

Constitutionalism, Law & Politics II
American Constitutionalism
An Introduction
CNST 50002/POLS 30665
Fall 2017
Department of Political Science
University of Notre Dame

M/W 9:30-10:45
Professor Susan Collins
JNH 2166
scollin5@nd.edu
574 631-3182
Office Hours: M 11:15-1:00 or by appt.

TA: Raúl Rodríguez
480 751-8211
rrodri19@nd.edu
Office Hours: M/Tu 12:30-2:00
(Eck Law School) or by apt.

There has been some talk lately that we may be confronting a constitutional crisis. It's not always clear what this portent of doom means, but at least it calls our attention to the fact that we are governed by a Constitution.

According to the Preamble of our founding document, "We the People of the United States" ordained and established this Constitution "in order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity."

So, how are we doing, circa 2017? Is our Union more perfect? Does justice reign? Are we secure from internal faction and external threats? How is the welfare of the country? Are we truly free? Will our children be?

With the aims of the constitutional generation at the forefront, this course will closely analyze the American constitutional order: examine its founding documents, clarify the thought that informed it, and consider its promise and perils. First and foremost, then, we approach the theme of this course as a question of institutional design.

But, most importantly, we will seek to understand how this institutional design or constitutional order has fundamentally shaped the kind of people we are and the way we live: how and to what extent we have been formed by our "regime"; what it means to be an "American."

After we have completed our investigations, we will put our constitutional wisdom to the test by convening to alter or to abolish the document that has governed us for over 200 years. If there were to be a constitutional crisis, does the present generation have the knowledge and character to address it?

After all, as Jefferson said, the earth belongs to the living.

Books:

- (1) Aristotle. 2013. *Politics*. Translated by Carnes Lord (2nd edition). Chicago: University of Chicago Press. (978-0226921846).
- (2) Locke, John. 1988. *Two Treatises of Government*. Cambridge: Cambridge University Press. Ed. Peter Laslett. (978-0521357302).
- (3) Hamilton, Madison, Jay. 2003. *The Federalist Papers*, Intro. by C. Kesler, ed. C. Rossiter. Penguin (9780451528810). (Any edition will do, but please number the paragraphs of the papers we are reading for easy reference in class.)

Unless otherwise noted, other readings will be on Sakai under Library Reserves***, or links to them are provided in this syllabus.

Helpful Websites:

The Founders Constitution: <http://press-pubs.uchicago.edu/founders/>

Teaching American History: <http://teachingamericanhistory.org/>

Founding.com: <http://founding.com/>

Library of Congress: <https://www.loc.gov/>

National Archives: <https://www.archives.gov/founding-docs>

Constitutional Studies at Notre Dame: <http://constudies.nd.edu/>

Tocqueville Program for Inquiry into Religion and Political Life: <http://tocqueville.nd.edu/>

Expectations

Although this is a lecture class, it is designed for close reading and active discussion. Students are expected to come to class, on time, to read the assigned selections carefully, and to participate in class discussion thoughtfully and with due respect for the opinions of their classmates. Please note that class participation is assessed as a part of your final grade. **BRING ALL TEXTS ASSIGNED FOR THAT DAY TO CLASS.**

Requirements

GENERAL CLASS PARTICIPATION

The success of this course will depend on preparation for and engagement in class discussion, and you will be evaluated on your preparation and discussion. This grade will occasionally include also brief class assignments connected with the reading and the questions raised by the texts. These assignments are intended to help your grade and encourage participation. You are also expected to attend the 3 mandatory Tocqueville lectures listed in the reading schedule and on the attached flyer. We will give each student mid-semester feedback on their participation grade.

IN-CLASS QUIZZES

To encourage you to keep up with the reading, from week 3 to week 12, there will be short in-class quizzes each Wednesday that will consist of short answer questions about the readings.

CONSTITUTIONAL CONVENTION PREPARATION AND PARTICIPATION

The mock constitutional convention at the end of the semester is an important component of the course and places a premium on student preparation and participation. The convention will give you the opportunity to put into some practice what you have learned in the course. You will work in smaller groups in preparation for the convention. But since students are not always enamored of group work and are especially averse to receiving a grade as a group, we will measure the quality of the work of

each student separately. You will receive directions in advance about the preparation & participation involved in the convention, as well as a description of the standards by which we will assess your work.

