

Reconsidering the Constitution: American Founding Debates

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I. Course Description

Do we need a new and improved constitution? Given the vastly different times in which we live, and the often heard claim that the American political system is “broken,” should we reconsider and potentially rewrite our founding document? This course is organized around the idea that Americans in 2009 will have the opportunity to vote on the following proposal: “Shall Congress call a constitutional convention empowered to consider the adequacy of the Constitution and, if thought necessary, to draft a new constitution that, upon completion, will be submitted to the electorate for its approval or disapproval by majority vote? Unless and until a new constitution gains popular approval, the current Constitution will continue in place.” (quoted from Sanford Levinson, *Our Undemocratic Constitution*)

To think through the merits of and problems with this proposal, we will return to and carefully consider the debates that surrounded the drafting and ratification of the Constitution. While we will on occasion broaden our perspective by considering relevant works of modern and contemporary political theory, constitutional theory, and constitutional law, the course is designed primarily as a back-and-forth between the Federalist / Anti-Federalist debates and more recent writings that address these same issues, but within the current context. Among the topics we will cover are: the proper extent of executive power, the proper role of political parties and “special interests” in our political system, the separation of church and state, the virtues and vices of a separation of powers system and “gridlock,” the form of political representation proper to a democracy, and the place and function of a constitutional document in a democracy.

The guiding question of the course is, given the challenges that face America and the world today, and with an eye toward what constitutes a just and good society, what sort of regime would we now design?

II. Course Goals

This course is intended to acquaint students with the ideas and debates that surrounded the founding of the current American regime, and to critically engage students in these debates. We will pursue four goals in this course. 1) We will carefully read, try to understand, and critique (in that order) each authors writings. As best as we can, we will attempt to leave our prejudices and preconceived notions behind and approach the readings on their own terms, thereby allowing them to unsettle our own often unnoticed assumptions. 2) After analyzing the work of each author, we will attempt to synthesize - compare and contrast - the readings from week to week, across the course. Hopefully, we will never lose sight of “the big picture.” 3) While necessary, understanding and evaluating the readings is not sufficient to meet the goals of the course. The ultimate purpose is to bring the insights gleaned from the readings to bear on the world in which we live. At its best, political theory illuminates and helps us interpret our own experiences, ideas, beliefs, and values. 4) Everything in this course is geared to persuasive argumentation. We want

to leave this course able to recognize, develop, and communicate (both orally and in our writing) persuasive arguments.

III. Assignments and Grading

Two separate take-home midterm papers of 5 pages each (typed, 12pt font, double-spaced, 1-inch margins). For these papers, you will, in consultation with me, choose and evaluate a recent piece that relates to one of the debates thus far addressed in class.

One take-home final paper of 8 pages (typed, 12pt font, double-spaced, 1-inch margins). For this paper, you will in effect draft your own Federalist Paper style essay arguing for or against some feature of the Constitution.

The final week of class will be dedicated to debating and ratifying / rejecting these proposals.

You are also expected to be aware of what is happening in America and the world through reading the reputable news-sources of your choosing.

Midterm Paper 1 (25%)
Midterm Paper 2 (25%)
Final Paper (40%)
Class Participation (%10)

IV. Texts

Required

- 1) The Federalist Papers
- 2) The Anti-Federalist: An Abridgment of The Complete Anti-Federalist, Herbert Storing, ed.
- 3) What the Anti-Federalists Were For: The Political Thought of the Opponents of the Constitution, Herbert Storing
- 4) Jefferson: Political Writings, Ball and Appleby, eds.
- 5) Our Undemocratic Constitution: Where the Constitution Goes Wrong (And How We the People Can Correct It), Sanford Levinson

Recommended

- 6) Does American Democracy Still Work?, Alan Wolfe
- 7) A More Perfect Constitution: Ideas to Inspire a New Generation, Larry Sabato

V. Course Policies

The strength of the university depends on academic and personal integrity. In this course, you must be honest and truthful. Plagiarism is the use of someone else's work, words, or ideas as if they were your own. You can find a fuller discussion of using sources and avoiding plagiarism on the Writing Center Website. (<http://www.yale.edu/writing/>)

Papers will be marked down one full letter grade for each day late. The only exception is for documented medical emergencies. You are expected to contact me by phone in advance of paper due-dates to discuss any other possible exceptions.

