

Princeton University
Department of Politics

POL 561 – Constitutional Theory
Fall 2019

Keith E. Whittington
113 Fisher Hall, 258-3453
kewhitt@princeton.edu

M 1:30-4:30pm
Robertson Hall 006

This course is concerned with examining the nature of constitutionalism. This is a broad topic, and we can only scratch the surface in a semester. The goal of the course is to propose some questions about constitutionalism and to provide some familiarity with alternative approaches and conceptions of constitutional theory and practice. This is not a course in constitutional law. The judiciary lurks in the background of many of our readings, but we will read few opinions and judges carry no special authority for our purposes. Much of this theorizing and discussion draws upon the American case in particular. Although the lessons to be learned are generalizable, they are largely elaborated in the context of American institutions, culture and theoretical assumptions. If you need more to refresh yourself on American constitutional history, I suggest Lucas Powe's The Supreme Court and the American Elite, Alfred Kelly, Winfred Harbison and Herman Belz's The American Constitution, and Howard Gillman, Mark Graber, and Keith Whittington, American Constitutionalism. There are a smaller number of comparative constitutional law casebooks, including Vicki Jackson and Mark Tushnet's Comparative Constitutional Law.

Our concerns include defining what a constitution actually is and identifying its function within a political system. This requires expanding our inquiry beyond the traditional emphasis on the legal constitutional text that predominates in American constitutional analysis. Examining what a constitution is also requires us to ask why we have one. A commitment to constitutionalism raises questions of constitutional interpretation. How should we interpret our fundamental political commitments and who is authorized to resolve disagreements as to its meaning? The mechanisms of constitutional change must be examined. If constitutions are to be binding, they must be relatively stable. But if constitutions are to be authoritative, they must be flexible. We will consider some ways of asking these questions and some ways that they have been answered. Finally, we will consider some important issues of constitutional design and the empirical and normative significance of some common constitutional features.

Our examination of constitutionalism should raise both empirical and normative questions. The Constitution is not only the subject of normative theory, it is also an aspect of political practice. If constitutions are to be authoritative, the is and the ought must be linked. Determining what the Constitution is should also determine how we should behave. On the other hand, constitutions should not only prescribe political practice, but a functioning constitution should also describe the actual political system. Ultimately, those two aspects of the Constitution must be related to one another. The topics under examination this semester are only a selection of the possible ones. Not only will our examination of each individual topic necessarily be limited, but also there will be other topics of constitutional theory that will not be examined at all (for example, other possible justifications for constitutionalism). These readings should relate not only to the other readings within a given week, but also to other readings in the semester and to other topics not discussed this semester. Class discussion in any given week should be permeable to those concerns. The syllabus provides a brief comment on each week's readings. The questions asked in those comments are at best starting points for your thinking, and are merely intended to help orient you toward that week's material in the context of the course. Those suggested questions are also framed in a rather general fashion, and do not explore the specifics raised by the assigned readings. You should certainly be thinking about those specifics, as well as how the readings relate to our general concerns.

Schedule:

1. September 16: Introduction: The Political Constitution (WILL END AT 3:30pm)
2. September 23: The Legal Constitution: Rights and Constraints
3. September 30: The Informal Constitution (WILL RESCHEDULE)

4. October 7 Democracy and Sovereignty
5. October 14: Entrenchment
6. October 21: Constitutional Ideas

October 28: No Class, Fall Break

7. November 4: Tensions
8. November 11: When Constitutions Go Wrong
9. November 18: Constitutional Survival
10. November 25: Maintenance and Change
11. December 2: Constitutional Foundings
12. December 9: Separation of Powers

Materials:

The following books are available for purchase:

Mark Graber, A New Introduction to American Constitutionalism
Bruce Ackerman, Revolutionary Constitutions
Bruce Ackerman, We the People, vol. 1
Ken Kersch, Conservatives and the Constitution
Zachary Elkins, Tom Ginsburg, and James Melton, The Endurance of National Constitutions
Christoph Moellers, The Three Branches

The remaining readings are on electronic reserve at the library. All required readings are available on reserve in the library.

