

THE UNIVERSITY OF TEXAS AT AUSTIN
Department of Government
Spring 2022

GOV 312P- Constitutional Principles: Core Texts
Unique number: 37875

Meets on Zoom, Tuesdays and Thursdays 3:30-5pm

Jeffrey K. Tulis

American political discourse is impoverished. Citizens and politicians have lost the ability to intelligently talk about the fundamental features of American political life. This Core Texts course seeks to address this political and educational pathology by introducing students to difficult problems of constitutional interpretation. Students are invited to adopt the perspective of one actually responsible for designing or maintaining a polity. From this perspective we address such questions as: How democratic is the American constitution? Is Democracy only an aspiration, or is democracy also something that happens to us? Must a democratic constitution be capitalistic too? Does capitalism have limits or pose any threat to constitutional governance? How does the Constitution secure rights? Who is included and who is excluded from the American constitutional order? What is a constitution?

Through a close reading of core texts of the American political tradition, we will attempt to answer these and other similar questions. Along the way, we will also look at the ethical questions involved when leaders seek to put ideas into practice. The course will proceed primarily through a close reading of primary sources. We will also read essays that synthesize and interpret these sources.

Office Hours:

To be announced during the first class.

Written work and grading policies:

The written work for the course will consist of two take-home exams and one short analytic essay. An essay pool, from which all of the exam questions will be chosen, will be distributed approximately one week before the in-class tests. Each of these three writing components will count for 25% of the final grade.

Informed class participation is a required part of the course and a substantial component of your final grade, 25%. You will be expected to attend regularly, have done the reading, and be prepared to discuss it. You need to be prepared to be called upon whether or not you raise your hand. You are expected to attend all the class sessions and we will keep track of attendance. Unexcused absences from two classes over the course of the semester – for any reason – are permitted. Assuming you attend all, or all but two, classes you will receive at least a 90 for the participation component of your grade.

OPTIONAL SEMINAR SESSIONS

My colleague Ian Myers, who is an advanced PhD student in Government, is co-teaching this class with me. He will be leading optional in-person seminars each week, starting the week that UT brings students back to in-class learning. We will discuss this opportunity during the first couple of class sessions, when you may sign up. There is no grading for this participation, nor any expectation/requirement to participate. However, it is a wonderful opportunity for those students who are interested: to dig deeper into the material we read, to clarify things that are difficult to understand, to get to know fellow students, and to better prepare for your paper and tests.

Students with a personal or family emergency should not worry about absence from the lectures on Zoom and need not provide a documented excuse until after you deal with the emergency situation. The lectures will be recorded and available for students who need to miss the live session.

NOTE WELL:

Class Recordings: Class recordings are reserved only for students in this class for educational purposes and are protected under FERPA. *The recordings should not be shared outside the class in any form.* Violation of this restriction by a student could lead to Student Misconduct proceedings. The reason for this rule is to encourage and support freedom of expression in class – the testing of ideas -- the free, frank and civil discussion of sometimes controversial points.

Students with disabilities may request appropriate academic accommodations from the Division of Diversity and Community Engagement, Services for Students with Disabilities, 471-6259

Students are excused for religious holidays. Please provide advance notice.

NOTE -- Policy on late work and special arrangements:

Please note well: Late papers will not be accepted, and a missed exam will not be made up -- unless, within two weeks of the assignment, a doctor certified medical excuse is provided or a letter from the advisors in Government, or an official in the Dean's office, testifies to the existence of a family emergency.

Papers can be turned in early to accommodate extra-curricular activities and, when planned well in advance, we can sometimes schedule an early exam to accommodate conflicts with extra-curricular activities on the day of the test. These accommodations are not guaranteed - but we will do our best if given ample advance notice. If students need to miss a few classes for extra-curricular activities let me know at the beginning of the semester and I will try to accommodate.

Grading Scale:

All assignments and class participation will be graded on a 100 point scale. The final course grade will be the weighted average of these grades on the following plus/minus scale:

94-100	A
90-93	A-
87-89	B+
83-86	B
80-82	B-
77-79	C+
73-76	C
70-72	C-
67-69	D+
60-66	D
0-59	F

FLAGS

Cultural Diversity in the United States

This course is designed to carry the flag for Cultural Diversity in the United States. Cultural Diversity courses are designed to increase your familiarity with the variety and richness of the American cultural experience. You should therefore expect a substantial portion of your grade to come from assignments covering the history and political thought of black Americans - a group that has experienced persistent marginalization and oppression over the course of our history.

