

**POLITICAL CHANGE AND LEGAL DEVELOPMENT:  
AMERICAN CONSTITUTIONALISM (POS 4674)**

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Office: 011 Anderson

Fall 2019  
MAT 016  
Lectures: MWF, 1:55- 2:45pm  
Office Hours: MW, 2:45-3:45pm, or by appointment

**DESCRIPTION**

The U.S. remains distinct in the veneration we show to our Constitution, alongside the American Revolution and the Founding Generation. The U.S. Constitution remains foundational as an authority and arbiter for assessing and adjudicating who we were, who we are, and who can be as a nation—politically and legally.

This course focuses on the creation of the Constitution as a case study to explore and examine political change and legal development. What political factors accounted for the legal framing of the Constitution? How should these factors shape how we relate to the Constitution today—and, in particular, the kinds of political and legal change, if any, we think is or should be possible?

Through this course, you will critically investigate the political formation and in turn contemporary politics of the U.S. Constitution from an “external” perspective, drawing on classic and cutting-edge scholarship from political theory, history, and law. This is not a course in constitutional law. We will not be focusing on judicial theories and methods of interpretation or case law.

**GOALS**

- Introduce you to general theories of constitutions. By the end of the course, you should be able to understand what a constitution is, how it is distinct from or related to law generally, and how it is distinct from or related to politics.
- Introduce you to the U.S. Constitution and to competing frameworks for understanding its formation and in turn the prospects for political change today. By the end of the course, you should be able to understand, assess, and critique the major frameworks in the extant scholarship for explaining the politics behind the Constitution, especially relative to general theories of constitutions.
- Equip you to be a more informed and critical citizen, resident, or visitor of the U.S.—and to think seriously about the perils and possibilities of political change, if any, relative to the U.S. Constitution and how we continue to understand its formation.

**PREREQUISITES**

- POS 2041: American Federal Government is a formal prerequisite of this course. I will presume familiarity with the material covered in POS 2041.
- Previous courses in constitutional law—in particular, POS 3603: American Constitutional Law—are highly recommended, but not required.
- Previous courses in political theory—such as POT 2002: Introduction to Political Theory—are recommended, but not required.
- Finally, familiarity with U.S. history—through courses like AMH 2010: United States to 1877 or their high school equivalents—would be helpful, but is not required.

**REQUIREMENTS**

- **Reading:** This is a reading intensive course; make sure to plan your week to keep up with the reading. You should do the reading assigned for each class session prior to coming to class on that day; lectures will only be helpful if you have wrestled with and already reflected upon the readings.
- **Lecture Participation:** You are required to attend class meetings on Mondays and Wednesdays and be prepared for a discussion of the assigned course material. Note that physical attendance does not equal paying attention, active listening, and thoughtful participation. I take random attendance and can engage in cold calling.
- **Friday Discussions:** We will have a class discussion every Friday this course meets. They will be structured differently throughout the semester. You will be graded separately on how you participate in these discussions. As with lecture participation, I can take random attendance and engage in cold calling.
- **Exams:** There are three in-class exams. Exams will focus on both basic comprehension and critical engagement with the readings, lectures, and discussions of the material most recently covered. They will be a mix of textual and conceptual identification and essay questions. The exams are scheduled for **Sept. 4th, Oct. 7th, and Nov. 15th.**
- **Final Assignment:** The final assignment of this course is a group policy proposal and presentation. The first group meeting will be on Nov. 1st and group presentations will be on **Dec. 2nd and 4th.** We will discuss this assignment further in class.

**GRADING**

- **Grade Distribution:** Your course grade will be calculated as follows:
  - Lecture Participation: 10%
  - Friday Discussions: 10%
  - Exam 1: 10%
  - Exam 2: 20%
  - Exam 3: 30%
  - Final Assignment: 20%
- **Letter Grades:** Letter grades will be assigned as follows:
  - $\geq 93 = A$
  - 90–92 = A-
  - 87–89 = B+
  - 83–86 = B
  - 80–82 = B-
  - 77–79 = C+
  - 73–76 = C
  - 70–72 = C-
  - 67–69 = D+
  - 63–66 = D
  - 60–62 = D-
  - $< 60 = F$