Requirements:

Seminar participants will prepare three short papers of 6-8 pages each. Each short paper is to explore some problem arising from or addressed by the readings of a selected week. There is no reason why two or even three of your papers could not address different facets of a common problem. The papers may be guided by the suggested questions provided in the syllabus, but they are by no means constrained by those suggestions.

Each paper should include a brief abstract (150-500 words). Papers should not simply be read at the seminar, but you should be prepared to present an oral version of your argument. The oral presentation should develop the argument contained in your paper and initiate that day's discussion. Papers will be scheduled at the beginning of the semester and are **due the day before the relevant seminar**. They should be emailed to me and the other seminar participants by 5:00 pm on the preceding Sunday, if not before.

The "required" readings are absolutely required. You are expected to have read thoroughly and thought about each of these readings before every class. The suggested readings are for your further consideration and reference. You are welcome to make use of the suggested readings in preparing your papers, and to incorporate them as appropriate for the benefit of the other participants. The suggested readings are sometimes directly related to the required readings. In other weeks, the suggested readings are a diverse collection of interesting works that raise related questions.

Each of the three papers will constitute a quarter of your final grade, with the remainder determined by participation.

Readings

1. Introduction: The Political Constitution

What is “the Constitution,” and what does it do within the political system? Is the Constitution constraining or empowering?

Required:

Karl Llewellyn “The Constitution as an Institution” Columbia Law Review (1934)
Edward S. Corwin “The Constitution as an Instrument and as Symbol” APSR (1936)
William F. Harris II The Interpretable Constitution ch. 1
Keith E. Whittington, “Constitutionalism,” in Oxford Handbook of Law and Politics
Mark Graber, A New Introduction, ch. 1-2

2. The Legal Constitution: Rights and Constraints

The “standard” view of the Constitution is that it is a mechanism for limiting government and protecting minority and individual rights. Constitutionalism contrasts with democracy, and the enforcement of constitutional constraints is best conceptualized as countermajoritarian. The Constitution is a “law” that is applied against the government. What is a constitution? What does it mean to think of the constitution as a law? What is the significance of the legalization of the constitution? What are constitutional rights, and how should they be enforced? Is there a relationship between the negative, legal constitution and the positive, political constitution?

Required:

Charles McIlwain Constitutionalism: Ancient and Modern ch. 1, 6
Giovanni Sartori “Constitutionalism: A Preliminary Discussion” APSR (1962)
Ronald Dworkin “Constitutional Cases” in Taking Rights Seriously
Richard Bellamy, “Constitutionalism and Democracy,” in Political Constitutionalism

Suggested:

Edward S. Corwin The “Higher Law” Background of American Constitutional Law
Edward S. Corwin “The Basic Doctrine of American Constitutional Law,” Michigan Law Review (1914)
Dennis S. Mueller “Constitutional Rights” Journal of Law, Economics and Organization 7 (1991)
Carl Friedrich Constitutional Government and Democracy
Carl Friedrich “Constitutions and Constitutionalism,” Internat’l. Encyclopedia of the Social Sciences (1968)
Thomas Grey “Constitutionalism: An Analytical Framework,” in Constitutionalism: NOMOS XX
Graham Maddox “A Note on the Meaning of ‘Constitution,’” APSR (1982)
Gary McDowell “Coke, Corwin & the Constitution: The ‘Higher Law Background’ Reconsidered,” ROP (1993)
James Stoner Common Law and Liberal Theory
Harvey Wheeler “Constitutionalism,” in Fred Greenstein and Nelson Polsby, eds. Handbook of Political Science, vol. 5
Gerald Stourzh “Constitution: Changing Meanings of the Term from the Early Seventeenth to the Late Eighteenth Century,” in Terence Ball and J.G.A. Pocock, eds. Conceptual Change and the Constitution
Stephen Elkin “Constitutionalism: Old and New,” in Stephen Elkin and Karol Soltan, eds. A New Constitutionalism
Ronald Dworkin “Constitutionalism and Democracy” European Journal of Philosophy (1995)
Walter Murphy “Constitutions, Constitutionalism and Democracy,” in D. Greenberg, et al., Constitutionalism and Democracy
Neil MacCormick “Constitutionalism and Democracy,” in Richard Bellamy, ed. Theories and Concepts of Politics
Harry Hirsch A Theory of Liberty
Jennifer Nedelsky Private Property and the Limits of American Constitutionalism
Friedrich Hayek The Constitution of Liberty
Daniel Sutter “Enforcing Constitutional Constraints” Constitutional Political Economy (1997)

