. Brennan, Georgetown University Speech on Living Constitutionalism, October 12, 1985

Free Speech (April 27)
Stanley Fish, “There’s No Such Thing as Free Speech and It’s a Good Thing, Too,” in There’s No Such Thing as Free Speech and It’s a Good Thing, Too (Oxford, 1994), pp. 102-19
University of Chicago Report by the Committee on Free Expression (2014)

Recommended
“The Battle Over Free Speech on College Campuses,” Panel at the University of Chicago, March 9, 2016

May 2 – Open

FINAL EXAMINATION