

PS 3255 / AMCS 3255

Development of the American Constitution

Spring 2012

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Important notes

- This syllabus summarizes information from the course website at <http://calvert.wustl.edu/PolSci3255/>. The website will be updated as the semester progresses to include new material, announcements, and any scheduling changes. You should refer to the on-line course webpage rather than to this printed syllabus.
- The WebSTAC description for this course states **incorrectly** that student who have taken L32 3254 Constitutional Politics in the U.S. are ineligible. This refers only to students who took that course from this instructor Fall 2008 or earlier.

Required textbooks

We will make extensive use of the following required textbooks:

- Bruce Ackerman, *We The People. Volume 2: Transformations*. Harvard University Press (1998). Price from B&N online: \$28.22.
- Louis Fisher, *Presidential War Power*, 2nd revised edition. University Press of Kansas (2004). \$14.23.
- Richard P. McCormick, *The Presidential Game*. Oxford University Press (1982). Price from Oxford University Press: \$45.95.

Many additional readings are posted on the course website, either as direct links to online sources or from the WU Libraries' Ares electronic reserve system.

Major Themes and Prerequisites

This course is a study of the politics and culture, as opposed to the judicial interpretation, of the U.S. Constitution. Since its inception, and independently of formal amendments, the Constitution has come to be understood, applied, and used in ways that differ importantly over time. In addition to providing the rules, or "supreme law," of politics, the Constitution functions as an important cultural symbol. In fact, these two functions are intertwined. Political actors pursue their strategies under the Constitution's rules, and simultaneously struggle to control and modify constitutional interpretation and to appropriate the constitution itself as a symbol of their particular visions of American nationhood.

Our ultimate purpose in the course is to understand, in these terms, the puzzle of the Constitution's simultaneous stability and changeability.

See below for course requirements and prerequisites

Things students should learn from this course

The meaning of constitutional rules or phrases depends on interpretation and construction. Interpretation and construction are, in part, matters of agreement: will the same interpretation be produced by many different interpreters? Will it be recognizable and seem "reasonable" to almost all listeners? In interpreting, then, one can't just say anything.

The fact that reigning interpretations of the constitution are widely recognized and shared does not necessarily mean that they meet logical or legal criteria. The sources of established meaning are complex: elite discourse (judges, politicians, and academics); officials' previous decisions and justifications; electoral rhetoric; naive public opinion.

The criterion of "original intent" is one powerful source of the acceptability of interpretations, but it has not been the only source. And original intent itself is very much subject to interpretation.

The range of accepted interpretations of the American Constitution today has developed over time. The framers would be surprised; and they should be! The world changes, society changes, and agreed-upon interpretation changes.

As a result of our work in this course, then, students should gain a reasonable understanding of various forces of constitutional development, including:

- constitution-writing and constitutional amendment;
- judicial interpretation in the process of applying the Constitution to ambiguous cases that arise;
- construction: what happens as officials apply the Constitution in "gaps" or under unusual circumstances;
- political innovation: how political leaders establish support for new principles, definitions, or applications.

In the process, students should gain a deeper appreciation of critical historical events used in the course to illustrate these forces, including

- the Framing;
- the creation of basic national political institutions such as the electoral system;
- constitutional dimensions of slavery, Civil War, Reconstruction, and civil rights;
- the New Deal;
- various American foreign conflicts and territorial expansions.

The course emphasizes and should help students develop the following skills and general areas of knowledge:

- appreciation for the mechanisms of American constitutionalism;
- understanding of cultural mechanisms generally;
- interpretation and synthesis of historical, theoretical, and legal writings;
- succinct written summarization of complex arguments.

Prerequisite:

I assume throughout the course that all students already have a working knowledge of the major features of American government, including: powers of the branches of government; the federal system; general election procedures; general history; and basics of constitutional government. We will not pause to introduce or, for the most part, even to review such basics.

Officially, then, PS 101 American Politics is a prerequisite, although a good high school AP course or the equivalent might suffice. Please check with me if you are uncertain.

Course Requirements and Grading

Your grade for this course will be based on a combination of in-class exams and assigned essays, as follows:

Two exams 40%: Two short-essay, 75-minute, in-class exams. The second exam will be given before Thanksgiving; the final material in the course will be covered in final essay assignments instead.