3. The Informal Constitution

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Required:

Keith Whittington, "The Status of Unwritten Constitutional Conventions in the United States," U. of Ill. L. Rev. (2013)

Daphna Renan, "Presidential Norms and Article II," Harvard Law Review (2018)

Neil S. Siegel, "Political Norms, Constitutional Conventions, and President Donald Trump," Indiana L. J. (2018)

Josh Chafetz & David Pozen, "How Constitutional Norms Break Down," UCLA Law Review (2018)

Suggested:

Fishkin & Pozen, "Asymmetric Constitutional Hardball," Columbia Law Review (2018)

Richard McAdams, "The Origin, Development and Regulation of Norms," Michigan Law Review (1997)

Vermeule, "The Third Bound," U. of Pennsylvania Law Review (2016)

Gerhardt, "Constitutional Arrogance," U. of Penn. Law Review (2016)

Primus, "Unbundling Constitutionality," U. of Chicago Law Review (2013)

Bradley & Siegel, "Historical Gloss, Constitutional Conventions & Judicial SOP," Georgetown L.J. (2017)

Ernest Young, "The Constitution Outside the Constitution," Yale Law Journal (2007)

Sachs, "Constitutional Backdrops," George Washington Law Review (2011)

Coan, "The Irrelevance of Writtenness in Constitutional Interpretation," U of Penn Law Review (2010)

Bradley and Siegel, "Constructed Constraint and the Constitutional Text," Duke Law Journal (2014)

4. Democracy and Sovereignty

American constitutionalism in particular elevates the idea of popular sovereignty. Fidelity to the U.S. Constitution has been justified in terms of popular sovereignty, and the constraints imposed on government have been regarded as democratically legitimated. In this context, the Constitution can be seen as the expression of the will of the people, and judges act as agents of the people in enforcing its terms against government officials. Alternatively, the Constitution can be seen as a vehicle of democracy, shaping the popular will and well as expressing it. What is the democratic status of the Constitution? Is it authorized by “we the people”? Is any such authorization sufficient to establish constitutional legitimacy? Is American constitutionalism an expression of democracy, or a constraint on democracy?

Required:

Bruce Ackerman We the People ch. 1-2, 7-8, 11

Dennis Thompson, “Deliberative Democratic Theory & Empirical Political Science,” Ann. Rev. of Pol. Sci. (2008)

Andrei Marmor, “Are Constitutions Legitimate?” Canadian Journal of Law and Jurisprudence (2007)

Martin Loughlin, “The Concept of Constituent Power,” European Journal of Political Theory (2013)

Suggested:

James Buchanan and Gordon Tullock The Calculus of Consent

James Buchanan “The Ethics of Constitutional Order,” in The Economics and the Ethics of Constitutional Order

Michael Lienesch New Order of the Ages

Gordon Wood The Creation of the American Republic, 1776-1789

Bernard Bailyn The Ideological Origins of the American Revolution

Donald Lutz Popular Consent and Popular Control

James Morone The Democratic Wish

Paul Kahn Legitimacy and History

Alexander Hamilton, James Madison and John Jay The Federalist Papers

Thomas Paine The Rights of Man

Ian Shapiro “Three Fallacies Concerning Majorities, Minorities and Democratic Politics,” in Majorities and Minorities: NOMOS XXXII (1990)

Hanna Pitkin The Concept of Representation

Kent Greenawalt “Dualism and Its Status,” Ethics (1994)

Don Herzog “Democratic Credentials,” Ethics (1994)

Edmund Morgan Inventing the People

William Riker Liberalism Against Populism

John Locke Two Treatises of Government

Jean-Jacques Rousseau On the Social Contract

Thomas Hobbes Leviathan

William Nelson On Justifying Democracy

James Gardner “Consent, Legitimacy and Elections: Implementing Popular Sovereignty Under the Lockean Constitution,” University of Pittsburgh Law Review (1990)