Ethics and Leadership

This course carries the Ethics and Leadership flag. Ethics and Leadership courses are designed to equip you with skills that are necessary for making ethical decisions in your adult and professional life. You should therefore expect a substantial portion of your grade to come from assignments involving ethical issues and the process of applying ethical reasoning to real-life situations.

Texts available at the UT Co-op and from online sources:

The Federalist (Rossiter ed.)

The Anti-Federalist (Ketchum, ed.)
 Tocqueville, *Democracy in America* (Kessler edition.)
 Locke, *A Letter Concerning Toleration* (any edition)
 Marx, *The Communist Manifesto* (any edition)
 Robert Horwitz ed., *Moral Foundations of the American Republic*,
 3rd Edition.

OPTIONAL: Tulis and Mellow, *Legacies of Losing in American Politics*
 Frederick Douglass, *The Essential Douglass* (Buccola edition).

SCHEDULE

January 18 Introduction

Background reading. An essay by me on "The Civic Constitution".
 If you have time this week before classes begin, this piece will give you a good sense of what constitutional thinking is and how it is different from legalistic thinking.

<https://theconstitutionalist.org/2021/09/17/the-civic-constitution/>

January 20 *The Federalist*, Reading the polity,
 Federalist #1

In preparation for Thursday's class, carefully read Federalist #1. Read it several times, very carefully. What is the relation between motives and reasons? Do bad motives taint or undermine good arguments? Why do the authors use a pseudonym? What is the author's motive?

January 25 Declaration of Independence

Think about the meaning of self-evidence; about the foundation or grounds for rights; about the meaning of political legitimacy; about what kind of revolution does this document articulate and advocate. Finally, being thinking about the relation of the Declaration and the Constitution. Do the two documents fully cohere or is there some tension between them?

Text can be found as an Appendix to *The Federalist*, or online.

January 27 Constitution

Text can be found as an Appendix to *The Federalist*, or online.

Read the whole Constitution and learn its structure, its parts, its organization.

Draw a picture or outline (for yourself) of the structure of the document. Choose five clauses that you think are of special importance - that are worthy of italics as a typeface -- and think about why. Bring these notes to class.

Pay special attention to Article V. Could this article provide clues regarding what other portions of the document should be given special importance?

Begin reading Letters of the Federal Farmer in
The Anti-federalist, pp. 23-101

February 1 Federalist #10 and David Hume, "Of Parties in General"
(from Hume, *Essays, Moral, Political and Literary*, link below)

This is the most influential essay ever written defending and interpreting the American Constitution. What is distinctive or interesting about its picture of the Constitution compared to the usual picture in popular culture, in high school civics and in legal disputes.

Note the structure of the essay and how it discusses the causes and effects of faction. Why is faction a problem and how does Publius attempt to solve that problem?

Please read the essay by David Hume linked here. It is one of two essays in Hume that Madison relied upon for Fed. #10. Compare the way Hume discusses faction to the way Madison presents a similar argument.

Hume's essay: <https://davidhume.org/texts/emp/pg>

February 3 John Locke, A Letter Concerning Toleration
Federalist #10. (again)

Try to outline Locke's argument for religious toleration.

Start thinking about what a constitution maker intends to do by encouraging religious toleration. What effects does the constitution maker hope to achieve with respect to democracy and with respect to religion?

February 8 Walter Berns, "Religion and the Founding Principle" in
Horwitz, ed. *Moral Foundations*

Discussion of religion and the Constitution continued.

February 10 Martin Diamond, "Ethics and Politics: The American Way"
Federalist #10

Try to grasp the large picture of politics that Diamond draws out of Federalist #10. Pay special attention to his use of Aristotle: on the one hand, Aristotle would not include American style democracy among his preferred regime types. On the other, Diamond thinks we can still use Aristotle's way of thinking to assess American politics. Try to understand both those points. Also, Federalist #10 suggests that the

Constitution creates a large commercial republic. What does that mean and what kind of economy does that entail?

February 15 Marx, *Communist Manifesto*

This famous and influential manifesto is one of the most radical critiques of capitalism. First, try to grasp the basic features of the argument: the role of history; the attention to class; the meaning of revolution; and the relation of material circumstances to ideas or ideology. Second, begin to think about how this contrast with Federalist #10 can help us understand the strengths and weaknesses of Federalist #10 and liberal democracy more generally.

