

Legal Studies 111 – The Making of Modern Constitutionalism

2008 Summer Session A (July 6-August 13)

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Office Hours: Monday, 5-6 and Wednesday, 5-6

Course Design

“The Making of Modern Constitutionalism” considers the formation of the modern idea of constitutional government, by examining major developments in western political theory in the 17th and 18th centuries as well as the long-influential constitutional experiments of the late-18th century found in the newly independent United States and in the early period of the French Revolution. Among the important political issues and challenges that we consider are: how a constitution and its functions are to be understood; the nature of political liberty and the constitutional provisions that best protect freedom; the extent to which the structure of government can prevent the abuse of political power; and the capacity of law to provide a standard for determining the legitimacy of political actions and decisions.

Course Web Site

A bSpace web site for the class - LegalSt 111 Sum 09 - will be used throughout the semester as the primary mechanism for posting on-line reading materials, making announcements and distributing other required information. All students registered in the class should have automatic access to the web site. Go to <http://bspace.berkeley.edu> and follow the Login instructions.

Class Organization, Requirements and Grading

Like all summer session classes, LS 111 moves at a very fast pace. The assigned reading is not voluminous, but it is challenging. *It is critical for you to keep up with the schedule of reading assignments and discussion topics.*

The course materials lend themselves to frequent class discussions. Class meetings will be divided between lectures and group discussions. For these discussions, you will be asked to prepare and hand in brief Study Assignments (1-2 paragraphs in length) to previously distributed questions. Also required is your attendance and participation at weekly Section meetings. *20% of your overall grade will be based on these Study Assignments and on your preparation and active participation at class discussions and section meetings.*

Two brief Mid-term Papers (about 5 pages in length) also are assigned. These will be due in class on July 20 and August 3. The Mid-term Papers are based on the assigned readings for the class and do not require additional or independent research. A cumulative final exam will be held in class on August 13. You will receive detailed information about each of these assignments well in advance of the relevant deadlines.

Your final grade will be determined on roughly the following basis:

Study Assignments, Class and Section discussions – 20%

Mid-term Papers – 55%; Final exam - 25%

Course Materials

All of the assigned reading is available on-line or posted as PDF files on the course web site. You will be required to print out copies of all these digital materials and bring them to class and section discussions. For some of the assigned reading, paperback editions also have been ordered. You may well find it less costly and more convenient to use an inexpensive paperback or library copy instead of the on-line versions.

Ordered books:

John Locke, *Two Treatises of Government*
(only material from *Second Treatise* assigned)
Hamilton, Madison and Jay, *Federalist Papers*
Montesquieu, *Spirit of Laws*
Jean-Jacques Rousseau, *On the Social Contract*

Schedule, Topics and Assigned Reading

Topic 1. Overview: “Constitutions in History and in Political Theory”
“Four Letters on Interesting Subjects” (1776) [posted PDF file]

Supplementary Reading (Throughout the course “Supplementary Reading” denotes items that are not assigned, but which provide useful background and supplementary information to the assigned materials):

Gordon J. Schochet, “Introduction: Constitutionalism, Liberalism, and the Study of Politics”, pp.1-4, 9-12 [posted PDF file]

Topic 2. Forms of Political Rule

Aristotle, *The Politics* (selection on constitutional forms) [posted PDF file]

Machiavelli, *Discourses on Livy*, Book I, ch. 2.

[<http://etext.library.adelaide.edu.au/m/machiavelli/niccolo/m149d/index.html>]

Montesquieu, *Spirit of the Laws* [<http://www.constitution.org/cm/sol-02.htm>]

Book II, chs. 1-2, 4-5.

Book III, chs. 1-10.

Book IV, chs. 1-2, 5.

Book V, chs. 1-4, 9, 11-12, 14.

Book VII, chs. 1-2, 4.

Book VIII, chs. 1-4, 6, 8, 11 (1st parag. only), 15-17, 19-20.

Book IX, chapter 1.

Supplementary Reading:

Machiavelli on republican government:

Discourses on Livy, Book I, ch. 55; Book II, preface; Book III, ch. 55.

[<http://etext.library.adelaide.edu.au/m/machiavelli/niccolo/m149d/index.html>]

Topic 3. The Nature of Political Liberty

3A. Liberty and Individual Rights

John Locke, *Second Treatise of Government*

[<http://etext.library.adelaide.edu.au/l/locke/john/181s/index.html>]

Ch. 2, parags. 4,6,8,14; ch. 3, parags. 16,17,19; ch. 7, parag. 87; ch. 9, parags.123-9; ch. 10, parag. 132; ch.11, parag. 142; ch. 12, parags. 143-4; ch. 19, parags. 212, 221-2, 223.

William Blackstone, *Commentaries on the Laws of England* – selections from Volume One, pp. 47-52, 123-9, 141-4. [posted PDF file]

U.S. Declaration of Independence

[\[http://www.constitution.org/usdeclar.htm \]](http://www.constitution.org/usdeclar.htm)

French Declaration of the Rights of Man and Citizen

[\[http://sourcebook.fsc.edu/history/declaration.html \]](http://sourcebook.fsc.edu/history/declaration.html)

3B. Liberty and Self-Government

Jean Jacques Rousseau, *The Social Contract*

[http://www.constitution.org/jjr/socon.htm \]](http://www.constitution.org/jjr/socon.htm)

Book I, chs. 6, 8.

Book II, chs. 1-4, 6, 8, 11.

Book III, chs. 1 (paragraphs 1-5), 3, 13-15, 18.