**POLICIES**

- **Class Environment:** You are expected to arrive to class on time and behave in a manner that is respectful to the instructor and to fellow students. We will be covering topics that can be controversial and difficult. I expect us all to maintain a thoughtful and open-minded environment for everyone to express their views. If you have concerns about any of this or feel uncomfortable with the classroom environment, please do come talk to me.
- **Accommodations:** Should you want or need to request accommodations, you should first register with the Disability Resource Center, which you can learn more about at <https://disability.ufl.edu>, by providing appropriate documentation. Once registered, you will receive an accommodation letter that must be presented to me when requesting accommodation. You should follow this procedure as early as possible in the semester.
- **Electronics:** You are expected to silence your cell phone and put it away during class, unless we do a class activity in which you are asked to use your phone. Laptops and tablets are permitted for note-taking and class-related activities. You may be asked to sit in certain parts of the classroom should you elect to use a laptop or tablet.
- **Academic Honesty:** All students are required to abide by the University of Florida's Academic Honesty Guidelines. You should review these guidelines here: <http://www.dso.ufl.edu/judicial/procedures/honestybrochure.php>. Most obviously, this means cheating on exams and plagiarism on the final assignment is completely unacceptable.

- **Exams and Make-up Exams:** For in-class exams, you will be asked to remove hats, caps, and sunglasses, and stow cell phones, computers, tablets, and smart-watches. Engaging in any communication using an electronic device during an exam will result in failure of the exam. Absences from exams will be excused—and a make-up exam scheduled—only with verifiable documentation.
- **Communication:** Per university policy, you are expected to follow rules of common courtesy in all messages and other electronic communications. Note that under Florida law, GatorLink emails are public records. Per university and federal policies, grades may not be discussed via e-mail or over the phone. Please allow about 24-48 hours for a response from me.
- **Course Evaluation:** You are expected to provide feedback on the quality of instruction in this course by completing online evaluations at: <https://evaluations.ufl.edu>. Summary results of these assessments are available to students at <https://evaluations.ufl.edu/results>. I will also be circulating a mid-term feedback form. Please complete both these evaluations and take them seriously; they are important for improving the course.
- **Subject to Change:** This syllabus is subject to change at my discretion to accommodate instructional and/or student needs. I will provide proper notification to you of any changes.

**REQUIRED TEXTS:**

- You will need to get these texts. They should also be accessible through the course reserves at the library. Books with \*\*\* are additionally accessible online through the library.
  - Derrick Bell, *And We Are Not Saved: The Elusive Quest for Racial Justice*, New York: Basic Books, 1987.
  - James W. Ely, *The Guardian of Every Other Right: A Constitutional History of Property Rights*, New York: Oxford University Press, 2008.
  - Joan Hoff, *Law, Gender and Injustice: A Legal History of U.S. Women*, New York: NYU Press, 1994.
  - Michael J. Klarman, *The Framers' Coup: The Making of the United States Constitution*, New York, NY: Oxford University Press, 2016.
  - Larry D. Kramer, *The People Themselves: Popular Constitutionalism and Judicial Review*, New York, NY: Oxford University Press, 2004.\*\*\*
  - Aziz Rana, *The Two Faces of American Freedom*, Cambridge, Mass: Harvard University Press, 2010.
  - Thomas G. West, *The Political Theory of the American Founding: Natural Rights, Public Policy, and the Moral Conditions of Freedom*, Cambridge: Cambridge University Press, 2017.\*\*\*
- Andrew B. Arnold, *A Pocket Guide to the US Constitution: What Every American Needs to Know*, Washington, DC: Georgetown University Press, 2018, is highly recommended but not required.
- All other assigned texts are available in the Canvas site for this course.

