

Constitutionalism and Republic
POL-UA 395.01
Fall 2012
Professor Sanford Clark Gordon

I. Introduction

This course will examine the foundations and implications of the constitutional structure of the United States. Topics of discussion include the philosophical and historical foundations of republicanism, “mixed” government, accountability, federalism, the separation of powers, secession, and the structure of social divisions. Three recurrent themes in the course will be the match between preferences and institutions, the representation of individuals versus groups, and the prospects for reforming the American political system. We will approach these topics from a variety of perspectives, including philosophical, historical, political-economic, and game-theoretic.

II. Contact and Meeting Information

Professor

Sanford Clark Gordon
19 W. 4th St., Room 311
Phone: (212) 998-3708
E-mail: sanford.gordon@nyu.edu
Office Hours: Monday 10am-12pm, or by appointment

Class meetings

Wednesday 2-4:30pm, 25 West 4th, Rm. C-5

III. Required Readings

The following books are available for purchase at the University bookstore:

- Wood, Gordon S. *The Creation of the American Republic, 1776-1787*
- Rakove, Jack. *Original Meanings: Politics and Ideas in the Making of the Constitution*
- Pettit, Phillip. *Republicanism: A Theory of Freedom and Government*

Additional reading materials are available via the web or on Blackboard (BB)

IV. Student Responsibilities and Course Grading

Formal Course Requirements

Class Participation

20%

Active participation in classroom discussion is an essential component of the seminar experience. During our discussions, students will be expected to demonstrate successful mastery of the week’s assigned readings, and to be ready to comment on other students’ response papers (see below). If you feel that shyness is preventing you from participating as fully as you would

like, I would be happy to meet with you to discuss strategies for improving your performance in class discussions.

Bi-Weekly Response Pieces

40%

Every other week, half of the students will each prepare a 400-500 word response piece on the assigned readings. The response should not be a summary; rather, it should (a) address a perceived deficiency in one or more of the arguments encountered in the readings; (b) advance and argue for the importance of a question unaddressed in those readings but pertinent to the general topic of that particular week; *or* (c) consider how some facet of contemporary American politics may be better understood by taking the perspective of one or more of the readings for that week.

Students will be divided into two groups: A and B. Members of Group A will write on the assigned readings for Weeks 2, 5, 7, 9, and 11. Members of Group B will write on the readings for Weeks 3, 6, 8, 10, and 13. In week 14, students in both groups will have the option to submit a response piece if for some reason they failed to submit an assignment earlier in the course.

Assignments must be uploaded to Blackboard *no later than* 5pm on the Monday preceding the course meeting; so, for example, if you are a member of Group A, you must upload your response for the September 12 class no later than 5pm on Monday, September 10. (Note that the 5pm deadline is programmed into Blackboard – at 5:05, the option to upload your comments for the week will disappear.)

To upload your assignment, go to the “Assignments” tab in Blackboard, select the applicable assignment, and upload your document (in .doc or .pdf format). When you are done, click “Submit.” (Clicking “Save” saves your work for later – it does not actually submit the assignment). After the Monday deadline, I will compile the response papers into a zip file and place it in that week’s “Course Documents” folder for viewing by the entire class.

Final Research Paper

40%

Students will write a research paper, approximately 15 pages in length (12 pt. font, double-spaced, with 1 inch margins on all sides), on a topic related to the material covered during the semester. Students must get approval on the topic from Professor Gordon by the week of October 17. Research papers are due in class on December 5.

Policy on missed exams and late papers

Short Papers: Response papers will not be accepted past 5pm on the Monday before class.

Research Papers: In general, research papers will be penalized 1/3 of a grade (e.g., from a B+ to a B) per day late.

V. Academic Integrity

All of the work you do in this course is expected to be your own. Absolutely no cheating or plagiarism (using someone else’s words or ideas without proper attribution) will be tolerated. All ideas not your own must be properly cited. Any cases of cheating or plagiarism will be handled according to university policy. For more information on university policy, see <http://bulletin.cas.nyu.edu/page/academic.policies#STANDARDS>.

VI. Weekly Schedule

Week 1 (September 5) Introduction: The Object(s) of Study

What is a “republican” form of government? Why did federalists and anti-federalists disagree as to whether the 1787 constitution created one or not? Does the stability of a republican government depend on the size or span of the polity? How do we reconcile the perceived need for energetic government with the normative concerns of republicanism?