Patrick Riley Will and Political Legitimacy

John Simmons On the Edge of Anarchy

H. Jefferson Powell “The Political Grammar of Early Constitutional Law,” North Carolina Law Review (1993)

Richard D. Parker “Here, the People Rule”

James Gray Pope “Republican Moments: The Role of Direct Popular Power in the American Constitutional Order,” University of Pennsylvania Law Review (1990)

Bernard Manin “On Legitimacy and Deliberation” Political Theory (1987)

Richard Bellamy and Dario Castiglione “Constitutionalism and Democracy – Political Theory and the American Constitution” British Journal of Political Science (1997)

Sheldon Wolin “Collective Identity and Constitutional Power,” in The Presence of the Past

Harry Beran The Consent Theory of Political Obligation

Hans Lindahl, “Sovereignty and Representation in the European Union,” in Sovereignty in Transition

5. Entrenchment

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Required:

Stephen Holmes Passions and Constraints ch. 5

Roger B. Meyerson, "The Autocrat's Credibility Problem & Foundations of the Constitutional State," APSR (2008)

Russell Hardin Liberalism, Constitutionalism, and Democracy ch. 3

Larry Alexander, "Constitutionalism," in Contemporary Debates in Political Philosophy

Mila Versteeg and Emily Zackin, "Constitutions Unentrenched" APSR (2016)

Suggested:

Jon Elster Ulysses and the Sirens

Jon Elster Ulysses Unbound

Thomas Schelling "Enforcing Rules on Oneself" Journal of Law, Economics, and Organization (1985)

Michael Seidman "Ambivalence and Accountability" Southern California Law Review (1988)

Paul de Man "Political Allegory in Rousseau" Critical Inquiry 2 (1976)

Samuel Freeman "Constitutional Democracy and the Legitimacy of Judicial Review," Law and Philosophy 9 (1990)

Stephen Holmes Passions and Constraints

Friedrich Hayek The Political Order of a Free People

James Buchanan The Limits of Liberty

James Buchanan and Gordon Tullock The Calculus of Consent

Richard Epstein Takings

John Rawls Theory of Justice

James Gwartney and Richard Wagner, eds. Public Choice and Constitutional Economics

Paul Kahn Legitimacy and History

Douglass North "Institutions and Credible Commitment," Journal of Institutional and Theoretical Economics (1993)

Douglass North and Barry Weingast "Constitutions and Commitment: the Evolution of Institutions Governing Public Choice in Seventeenth Century England," Journal of Economic History (1989)

Geoffrey Brennan and James Buchanan The Reason of Rules

Kenneth Shepsle "Discretion, Institutions and the Problem of Government Commitment," in Social Theory for a Changing Society, eds., Pierre Bourdieu and James Coleman

Anne Norton Alternative Americas

Benjamin Wright "The Early History of Written Constitutions in America," in Essays in History and Political Theory in Honor of Charles Howard McIlwain, ed. Carl Wittke

Andrew McLaughlin "Social Compact and Constitutional Construction" American Historical Review (1900)

Patrick Riley Will and Political Legitimacy

Akhil Amar "Of Sovereignty and Federalism," Yale Law Journal (1987)

John Dunn Political Obligation in its Historical Context

David Ericson The Shaping of American Liberalism

David Gauthier Moral Dealing

Stefan Voigt Explaining Constitutional Change

Peter C. Ordeshook, "Constitutional Stability," Constitutional Political Economy (1992)

6. Constitutional Ideas

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Required:

Ken Kersch, *Conservatives and the Constitution*

Suggested:

Ken Kersch, *Constructing Civil Liberties*

Mark Graber, *Transforming Free Speech*

Amanda Hollis-Brusky, *Ideas with Consequences*

Howard Gillman, *The Constitution Besieged*

William Wiecek, *The Sources of Anti-Slavery Constitutionalism*

Clyde Jacobs, *Law Writers and the Courts*

Kathleen Sullivan, *Constitutional Context*

John Compton, *The Evangelical Origins of the Living Constitution*

7. Tensions

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Required:

