

CNST 30638/POLS 30707
FOUNDATIONS OF CONSTITUTIONAL ORDER
UNIVERSITY OF NOTRE DAME
SPRING 2024

Susan D. Collins
JNH 2166
Office Hrs: T/Th: 12:30-2:00PM
and by appt.
scollin5@nd.edu

Fr. Henry Stephan, OP
Office Hrs.: TBD
Location TBD
and by appt.
bstepha2@nd.edu

Political Philosophy, Citizenship, and Constitutional Order

“But what is government itself but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary.”

James Madison, *Federalist* 51

If Madison is right that government is the greatest of all reflections on human nature, then by focusing on the question of constitutional order—the forging and constituting of political communities—we can come to see how this question opens up the most fundamental problems of political philosophy. To begin most simply: in thinking through the foundations, institutions, and aims of human beings in society with one another, political philosophers, lawgivers, and citizens alike begin from assumptions and presuppositions about the human beings who constitute and are constituted by the political order. Aided by seminal thinkers in the history of political philosophy, we will examine foundational questions of constitutional order and so also the assumptions and presuppositions that these questions bring into view. These will include, among others, the nature or character of human beings; our “original” or pre-political condition; the foundation of political association; the role of war or conflict in human affairs; the status of peace and order; the nature of political authority, law and freedom; the relation between religion and politics; and the aims of political society.

Books

1. Locke, *Two Treatises of Government* (Cambridge)
2. Rousseau, *The Major Political Writings* (University of Chicago)
3. Aristotle, *Politics* (University of Chicago)

Please purchase the edition listed. The first three books are available at the University Bookstore. All other readings are available electronically or are on reserve. They are marked on the reading list by asterisks or given a hyperlink.

Helpful Websites:

Constitute: <https://www.constituteproject.org/>

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

Yale Avalon Project: The *Federalist*: https://avalon.law.yale.edu/subject_menus/fed.asp

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

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

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

Reinventing the US Constitution: <https://www.amacad.org/news/ourcommonpurpose-press-release>

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

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

Expectations & the Spirit of our Common Inquiry

Because this is a seminar that aims at close analysis of fundamental texts and questions, we have minimized, as well as we could, the number of pages to read for each class. *But this means that we are expecting you to read and re-read, taking notes and bringing those notes to class for discussion.*

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

It should go without saying, but I will say it anyway: since we are undertaking a common inquiry into fundamental and vexed questions of moral-political affairs, we must do so in a spirit of open-mindedness and collegiality. We should also be prepared to have our own deeply held convictions challenged at times—not for the sake of mere provocation, but for the sake of understanding the matters at hand.

As fellow inquirers, each of us should seek to further and deepen one another's understanding, treat colleagues with respect, and be disposed toward intellectual humility rather than hubris.

Learning Goals

In this course, you will cultivate the ability to:

1. Interpret and analyze complex political and philosophic texts.
2. Identify and evaluate central questions of political philosophy and constitutional order.
3. Articulate clearly and precisely, in writing and oral discussion, a set of arguments regarding these questions. Be able to pose and field objections to your own claims and arguments.
4. Live well, or at least more thoughtfully, as a citizen and human being.

COURSE REQUIREMENTS

There are many paths to success in this course. If at any time you should have concerns about your progress, you should not hesitate to discuss these concerns with us. Likewise, if we think that you need to be alerted to concerns we may have, we will not hesitate to discuss them with you. The following brief descriptions of the requirements should give you a sense of our expectations.

Seminar Participation, including Analytical Outlines and Convention Debates

Participation in seminar discussion is critical to your education and important for success in this course. You should come prepared, having read the texts more than once and having prepared questions and comments on what you have read.

As part of your class participation, you will submit *two* analytical outlines of assigned texts from the syllabus. You may choose any of the readings by Aristotle or Locke for the week the outline is due. Each outline should be 2-3 pages long, and should demonstrate a close reading of the text by presenting the author's argument succinctly and clearly. Your outline should not simply copy-and-paste text from the source. Instead, you should synthesize the argument, define terms, identify premises, and note possible counter-arguments. Prof. J. Budziszewski of UT Austin offers a [useful guide](#) to the many forms of analytical outlines on his blog. Do not use ChatGPT to generate your outline: you will only be led astray in more ways than one.

The course culminates in a Convention Debate, the specifics of which we will discuss as we come nearer to it. Students will work in groups, and we will include your participation in the debate as part of your participation grade.

Short Essay

At the conclusion of the introductory section of the course, you will submit a short essay (3-5 pages) that outlines two or three major constitutional questions arising from the readings and discusses briefly the potential connections between these questions and fundamental anthropological or metaphysical presuppositions. We will discuss the requirements of the essay as we near its due date.