FINAL PAPER

There will be a final paper (8-10 pp.) that will stand as your final exam. The paper will build on your work in the constitutional convention and will require you to bring the course material and at least two outside sources to bear on an analysis of the convention.

Grade Breakdown & Assignment Due Dates

15%	General Class Participation
30%	Weekly In-class Quizzes (10 exams)
25%	Constitutional Convention Preparation and Participation
30%	Final Paper

All work for this course will be given a numerical grade on the following scale:

A	93-100	C	73-76
A-	90-92	C-	70-72
B+	87-89	D+	67-69
B	83-86	D	63-66
B-	80-82	D-	60-62
C+	77-79	F	59 and below

The course grade is determined by multiplying numerical grades by the weights listed above.

Grade Descriptions

A	Truly Exceptional: <i>All</i> work meets or exceeds the highest expectations for the course
A-	Outstanding: Superior work in <i>all</i> areas of the course
B+	Very Good: Superior work in <i>most</i> 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 <i>all</i> the basic requirements and standards for the course
C	Acceptable: Meets <i>most</i> of the basic requirements and standards in several areas
C-	Work falls short of meeting basic standards in several areas
D	Minimally Passing Work just over the threshold of acceptability
F	Failing Unacceptable performance

Attendance Policy: Officially excused absences fall under the university's Office of Community Standards and the college's advising office and require documentation. For unexcused absences, I will subtract three points from your final grade points *for every class missed*.

Laptop Computers, Tablets, Phones and Recording Devices are not to be used in the classroom without prior approval of the professor. There may be classes in which it is appropriate to use electronic devices, but in general, they act as a terrible distraction for you and for the students around you.

Academic Honesty: We are all bound by the university's policies regarding academic integrity. What is more, academic honesty protects the credibility of your degree and is crucial to your education. Be scrupulous in following the University's policy on Academic Honesty, under the Honor Code (<http://www.nd.edu/~hnrcode/>). If you have any doubts or questions as you work on assignments, check with me.

Honor Code: Class members are expected to understand the principles and procedures set forth in the University of Notre Dame Academic Code of Honor 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 contact me directly regarding any necessary arrangements.

Other Policies

All written work must be uploaded before class on the day it is due. Work that is submitted after the first of class will receive a letter grade reduction. Additional letter grade reductions are made for each subsequent day the assignment is late. This includes the day it is turned in and weekend days. For example, if a paper is due Thursday and you turn it in on Friday, your grade will be reduced by 2 letter grades or 20 points, or if a paper is due Thursday and you turn it in on Monday, your grade will be reduced by 5 letter grades or 50 points.

MAKE BACK-UP COPIES of your work. Do not wait until the last minute to go to the computer lab to print your paper since students often find that in waiting to the last minute to print their paper, they meet with printer problems and delays. Such last minute problems are not acceptable excuses for handing work in late. *If you miss handing in a paper, you must have a very good and a documented excuse: for example, a doctor's or infirmary's note, or evidence validating a family emergency. Such evidence will also be required if you miss the final exam.*

TOCQUEVILLE PROGRAM LECTURES:

Three of the Tocqueville Program lectures are "mandatory." You are expected to attend the lectures as part of your class participation grade. That said, I know that some students will have genuine time conflicts, which we will work out on a case by case basis. For dates and times, see the class reading schedule or the attached flyer.

Constitutional Studies 50002
Schedule of Readings and Assignments

Week 1

(1) Aug. 24: Introduction: What is a Constitution?

Martin Diamond, "On the Study of Politics in a Liberal Education" (under course resources)

Donald Kagan, "Democracy Requires a Patriotic Education," WSJ, Sept. 26, 2014 (under course resources)

<http://www.politico.com/magazine/story/2017/05/09/comey-trump-firing-is-this-a-constitutional-crisis-215118>

https://en.wikipedia.org/wiki/Second_Constitutional_Convention_of_the_United_States

Week 2 **What is "Constitutionalism"? The Ancient City**

(2) Aug. 28: a. Fustel de Coulanges, *The Ancient City****
Introduction (pp. 3-6)
Bk. 1, ch. XI: "The Law" (pp. 178-85)
Bk. 1, ch. XII: "The Citizen and the Stranger" (pp. 185-90)

b. Aristotle, *Politics (Polis & Politeia: "city" & "regime")*
Bk 1, chs. 1-2
Bk 3, chs. 1-6
Bk 4, chs. 1-3
See also "Analysis of the Argument" (pp. xliii-xlv)