Richard Price, *Observations on the Nature of Civil Liberty*: Sections 1-2

[http://www.constitution.org/price/price_3.htm \]](http://www.constitution.org/price/price_3.htm)

Topic 4: The Constitution of England

4A. Liberty and Constitutional Balance

Montesquieu, *Spirit of the Laws*:

Book XI, chs 1-9.

Book XII, chs. 1-2, 4 (1st parag. only).

William Blackstone, *Commentaries on the Laws of England* - selections from Volume One pp. 146-7, 153-5, 234, 237-8, 266-70, 223-7. [posted PDF file]

John Adams on the English Constitution [posted PDF file]

John Louis de Lolme, *The Constitution of England*, Book I, chs. 4-6, 12.

http://oll.libertyfund.org/index.php?option=com_staticxt&staticfile=show.php%3Ftitle=2089&Itemid=28

4B. Liberty and Representatives

Richard Price, *Additional Observations on the Nature and Value of Civil Liberty*, Section 1 and Conclusion

[http://www.constitution.org/price/price_4.htm \]](http://www.constitution.org/price/price_4.htm)

Edmund Burke, Speech to the Electors of Bristol (1774) selections [posted PDF]

John Louis de Lolme, *The Constitution of England*, Book II, chs 1, 5-6, 8.

http://oll.libertyfund.org/index.php?option=com_staticxt&staticfile=show.php%3Ftitle=2089&Itemid=28

Supplementary Reading:

van Caenegem, *Historical Introduction to Western Constitutional Law* [posted PDF file], pp. 108-25.

David Lieberman, “The Mixed Constitution and the Common Law”, Sections 1, 3-4 [\[http://repositories.cdlib.org/boaltwp/68/\]](http://repositories.cdlib.org/boaltwp/68/)

Topic 5 North American Experiments: Creating Modern Republics

5A. State Constitutions of the Revolutionary Era

Virginia

[http://press-pubs.uchicago.edu/founders/print_documents/v1ch1s4.html]

Pennsylvania [http://avalon.law.yale.edu/18th_century/pa08.asp]

New York [http://avalon.law.yale.edu/18th_century/ny01.asp]

South Carolina [http://avalon.law.yale.edu/18th_century/sc02.asp]

5B. The U.S. Federal Constitution 1787-89

Proposed Drafts

Virginia Plan [http://avalon.law.yale.edu/18th_century/vatexta.asp]

New Jersey Plan [http://avalon.law.yale.edu/18th_century/patexta.asp]

Alexander Hamilton Plan

[http://avalon.law.yale.edu/18th_century/hamtexta.asp]

U.S. Constitution [<http://www.constitution.org/constit.htm>]

Supplementary Reading:

Jack N. Rakove, "Framing the Constitution" [posted PDF file]

Articles of Confederation [<http://www.yale.edu/lawweb/avalon/artconf.htm>]

5C. Ratification Debate

In support:

Federalist Papers [http://avalon.law.yale.edu/subject_menus/fed.asp]

Nos. 10, 14, 15, 37, 39.

Thomas Jefferson, letter to James Madison 12/20/1787 [posted PDF file]

In opposition:

George Mason, "Objections to the Constitution" [posted PDF file]

"Letters from the Federal Farmer", Letter 3 – 10/10/1787

[<http://www.constitution.org/afp/fedfar03.htm>]

Essays of "Brutus" [<http://www.constitution.org/afp/brutus00.htm>]

Nos. 1, 3.

Supplementary Reading:

James Wilson speech 11/26/1787 [posted PDF file]

Topic 6: French Experiments: Creating Modern Citizens

Charles Loyseau, *Treatise on Orders*, selections [posted PDF]

Emmanuel Joseph Sieyès, *What is the Third Estate?*, selections [posted PDF]

French Declaration of the Rights of Man and Citizen

[<http://sourcebook.fsc.edu/history/declaration.html>]

Revolutionary Debates concerning the implementation of the *Declaration of the Rights of Man and the Citizen* [posted PDF]

Constitution of France 1791, selections [posted PDF]

Supplementary Reading:

van Caenegem, *Historical Introduction to Western Constitutional Law* [posted PDF file], pp. 174-86

Rogers Brubaker, *Citizenship and Nationhood in France and Germany*, chapter 2 [posted PDF file]

Topic 7: Preserving Constitutional Liberty

Federalist Papers [http://avalon.law.yale.edu/subject_menus/fed.asp]

Nos. 47, 49, 50, 51, 62, 78.

Essays of "Brutus" [<http://www.constitution.org/afp/brutus00.htm>]

Nos. 11, 15.

Schedule of reading and class discussion assignments (subject to revision)

Week 1 (July 6-9)

July 6 read "Four Letters on Interesting Subjects" (1776) [posted PDF file]

July 8 have completed reading for Topic 2

July 9 submit and class discussion of Topic 2 Study Assignment

Week 2 (July 13-16)

July 14 have completed reading for Topic 3A

July 15 have completed reading Topic 3B

July 16 class discussion in anticipation of first Mid-term Paper assignment

Week 3 (July 20-23)

July 20 submit in class first Mid-term Paper assignment

July 22 have completed reading for Topic 4A and 4B

July 23 submit and class discussion of Topic 4 Study Assignment

Week 4 (July 27-30)

July 27 have completed reading for Topic 5A.

July 27 submit and class discussion of Topic 5A Study Assignment

July 29 have completed reading for Topic 5B and 5C

July 30 class discussion in anticipation of second Mid-term Paper assignment

Week 5 (August 3-6)

August 3 submit in class second Mid-term Paper assignment

August 5 have completed reading for Topic 6

August 6 submit and class discussion of Topic 6 Study Assignment

Week 6 (August 10-13)

August 10 have completed reading for Topic 7

August 11-12 course review and discussion of Final Exam Study Questions

August 13 - Final Exam (in class)