

AMERICAN CONSTITUTIONALISM I

GVPT 431

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Course Content

The purpose of this course is to introduce you to basic topics in American constitutional law. In this course, we will look at the structure of American government as set forth in the U.S. Constitution. We will pay particular attention to issues of federalism and the separation of powers. What is and what should be the proper relationship between the executive, legislative and judicial branches of government? What is and what should be the relationship between the federal government and state governments?

We will examine the specific powers delegated by the Constitution to the federal government, *e.g.* the power to regulate trade and the economy. (The Bill of Rights and civil liberties are reserved for another course.) How are we to understand these powers in light of changing economic and cultural circumstances? Through an examination of Supreme Court case law, we will examine how the structure of government has evolved over the last 200 years. Finally, we will close the course by looking at whether an 18th century constitution—one with strong counter-majoritarian features—is adequate to structure a functional government in the 21st century.

Throughout the course, we will consider the role of courts themselves—and in particular, the Supreme Court—in the American republic. Is the Court anti-democratic? Does it usurp decision-making more appropriately left to other political actors? How should the Court go about its work? Are there different theories of democracy in evidence on the Court?

Course Requirements

1. Class participation: VERY IMPORTANT. You should come prepared to discuss the readings each and every class. Anyone can be called upon at any time. This is not primarily a lecture course. Learning depends upon the active engagement of everyone.
2. Exams: There will be two exams over the course of the semester: a mid-term and a final exam.

3. Book Review: Everyone will write a review of *The Crisis of the Middle Class Constitution*. In your review, you will make proposals for how (if at all) the Constitution should be revised. A rubric for this paper will be provided later in the semester.
4. Actual and Hypothetical Case Discussion Papers: Over the course of the semester we will review numerous Supreme Court decisions and discuss a variety of hypothetical cases. For each, you will prepare a short one-page paper discussing how you would decide the case and why.

Grading Criteria

Grades will be computed as follows:

Book Review:	20%
Short Papers:	20%
Mid-Term Exam:	25%
Final Exam:	35%

As noted earlier, participation is very important in this course. I will consider both the quality and the quantity of your comments. Evaluation of participation is inherently subjective. I reserve the right to enhance or reduce your final course grade based upon your participation in this course. Failure to be prepared to discuss the material on the day you are assigned to be case leader will automatically result in a reduction of your course grade.

Required

The Constitution of the United States

Sitaraman, *The Crisis of the Middle Class Constitution*

Suggested Books

Institutional Powers and Constraints Epstein and Walker

For Further Reading

The Federalist Papers: Hamilton, Madison and Jay, edited by J. R. Pole.

The Anti-Federalist Papers Borden

The Federalist Papers can also be found at: www.foundingfathers.info/federalistpapers/

Great Web Sites

- **For documents from the founding period:**

www.oll.libertyfund.org
www.constitution.org
www.yale.edu/lawweb/avalon
www.foundingfathers.info
www.teachingamericanhistory.org
<http://press-pubs.uchicago.edu/founders/>

- **For transcripts of Supreme Court cases and audio recordings, visit:**

www.oyez.org

- **For additional reading regarding the Constitution and the founding period:**

Philip B. Kurland and Ralph Lerner, eds., *The Founders' Constitution*, Chicago: University of Chicago Press, 1987. Online edition: <http://press-pubs.uchicago.edu/founders/>

Michael Meyerson. *Liberty's Blueprint*. New York: Basic Books, 2008.

J. W. Peltason. *Understanding the Constitution*. Hynsdale: Dreyden Press, 1973.

Herbert J. Storing. *What the Anti-Federalist Were For*. Chicago: University of Chicago Press, 1981.

Herbert J. Storing, ed. *The Anti-Federalist: An Abridgment of the Complete Anti-Federalist*. (Abridgment by Murray Dry.) Chicago: University of Chicago Press, 1985.

Gordon Lloyd. "The Six Stages of Ratification," online at:
www.teachingamericanhistory.org.

Students with Disabilities

Students with disabilities who are registered with Disability Support Services (301-314-7682) are encouraged to meet with the instructor early in the semester to arrange appropriate academic accommodations.

Inclement Weather

Exams will be rescheduled for the next class meeting if the university is officially closed because of inclement weather. Similarly, any assignments due should be turned in at the next class meeting. Official closures and delays are announced on the campus website and snow phone line (301-405-SNOW) as well as local radio and TV stations.

Religious Holidays

For any assignment due on a religious holiday, you must make arrangements to submit the assignment **before** your absence.

Academic Honesty and Honor Code Pledge

The University of Maryland, College Park has a nationally recognized Code of Academic Integrity, administered by the Student Honor Council. This Code sets standards for academic integrity at Maryland for all undergraduate and graduate students. As a student you are responsible for upholding these standards for the course. It is very important for you to be aware of the consequences of cheating, fabrication, facilitation and plagiarism. For more information on the Code of Academic Integrity or the Student Honor Council, see <http://www.studenthonorcouncil.umd.edu/whatis.html>.

Academic honesty is taken very seriously in this course. Plagiarism and any other infractions will be taken up with the appropriate university judicial proceedings.

Students should write and sign the following statement on the cover page of each paper they submit in this course, "I pledge on my honor that I have not given or received any unauthorized assistance on this assignment."