Take-Home Essay Exams (Submit to Canvas by due date and time)

There will be three take-home essay exams, including the final exam. The first two take-home exams will be designed to enhance and test your understanding of the material for the two major sections of the course, Modern Constitutionalism and Ancient Constitutionalism. These exams will consist of two or three questions for which you will supply brief essay answers. The questions and directions for the exams will be emailed to you on the Friday before they are due. The final take-home exam will be comprehensive, asking you to draw from the full course and the convention debates, and it will involve an exercise in constitutional design. We will use the last two weeks of the course to help prepare you for this exam.

Grade Breakdown & Due Dates

25%	Class Participation Including Analytical Outlines (Due: Feb 15 and Mar 21 at 9am) and Convention Debate
10%	Short Essay, Due Monday, Jan. 29, NOON
15%	First Take-Home Exam, Due Monday, Feb. 26, NOON
20%	Second Take-Home Exam, Due Monday, Apr 15, NOON
30%	Final Take-Home Exam, Due Monday, May 6, NOON

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, 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: Attendance is mandatory. Officially excused absences fall under the university's Office of Community Standards and the college's advising office and require documentation. We allow one unexcused absence, but for other unexcused absences, **three points** will be subtracted 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.

Food & Drink in Class: You may bring (nonalcoholic) beverages to class, but since we are not a dinner club (unfortunately), eating your breakfast or lunch should occur before or after class.

ACADEMIC HONESTY is Expected and Honorable: From the Honor Code: “**As a member of the Notre Dame community, I will not participate in or tolerate academic dishonesty.**”

We are all bound by the university’s policies regarding academic integrity. ***This includes any use of AI related software.*** In addition to its moral importance, academic honesty protects the academic credibility of your degree and is crucial to your education. I am scrupulous in ensuring academic honesty on papers and exams, and I ask that you be scrupulous in following the University’s policy, under the [HONOR CODE](#). If you have any doubts or questions as you work on assignments, check with me or the teaching assistant for this course.

Students with Disabilities will be accommodated as extensively as possible. Please talk directly with me regarding any necessary arrangements.

Purchase a good style book if you don’t own one already. I recommend Steven Pinker’s *The Sense of Style* and, for the connoisseurs of fine writing, F.R. Lucas’s *Style: The Art of Writing Well*. And, if only for fun, try Stanley Fish’s *How to Write a Sentence*. My main point is that writing is a craft, which you should be honing as you go through university and beyond.

Late Submitted Work

All written work must be submitted on the day it is due. Work that is submitted after the due date and time 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 due and weekend days. For example, if an assignment is due Monday and you turn it in on Tuesday, your grade will be reduced by 2 letter grades or 20 points.

MAKE BACK-UP COPIES of your work. *If you miss submitting 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.*

CNST 30638/POLS 30707

Schedule of Readings and Assignments

This schedule may change according to class progress and as circumstances require.

Students will receive notification of any such changes.

*Readings marked with ** are on reserve or online*

Week 1 Introduction

Jan 16: Course Aims and Expectations

Jan 18: **John Rawls, *Political Liberalism*, Introduction

I CONTEMPORARY CONSTITUTIONALISM

Week 2 Liberal Constitutionalism: Procedural Justice, Rights, and the Good as Plural

Jan 23: **John Rawls, "Justice as Fairness: Political not Metaphysical." *Philosophy & Public Affairs*, Vol 14, No. 3 (Summer 1985), pp. 223-251.

 **Alasdair MacIntyre, "The Privatization of the Good." *Review of Politics*, Vol. 52, No. 3 (Summer 1990), pp. 344-361.

Jan 25: Rawls & MacIntyre readings contd.

Preface & Chapters 1-2 of Pierre Manent's An Intellectual History of Liberalism (Princeton University Press, 1995).

 ** Note: This is an online book, which you can access through Hesburgh Library search engine.

Chapter 1 of Pierre Manent's Natural Law and Human Rights: Toward a Recovery of Practical Reason (University of Notre Dame Press, 2020).

 Also an online book.

SHORT PAPER DUE MONDAY, JANUARY 29, NOON (SUBMIT TO CANVAS)

II MODERN CONSTITUTIONALISM

Week 3 Modern Constitutionalism: War & Our "Original" or Pre-political Condition

Jan 30: **Machiavelli, *Prince*, chapter 15, "Of Those Things for Which Men and Especially Princes Are Praised or Blamed."

 **Hobbes, *Leviathan*: Chapter 13, "Of the Natural Condition of Mankind, as Concerning their Felicity, and Misery."

 Aristotle, *Politics*, Bk 1, chs. 1-2

 **Genesis, chs. 1-4. (NAB)

Feb 1: Hobbes Ch. 14: “Of the First and Second Natural Laws, And Of Contract”

Chapters 3-4 of Manent’s Natural Law and Human Rights.