- Review The Articles of Confederation and The U.S. Constitution (web)
- Madison, James. 1787. “Vices of the Political System of the United States” (web)
- Federalist Papers 15, 17, and (esp.) 39 (web)
- Speech of Patrick Henry to the Virginia Ratifying Convention, 5 June 1788 (web)

Week 2 (September 12) Republicanism: Theory and Historical Background

Group A thought papers due by 5pm on September 10

What were critical institutional features of the Roman republic and how did they channel political conflict before the rise of the empire? Why would the framers of the U.S. Constitution have found them relevant? Does Pettit’s conception of republicanism differ from Madison’s or is it a natural extension? What was the nature of civic republicanism at the time of the founding?

- Machiavelli, *Discourses, Book I*, chs. 1-10 (BB)
- Pettit, *Republicanism*: quickly skim chapter 5, read chapter 6, skim chapter 7
- Wood, *Creation*, skim chapter 2, read chapter 3

Week 3 (September 19) Republicanism and the Constitution: Debates over Ratification

Group B thought papers due by 5pm on September 17

What were the most salient political conflicts at the time of the “second founding” of 1787? How did the eventual constitutional document reflect compromises respecting those conflicts and the relevant interests? What lessons were learned from governance at the national level in the preceding decade? What about governance at the local level?

- Wood, *Creation*, skim chapter 10, read chapters 11-12, skim chapter 13
- Rakove, *Original Meanings*, skim chapter 2; read chapters 3 and 6

Week 4 (September 26) Class will Not Meet

Week 5 (October 3) Federalism: from the Perspective of the Framers

Group A thought papers due by 5pm on October 1

What was the division of authority between the states and federal government at the time of ratification? How much did the new U.S. constitution alter that division? The anti-federalists argued, channeling Montesquieu, that a republican form of government was unsustainable in a large expanse of territory – were they correct, or did Madison’s argument in Federalist #10

settle the issue? How much residual authority was left by the Constitution in the hands of the states?

- Federalist Papers 10, 35, 44, 45 (web)
- The Address and Reasons of Dissent of the Minority of the Convention of Pennsylvania to their Constituents (web)
- Diamond, Martin. “What the Framers Meant by Federalism.” (BB)
- The Kentucky and Virginia Resolutions (web)
- Rakove, ch. 7

Week 6 (October 10) Federalism II. “Dual” Federalism in Operation; its Apparent Demise and Resurrection

Group B thought papers due by 5pm on October 8

Why could Corwin write of the “passing” of dual federalism in 1950? If it indeed passed away, has it been resurrected? How does a federal system function in practice – i.e., what are the consequences for how governments spend money, how they develop policy, and how they compete? What role did the Supreme Court play, starting in the 1990s, in resurrecting doctrines of federalism perceived as dormant?

- Corwin, Edward. 1950. “The Passing of Dual Federalism” *Virginia Law Review* 36: 1-24. (BB)
- Oates, Wallace. 1999. “An Essay on Fiscal Federalism.” *Journal of Economic Literature* 37: 1120-1149. (BB)
- Dye, Thomas. 1990. “Federalism as Competition.” In *American Federalism: Competition Among Governments*. (BB)
- New York v. United States (1992), O’Connor’s Opinion (BB)

Week 7 (October 17) Nullification and Secession: Compact or Contract?

Group A thought papers due by 5pm on October 15

Does Calhoun’s notion of “concurrent majorities” imply a right to nullify federal legislation or to secede from a union? If so, is there a limiting principle, or, as Lincoln argued, does the very notion ultimately lead to chaos? Is it possible to separate the “states’ rights” view of the southern states in the decades leading up to the civil war from the base interest of white southern landholders in perpetuating slave labor? Can we resurrect a coherent theory of states’ rights to secede in the absence of this fundamental substantive issue? Are there examples from abroad that paint a clearer picture?

- Calhoun, *Disquisition on Government, Selections* (BB)
- Jackson, Andrew. “Proclamation to the People of South Carolina,” 10 December 1832 (web)
- Lincoln, Abraham. First Inaugural Address and Address to Congress (web)
- Texas v. White (1869) – Opinion and Grier’s Dissent (web)
- Zák, Václav. “The Velvet Divorce: Institutional Foundations.” In Jirí Musil, ed., *The End of Czechoslovakia*.

Week 8 (October 24) The Guarantee Clause

Group B thought papers due by 5pm on October 22

Under what conditions will national or supranational governments have the authority or inclination to intercede in the local affairs of member states for democratic or republican

purposes? Why has the Supreme Court persistently held that the guarantee clause is “non-justiciable?” Who has responsibility for enforcing it? Who should? Why did the court ultimately come to favor the 14th amendment over Article IV?