General Policies

1. **Late Assignments.** Short Papers are due at the **beginning** of the appropriate class. If you are leading the class discussion, you should bring a copy for yourself and a copy for me. If a paper is submitted after the beginning of class but before the next class, it will be graded downward by one letter grade. No late papers will be accepted following the beginning of the next class at which the paper was due. If you expect to miss the class for any reason, you should email your paper before the beginning of class.
2. **Make up Exams.** Exams including the Final Exam will be re-administered for those with excused absences only. An absence can only be excused in advance.

3. **Cell phones and computers.** ALL cellphones and computers must be turned off during class. This is a discussion class so your active participation is required. Studies have shown that multi-tasking is not productive or efficient. Moreover, it is disrespectful and harmful to classmates.
4. **Attendance.** While I do not take attendance, I do make a mental note of those who are absent. 100% attendance is expected. You cannot do well in this class if you are not in class to listen to and participate in the discussion.

A complete discussion of all UMD undergraduate course policies can be found at:
<http://www.ugst.umd.edu/courserelatedpolicies.html>.

OFFICE HOURS

Finally, I strongly encourage everyone to visit me during office hours—even if you do not have questions to discuss. It is a great way for me to get to know you and help you to be successful in this course.

Course Schedule

WEEK 1

August 28: Introduction

August 30: **The Court System**
(This is a primarily a review of material covered in GVPT 331.)

Reading: Federal and State Courts (ELMS)

Homework: please go to www.politicalcompass.org and complete the survey. Bring a printout of your “graph” to class.

WEEK 2

September 4: NO CLASS—Labor Day

September 6: **DECIDING: How to Interpret the Constitution, Part 1**

Reading:
Souter Reading
Scalia Reading
Brennan Reading

Homework: Pick one of these readings. Prepare a one-page paper explaining why you think the author is wrong.

WEEK 3

September 11: **Why a “Supreme” Court?**

Reading: *Marbury v. Madison*

September 13: ***Marbury Concluded***

Reading: *Federalist 78*

WEEK 4

September 18: ***Dred Scott***

September 20: **Before the Constitution**

Reading: The Declaration of Independence

Homework: Complete “First Principles” Questionnaire on ELMS.
(By 9am.)

WEEK 5

September 25: **Constitutional Design**

Reading: The Articles of Confederation (skim)
The Constitution of the United States, Article II

September 27: **Constitutional Design, Part 2**

Reading: The Constitution of the United States
Federalist 10

Part II. FEDERALISM

WEEK 6

October 2: **A Government of Limited Powers?**

Reading: *McCulloch v. Maryland*

October 4: **The Commerce Clause—Unlimited Power?**

Reading: *Schechter*
NLRB v. Jones

Case Argument: *Wickard v. Filburn*

WEEK 7

October 9: **The Commerce Power and Race: Do the Ends Justify the Means?**

Reading: *Katzenbach v. McClung*

Case Argument: *Heart of Atlanta Motel*

October 11: **A New Federalism?**

Reading and Case Argument: *United States v. Lopez*
United States v. Morrison

Case Argument: *Gonzales v. Raich*

WEEK 8

October 16: **Can the Government Make Me Buy Broccoli?**

Reading and Case Argument: *NFIB v. Sebelius* (Selections)

October 18: **The Spending Power: Unbounded Power by Another Name**

Reading: *Dole v. South Dakota*
Sabri v. US

Case Argument: *NFIB v. Sebelius* (Selections)

WEEK 9

October 23: **What About States?**

Readings: *National League of Cities v. Usery*
Garcia v. SAMTA
Printz v. United States

Case Argument: *New York v. US*

October 25: **MID-TERM EXAM**

Part III. SEPARATION OF POWERS

WEEK 10

October 30: **Can Congress Share Its Power?**

Reading and Case Argument: *INS v. Chadha*

Dress up as your favorite justice! Bonus Points for the BEST Justice Outfit.

November 1: **Can Congress “Give Away” Power?**

Reading: *Clinton v. City of New York*
(Also review *Schechter Poultry*)

WEEK 11

November 6: **To Defer or Not Defer? The Courts and Congress**

Reading: *Chevron v. NRDC*
Shelby County v. Holder

November 8: **The Court Versus the President**

Reading: *US v. Nixon*
Clinton v. Jones

HYPO: Can President Trump Be Sued for tortious acts by his Washington D.C. hotel?

WEEK 12

November 13: **Presidential Power in the Age of Terror**

Reading: Yoo, “*Torture*” Memo (Selections, ELMS)

HYPO: Can the President Pardon Himself?

Part IV. The Constitution and Representative Government

November 15: **The Court and Democratic Representation**

Readings: *Baker v. Carr*

WEEK 13

November 20: **Can the Gerrymander be Constitutionally Tamed?**

Reading: *Reynolds v. Sims*
Shaw v. Reno
Hunt v. Cromartie

Case Argument: *Gill v. Whitford*

November 22: **NO CLASS: HAPPY THANKSGIVING**

WEEK 14

November 27: **The Supreme Court Chooses a President**

Reading: *Bush v. Gore*

November 29: **Politics and the Constitution:** *Bush v. Gore* Concluded

Part V. CONCLUSION

WEEK 15

December 4: **Discussion, *The Middle Class Constitution***

December 6: **A Constitution for the 21st Century?**

December 11: **Concluding Thoughts**

Readings: *Were the Founders Wrong?* (ELMS)

The Political One Percent of the One Percent (ELMS)