(3) Aug. 30: a. Fustel de Coulanges, *The Ancient City****
Bk 5, ch. III: "Christianity" (pp. 381-388)

b. Thomas Aquinas, *On Monarchy*: <http://dhspriority.org/thomas/DeRegno.htm>
Ch. 1: "Preliminary Observations"
Ch. 2: "Different Kinds of Rule"
Ch. 3: "Whether it is More Expedient for a City to be Ruled by One Man or by Many"
Ch. 13: "On the Duties of a King"
Ch. 14: "What it is Incumbent Upon a King to do and How He Should Go About Doing it"
Ch. 15: "That the Office of Governing the Kingdom Should be Learned from Divine Government"

Week 3

What is “Constitutionalism”? Our “Natural Condition” & the Modern State

(4) Sep. 4:

Class Cancelled: “Mandatory” Attendance at Tocqueville Program Lecture:

Ryan Anderson & John Corvino: “Debating Religious Liberty and Discrimination”
On Thursday, September 7, 2017 – 7:00pm – JNH Forum.

(5) Sep. 6:

a. Machiavelli, *The Prince*:***

Ch. 1: “How Many are the Kinds of Principalities and in What Modes They are Acquired”

Ch. 2: “Of Hereditary Principalities”

Ch. 3: “Of Mixed Principalities”

Ch. 15: “Of Those Things for Which Men and Especially Princes are Praised or Blamed”

b. Hobbes, *Leviathan****

Ch. 13: “Of the Natural Condition of Mankind, As Concerning Their Felicity, & Their Misery”

Ch. 14: “Of the First and Second Natural Laws, And Of Contract”

c. Thomas Aquinas, “Treatise on Law”: On the Natural Law

<http://dhspriority.org/thomas/summa/FS/FS094.html#FSQ94OUTP1>

Week 4

American Constitutionalism: The State of Nature, Natural Rights, and Consent

(6) Sep. 11:

a. The Declaration of Independence:

<http://press-pubs.uchicago.edu/founders/documents/v1ch1s5.html>

b. Locke, *First Treatise of Government*:

Title-page, Preface, and ch. 1 (pp. 135-43)

c. Locke, *Second Treatise of Government*:

Chs. 1-4 (pp. 267-85)

(7) Sep. 13:

a. Locke, *Second Treatise*:

Ch. 5: On Property—Self-ownership

Chs 6-9: Paternal Power and Political Society

Ch. 15: “Of Paternal, Political, and Despotical Power, considered together”

b. Lincoln, Fragment on the Declaration & the Constitution:

<http://teachingamericanhistory.org/library/document/fragment-on-the-constitution-and-union/>

c. William Allen, “The Declaration of Independence & the Constitution:

<http://teachingamericanhistory.org/library/document/best-friends-the-declaration-of-independence-and-the-constitution/>

Week 5 The American Constitution: A More Perfect Union?

- (8) Sep. 18: *"Constitution Day"* (a date late)
- a. The Constitution of the United States: *Preamble* & Articles 5, 6 & 7:
<http://press-pubs.uchicago.edu/founders/tocs/toc.html> or *Federalist* Volume
 - b. Thomas Jefferson, Sept 6, 1789 "The Earth Belongs to the Living":
<http://teachingamericanhistory.org/library/document/letter-to-james-madison-17/>
 - c. Sanford Levinson on his book *Our Undemocratic Constitution: Where the Constitution Goes Wrong and How We the People Can Correct It*.
<http://www.pbs.org/moyers/journal/12212007/profile.html>

"Mandatory" attendance (and free lunch) at Lecture by Sanford Levinson, Sep. 18

"Flaws in the Constitution?: What We Should be Learning about the Constitution Today."

Lunch begins at 12:00/Lecture at 12:30

Oak Room, South Dining Hall

- (9) Sep. 20: a. *Federalist* 37 & 49
- b. Aristotle's *Politics*:
 - Bk. 2, ch. 1, section 1;
 - Bk. 2, ch. 8 (Hippodamus, a Scientific Politics, and Law)

**Thurs. Sept. 21, "Mandatory" attendance at Talk by Mark Lilla, "Identity and Citizenship": 4:00 pm
Oak Room, South Dining Hall**

"The End of Identity Liberalism," by Mark Lilla, NYT Nov. 18, 2016, with response by Matthew Yglesias, Vox, Nov 23, 2016 (under course resources).