## SCHEDULE

## I. OVERVIEW

## Aug. 21: Introduction

## Aug. 23: Class Discussion: What is a Constitution?

- **Read:** Class Syllabus. Annotate it, list any questions you might have.
- **Read:** <https://www.nytimes.com/2012/12/31/opinion/lets-give-up-on-the-constitution.html>
- **Listen:** <https://www.npr.org/2013/01/03/168549290/the-constitution-just-a-poetic-piece-of-parchment>

## II. THEORIES

## Aug. 26: Theories of Constitutions

- **Read:** Denis J. Galligan and Mila Versteeg, "Theoretical Perspectives on the Social and Political Foundations of Constitutions."
- **Read:** Re-familiarize yourself with the U.S. Constitution.
- Recommended sources:
  - 10-min Guide to the U.S. Constitution
  - Andrew B. Arnold, *A Pocket Guide to the US Constitution*
  - <https://constitutioncenter.org/interactive-constitution#>
  - <https://www.heritage.org/constitution/#!/>

## Aug. 28: Why the American Revolution and U.S. Founding?

- **Individual Assignment:** Find a strange, confusing, or funny reference to the American Revolution, U.S. founding, or Constitution to share with class.
- **Read:** Andrew M. Schocket, *Fighting over the Founders*. Introduction and Chapter 1.
- **Read:** Re-familiarize yourself with the U.S. Constitution.
  - Recommended sources:
    - 10-min Guide to the U.S. Constitution
    - Andrew B. Arnold, *A Pocket Guide to the US Constitution*

- <https://constitutioncenter.org/interactive-constitution#>
- <https://constitutioncenter.org/interactive-constitution#>
- <https://www.heritage.org/constitution/#!/>

**Aug. 30: Class Discussion: What is a Preamble?**

- **Group Assignment:** Research and present another constitutional preamble.
- **Read:** Erwin Chemerinsky, “Rediscovering the Preamble”
- **Read:** Liav Orgad, “The preamble in constitutional interpretation”

**Sept. 2: Holiday****Sept. 4: Exam 1****III. A DEMOCRATIC CONSTITUTION****Sept. 6: Liberalism vs. Republicanism**

- **Read:** Jeffrey Isaac, “Republicanism vs. Liberalism?”

**Sept. 9: Popular Constitutionalism**

- **Read:** Larry D. Kramer, *The People Themselves*. Introduction and Chapter 1.

**Sept. 11: Popular Constitutionalism**

- **Read:** Larry D. Kramer, *The People Themselves*. Chapters 2-3.

**Sept. 13: Class Discussion: Should “The People” Have a Constitutional Veto?**

- **Read:** [https://www.washingtonpost.com/opinions/the-peoples-veto-a-way-to-keep-the-courts-in-check/2011/12/23/gIQAwIWOPP\\_story.html](https://www.washingtonpost.com/opinions/the-peoples-veto-a-way-to-keep-the-courts-in-check/2011/12/23/gIQAwIWOPP_story.html)
- **Read:** Thomas Donnelly - Making Popular Constitutionalism Work (Excerpt).
- **Read:** <https://www.theguardian.com/news/2019/mar/11/referendums-who-holds-them-why-and-are-they-always-a-dogs-brexite>
- **Read:** <https://www.nytimes.com/2016/10/05/world/americas/colombia-brexite-referendum-farc-cameron-santos.html>

**Sept. 16: Popular Constitutionalism**

- **Read:** Larry D. Kramer, *The People Themselves*. Chapters 4-5.

**Sept. 18: Popular Constitutionalism**

- **Read:** Larry D. Kramer, *The People Themselves*. Chapters 8-9 and Epilogue.

**Sept. 20: Class Discussion: Should We Democratize the Constitution?**

- **Read:** Erwin Chemerinsky, "In Defense of Judicial Review."
- **Read:** Sheldon Wolin, "The People's Two Bodies."
- **Read:** Al Carroll, "How Would You Change the Constitution?"

**IV. A CONSTITUTION OF RIGHTS****Sept. 23: Natural Rights**

- **Read:** Thomas G. West, *The Political Theory of the American Founding*. Introduction and Chapters 1-2.

**Sept. 25: Natural Rights**

- **Read:** Thomas G. West, *The Political Theory of the American Founding*. Chapters 3-5.

**Sept. 27: Class Discussion: Kramer v. West**

- **Review:** Larry D. Kramer, *The People Themselves*.

**Sept. 30: Property Rights**

- **Read:** James Ely, *The Guardian of Every Other Right*. Introduction and Chapters 1-3.