February 17 Federalist 15, 23, 31

In Fed. 15, What is the great and radical vice of the Articles of Confederation? What does it suggest about how one could fix that vice? In Fed. 23 and 31, try to understand the logic of Hamilton's argument - the relation of means to ends and what that implies about how to interpret a constitution.

Topics for short analytic paper distributed today. You will pick one of the topics and write an 1,000 word essay about it. Due: Feb. 24.

February 22. Federalist 37, 39

In Federalist 37, we will spend time thinking about Madison's description about the limits of human reasoning and that suggests for constitutional interpretation. In Federalist 39, we will try to understand what it means to invent a new political form that is partly federal and partly national. Does the argument hold up? Is there more going on here than is apparent on the surface?

February 24 Centinal, Pennsylvania Minority and Federal Farmer, 227 to 269 in Ketchum.

Essay due today.

But please also be prepared to identify some of the principal concerns of the Anti-Federalists. What seems to most concern them about the proposed Constitution?

March 1 Federalist 47-51

These are some of the most important readings in the course. They lay out the case for a new kind of constitutional design. If there are serious problems in American politics today - the deepest source for

them may lie in this new and unprecedented structural design for the American national government.

Note the movement of Madison's argument - how he uses rhetoric to prepare the citizen for something very new.

March 3 Federalist 52, 53, 62, 70

Articles of Impeachment of Donald Trump (first time, 2019)

<https://www.nytimes.com/interactive/2019/12/10/us/politics/articles-impeachment-document-pdf.html>

Articles of Impeachment of Donald Trump (second time, 2021)

<https://www.congress.gov/117/bills/hres24/BILLS-117hres24ih.pdf>

One of the important topics we will discuss is impeachment and its role in the whole structural design of the American Constitution.

March 8 Federalist, 78, 84-85

Brutus, Nos XI to XV in Ketchum, AntiFederalist Papers.

Two large topics are our subjects. The first is judicial review. Compare Publius and Brutus. Note that Brutus, who opposed the Constitution, makes an argument about how the original constitution invites modes of interpretation in the future that are rejected today by many who recur to the original meaning of the Constitution.

The second large topic is the bill of rights. Note that Publius thought that a bill of rights was unnecessary and might pose a problem for the protection of rights in the future. Think about how his argument applies to controversies today, such as the current cases regarding abortion now before the Supreme Court.

March 10 Review session: Topics for test distributed.

MARCH 14-19 SPRING BREAK

March 22. Test during scheduled class time.

March 24 Robert Dahl, "On Removing Certain Impediments to Democracy"
James Ceaser, "Reply to Dahl" both in Horwitz.

Thinking back over *The Federalist*, how would you assess this argument between Dahl and Ceaser?

March 29. Tocqueville, 1-73

Read the introduction carefully. What does it mean that democracy is like a providential fact? How does this understanding of history differ from Marx? Thinking back to the Diamond article which

introduced you to Aristotle on regime types, including democracy, how does Tocqueville think about democracy in a completely new way?

March 31 Tocqueville, 73-168

APRIL 5 Tocqueville, 169-200

APRIL 7 Tocqueville 201-248

APRIL 12 Tocqueville 248-319

APRIL 14 On the *New York Times* 1619 Project

<https://www.nytimes.com/2019/12/20/magazine/we-respond-to-the-historians-who-critiqued-the-1619-project.html>

<https://www.politico.com/news/magazine/2020/03/06/1619-project-new-york-times-mistake-122248>

Hopefully, materials in this course should allow us to intelligently discuss the current political controversy regarding the teaching of history in the United States. This controversy provides a useful introduction to the thinking of Frederick Douglass.

APRIL 19 Frederick Douglass

"The Constitution and Slavery," an essay published in the *North Star*, March 16, 1849. In, Buccola, ed., *The Essential Douglass*.

"What to the Slave is the Fourth of July, 1852, in *The Essential Douglass*.

April 21 Frederick Douglass

"Oration of Frederick Douglass Delivered on the Occasion of the Unveiling of the Freedmen's Monument in Memory of Abraham Lincoln," 1876, in *The Essential Douglass*.

April 26. Herbert Storing

"Slavery and the Moral Foundations of the American Republic," in Horwitz ed. *Moral Foundations*.

April 28. Martin Luther King, Jr., Letter from Birmingham Jail

https://web.cn.edu/kwheeler/documents/Letter_Birmingham_Jail.pdf

Topics for test distributed

May 3. Review session

May 5. Test during scheduled class time