

Constitutional Law

Bard College

PS 134

T/Th 2:30-3:50

Olin 203

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Reading and Preparation

This course will provide an introduction to constitutional legal systems, including but not limited to the United States. The class is divided into two parts. The first part of the semester looks at the history of the idea of constitutionalism in Greece, England, and France. The second part explores the United States Constitutional revolution and engages current constitutional controversies, including the rights of individuals during crises, judicial review, and due process.

The texts will be difficult, and we will proceed slowly. You are required and expected to attend every class meeting and to be prepared. Reading the texts is only the bare minimum preparation, and is, on its own, not sufficient. While I will lecture for part of every class, you are expected to ask questions and participate in discussions. The format requires that you not only read and re-read the texts, but also thoughtfully engage with these texts *before* you come to class.

Participation

You are expected to engage actively in the readings and the class discussions. You will be evaluated on your classroom participation.

Lateness

As a matter of respect for your fellow students, you are to arrive on time.

Assignments

There will be two exams. One on October 15th. The second will be a take home exam on Wednesday, December 17th.

In addition, every class member is required to take responsibility for preparing a 5-10 minute oral presentation for two classes. You will work with one other person and meet before class to discuss a selection from the assigned material. You will then, individually, write a short expository essay (no more than 400 words) stating the main argument of the reading. This essay is to be handed in at the end of class and will be graded.

Books

Please buy and read the following books in the specified edition.

Aristotle, *Politics and the Constitution of Athens* (Cambridge)

Montesquieu, *The Spirit of the Laws* (Cambridge)

Mason and Stephenson, *American Constitutional Law* 15th ed. (Prentice Hall).

Jean Bodin, *On Sovereignty* (Cambridge). Optional.

Hannah Arendt, *On Revolution* (Penguin). Optional.

I. Week One

Introduction. What is Constitutionalism?

The Declaration of Independence

II. Week Two: Ancient Constitutionalism

The Forms of Constitution

Ethics and Politics:

Aristotle, *Nichomachean Ethics* (Bk. X. chp. 9)

Graham Maddox, *A Note on the Meaning of 'Constituiton'* (1982)

Property:

Aristotle, *Politics* (Bk. 1 chp. 1; Bk. II).

III. Week Three

The Athenian Constituiton and Constituitonalism

Types of Regimes

Aristotle, *Politics* Bk. III 4-12

Rule of Law

Aristotle, *Politics* (Bk. IV chps. 2-4, 13-17; Bk. VII chps. 1-4, 1-15; Bk VIII, chps. 1-5)

Aristotle, *The Constitution of Athens*, 225-242.

Hannah Pitkin, "The Idea of a Constitution" *Journal of Legal Education*, v. 37 (1987) 167-169.

IV. Week Four Modern Constitutionalism

Montesquieu, The Spirit of the Laws

Preface
Book I.
Book II, chps. 1-2, 4-5.
Book III
Book IV, chps. 1-5.
Book V, chps. 1-5, 7, 9, 11-14.
Book VI chps. 3, 9-12, 16.
Book VIII, chs. 1-4, 6, 8, 11,15-17, 19-20.

Hannah Arendt, *On Revolution*, 179-94.
Jacob Levy, Montesquieu's Constitutional Legacies. MODERNITY IN QUESTION: MONTESQUIEU AND HIS LEGACY, Rebecca Kingston, ed., SUNY Press

V. Week Five: The English Constitution

Montesquieu, *Spirit of the Laws*:
Book XI,
Book XII, chs. 1-4.
Book XIV
Book XIX
Book XXIX

William Blackstone, *Commentaries on the Laws of England* – selections from Volume One pp. 146-7, 153-5, 234, 237-8, 266-70, 223-7.

John Adams on the English Constitution
John Louis de Lolme, *The Constitution of England*, Book I, chs. 4-6, 12.
http://oll.libertyfund.org/index.php?option=com_staticxt&staticfile=show.php%3Ftitle=2089&Itemid=28

VI. Week Six: French Constitutionalism Bridling the Sovereign

Claude Seyssel, *Reflections on the Monarchy in France*, pgs. 38-66.