Gary Jacobsohn, Constitutional Identity ch. 1-2

Mark A. Graber, A New Introduction to American Constitutionalism, ch. 6

Martin Loughlin, "The Constitutional Imagination," Modern Law Review (2015)

Suggested:

Yaniv Roznai, Unconstitutional Constitutional Amendments

Alexander Somek, The Cosmopolitan Constitution

Nick Barber, The Constitutional State

Richard Albert, Constitutional Amendment

Ran Hirschl, Constitutional Theocracy

8. When Constitutions Go Wrong

Required:

David Landau, "Abusive Constitutionalism," UC Davis Law Review (2013)

Mark Tushnet, "Authoritarian Constitutionalism," Cornell Law Review (2014)

Aziz Huq and Tom Ginsburg, "How to Lose a Constitutional Democracy," UCLA Law Review (2018)

Suggested:

David Law, "Alternatives to Liberal Constitutional Democracy," Maryland Law Review (2017)

Mark Tushnet, "The Possibility of Illiberal Constitutionalism," Florida Law Review (2017)

Robert Barros, Constitutionalism and Dictatorship

Jan-Werner Mueller, "Militant Democracy," in Oxford Handbook of Comparative Constitutional Law

G. O'Donnell, "Delegative Democracy," Journal of Democracy (1994)

Javier Corrales, Fixing Democracy

Jose Chieub, Presidentialism, Parliamentarism, and Democracy

Steven Levitsky and Daniel Ziblatt, How Democracies Die

Gabriel Negretto, Making Constitutions

Brian Loveman, The Constitution of Tyranny

9. Constitutional Survival

Constitutions must be created through political effort. Once put in place, constitutions must also be capable of surviving various crises and of effectively structuring actual politics over time. How can politics effect the transition from one constitutional regime to another? How do constitutions reflect their political origins? What allows constitutions to survive crises? What causes constitutions to fail? What is constitutional “failure”?

Required:

Zachary Elkins, Tom Ginsburg, and James Melton, The Endurance of National Constitutions
Bernd Hayo and Stefan Voigt, “Determinants of Constitutional Change,” J. of Comp. Econ. 38 (2010): 283-305
Barry R. Weingast, “The Political Foundations of Democracy and the Rule of Law,” APSR (1997)
Mark A. Graber, A New Introduction to American Constitutionalism, ch. 5

Suggested:

Avinash Dixit, Gene M. Grossman, and Faruk Gul, “The Dynamics of Political Compromise,” Journal of Political Economy (2000)
Avinash Dixit, Lawlessness and Economics (forthcoming)
Herschel I. Grossman, “Constitution or Conflict?” Conflict Management and Peace Science (forthcoming)
Matthew Shugart, “The Inverse Relationship Between Party Strength and Executive Strength: A Theory of Politicians’ Constitutional Choices,” British Journal of Political Science (1998)
Jon Elster, Claus Offe, and Ulrich Preuss, eds., Institutional Design for Post-communist Societies
Jon Elster, “Forces and Mechanisms in the Constitution-Making Process,” Duke Law Journal (1995)
Jon Elster, “Constitution-Making in Europe: Rebuilding a Boat in the Open Sea,” Public Administration (1993)
Claus Offe, Modernity and the State
Ulrich Preuss, Constitutional Revolution
Andrew Arato, Civil Society, Constitution, and Legitimacy
Timothy Frye, “A Politics of Institutional Choice: Post-Communist Presidencies,” Comp. Political Studies (1997)
Andrew Reynolds, ed., The Architecture of Democracy
John Ferejohn, et al., eds., Constitutional Culture and Democratic Rule
Allison Stanger, “Do New Constitutions Matter? Identity, Choice, and Development in post-Communist Central Europe’s Democratization,” working paper
Larry Diamond, Developing Democracy
Robert Gooden, ed., Institutions and their Design
Nancy Bermeo, Ordinary People in Extraordinary Times
Giovanni Sartori, Comparative Constitutional Engineering
Kim Lane Scheppele, “Aspirational and Aversive Constitutionalism: The Case for Studying Cross-Constitutional Influences through the Negative Model,” International Journal of Constitutional Law (2003)
Clinton Rossiter, Constitutional Dictatorship
Carl Friedrich, Constitutional Reason of State
Juan Linz and Alfred Stepan, eds., The Breakdown of Democratic Regimes
Philippe Schmitter, et al., eds., Transitions from Authoritarian Rule
Frederick Watkins, The Failure of Constitutional Emergency Powers in the German Republic
Leonard Binder, et al., eds., Crises and Sequences in Political Development
Franz Neumann, Behemoth
Daniel Nielson & Matthew Shugart, “Constitutional Change in Columbia,” Comparative Political Studies (1999)
Arthur Bestor, “The American Civil War as a Constitutional Crisis,” American Historical Review (1964)
Brian Loveman, The Constitution of Tyranny
Alfred Stepan, The Military in Politics
Barry Ames, The Deadlock of Democracy in Brazil
Adam Przeworski, et al., Democracy and Development
Robert Barros, Constitutionalism and Dictatorship
Ruth Collier and David Collier, Shaping the Political Arena