You may appeal your grade by submitting a written statement explaining why the grade is inappropriate. You have one week after the paper is returned to submit your statement to me.

VI. Course Reading & Assignment Schedule

Please bring the relevant book to class.

Week 1: Sept 3

Introduction

Week 2: Sept 8, 10 (Reform, Revolution, or a New Constitutional Convention)

- a. Levinson, *Our Undemocratic Constitution*, Chs. 1 & 7
- b. Jefferson, Letter to Samuel Kercheval, July 12, 1816 (210-217)
- c. Jefferson, Letter to James Madison, Jan. 30, 1787 (107-109)
- d. Jefferson, Letter to William Stephens Smith, Nov. 13, 1787 (109-111)
- e. Jefferson, Letter to James Madison, Sept. 6, 1789 (593-598)
- f. James Madison to Jefferson, Feb. 4, 1790 (Appendix A in *Jefferson: Political Writings*, 606-609)
- g. *The Federalist Papers* Nos. 1, 40, 49
- h. Storing, *What the Anti-Federalists Were For*, Ch. 2
- i. The Declaration of Independence

Week 3: Sept 15, 17 (Representation; Elections; Political Parties)

- a. Edmund Burke, Excerpt from Speech to the Electors of Bristol, Nov 3, 1774
(<http://press-pubs.uchicago.edu/founders/documents/v1ch13s7.html>)
- b. *The Federalist Papers* Nos. 35, 55, 57, 63
- c. Storing, *The Anti-Federalist*, Letter from The Federal Farmer No. VII (73-79)
- d. Storing, *The Anti-Federalist*, Essay V of A (Maryland) Farmer (261-272)
- e. Jefferson, Letter to Francis Hopkinson, March 13, 1789 (410-412)
- f. Storing, *What the Anti-Federalists Were For*, Ch. 5
- g. Levinson, *Our Undemocratic Constitution*, Ch. 5

Week 4: Sept 22, 24 (Citizenship, Participation, Civic Education)

- a. Jefferson, Letter to John Adams, Oct. 28, 1813 (185-191)
- b. Jefferson, Letter to Joseph C Cabell, Feb. 2, 1816 (202-206)
- c. Jefferson, Letter to Samuel Kercheval, Sept, 5, 1816 (218-220)
- d. Jefferson, Notes on Virginia: Query XIV (256-260)
- e. Storing, *What the Anti-Federalists Were For*, Chs. 3 & 7
- f. The “Port Huron Statement”
(<http://coursesa.matrix.msu.edu/~hst306/documents/huron.html>)
- g. Robert Putnam, *Bowling Alone: America’s Declining Social Capital*
(<http://xroads.virginia.edu/~hyper/DETOC/assoc/bowling.html>)
- h. James Fishkin on Deliberative Polling (<http://bostonreview.net/BR31.2/fishkin.html>)

Week 5: Sept 29, Oct 1 (The Commercial Republic)

- a. Michael C. Maibach, *Virtues of the Commercial Republic*, 2002
(<http://www.maibachfoundation.org/Articles/Virtues.htm>)
- b. Storing, *What the Anti-Federalists Were For*, Chs. 4 & Conclusion
- c. Storing, *The Anti-Federalist*, Letter of Agrippa I & VIII (229-230; 243-244)
- d. James Madison, “Property,” *National Gazette*, March 29, 1792
(<http://press-pubs.uchicago.edu/founders/documents/v1ch16s23.html>)

- e. Alexander Hamilton, Report on Manufacturers, 1791 (excerpted) (<http://history.sandiego.edu/gen/text/civ/1791manufactures.html>)
- f. The Federalist Papers, No. 6
- g. What is a Flat World? (seven short videos) (http://video.on.nytimes.com/?fr_story=059db33970c4329ad6493a08d005052ef5607769)

1ST PAPER DUE TUESDAY, SEPTEMBER 29

Week 6: Oct 6, 8 (Federalism; Factions)

- a. The Federalist Papers Nos. 9-10, 14, 23, 37, 39
- b. Storing, The Anti-Federalist, Letter of Agrippa IV (234-236)
- c. Storing, The Anti-Federalist, The Federal Farmer, Letter II (39-43)
- d. Jefferson, Letter to James Madison, June 29, 1792 (412-413)