- Article IV, Section 4 of the Constitution and Article 7 of the Treaty of Lisbon (on European Union) (web)
- Federalist 43, paragraph on Guarantee Clause (web)
- Luther v. Borden (1849), selections (BB)
- Pacific States Telephone & Telegraph Company v. Oregon (1912) (BB)
- Baker v. Carr (1962), (BB)
- Magliocca, Gerard. “Huey P. Long and the Guarantee Clause.” (BB)

Week 9 (October 31) Separation of Powers: the Protection of Interests
Group A thought papers due by 5pm on October 29

Is the separation of powers a necessary feature of republican government? How does bicameralism protect interests? What are the normative consequences of the countermajoritarian features of the U.S. Constitution? What of other constitutions? What are the practical consequences? What is the appropriate balance of minority rights with the need for government response to a crisis?

- Federalist Papers 47, 48, 51, 63 (web)
- McCarty, Nolan, Keith Poole, and Howard Rosenthal. Forthcoming (2013). *Political Bubbles: Financial Crises and the Failure of American Democracy*, chapters 3-4 (BB)
- Jedruch, Jacek. *Constitutions, Elections, and Legislatures of Poland, 1493-1993*, 115-136 (BB)

Week 10 (November 7) Separation of Powers as Separation of Functions
Group B thought papers due by 5pm on November 5

How should we place the division of responsibilities between the executive and legislative in historical and theoretical perspective? Is the exercise of presidential unilateral powers antidemocratic given the president’s position as the sole nationally-elected public official? What advantages does the president have in the contemporary U.S. politics and policy making?

- Montesquieu, *Spirit of the Laws*, Book 11 (BB)
- Kemp, Betty. *King and Commons: 1660-1832*, chs. 1-2 (BB)
- Howell, Will. 2005. “Unilateral Powers: A Brief Overview.” *Presidential Studies Quarterly* 35: 417-439 (BB)
- Moe, Terry M. 1995. “The Presidency and the Bureaucracy: The Presidential Advantage.” In Michael Nelson, ed., *The Presidency and the Political System*. (BB)

Week 11 (November 14) Constitutions and Commitment: The Case of Public Finance
Group A thought papers due by 5pm on November 12

A common argument in favor of constitutional government is that it permits governments to credibly commit to future courses of action, thus reducing uncertainty and encouraging productive investment. Is this an argument of necessity or sufficiency? What are the potential downsides of too close a relationship between finance capital and the state? Is the case of 17th and 18th century Britain instructive for the U.S. experience?

- Hamilton, Alexander. 1790. “Report on the Public Credit” (web)
- Johnson, Simon, and James Kwak. 2010. *13 Bankers*, ch. 1 (BB)

- North, Douglass C., and Barry Weingast. 1989. "Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth-Century England." *Journal of Economic History* 49(4): 803-832 (BB)
- Stasavage, David. 2003. *Public Debt and the Birth of the Democratic State*, ch. 5 (BB)

Week 12 (November 21) Class Will Not Meet

Week 13 (November 28) Cleavages, Norms, and Political Stability

Group B thought papers due by 5pm on November 26

What is the relationship between the beliefs of citizens and the stability of any given constitutional structure? What informal norms are necessary to sustain constitutional, republican governance? A canonical claim in comparative politics is that "crosscutting cleavages" can have salutary effects on political stability – why is this? What is necessary and/or sufficient about the preference profile of a given society to forestall extra-constitutional tactics by the "losers" of policy making?

- Montesquieu, *Spirit of the Laws*, Book 19 (BB)
- Lipset, Seymour Martin. 1960. *Political Man: The Social Basis of Politics*, selections (BB)
- Lijphart, Arend. *Democracy in Plural Societies*, ch. 3 (BB)
- Przeworski, Adam. *Democracy and the Market*, pp. 10-37 (BB)
- Pettit, *Republicanism*, ch. 8

Week 14 (December 5) Dimensionality and Polarization in U.S. Politics

Students who missed an assignment will have the option to hand in a response piece for this week by 5pm on December 3

Research Papers Due

What is the structure of elite preferences in contemporary U.S. politics, and how has it changed over time? Why is U.S. politics fundamentally "low-dimensional?" What is a realignment? Why do realignments occur, and can they be predicted? Does the susceptibility of a political system to realignment enhance or degrade political stability and/or polarization?

- Schofield, Norman. 2006 *Architects of Political Change*, chs. 5-6 (BB)
- Poole, Keith, and Howard Rosenthal. 2006. *Ideology and Congress*, chs. 1-3 (BB)