Thomas Aquinas, “On Princely Government To the King of Cyprus”,
Book One, pgs. 2-7; 40-41.

Nannerl O. Keohane, Claude de Seyssel and Sixteenth Century
Constituitionalism in France, Nomos XX.

Optional
Jean Bodin, *On Sovereignty*, books 1-3

VII. Week Seven

The American Constitutional Revolution

State Constitutions of the Revolutionary Era

Virginia [[http://press-](http://press-pubs.uchicago.edu/founders/print_documents/vichis4.html)

[pubs.uchicago.edu/founders/print_documents/vichis4.html](http://press-pubs.uchicago.edu/founders/print_documents/vichis4.html)]

Pennsylvania [http://avalon.law.yale.edu/18th_century/pao8.asp]

New York [http://avalon.law.yale.edu/18th_century/nyo1.asp]

South Carolina [http://avalon.law.yale.edu/18th_century/sco2.asp]

The U.S. Federal Constitution 1787-89

Proposed Drafts

Virginia Plan [http://avalon.law.yale.edu/18th_century/vatexta.asp]

New Jersey Plan

[http://avalon.law.yale.edu/18th_century/patexta.asp]

Alexander Hamilton Plan

[http://avalon.law.yale.edu/18th_century/hamtexta.asp]

U.S. Constitution [<http://www.constitution.org/constit.htm>]

Federalist Papers [http://avalon.law.yale.edu/subject_menus/fed.asp]

Nos. 10, 14, 15, 37, 39, 47, 49, 50, 51, 62, 78.

In opposition:

“Letters from the Federal Farmer”, Letter 3 – 10/10/1787

[<http://www.constitution.org/afp/fedfar03.htm>]

Essays of “Brutus” [<http://www.constitution.org/afp/brutusoo.htm>]

Nos. 1, 3.

Essays of “Brutus” [<http://www.constitution.org/afp/brutusoo.htm>]

Nos. 11, 15.

Hannah Arendt, *On Revolution*.

Cecilia M. Kenyon, *Constitutionalism in Revolutionary America*,
Nomos, vol. XX. 84-121.

Jack N. Rakove, “Framing the Constitution”

VIII. Week Eight

The American Constitution and Judicial Review

Mason and Stephenson, *American Constitutional Law*, chps. 1-2
Jeremy Waldron, "The Core of the Case Against Judicial Review," 115
Yale Law Journal 1346 (2006).

IX. Week Nine

Federalism

Mason and Stephenson, *American Constitutional Law*, chp. 4
Carl J. Friedrich, "Constitutions and Constitutionalism,"
International Encyclopedia of the Social Sciences, v. 3 (1968) 318-326.
Federalist 45.
Harry Scheiber, Federalism and the Constitution: The Original
Understanding, in *American Law and Constitutional Order*, ed. by
Friedman and Scheiber. 85-98.

X. Week Ten

Nationalization of the Bill of Rights

Mason and Stephenson, *American Constitutional Law*, chps. 9. 14
Wilfrid E. Rumble, James Madison on the Value of Bills of Rights,
Nomos, v. xx, 122-162.

XI. Week Eleven

Due Process

Mason and Stephenson, *American Constitutional Law*, chp. 8
George Kateb, Procedures of Constitutional Democracy, *Nomos*, v.
XX, 210-237.

XII. Week Twelve

Freedom of Expression

Mason and Stephenson, *American Constitutional Law*, chp. 11
Citizens United v. Federal Election Commission, No. 08-
205,

XIII. Week Thirteen

Habeas and Warfare

Mason and Stephenson, *American Constitutional Law*, chp.15.

XIV. Week Fourteen: New Constitutionalism

Carl Friedrich, "The Political Theory of the New Democratic Constitutions."
South African Constitution