Week 7: Oct 13, 15 (Separation of Powers)

- a. Storing, What the Anti-Federalists Were For, Ch. 7
- b. The Federalist Papers Nos. 47-51
- c. Storing, The Anti-Federalist, Pennsylvania Dissent (199-221)
- d. Sarah Binder, Going Nowhere: A Gridlocked Congress (http://www.brookings.edu/articles/2000/winter_governance_binder.aspx)

Week 8: Oct 20, 22 (Congress; Article I)

- a. Levinson, Our Undemocratic Constitution, Ch. 2
- b. The Federalist Papers Nos. 52, 55-57, 62-63
- c. Storing, The Anti-Federalist, Brutus, Essay III (43-54)
- d. Jonathan Rauch, Demosclerosis (http://www.jonathanrauch.com/jrauch_articles/demosclerosis_the_original_article/)

Week 9: Oct 27, 29 (The Executive; Article II)

- a. Levinson, Our Undemocratic Constitution, Ch. 3
- b. The Federalist Papers Nos. 70-74
- c. Jefferson, Letter to Wilson C. Nicholas, Sept. 7, 1803 (373-375)
- d. Lincoln's Suspension of the Writ of Habeas Corpus (<http://www.teachingamericanhistory.org/library/index.asp?document=425>)
- e. United States v. Nixon (<http://www.teachingamericanhistory.org/library/index.asp?document=159>)
- f. Hamdi v. Rumsfeld
<http://www.law.duke.edu/publiclaw/supremecourtonline/certGrants/2003/hamvrum.html>
<http://www.law.duke.edu/publiclaw/supremecourtonline/editedCases/hamvrum>
- g. John Yoo, Energy in the Executive: Re-examining Presidential Power in the Midst of the War on Terror (<http://www.heritage.org/Research/PublicDiplomacy/fp4.cfm>)

Week 10: Nov 3, 5 (The Judiciary; Article III)

- a. Levinson, Our Undemocratic Constitution, Ch. 4
- b. Jefferson, Letter to Judge Spencer Roane, Sept. 6, 1819 (378-380)
- c. The Federalist Papers Nos. 78-80
- d. Storing, The Anti-Federalist, Essays of Brutus, nos. XI-XV (162-187)

2ND PAPER DUE TUESDAY, NOVEMBER 3

Week 11: Nov 10, 12 (The Bill of Rights)

- a. Amendments I-X to the Constitution
- b. Storing, What the Anti-Federalists Were For, Ch. 8
- c. The Federalist Papers No. 84
- d. Jefferson, Letter to James Madison, March 15, 1789 (367-369)
- e. Storing, The Anti-Federalist, Brutus Essay II (117-122)

Week 12: Nov 17, 19 (The First Amendment)

- a. The First Amendment to the Constitution
- b. Jefferson, Notes on Virginia: Query XVII (392-396)
- c. Jefferson, Letter to Danbury Baptist Association, Jan. 1, 1802 (396-397)
- d. James Madison, Memorial and Remonstrance
(http://religiousfreedom.lib.virginia.edu/sacred/madison_m&r_1785.html)
- e. Van Orden v. Perry, 2005
(<http://www.law.duke.edu/publiclaw/supremecourtonline/certGrants/2004/vanvper>)
(<http://www.law.duke.edu/publiclaw/supremecourtonline/editedCases/vanvper>)
- f. Brandenburg v. Ohio, 1969
(<http://history.sandiego.edu/gen/text/civ/1791manufactures.html>)

No class Nov 21 – 29 for Fall Recess

Week 13: Dec 1, 3 (Amending the Constitution; Article V)

- a. Amendments I-XXVII to the Constitution
- b. Levinson, Our Undemocratic Constitution, Ch 6 & Afterword for the Paperback Edition
- c. The Federalist Papers No. 85
- d. Jefferson, Letter to Major John Cartwright, June 5, 1824 (382-388)
- e. Abraham Lincoln, Lyceum Address, Jan. 27, 1838
(<http://showcase.netins.net/web/creative/lincoln/speeches/lyceum.htm>)

FINAL PAPER DUE: TBA