**Oct. 2: Class Discussion: Should there be a Commission on Unalienable Rights?**

- **Read:** Randy Barnett, "Is the Constitution Libertarian?"
- **Read:** Patrick J. Deneen, "Unsustainable Liberalism."
- **Read:** <https://www.politico.com/story/2019/05/30/human-rights-state-department-1348014>



- **Read:** <https://newrepublic.com/article/154204/man-behind-state-departments-new-natural-law-focus>

**Oct. 4: No Class**

**Oct. 7: Exam 2**

## **V. A PROBLEMATIC CONSTITUTION**

**Oct. 9: An Elite Coup**

- **Read:** Michael J. Klarman, *The Framers' Coup*. Introduction and Chapter 1.

**Oct. 11: Class Discussion: Is the Constitution Elitist by Design?**

- **Read:** <https://www.nytimes.com/2018/08/09/opinion/constitution-founders-democracy-trump.html>
- **Read:** <https://www.forbes.com/sites/tomlindsay/2018/08/28/think-the-u-s-constitution-subverts-democracy-think-again/#29dc82ba3e54>
- **Read:** <https://www.theguardian.com/commentisfree/2018/nov/13/us-midterm-election-american-democracy-lie-voter-suppression>
- **Read:** <https://www.nationalreview.com/2019/05/america-best-defense-against-socialism-constitution-culture/>

**Oct. 14: An Elite Coup**

- **Read:** Michael J. Klarman, *The Framers' Coup*. Chapter 2.

**Oct. 16: An Elite Coup**

- **Read:** Michael J. Klarman, *The Framers' Coup*. Chapter 3 and Conclusion.

**Oct. 18: No Class**

**Oct. 21: Slavery and Race**

- **Read:** Michael J. Klarman, *The Framers' Coup*. Chapter 4.

**Oct. 23: Slavery and Race**

- **Read:** Derrick Bell, *And We Are Not Saved*. Introduction, Prologue to Part I, Chapter 1, and Chapter 10.

**Oct. 25: Class Discussion: Is the Electoral College Racist?**

- **Read:** <https://time.com/4558510/electoral-college-history-slavery>
- **Read:** <https://www.nytimes.com/2019/04/04/opinion/the-electoral-college-slavery-myth.html>
- **Read:** <https://www.aaihs.org/4212-2/>

**Oct. 28: Native Americans and Settler Colonialism**

- **Read:** Aziz Rana, *Two Faces of American Freedom*. Introduction and Chapter 2.

**Oct. 30: Native Americans and Settler Colonialism**

- **Read:** Gregory Ablavsky, "The Savage Constitution." Introduction; Parts I, II, IV; and Conclusion.

**Nov. 1: Group Meeting 1****Nov. 4: Gender and the Constitution**

- **Read:** Joan Hoff, *Law, Gender and Injustice*. Introduction, Chapter 1.

**Nov. 6: Gender and the Constitution**

- **Read:** Joan Hoff, *Law, Gender and Injustice*. Chapter 4.

**Nov. 8: Class Discussion: Should There Be An Equal Rights Amendment?**

- **Read:** <https://www.nytimes.com/2018/05/31/us/equal-rights-amendment-illinois.html>
- **Read:** <https://ideas.ted.com/why-the-us-needs-to-pass-the-equal-rights-amendment-finally>

- **Read:** <https://www.nytimes.com/2018/06/04/opinion/after-masterpiece-its-time-to-change-the-constitution.html>
- **Read:** <https://www.kansascity.com/opinion/readers-opinion/guest-commentary/article229653684.html>

**Nov. 11: No Class**

**Nov. 13: Race and Property**

- **Read:** Cheryl I. Harris, "Whiteness as Property." Sections I and II and Conclusion.

**Nov. 15: Exam 3**

**Nov. 18: A Familiar Critic**

- **Read:** Thomas West, *Vindicating the Founders*. Preface and Chapter 1.

**Nov. 20: A Familiar Critic**

- **Read:** Thomas West, *Vindicating the Founders*. Chapters 3 and 5 and Afterword.

**Nov. 22: Group Meeting 2**

**Nov. 25: No Class**

- **Group Assignment:** Policy Proposal Due by Email to Me.

**Nov. 27: No Class**

**Nov. 29: No Class**

**Dec. 2: Group Presentations**

**Dec. 4: Group Presentations and Conclusion**