Week 6 Modern Constitutionalism: A New Science of Politics?

- (10) Sep. 25: a. *Federalist* 1 & 9
- b. Brutus #1: <http://teachingamericanhistory.org/library/document/brutus-i/>
 - c. Brutus #2: <http://teachingamericanhistory.org/library/document/brutus-ii/>

- (11) Sep. 27: a. The Constitution of the United States:
 Preamble (again)
- b. Locke, *Second Treatise*:
 Chs. 10-13: Popular Sovereignty & Legislative Supremacy

**Week 7 New Modes and Orders: Sovereignty & Representation;
Liberty & Separation of Powers**

- (12) Oct. 2: a. The Constitution of the United States
 Article 1: Legislative Power
- b. Montesquieu, *Spirit of the Laws****
 Bk. 11, chs. 1-6: Political Liberty & Constitutionalism
 - c. Brutus #3: <http://teachingamericanhistory.org/library/document/brutus-iii/>
 - d. *Federalist* 47, 51, 55, & 57

- (13) Oct. 4: a. The Constitution of the United States:
Article 2: Executive Power
b. *Federalist* 68, & 70
c. Locke, *Second Treatise*, ch. 14

Week 8 New Modes and Orders: Faction, Rights, & Institutional Design

- (14) Oct. 9: a. The Constitution of the United States:
Article 3: Judicial Power
The First Ten Amendments
c. *Federalist* 78 & 84
d. Brutus #11: <http://teachingamericanhistory.org/library/document/brutus-xi/>
- (15) Oct. 11: a. *Federalist* 10, 14, & 15
b. Aristotle's *Politics*, Bk 5, chs. 1-3

Oct 14-22: MIDTERM BREAK

Week 9 New Modes and Orders: Federalism/Religion, Virtue, & The Commercial Republic

- (16) Oct. 23: a. The Constitution of the United States
Article 4: The States
b. *Federalist* 39
c. Montesquieu, *Spirit of the Laws*, Bk. 9, ch. 1***
- (17) Oct. 25: a. The Constitution of the United States:
Article 1, section 8
The First Amendment
b. Madison, "On Property":
<http://press-pubs.uchicago.edu/founders/documents/v1ch16s23.html>
c. Montesquieu, *Spirit of the Laws*, Book 20, all: "On the laws in their relation to commerce, considered in its nature and its distinctions."***
d. George Washington, Farewell Address:
<http://teachingamericanhistory.org/library/document/farewell-address/>
e. Aristotle's *Politics*, Bk. 7, chs. 1-3; ch. 8.

Thurs., Oct. 26, Talk by Rod Dreher, "The Benedict Option": 7:00 pm, JNH Forum

Week 10 New Modes and Disorders: Tocqueville on the Dangers of Democracy

- (18) Oct. 30: Tocqueville, *Democracy in America*:***
a. Tocqueville, *Democracy in America*, Introduction (pp. 3-15)
b. "On Individualism in Democratic Countries," 482-484.
c. "On the Taste for Material Well-Being in America," 506-508.
d. "Why the Americans Show Themselves So Restive in the Midst of their Well-Being," 511-514.
e. "How Aristocracy Could Issue from Industry," 530-532.
f. "What Kind of Despotism Democratic Nations Have to Fear," 661-665.
- (19) Nov. 1: Tocqueville, *Democracy in America*:***
a. "How the Americans Combat Individualism with Free Institutions," 485-488.

- b. "On the Use that the Americans Make of Associations in Civil Life," 489-492.
- c. "Relations Between Civil Associations and Political Associations," 496-500.
- d. "How the Americans Combat Individualism by the Doctrine of Self-Interest Well Understood," 500-503
- e. "How Religious Beliefs at Times Turn the Souls of Americans Toward Immaterial Enjoyments," 517-521.

Week 11 The American Experience: The Quest for Equality?

