

COURSE: LAWS 2501A Law, State and Constitution

TERM: Fall 2022

PREREQUISITES: Either LAWS 1000 [1.0] or PSCI 1000 [1.0], or the combination of PSCI 1001 and PSCI 1002, or second-year status or higher in the Bachelor of Public Affairs and Policy Management Program.

CLASS: Day: Wednesday
Time: 2:34
Room: SA306

INSTRUCTOR: Zoran Oklopcic

CONTACT: Office: D587
Office: after class and upon appointment
hours:
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"Students with disabilities requiring academic accommodations in this course must register with the Paul Menton Centre for Students with Disabilities for a formal evaluation of disability-related needs. Registered PMC students are required to contact the centre, 613-520-6608, every term to ensure that I receive your letter of accommodation, no later than two weeks before the first assignment is due or the first in-class test/midterm requiring accommodations. If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by November 7, 2008, for December examinations, and March 6, 2009, for April examinations." With regard to accommodations for religious obligations and pregnancy, please see http://www.carleton.ca/pmc/students/accom_policy.html

Course description

Almost all modern democratic states are liberal democracies that subscribe to the principles of limited government, popular sovereignty, separation of powers, constitutionalism, and the rule of law. What those ideals mean, however, is far from clear—both in theory as well as in practice. The aim of this course is to expose students to the historical origins of these ideas, to the variety of their contemporary understandings, to their implications in the contexts of constitution-making, institutional design, and legal interpretation—as well as to contentious issues they raise in the age of globalization, migration, populist, authoritarian and ethnonational challenges to contemporary constitutional democracy. Depending on the level of your own engagement, this course will provide you with a panoramic, but in-depth grasp of the central theoretical *concepts* of modern constitutional theory, including diverse institutional *options* in constitution-making and constitutional design. Among others, the course will address some of the most important and foundational questions in modern constitutional thought: What is an adequate way to think about the constitution of a legitimate state? How should we organize political power in a new polity? Should we embrace the idea of the separation of powers, and, if so, which one of its variants? What are the merits and demerits of federalism? Can public (constitutional) law guide the most radical of political changes—secession? Course participation is strongly encouraged,

and student questions are always welcome. Still, the success of this course depends on student engagement and interaction. In order to reap maximum benefits from the course material and class discussions, students are advised to keep up with the readings, and come prepared to each class.

Grading scheme

The final grade consists of three response papers, each addressing a one question of your choice, from the list below. In order to fulfill the course requirements, you will need to write three essays in total: the first two between 400-500, and the the third between 500-600 words long. **The first two essays will be worth 30%** of the final grade, and **the third 40%**. The deadline for the submission of your **first essay is by October 19**. The deadline for the submission of your **second essay is by December 7th**, and the deadline for the submission of your **third essay is by the end of the exam period** in accordance with the Carleton Ungergraduate Calendar. Each essay should respond to one of the themes / provocations / questions from the list below:

1. Even though they are both called 'states', modern sovereign states and ancient city-states are actually radically different in the following ways: ...
2. I'd rather be a Prime Minister in a parliamentary regime, than a President in a presidential. Here is why: ...
For the following reasons, I'd rather be a President in a semi-presidential than in a presidential regime:...
3. Direct democracy is over-rated. Madison persuaded me that it makes far more sense to put trust in our elected representatives than to govern ourselves directly. These are my reasons:
4. When it comes to their ideas about causes of political conflict, neither Hobbes nor Madison were right for the following reasons:...
5. From the perspective of modern constitutionalism, 'popular sovereignty' refers to:
6. What's the point of federations? How are they different from from highly decentralized states?
7. Not all bad governments are automatically illegitimate. Rebellion becomes a legitimate option only ...
8. What do those who 'sign' on a social contract actually sign on?
9. As an adjective "sovereign" is the attribute of states. As a noun, it is the name that public law gives to ... who must
10. When people speak about "separation of powers", they often mention the importance of "checks and balances". What they mean by that, is actually: ...
11. Every constitution has a structure. But some say that some parts of that structure are more basic than others. What do they mean by that? Why would they say that?
12. In parliamentary regimes, the office of the President is oftentimes only ceremonial. Yet, even in such regimes, as Benjamin Constant argued ...
13. What's the point of having a written constitution?
14. What are 'factions'? According to Madison, this is why we should worry about them:
15. What is "secession"? In what sense it might be seen a similar to a "revolution"? Why should federations tolerate "secession"?