Weeks 4-6 The Modern State: Equality, Freedom, Property, Contract

Feb 6: Locke, *First Treatise of Government*:
Title-page, Preface, and ch. 1

Feb 8: Locke, *Second Treatise of Government*:
Chs. 1-4 Political Power/State of Nature/State of War/Slavery
Ch. 8 Of the Beginning of Political Societies

Feb 13: Locke, *Second Treatise*, ch. 5 On Property

Declaration of Independence

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

Preamble to US Constitution

<http://press-pubs.uchicago.edu/founders/tocs/toc.html>

Lincoln, Fragment on the Declaration & the Constitution:

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

Feb 15: Locke, *Second Treatise*:
Ch. 5: On Property contd.
Chs 6-9: Paternal Power and Political Society

Madison, “On Property”:

<http://press-pubs.uchicago.edu/founders/documents/v1ch16s23.html>

**FIRST ANALYTICAL OUTLINE DUE FEBRUARY 15, BY 9AM
(SUBMIT TO CANVAS)**

Feb 20: Rousseau, *Discourse on the Origins and the Foundations of Inequality Among Men* (*Second Discourse*): Preface and First Part, pp. 51-90 (also “notes”).

Feb 22: Rousseau, *Second Discourse*, Part 2: Property, Civil Society, & Inequality, pp. 91-117 (also “notes”)

**FIRST TAKE HOME EXAME DUE FEBRUARY 26, BY NOON
(Submit to Canvass)**

Week 7 Faction, Separation of Powers, & The New Science of Politics

Feb 27: **Tocqueville, Introduction to *Democracy in America*

Locke, *Second Treatise*, chs. 6-9 contd.

Federalist 1, 9, & 37

https://avalon.law.yale.edu/subject_menus/fed.asp

Feb 29: Locke, *Second Treatise*:
Chs. 10-14: Popular Sovereignty, Legislative Supremacy, Executive Prerogative

The Constitution of the United States, Articles 1-3

<http://press-pubs.uchicago.edu/founders/tocs/toc.html>

Federalist 10, 47, & 51

https://avalon.law.yale.edu/subject_menus/fed.asp

Week 8 Modern Constitutionalism: Faction, Freedom, and Equality

Mar 5: Locke, *Second Treatise*, ch. 14 contd. and chs. 15-19

Lincoln, Gettysburg Address

<https://teachingamericanhistory.org/library/document/gettysburg-address/>

Mar 7: Readings contd.

Week 9 SPRING BREAK (MARCH 10-17)

III ANCIENT CONSTITUTIONALISM

Week 10 The Natural City (Polis) and Ancient Regime (Politeia)

Mar 19: **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)

Aristotle, *Politics* (*Polis* & *Politeia*: "city" & "regime")

Bk 1, chs. 1-2

Bk 3, chs. 1-7

See also "Analysis of the Argument" (pp. xliii-xlv)

Mar 21: Aristotle, *Politics*, Bk 1, chs. 3-7

SECOND ANALYTICAL OUTLINE DUE March 21, by 9am.

Week 11 Ancient Constitutionalism: Political Animals & The Politics of Virtue

Mar 26: Aristotle, *Politics*, Bk 1, chs. 8-13; Bk. 7, chs. 1-13

Mar 28: Aristotle, *Politics*, Bk. 7, chs. 14-15; Bk. 8, chs. 1-2

 **Fustel de Coulanges, *The Ancient City*
 Bk 5, ch. III: “Christianity” (pp. 381-388)

Weeks 12-13 Ancient Constitutionalism: Faction, Equality & The Problem of Political Justice

Apr 2: Aristotle, *Politics*, Bk 3, chs. 1-7

Apr 4: Aristotle, *Politics*, Bk 3, chs 8-13

Apr 9: Aristotle, *Politics*, Bk 3, chs. 14-18

Apr 11: Aristotle, *Politics*, Bk. 5, chs. 1-9; Bk. 6, chs. 1-2

**SECOND TAKE HOME EXAM DUE April 15, NOON
(SUBMIT TO CANVAS)**

Weeks 14-15 Our Contemporary “Constitution”: Enlightenment or Twilight?

Apr 16: Rousseau, *On the Social Contract*, Book 1, pp. 163-78.

 **Kant, “What is Enlightenment”

 **Habermas, “Pre-political Fdns of the Democratic Constitutional State,” pp. 21-52

Apr 18: **Joseph Cardinal Ratzinger, “That Which Holds the World Together: The Pre-political Foundations of a Free State,” pp. 53-80

 **Edmund Burke, extract from *Speech to the Electors of Bristol*

Apr 23: **CONSTITUTIONAL CONVENTION, DAY ONE**

Apr 25: **CONSTITUTIONAL CONVENTION, DAY TWO**

Apr 30: **CONVENTION DEBRIEF**

**FINAL TAKEHOME EXAM: THE NEW CONSTITUTIONAL ORDER
DUE MONDAY, MAY 6, NOON
(SUBMIT TO CANVAS)**