Five or six short essays 60%: Prior to the second exam, there will be an essay assignment just about every week, but only a subset of students will be responsible for each week's assignment. In the two weeks following the second exam, everybody will do two more weekly essays. Thus each student will end up doing about five or six essays total.

I am susceptible to giving a little fudge factor for **class participation** above and beyond the norm. This means quality as well as quantity; it also means good questions at least as much as good comments.

Nature of the essay assignments. Some essay assignments will essentially ask you to articulate the arguments in assigned readings. Others may require you to gather information easily available from standard sources, generally on-line. Learning to do this sort of research is one goal of the course.

Here is a summary of the essay expectation

assigned topics

2-3 pages

formal citations or footnotes unnecessary (except for outside sources)

penalty for late papers, but no heavier than 50%

Grading. Each essay and exam will be graded on numerically, with the intention that approximately 90% is the lowest A-minus, 80% the lowest B-minus, and so on to 60%, the lowest passing grade. Signs (A-, B+) will be assigned in a way that seems appropriate and reflects natural gaps in the grade distribution, except that A+ is reserved for really outstanding performance only.

Be careful: experience indicates that, given the vagaries of the exam process, for most people it's easier to get a very low grade on an exam than on an essay.

Topic Outline and Schedule

1. (W 1/18 & M 1/23) Constitutional Development and Constitutional Issues
2. (W 1/25, M 1/30, W 2/1) The Framing; The Slavery Compromises
(Begin using Ackerman textbook here)
3. (M 2/6, W 2/8, M 2/13) The Presidential Election Process
(McCormick textbook is used here)

Review Wednesday, Feb. 15

First exam Monday, Feb. 20

4. (M 2/22 - W 2/29) Civil War and Reconstruction
5. (M 3/5 & W 3/7) Civil Rights and Voting Rights

(Mar. 12 & 14 Spring Break)
6. (M 3/19 & W 3/21) States, Territories, and Empire

Review Monday Mar. 26

Second exam Wednesday Mar. 28

7. (M 4/2 - W 4/11) Economic Regulation and the New Deal
8. (M 4/16 & W 4/18) Executive Powers
9. (M 4/23 & W 4/25) War Powers
(Fisher textbook is used here)

Note again: The topics after the second exam will be covered in essay assignments only.
There is **no final exam**.

First reading and essay assignments

Reading assignments, essay topics, and much additional material is posted under each topic on the course website, and is subject to updating. The assignments for the first few class meetings are as follows:

For Monday, Jan. 23:

- A large number of websites on political topics are linked from the course website.
- Thurgood Marshall, "Commentary: Reflections on the Bicentennial of the United States Constitution." *Harvard Law Review* Vol. 101, No. 1 (Nov. 1987), pp. 1-5.
- William Bradford Reynolds, "Another View: Our Magnificent Constitution." *Vanderbilt Law Review* 40 (Nov. 1987), pp. 1343-1351.
- ESSAY ASSIGNMENT due Mon., Jan. 23 for students whose last names begin with A-H:
 - Judging from the websites and online articles we read, do liberals support or attack the constitution? Give specific instances from the readings to support your answer.

For Wednesday, Jan. 25:

- Ackerman, *We the People: Transformations*, chapters 1-3.

For Monday, Jan. 30:

- David J. Siemers, "'It Is Natural to Care for the Crazy Machine': The Antifederalists' Post-ratification Acquiescence." *Studies in American Political Development* vol. 12, issue 2 (Summer 1998), pp. 383-410.
- Russell Hardin, "Why a Constitution?" In Bernard Grofman and Donald Wittman, eds., *The Federalist Papers and the New Institutionalism*, pp. 100-120. New York: Agathon Press (1989).
- ESSAY ASSIGNMENT due Mon., Jan. 30 for students whose last names begin with I to Z
 - According to Siemers, why did the anti-federalists decide to support the Constitution once it had been ratified?

For Wednesday, Feb. 1:

- William M. Wiecek, "The Witch at the Christening: Slavery and the Constitution's Origins," in L.W. Levy and D.J. Mahoney, eds., *The Framing and Ratification of the Constitution*.

For Monday Feb. 6:

- Begin reading McCormick, *The Presidential Game*.
- Another essay for the A-H students (topic to be announced)