1. Introduction

2. Modern constitution and its state

- Max Weber, 'Politics as Vocation' (Hackett Publishing 2004) 32-47
- Pasquale Pasquino, 'Classifying Constitutions: Preliminary Conceptual Analysis (2013) Cardozo L. Rev. 999

3. Sovereign power: obedience for protection

- Thomas Hobbes, *Leviathan* (Oxford University Press 2019) (select passages)
- Carl Schmitt, *Political Theology* (The MIT Press 1985) 5-15

4. Social contract and the right to rebellion

- Jean Hampton, 'Contract and consent' in *A companion to contemporary political philosophy* (Blackwell 2007) 478-492.
- John Locke, *Second Treatise on Government* (Hackett Publishing 1980) (select passages)

5. The people as the source of sovereignty

- Margaret Canovan, 'The People', *The Oxford Handbook of Political Theory*, edited by John S. Dryzek, Bonnie Honig and Anne Phillip (Oxford: Oxford University Press 2008) 349-362
- Bernard Yack, 'Popular Sovereignty and Nationalism' (2001) *Political Theory* 519-

6. Majority rule and representative government

- James Madison, 'Federalist No. 10' in Alexander, James Madison and John Jay. [1787] 2008. *The Federalist Papers* (Oxford University Press 2008 [1787] 67-72.

7. The idea of the separation of powers

- David Wootton, 'Liberty, metaphor, and mechanism: "Checks and balances" and the origins of modern constitutionalism' in David Womersley (ed), *Liberty and American experience in the eighteenth century* (Amagi Books 2006)

8. Representative government: parliamentarism and its varieties

- Cesare Pinelli & AW Bradley, 'Parliamentarism' in *The Oxford Handbook of Comparative Constitutional Law* (Oxford University Press 2012)
- William Selinger, 'Reinventing Parliamentarism: The Significance of Benjamin Constant *Parliamentarism*', *From Burke to Weber* (Cambridge University Press 2019)

9. Representative government: presidentialism and bicameralism

- Walter Bagehot, *The English Constitution* (Oxford University Press) 49-60
- Giovanni Sartori on: 'Presidentialism', 'Parliamentarism', 'Semi-Presidentialism'

Optional: Jeffrey A Winters and Benjamin I. Page, 'Oligarchy in the United States?' (2009) 7:4 *Perspectives on Politics* 731-751.

10. Constitutional change: basic constitutional structure

- James Madison, 'Federalist No. 10' in Alexander, James Madison and John Jay. [1787] 2008. *The Federalist Papers* (Oxford University Press 2008 [1787] 67-72.
- Yaniv Roznai, 'Necrocracy or Democracy? Assessing Objections to Constitutional Unamendability' in Richard Albert and Bertil Omrah Oder, *An Unamendable Constitution? Unamendability in Constitutional Democracies* (Springer) 29-61

11. Liberal constitutional democracy: the end of history?

- CB Macpherson, *The Life and Times of Liberal Democracy* (Oxford University Press 1977) 77-92.
- Ran Hirschl, 'Juristocracy'--Political, not Juridical' (2004) 13(3) *The good society* 6-11.

12. Democracy and (dis)unity: federal union and secession

- William Riker, 'Federalism' *A Companion to Contemporary Political Philosophy*, 612-620.
- Sanford Levinson, 'Perpetual Union, Free Love, and Secession: On the Limits to the Consent of the Governed' (2003) 39 *Tulsa L. Rev.* 457.

Unless there is an overriding concern which justifies an extension in individual cases (family emergency, illness, irreconcilable scheduling conflict at work) the failure to submit the written work (reflection pieces and final essay) the penalty for late submissions will consist in deducting 10 percentage points for each day after the agreed deadline (which will be discussed in the class). The granting of extensions is determined by the instructor who will confirm whether an extension is granted and the length of the extension. For requests for extensions lasting less than 7 days, please complete the form at the following link and submit it to the instructor prior to the assignment due date. https://carleton.ca/registrar/wp-content/uploads/COVID-19_Self-declaration.pdf Extensions for longer than 7 days will normally not be granted. In those extraordinary cases where extensions lasting longer than 7 days are granted, the student will be required to provide additional information to justify the longer extension (up to a maximum of 14 days).