10. Maintenance and Change

Constitutions constrain politics over time as well as within any given political moment. Constitutions help create political stability and continuity. But constitutions must also allow for change. One mechanism of change is amendment. How can we distinguish amendment from interpretation? What is the purpose of amendment? What do amendments do within a constitutional system? What is the authority of an amendment? Are there limits on amendment? In addition, constitutional commitments may change in the absence of any formal change in the constitutional text. What is the status of such changes in constitutional understandings? What practices are part of “the Constitution”? Is “the Constitution” more than the text?

Required:

Bruce Ackerman We the People ch. 9-10

David Strauss, “The Irrelevance of Constitutional Amendments,” Harvard Law Review 114 (2001)

Heinz Klug, “Constitutional Amendments,” Annual Review of Law and Social Science (2015)

Suggested:

Akhil Amar “Philadelphia Revisited: Amending the Constitution Outside Article V” U. of Chicago Law Rev. (1988)

Akhil Amar “Consent of the Governed: Constitutional Amendment Outside Article V” Columbia L. Rev. (1994)

H. Monaghan “We the People(s), Original Understanding, & Constitutional Amendment,” Columbia L. Rev. (1996)

Michael Klarman “Constitutional Fact/Constitutional Fiction” Stanford Law Review (1992)

Walter F. Murphy “Slaughter-House, Civil Rights, and Limits on Constitutional Change” Am. J. of Juris. (1986)

Robert C. Palmer “The Parameters of Constitutional Reconstruction: Slaughter-House, Cruikshank, and the Fourteenth Amendment,” University of Illinois Law Review (1984)

Walter Dellinger “The Legitimacy of Constitutional Change” Harvard Law Review (1983)

Lawrence H. Tribe “A Constitution We Are Amending” Harvard Law Review (1983)

Lawrence H. Tribe “Taking Text and Structure Seriously” Harvard Law Review (1995)

John R. Vile Constitutional Change in the United States

Clement E. Vose Constitutional Change

David Kyvig Explicit and Authentic Acts

George Anastaplo The Amendments to the Constitution

Ronald King and Susan Ellis “Partisan Advantage and Constitutional Change: The Case of the Seventeenth Amendment,” Studies in American Political Development (1996)

Richard S. Kay “The Illegality of the Constitution” Constitutional Commentary (1987)

Sanford Levinson “‘Veneration’ and Constitutional Change,” Texas Tech Law Review (1990)

Peter Suber The Paradox of Self-Amendment

Kent Greenawalt “The Rule of Recognition and the Constitution” Michigan Law Review (1987)

Herman Belz “History, Theory, and the Constitution” Constitutional Commentary 11 (1994)

Edward S. Corwin “The Constitution versus Constitutional Theory,” American Political Science Review 19 (1925)

Henry Monaghan “Our Perfect Constitution” New York Law Review 56 (1981)

Lawrence Lessig “Understanding Changed Readings: Fidelity and Theory” Stanford Law Review 47 (1995)

John Finn Constitutions in Crisis

Stephen Munzer & James Nickel “Does the Constitution Mean What It Always Meant?” Columbia L. Rev. (1977)