- (20) Nov. 6:
- a. The Declaration of Independence, redux
 - b. Frederick Douglas, "What to the Slave is the 4th of July?"
<http://teachingamericanhistory.org/library/document/what-to-the-slave-is-the-fourth-of-july/>
 - c. Lincoln, Gettysburg Address:
<http://teachingamericanhistory.org/library/document/gettysburg-address/>
 - d. Martin Luther King, "I Have a Dream"
<https://www.youtube.com/watch?v=H0yP4aLyq1g>
 - e. Malcom X, "A Declaration of Independence":
<http://teachingamericanhistory.org/library/document/a-declaration-of-independence>
- (21) Nov. 8:
- a. Seneca Falls, Declaration of Sentiments (1848):
http://www.womensrightsfriends.org/pdfs/1848_declaration_of_sentiments.pdf
 - b. Danielle Allen, *Our Declaration: A Reading of the Declaration of Independence in Defense of Equality* (2014)***

Week 12

- (22) Nov. 13:
- a. Herbert Croly, *The Promise of American Life* (1909):
Ch. 7, "Reconstruction; Its Conditions and Purposes"***
 - b. Students for a Democratic Society: The Port Huron Statement (1962)
<http://teachingamericanhistory.org/library/document/port-huron-statement/>
- (23) Nov. 15:
- a. John Courtney Murray, We Hold These Truths (Selection)***
 - b. David Schindler, "The Repressive Logic of Liberal Rights"***
 - c. Michael Baxter, "God, Notre Dame, Country" (Video):
<https://vimeo.com/13460022>

Debate between James Otteson & Patrick Deneen, "Is There a Moral Case for Capitalism?" 12:30pm JNH Forum (free lunch begins at noon).

Week 13 Preparing the New American Order

- (24) Nov. 20: **Constitutional Agenda**
- a. Oliver Wendell Holmes, "The Path of the Law"***
 - b. Justice William Brennan, Jr. "The Constitution of the United States: Contemporary Ratification"***
 - c. Justice William Rehnquist, "The Notion of a Living Constitution"***
 - d. James W. Ceaser, "A Revered Constitution"***

e. Sanford Levinson, "The 'Constitution' in American Civil Religion, ch. 1 from *Constitutional Faith*."***

. Nov. 22: **Thanksgiving Break**

Week 14 A New American Order?

(25) Nov. 27: Constitutional Convention I: To Alter or Abolish?

(26) Nov. 29: Constitutional Convention II: To Abolish and Replace

Thurs., Nov. 30, Talk by John Inazu, "Confident Pluralism and the University: Surviving and Thriving Through Deep Difference" 12:30 JNH 1030 (free lunch, begins at noon).

Week 15

(27) Dec. 4: Constitutional Convention III: To Alter and Improve

(28) Dec. 6: Constitutional Review & Debriefing

FINAL PAPER DUE Monday, DECEMBER 11th

By 4:00 PM

Upload to Sakai

Fall 2017 Lectures *and* Debates

all lectures are free and open to the public – all events subject to change – all times tentative

Fighting for Charlie Gard: Ethics, Public Policy, and Pope Francis

Friday, September 1, 2017 – 12:30pm – JNH Forum – Complimentary Lunch (noon)

Carter Snead, Professor of Law, University of Notre Dame

Debating Religious Liberty and Discrimination

Thursday, September 7, 2017 – 7:00pm – JNH Forum

Dr. Ryan Anderson, ND Ph.D, '14, Senior Research Fellow, Heritage Foundation

Dr. John Corvino, Professor of Philosophy, Wayne State University

Flaws in the Constitution?

What We Should be Learning about the Constitution Today

Monday, September 18, 2017 – 12:30pm – Oak Room – Complimentary Lunch (noon)

Sanford Levinson, Chair in Law & Professor of Government, University of Texas

Identity and Citizenship

Thursday, September 21, 2017 – 4:00pm – Oak Room at South Dining Hall

Dr. Mark Lilla, Professor of Humanities, Columbia University

The Benedict Option

Thursday, October 26, 2017 – 7:00pm – JNH Forum

Rod Dreher

Is there a Moral Case for Capitalism?

Friday, November 17, 2017 – 12:30pm – JNH Forum – Complimentary Lunch (noon)

Dr. James Otteson, Chair in Business Ethics, Professor of Economics, Wake Forest University

Dr. Patrick Deneen, Associate Professor of Political Science, University of Notre Dame

Confident Pluralism and the University:

Surviving and Thriving Through Deep Difference

Thursday, November 30, 2017 – 12:30pm – JNH 1030 – Complimentary Lunch (noon)

John Inazu, Professor of Law and Religion, Washington University in St. Louis

JNH is the new Jenkins and Nanovic Halls, located on Notre Dame Avenue