Steven G. Calabresi “The Crisis in Constitutional Theory” Virginia Law Review (1997)

David A. Strauss “Common Law Constitutional Interpretation” University of Chicago Law Review (1996)

Benjamin Cardozo The Nature of the Judicial Process

Elaine K. Swift The Making of an American Senate

James G. Wilson “American Constitutional Conventions” Buffalo Law Review (1992)

Herbert W. Horwill The Usages of the American Constitution

Walter F. Murphy “Civil Law, Common Law, and Constitutional Democracy” Louisiana Law Review (1991)

Sanford Levinson, ed. Responding to Imperfection

Howard Gillman “The Collapse of Constitutional Originalism and the Rise of the Notion of the ‘Living Constitution’ in the Course of American State-Building,” Studies in American Political Development (1997)

M. Horwitz, “The Constitution of Change – Legal Fundamentality without Fundamentalism,” Harv. L. Rev. (1993)

11. Constitutional Foundings

A critical choice in designing a constitutional framework is the distribution of political power among various institutions. Those choices may affect the type of constitutional regime put in place and the kinds of political values and policy outcomes that it facilitates, and they may well affect the survival of the constitutional regime itself. What are the advantages and disadvantages of a presidential system as opposed to a parliamentary system? Are presidential systems inherently dangerous or unstable? How can horizontal checks on political power be established?

Required:

Bruce Ackerman, Revolutionary Constitutions

Gary Jacobsohn, "Theorizing the Constitutional Revolution," Journal of Law and Courts (2014)

Stephen Gardbaum, "Revolutionary Constitutionalism," International Journal of Constitutional Law (2017)

Suggested:

Terry Moe and M. Caldwell, "The Institutional Foundations of Democratic Government: A Comparison of Presidential and Parliamentary Systems," J. of Inst. & Theoretical Econ. (1994)

David Samuels and M. Shugart, "Presidentialism, Elections, and Representation," J. of Theoretical Politics (2003)

Daniel Nielson, "Supplying Trade Reform: Political Institutions and Trade Liberalization," AJPS (2003)

Juan Linz, and Arturo Valenzuela, eds., The Failure of Presidential Democracy

John M. Carey and Matthew S. Shugart, eds., Executive Decree Authority

Matthew S. Shugart and John M. Carey, Presidents and Assemblies

Matthew S. Shugart and Scott Mainwaring, eds., Presidentialism and Democracy

Stephen Haggard and Mathew McCubbins, eds., Presidents, Parliaments, and Policy

Andreas Schedler, et al., eds., The Self-Restraining State

S. Mainwaring, "Presidentialism, Multipartism, & Democracy: The Difficult Combination," Comp. Pol. St. (1993)

Scott Mainwaring and Matthew Shugart, "Juan Linz, Presidentialism, and Democracy: A Critical Appraisal,"

Comparative Politics (1997)

Scott Morgenstern & Gary Cox, "Latin America's Reactive Assemblies & Proactive Presidents," Comp. Pol. (2001)

Fred Riggs, "The Survival of Presidentialism in America: Para-constitutional Practices," Inter. Pol. Sci. Rev. (1988)

Robert Godwin and Art Kaufman, eds., Separation of Powers – Does It Still Work?

Jennifer Widner, Building the Rule of Law

John Huber and Charles Shipan, Deliberate Discretion?

Adam Przeworski, et al., eds., Democracy, Accountability, and Representation

George Tsebelis, Veto Players

Robert Barros, Constitutionalism and Dictatorship

Kent Eaton, "Parliamentarism versus Presidentialism in the Policy Arena," Comparative Politics (2000)

Torsten Persson and Guido Tabellini, The Economic Effects of Constitutions

Mark Jones, Electoral Laws and the Survival of Presidential Democracies

Michael Laver and Kenneth Shepsle, Making and Breaking Governments

David Mayhew, Divided We Govern

Keith Krehbiel, Pivotal Politics

Timothy Power and Mark Gasiorowski, "Institutional Design and Democratic Consolidation in the Third World,"

Comparative Political Studies (1997)

D. Samuels, "Presidentialized Parties: The Separation of Powers & Party Org. & Behavior," Comp. Pol. St. (2002)

David Samuels & Matthew Shugart, "Presidentialism, Elections, & Representation," J. of Theoretical Politics (2003)

Kaare Strom, Minority Governments and Majority Rule

J. Mark Ramseyer, "The Puzzling (In)dependence of Courts: A Comparative Approach," J. Legal St. (1994)

Keith Whittington, "Legislative Sanctions & the Strategic Environment of Jud. Review," Inter. J. of Con Law (2003)

12. Separation of Powers

Constitutions structure politics as well as constrain it. In doing so, constitutions can channel politics in a variety of ways, and the structural features of a particular political system may reflect important constitutional choices about what kind of polity is desirable. What kind of polity should be constituted? What interests should be represented? How should those interests be represented? How should policy decisions be made? How distinct should the policymaking process be from the constitution-making process? How can subversive elements within the polity be contained through constitutional design? How can the constitutional system encourage political stability? Economic growth? Other substantive goods? How insulated should government be from society?

Required:

Christoph Moellers, [The Three Branches](#)

Mark Graber, [A New Introduction](#), ch. 5, 8

Suggested:

Gary Cox [Making Votes Count](#)

William Riker, [Liberalism versus Populism](#)

John Carey and Matthew Shugart [Presidents and Assemblies](#)

Kaare Strom [Minority Government and Majority Rule](#)

Heinz Klug [Constituting Democracy](#)

David Samuels & Richard Snyder, "The Value of a Vote: Malapportionment in Comp. Perspective," [BJPS](#) (2001)

Richard Bellamy, ed. [Constitutionalism, Democracy, and Sovereignty](#)

G. Bingham Powell [Contemporary Democracies](#)

Benjamin Reilly, [Democracy in Divided Societies](#)

George Tsebelis and Jeannette Money [Bicameralism](#)

Juan J. Linz [The Breakdown of Democratic Regimes: Crisis, Breakdown and Reequilibrium](#)

Adam Przeworski, et al., [Democracy and Development](#)

Adam Przeworski, et al., eds. [Democracy, Accountability and Representation](#)

Alfred Stepan [Arguing Comparative Politics](#)

Scott Mainwaring and Matthew Shugart, eds. [Presidentialism and Democracy in Latin America](#)

Juan J. Linz and Arturo Valenzuela, eds. [The Failure of Presidential Democracy](#)

Andreas Schedler, Larry Diamond and Marc F. Plattner eds. [The Self-Restraining State](#)

Guillermo O'Donnell [Counterpoints](#)

Keith Krehbiel [Pivotal Politics](#)

Charles Cameron [Veto Bargaining](#)

David Mayhew [Divided We Govern](#)

Ann Althouse, "Electoral College Reform: Déjà vu," [Northwestern University Law Review](#) (2001)

N. McCarty & R. Razaghian, "Advice & Consent: Senate Responses to Exec. Branch Nominations," [AJPS](#) (1999)

Jack Snyder & Barry Weingast, "The American System of Shared Powers," [J. of Law, Econ. & Organization](#) (2000)

Barry Weingast, "The Economic Role of Political Institutions: Market Preserving Federalism and Economic Development," [J. of Law, Econ. and Organization](#). (1995)

Jonathan Rodden and Susan Rose-Ackerman, "Does Federalism Preserve Markets?" [Virginia L. Rev.](#) (1997)

K. Whittington, "Dismantling the Modern State? Changing Structural Foundations of Fed.," [Hast. Con. L. Q.](#) (1998)

Barry Weingast, "The Political Foundations of Democracy and the Rule of Law," [APSR](#) (1997)

David Epstein and Sharyn O'Halloran [Delegating Powers](#)

John Ferejohn, et al., eds. [Constitutional Culture and Democratic Rule](#)

John Mueller [Constitutional Democracy](#)

Robert Cooter [The Strategic Constitution](#)

Aziz Huq, "Separation of Powers Metatheory," [Columbia L. Review](#) (2018)

Pozen, "Self-Help and the Separation of Powers," [Yale Law Journal](#) (2014)